

IN THE SUPREME COURT OF OHIO

IN THE MATTER OF: : CASE NO. 2007-1310  
: :  
JOHN STEELE : On Appeal from Cuyahoga  
JORDAN STEELE : County Court of Appeals,  
: Eighth Appellate District  
: :  
: Court of Appeals  
: Case No. 89494

APPELLEE/MOTHER KAREN STEELE'S BRIEF IN OPPOSITION  
TO JURISDICTION

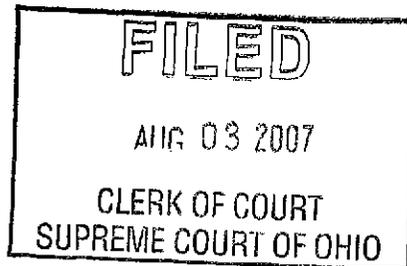
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TABLE OF CONTENTS

	<u>Page No.</u>
TABLE OF CONTENTS .....	i
TABLE OF AUTHORITIES .....	ii
STATEMENT OF CASE AND EXPLANATION .....	1
ARGUMENT AGAINST JURISDICTION .....	3
<u>Proposition of Law No. I:</u> .....	3
AN OHIO JUVENILE COURT'S DENIAL OF AN AGENCY'S MOTION FOR PERMANENT CUSTODY WHEN THE AGENCY ALREADY RETAINS TEMPORARY CUSTODY IS NOT A FINAL APPEALABLE ORDER.	
CONCLUSION .....	9
PROOF OF SERVICE .....	10

TABLE OF AUTHORITIES

Page No.

CASES

Atkinson vs. Grumman Ohio Corp. ..... 4  
(1988), 33 Ohio St. 80, 523 N.E. 2d 851

In re K.M., 2006 Ohio 4878 ..... 8

In Re Murray ..... 4,6  
(1990), 52 Ohio St. 3d 155, 556 N.E. 2d 1169

STATUTES

O.R.C. 2505.02 (A)(2) ..... 7

O.R.C. 2505.02(B) ..... 5,7

RULES

Ohio Juvenile Rule 34(J) ..... 3,4

OTHER SOURCES

III Blackstone, Commentaries on the Laws of England 47 (W.D. Lewis ed. 1902) ..... 7

Amendment XIV, Section 1 of the U.S. Constitution ..... 4

A Very Special Place in Life: The History of Juvenile Justice in Missouri 4-6" (2003) ..... 7

Baldwin's Ohio Juvenile Law by Giannelli and Yeamons (Thomson West 2006) ..... 7

**STATEMENT OF CASE AND EXPLANATION OF WHY THIS CASE IS NOT OF  
PUBLIC INTEREST OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE A  
SUBSTANTIAL CONSTITUTIONAL QUESTION**

Appellant Cuyahoga County Department of Children and Family Services attempts to argue in their jurisdictional brief that the entire system of Ohio child protection efforts will dissolve unless this case is heard. Appellant claims that every child in the system may be effected. They claim that tax monies will be wasted and all taxpayers will be effected. So too, the federal and Ohio legislatures will be offended. Further, the purposes and integrity of the legal systems will dwindle. Lastly, Appellant says that unless heard, that it will encourage "lengthy and costly foster care placements." However, Appellant's brief fails to document or provide a realistic or factual basis to prove their various unfounded fears..

It is therefore necessary to take a look at what kind of a case this really involves. It is a case involving two brothers, John Steele (d.o.b. 03-09-90)(age 17) and Jordan Steele (d.o.b. 12-07-92)(age 14 ½). The two boys were adjudged neglected, through admission by mother, and placed in Appellant's temporary custody on December 20, 2004.

On November 4, 2005, Appellant filed their motion for permanent custody. The trial on Appellant's motion occurred on November 28 -30, 2006 and December 4, 2006. The trial court ultimately denied the permanent custody motion.

Both boys participated in an *in camera* interview, and both boys testified at trial. Both boys stated that they did not desire to be adopted, and that they valued their relationship with their mother. The boys were living in the same foster home, and there was evidence that the foster mother was not willing to adopt, but was willing to have the boys live with her until they each finished high school.

Appellant appealed the denial of their permanent custody motion. The boys to this day remain in the same foster home. They are still "thriving" as commented by the trial court.

One wonders why Appellant filed any appeal, as the boys' consent would be necessary to effectuate an adoption.

This situation may raise the eyebrows of Ohio's taxpayers, but more than likely those taxpayers would want to know why Appellant is wasting resources under the facts of the Steele brothers' case.

This is not a case which will cause child protection systems to crumble. The Eighth District Court of Appeals dismissed Appellant's appeal. It is important to note that the two boys' placement is uneffected as they remain in Appellant's temporary custody. The Eighth District Court of Appeals' decision seems to promote some closure to the two Steele brothers, in their permanent foster home. Regrettably, Appellant seeks to prolong the Steele brothers' risk of losing their mother's companionship.

**ARGUMENT IN OPPOSITION OF APPELLANT'S PROPOSITION OF LAW**

**Proposition of Law No. I**

AN OHIO JUVENILE COURT'S DENIAL OF AN AGENCY'S MOTION FOR PERMANENT CUSTODY WHEN THE AGENCY ALREADY RETAINS TEMPORARY CUSTODY IS NOT A FINAL APPEALABLE ORDER.

This matter presents the Court with yet another opportunity to end the Appellant's practice of using the appellate process to avoid its desire to assume the responsibility to work with families. This case involves two teenage boys who are thriving in their foster home. They both wish to continue having visits and daily telephone contact with their mother and adult sister.

The trial court found that "mother has significant physical, mental or psychological problems and is unable to care for the children..." and they ruled that "adoption is not in the best interest of the children." The trial court concluded by continuing the boys in the Appellant's temporary custody.

So, it is reasonable to conclude that the sole issue that Appellant could impact in this appeal is that they will no longer need to coordinate visits between the mother and the two boys.

Appellant now appeals the trial courts decision to the Eighth District Court of Appeals, even though they were granted continued temporary custody. The Court of Appeals dismissed their appeal for want of a final appealable order.

**A. Appellant does not have a right to appeal under Ohio Juvenile Rule 34(J).**

Appellant's primary argument relies on Ohio Juvenile Rule 34(J), which Appellant asserts gives the agency a right to appeal their motion for permanent custody. In fact, Ohio Juvenile Rule 34(J) does not create such a right of appeal, and is merely a requirement for the trial court to advise of the right to appeal. Ohio Juvenile Rule 34(J) states:

Advisement of Rights After Hearing:

At the conclusion of the hearing, the court shall advise the child of the child's right to record expungement and, where any part of the proceeding was contested, advise the parties of their right to appeal.

The very title of Ohio Juvenile Rule 34(J) indicates that it is "advisory" and does not create any substantive rights. Does Appellant really assert that this rule was created to remind the county of the right to appeal?

**B. Every dispositional order issued by an Ohio Juvenile Court does not trigger a common law right to appeal.**

Appellant also claims that it has been deprived of "a property interest ...without due process of law." Appellant's Jurisdictional Brief at page 7, in citing Atkinson vs. Grumman Ohio Corp. (1988), 33 Ohio St. 80, 523 N.E. 2d 851.

It is not clear what property interest the Appellant claims they are being deprived of. It does seem necessary to be reminded of what Amendment XIV, Section 1 of the U.S. Constitution which grants rights to "persons.":

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.  
(Emphasis added).

Appellant relies on the case of In Re Murray (1990), 52 Ohio St. 3d 155, 556 N.E. 2d 1169, to support their premise that the continuance of a temporary custody order is a final, appealable order. In Murray, a parent appealed the award of neglected/dependent to a public children services agency. The Murray opinion states at page 1171 as follows:

The United States Supreme Court has stated that the right to raise one's children is an "essential" and "basic civil right." See *Stanley v. Illinois* (1972), 405 U.S. 645, 651, 92 S.Ct. 1208, 1212, 31 L.Ed2d 551; *Meyer v. Nebraska* (1923), 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042. Parents have a "fundamental liberty interest" in the care, custody, and management of the child. *Santosky v. Kramer* (1982), 455 U.S. 745, 753, 102 S.Ct. 1388, 1394, 71 L.Ed.2d 599. Further, it has been deemed "cardinal" that the custody, care and nurture of the child reside, first, in the parents. *H.L. v. Matheson* (1981), 450 U.S. 398, 410, 101 S.Ct. 1164, 1171, 67 L.Ed.2d 388; *Quilloin v. Walcott* (1978), 434 U.S. 246, 255, 98 S.Ct. 549, 554, 54 L.Ed.2d 511; *Stanley, supra*, 405 U.S. at 651, 92 S.Ct. At 1212; *Prince v. Massachusetts* (1944), 321 U.S. 158, 166, 64 S.Ct. 438, 422, 88 L.Ed. 645.

Similarly, this court has long stated that parents who are suitable persons have a "paramount" right to the custody of their minor children. *In re Perales* (1977), 52 Ohio St. 2d 89, 97, 6 O.O. 3d 293, 297, 369 N.E. 2d 1047, 1051-1052; *Clark v. Bayer* (1877), 32 Ohio St. 299, 310. Numerous reported decisions demonstrate that this principle has become the foundation for child custody cases faced by lower courts. See, e.g., *In re Fassinger* (1974), 43 Ohio App. 2d 89, 91-92, 72 O.O. 2d 292, 294, 334 N.E. 2d 5, 8; *In re Messner* (1969), 19 Ohio App. 2d 33, 39-40, 48 O.O. 2d 31, 35, 249 N.E. 2d 532, 536; *In re DeVore* (1959), 111 Ohio App. 1, 3, 13 O.O. 2d 376, 377, 167 N.E. 2d 381, 382; *In re Duffy* (1946), 78 Ohio App. 16, 18, 33 O.O.381, 382, 68 N.E. 2d 842, 843-844; *Ex Parte Combs* (C.P. 1958), 77 Ohio Laws Abs. 458, 460, 150 N.E. 2d 505, 507; *In re Zerick* (J.C. 1955), 74 Ohio Law Abs. 525, 530, 57 O.O. 331, 333, 129 N.E. 2d 661, 665; *In re Routa* (P.C. 1955), 71 Ohio Law Abs. 574, 576, 2 O.O. 2d 80, 130 N.E. 2d 453, 454; *In re Swentosky* (P.C. 1937), 25 Ohio Law Abs. 601, 602, 10 O.O. 150, 151, 1 Ohio Supp. 37, 38. Accordingly, it is manifest that parental custody of a child is an important legal right protected by law and, thus, comes within the purview of a "substantial right" for purposes of applying R.C. 2505.02.

Thus, there is long-standing precedent to allow a parent to appeal a case where the parent's fundamental right to raise their child is impeded. Parents have such "substantial rights" but county agencies do not, in that they are not "persons."

Appellant is misplaced in asserting that a government agency has same rights as parents.

**C. An order to extend temporary custody is not a final, appealable order.**

O.R.C. 2505.02(B) states, in part:

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment to all proceedings, issues, claims, and parties in the action.

The Appellant asserts that subsection (B)(2) applies to them, and cites Justice Douglas' concurring opinion in Murray, supra, which states at page 1175:

The second prong of R.C. 2505.02 provides that an order is final and appealable when it is “\* \* \* an order that affects a substantial right made in a special proceeding \* \* \*.” Clearly, complaints brought in juvenile court pursuant to statute to temporarily or permanently terminate parental rights are “special proceedings.” Such actions were not known at common law. In addition, it is beyond argument that a “substantial right” is affected when parental custody is involved.

Let us be reminded that this is merely a “concurring” opinion, and not adopted by the other six justices who authored the Murray opinion. It is not an Ohio precedent.

The question remains whether or not Justice Douglas was correct. O.R.C. 2505.02 (A)(2) defines special proceeding as “an action or proceeding that is specifically created by statute and that prior to 1853 was not denoted as an action at law or suit in equity.”

According to III Blackstone, Commentaries on the Laws of England 47 (W.D. Lewis ed. 1902):

The King’s chancellor “is the general guardian of all infants, idiots, and lunatics; and has the general superintendence of all charitable uses in the kingdom.”

This is referencing the age old doctrine of *parens patriae* which is defined in Barron’s Law Dictionary as “Lat: parent of his country; refers traditionally to the role of the state as sovereign and guardian of persons under legal disability.”

And, according to a writing of Douglas E. Abrams entitled “A Very Special Place in Life: The History of Juvenile Justice in Missouri 4-6” (2003):

Once the Revolution ended direct English influence on the new nation, American law quickly began to extend *parens patriae* protection beyond children of well-to-do parents. Justice Joseph Story’s influential 1836 masterpiece, *Commentaries on Equity Jurisprudence*, spoke of children generally, without regard to their parents’ station in life: “[P]arents are intrusted with the custody of the persons, and the education, of their children; yet this is done upon the natural presumption, that the children will be properly taken care of \* \* \*; and that they will be treated with kindness and affection. But, whenever \* \* \* a father \* \* \* acts in a manner injurious to the morals or interests of his children; in every such case, the Court of Chancery will interfere.

And, the well-known handbook entitled Baldwin’s Ohio Juvenile Law by Giannelli and Yeamons (Thomson West 2006) states on page 2:

The doctrine of *parens patriae* underlies the philosophy of the juvenile court system. The concept that “the state is the higher or the ultimate parent of all of the dependents within its borders” was used to justify the commitment of children to reform school as early as 1839.

Thus, it appears that all states, including Ohio, utilized the *parens patriae* doctrine to take children who were at risk into state custody before 1853 at common law through equitable powers.

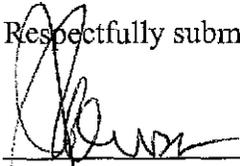
Accordingly, R.C. 2505.02(B)(2) simply does not apply herein.

**CONCLUSION**

Appellant Cuyahoga County Department of Children and Family Services already has two other cases pending in this Court where their permanent custody motions were denied. In this case and In re K.M., 2006 Ohio 4878 (for which the undersigned is the legal counsel for the children), involve children who do not want to be adopted. In both cases, the Appellant is granted continuing temporary custody. To allow the Appellant to process such appeals only stands to prolong in the children's eyes an extension of the time period where they will be cutoff from their mothers.

The Appellant's appeal herein was dismissed because it was not an appealable order. For the reasons stated above, Appellee/Mother Karen Steele strongly opposes the acceptance of this case involving her sons John and Jordan Steele by this Honorable Court.

Respectfully submitted,



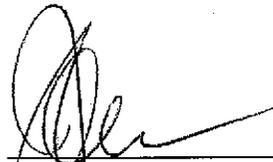
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**PROOF OF SERVICE**

A copy of the foregoing **Appellee/Mother Karen Steele's Brief in Opposition of Jurisdiction** was sent via ordinary U.S. mail, postage prepaid to, Joseph C. Young, Assistant Prosecuting Attorney, Cuyahoga County Department of Children and Family Services, 8111 Quincy Ave., Rm. 341, Cleveland, OH 44104, Thomas Kozel, P.O. Box 534, North Olmsted, OH 44070, Linda Julian, Guardian ad litem, P.O. Box 93523, Cleveland, OH 44101 and Michael Granito, Counsel for Children, 24400 Highland Rd., Richmond Hts., OH 44143 on this 28<sup>th</sup> day of July, 2007.



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