[Cite as *Otten v. Tuttle*, 2009-Ohio-3158.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

GARY OTTEN,	:	
Plaintiff-Appellee,	:	CASE NO. CA2008-05-053
	:	O P I N I O N
- vs -		6/29/2009
	:	
SUSAN TUTTLE nka Crooks,	:	
Defendant-Appellant.	:	

CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS,
JUVENILE DIVISION
Case No. 2007-JG-14510

Gary D. Otten, 1907 Eastern Avenue, Covington, KY 41014, plaintiff-appellee, pro se

Edwin L. Hoseus, Jr., 741 Milford Hills Drive, Milford, OH 45150-1446, for defendant-appellant

POWELL, J.

{¶1} Appellant-mother, Susan Tuttle nka Susan Crooks, appeals the decision of the Clermont County Court of Common Pleas, Juvenile Division, awarding appellee-father, Gary Otten, standard parenting time with his daughter, Paityn Tuttle. For the reasons set forth below, we affirm the juvenile court's decision.

{¶2} Paityn Tuttle was born on July 13, 2005. At the time of Paityn's birth,

appellant was married to Jeremy Tuttle, who is listed as father on the child's birth certificate. In August 2005, however, genetic testing was performed, the results of which indicate that appellee is Paityn's biological father. Accordingly, in February 2007, appellee filed a complaint for allocation of parental rights and responsibilities concerning Paityn. Appellant also filed a complaint to determine parentage and establish child support. Appellee filed a confession of judgment admitting he was Paityn's father in May 2007.

{¶3} In April 2007, appellant married Kevin Crooks. Shortly after the marriage, Crooks filed a petition in the Hamilton County Probate Court to adopt Paityn. As a result of such filing, appellant filed a motion to dismiss appellee's complaint in this case on the basis the juvenile court lacked jurisdiction over the matter due to the pending adoption proceeding. On June 6, 2007, the Hamilton County Probate Court stayed the adoption proceeding pending the resolution of appellee's action in this case.[1]

{¶4} On June 20, 2007, the magistrate conducted a hearing on appellee's complaint for allocation of parental rights and responsibilities, during which appellee testified concerning his relationship with appellant and Paityn. Appellee testified that he and appellant commenced a romantic relationship while appellant was married to Tuttle, and that appellant became pregnant during such relationship. Appellee further testified that within a month following Paityn's birth, he obtained genetic testing which indicated that he was the child's father. According to appellee, appellant and Tuttle separated the day the genetic test results were obtained. Appellee indicated that he lived with appellant and Paityn for an extended period of time following appellant's separation from

1. Appellant appealed such decision to the First District Court of Appeals. The appeal was subsequently dismissed February 2008.

Tuttle, and that he supported Paityn during that time. Appellee testified, however, that appellant has refused to allow him to see or speak with Paityn since February 2007 despite his numerous requests to do so. Appellant did not present any evidence during the hearing.

{¶5} On July 30, 2007, the juvenile court issued its decision declaring appellee to be Paityn's father, but denying appellee parenting time with the child, and staying the matter pending the outcome of the adoption proceeding. Appellee filed objections to the magistrate's decision, which the juvenile court overruled on December 11, 2007. Appellee subsequently appealed the juvenile court's decision to this court. Upon appellee's request, however, this court dismissed such appeal in February 2008.

{¶6} The juvenile court resumed the case following the dismissal of appellee's appeal.[2] On March 10, 2008, the magistrate issued an order granting custody of Paityn to appellant and awarding standard parenting time to appellee on the basis of the evidence presented during the June 20, 2007 hearing. The court also ordered appellee to pay $264.99 in child support on behalf of Paityn and to maintain health insurance for the child. Appellant filed objections to the magistrate's decision, attempting to introduce evidence that she failed to present during the June 20, 2007 hearing. Following a hearing on the matter, the juvenile court overruled appellant's objections and affirmed the magistrate's decision.[3]

{¶7} Appellant thereafter filed a timely notice of appeal to this court, advancing

2. While appellee's appeal was pending in this court, appellee served the juvenile court with a copy of a complaint he had filed in the Ohio Supreme Court seeking a writ of procendendo. It does not appear from the record that the Ohio Supreme Court ruled upon the matter.

3. According to appellee, the Hamilton County Probate Court subsequently dismissed Crooks' petition for adoption in November 2008.

a single assignment of error for review. In conjunction with her appeal, appellant filed a motion to stay the magistrate's parenting order pending the outcome of the appeal, which the juvenile court granted on June 5, 2008.

{¶8} Assignment of Error:

{¶9} "THE TRIAL COURT ERRED IN GRANTING THE APPELLEE, GARY OTTEN

STANDARD GUIDELINE PARENTING TIME WITH THE MINOR CHILD PAITYN TUTTLE."

{¶10} In her sole assignment of error, appellant argues the juvenile court erred in granting appellee parenting time without holding an additional hearing on the matter at which appellant could present evidence. Appellant contends she did not introduce evidence during the June 20, 2007 hearing because her attorney had previously filed a motion to stay and/or dismiss the proceeding due to the pending adoption proceeding in the Hamilton County Probate Court. We find appellant's argument without merit.

{¶11} Pursuant to R.C. 3109.12(A), "* * * [i]f a child is born to an unmarried woman and if the father of the child has acknowledged the child and that acknowledgment has become final pursuant to section 2151.232, 3111.25, or 3111.821 of the Revised Code or has been determined in an action under Chapter 3111 of the Revised Code to be the father of the child, the father may file a complaint requesting that the court of appropriate jurisdiction of the county in which the child resides grant him reasonable parenting time rights with the child * * *."

{¶12} R.C. 3109.12(B) further provides that "[t]he court may grant the parenting time rights or companionship or visitation rights requested under division (A) of this

section, if it determines that the granting of the parenting time rights or companionship or visitation rights is in the best interest of the child. In determining whether to grant reasonable parenting time rights or reasonable companionship or visitation rights with respect to any child, the court shall consider all relevant factors, including, but not limited to, the factors set forth in division (D) of section 3109.051 of the Revised Code. Divisions (C), (K), and (L) of section 3109.051 of the Revised Code apply to the determination of reasonable parenting time rights or reasonable companionship or visitation rights under this section and to any order granting any such rights that is issued under this section."

{¶13} As this court has previously recognized, a juvenile court is vested with broad discretion in determining the visitation rights of a nonresidential parent. *In the Matter of Nichols* (June 8, 1998), Clermont App. No. CA97-11-102, 1998 WL 295937, 3-5. Accordingly, while a juvenile court's visitation orders must be reasonable and consistent with the best interest of the child, an appellate court must review a juvenile court's decision concerning visitation with deference, and will reverse only if the court abused its discretion. Id. An abuse of discretion connotes more than an error of law or judgment and implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶14} A nonresidential parent's right of visitation with his child is a natural right and should be denied only under extraordinary circumstances. *In the Matter of Nichols* at 5, citing *Pettry v. Pettry* (1984), 20 Ohio App.3d 350, 352. Extraordinary circumstances would include the unfitness of the noncustodial parent, or a showing by clear and convincing evidence that visitation presents a significant risk of serious

emotional or physical harm to the child. Id., citing *Johntonny v. Malliski* (1990), 67 Ohio App.3d 709, 712.

{¶15} Our review of the record in this case demonstrates the juvenile court acted within its discretion in granting appellee standard parenting time with Paityn.[4] The juvenile court considered the evidence presented during the June 20, 2007 hearing on the matter, including appellee's testimony concerning his relationship with appellant and Paityn. Appellee testified that he and his other two children lived with appellant and Paityn for an extended period of time following Paityn's birth. He indicated that he supported Paityn during that time by adding the child to his health insurance plan and providing her with clothing, food, and money. Appellee further testified that appellant has refused to allow him to see or speak with Paityn since February 2007 despite his numerous requests to do so.

{¶16} The record demonstrates that appellant's counsel was present at the hearing and did not offer any evidence concerning appellee's request for parenting time. Rather, appellant's counsel opined that "when the [Hamilton County Probate] Court finds that I don't need [appellee's] consent and the adoption is granted everything would become moot here anyway." While appellant argues the juvenile court should have conducted an additional evidentiary hearing on the matter of parenting time, appellant has cited no legal authority in support of her contention that the court erred in failing to do so. Moreover, we find appellant was afforded an ample opportunity to present evidence during the juvenile court's June 20, 2007 hearing and simply declined to do so. Accordingly, our review of the record has yielded no indication that the juvenile court

4. We note that appellant does not challenge the juvenile court's consideration of the requisite statutory factors.

abused its discretion in granting appellee parenting time with Paityn based upon the evidence presented.

{¶17} Based upon the foregoing, we find appellant's sole assignment of error without merit and overrule the same accordingly. The judgment of the juvenile court is hereby affirmed. Because of excessive delay in this case that has prevented appellee from visiting Paityn for over two years, we instruct that the juvenile court's order awarding appellee standard parenting time be put into effect on an immediate basis with the issuance of this opinion.

BRESSLER, P.J., and RINGLAND, J., concur.