[Cite as *In re P.G.*, 2009-Ohio-6747.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

IN THE MATTER OF:	:	
P.G.	:	CASE NO. CA2008-12-109
	:	O P I N I O N 12/21/2009
	:	
	:	
	:	

APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS,
JUVENILE DIVISION
Case No. 2003-JG-11310

Kacy C. Eaves, P.O. Box 6251, Cincinnati, OH 45206, guardian ad litem

T. David Burgess Co., L.P.A., T. David Burgess, 110 North Third Street, Williamsburg, OH, 45176-1322, for appellant, Father

Mark Eckerson, One Crestview Drive, Milford, OH 45150, for appellee, Maternal Grandmother

POWELL, P.J.

{¶1} Appellant, J.M. (father), appeals the decision of the Clermont County Court of Common Pleas, Juvenile Division, denying his motion for parenting time with his minor child, P.G.

{¶2} Father was 20 years old and P.G.'s mother was 14 years of age when mother became pregnant with P.G. (d.o.b. 7/5/2003). According to findings from the juvenile court, father was convicted of unlawful sexual conduct with a minor and sentenced to seven months in prison in connection with his association with P.G.'s mother. P.G. was placed in the custody of his maternal grandmother (custodian), with whom the child's mother lived.

{¶3} Father filed a motion for parenting time, and upon the agreement of the parties, reportedly exercised some visitation with the child. A guardian ad litem (GAL) for the child was subsequently appointed. The GAL did not agree that father should receive parenting time. The juvenile court magistrate denied father's motion, and father filed objections to the decision. According to the magistrate's findings, father withdrew his objections because he had been returned to prison on a parole violation.

{¶4} Father filed a new motion for "visitation" in 2006, and over a two-year period, the motion was the subject of hearings before the juvenile court magistrate.[1] In 2008, the magistrate issued a decision denying father's motion. The juvenile court overruled father's objections and adopted the magistrate's decision. Father now institutes this appeal, presenting a single assignment of error for our review.

{¶5} Assignment of Error:

{¶6} "THE TRIAL COURT COMMITTED ERROR BY NOT GRANTING APPELLANT'S OBJECTIONS AND ORDERING THE MAGISTRATE TO GRANT SOME PARENTING TIME FOR THE APPELLANT AND HIS CHILD."

1. The magistrate indicated in his decision that three hearings were held on father's motion. The transcripts provided to this court do not include any testimony from the June 25, 2007 hearing date.

{¶7} Father argues that the denial of some parenting time with the child was against the manifest weight of the evidence, contrary to law, and/or an abuse of discretion, and was not in the child's best interest.

{¶8} R.C. 3109.12(A) states, in pertinent part, that if a child is born to an unmarried woman and if the father has either formally acknowledged or been determined to be the father, the father may file a complaint requesting the court grant him reasonable parenting time with the child. R.C. 3109.12(B) provides that the court may grant parenting time requested under division (A) if it determines that the granting of the right is in the best interest of the child. The court shall consider all relevant factors, including, but not limited to, the factors set forth in R.C. 3109.051(D). R.C. 3109.12(B).

{¶9} In addition, R.C. 3109.051(C) states, in part, that when determining whether to grant parenting time to a parent pursuant to R.C. 3109.12, the court shall consider the best interests factors of R.C. 3109.051(D).

{¶10} R.C. 3109.051(D) includes such factors as the interaction of the child with parents, siblings, other persons, the child's adjustment to home, school, and community, the health and safety of child, and the mental and physical health of all parties.[2]

---

2. **{¶a}** We note that under R.C. 3109.051(A), if no shared parenting decree is issued in a divorce, dissolution, separation or annulment, the court *shall* make a just and reasonable order of parenting time unless the court determines that such order would not be in the child's best interest; conversely, a court *may* make an order of parenting time for the father of a child born to an unmarried woman upon the father's request, if such an order is in the best interest of the child. [Emphasis added].

{¶b} Our decision *In the Matter of Nichols* (June 8, 1998), Clermont App. No. CA97-11-102 dealt with a request for parenting time from a father of a child born to an unmarried woman. The case discussed both R.C. 3109.12 and R.C. 3109.051, but placed the "burden of proof" on the party opposing visitation, and also stated that a nonresidential parent's visitation rights should only be denied under extraordinary circumstances. Both statements as applied to a situation of a father seeking parenting time with a child of an unmarried woman are not congruent with the language of

{¶11} The child's GAL issued a report for the second hearing scheduled on father's motion, wherein she reluctantly agreed that father could visit the child under specific limitations. However, the magistrate denied the parties' temporary agreement to permit visits during the pendency of the case.

{¶12} In her final report, the GAL continued to express concerns about father and her perception that he was less than forthcoming about information regarding his parole violation and his psychological testing or counseling, if any. The GAL stated that if the court was inclined to permit visitation, she would recommend very specific limits to the supervised visits, due, in part, to the child's fear of father.

{¶13} The custodian of the child testified at the last hearing that she had concerns that the child would be "set back" if he visited father because the child does not know him and is afraid of him. The mother of P.G. was reportedly not living in the same residence with the child and his custodian when the final hearing was held. While the record indicates that mother was present at the hearings, she did not testify and her position is not known to this court.

{¶14} The magistrate issued his decision in June 2008 and filed findings of fact and conclusions of law in July. In the conclusions of law, the magistrate's only citation was *In re Connolly* (1974), 43 Ohio App.2d 38, and included language from the case that a putative father was not entitled to visitation with a child born out of wedlock over the objection of the mother unless the putative father clearly established that such visitation was in the best interests of the child.

{¶15} While the language of *Connolly* acknowledged that the best interests of

---

R.C. 3109.12(A) and (B). Therefore, we will no longer follow *Nichols* to the extent that its language and holdings are inconsistent with statutory law dealing with a father seeking parenting time with the child of an unmarried woman.

the child should be the considered, the position of *Connolly* otherwise appears inconsistent with the current state of the law pertaining to a father seeking parenting time with a child born to an unmarried woman. Based on the language of R.C. 3109.12, and given the fact that mother does not have custody and her position was not presented on the record before this court, it is perplexing why the juvenile court would rely on *Connolly* and the specific language it cited to support its conclusions.

{¶16} More importantly, we observe that the magistrate's decision did not mention the applicable law in R.C. 3109.12, nor did it appear to consider any of the best interest factors of R.C. 3109.051(D).

{¶17} We are mindful that a juvenile court is vested with broad discretion in determining the parenting rights of a nonresidential parent, *Otten v. Tuttle*, Clermont App. No. CA2008-05-053, 2009-Ohio-3158, ¶13, but we cannot ascertain whether the juvenile court applied the correct law in making its determination. Accordingly, we sustain father's assignment of error only to the extent that we reverse the juvenile court's determination and remand this cause so that the juvenile court may determine father's motion for parenting time in compliance with R.C. 3109.12(B) and the best interest factors, including, but not limited to, those enumerated in R.C. 3109.051(D).

{¶18} Judgment reversed and remanded for further proceedings consistent with this opinion and in accordance with the law.

YOUNG and HENDRICKSON, JJ., concur.