

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

GARY OTTEN,	:	
Plaintiff-Appellant,	:	CASE NO. CA2009-09-055
- vs -	:	<u>OPINION</u>
	:	11/8/2010
SUSAN TUTTLE nka CROOKS,	:	
Defendant-Appellee.	:	

APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. 2007JG14510

Gary Otten, 1907 Eastern Avenue, Covington, Kentucky 41014, plaintiff-appellant, pro se
Edwin L. Hoseus, Jr., 741 Milford Hills Drive, Milford, Ohio 45150-1446, for defendant-appellee

BRESSLER, P.J.

{¶1} Plaintiff-appellant, Gary Otten (Father), appeals pro se from the decision of the Clermont County Court of Common Pleas, Juvenile Division, to amend its order granting Father standard parenting time with his daughter, Paityn Tuttle (Daughter), something which this court ordered be put into effect on an immediate basis, and implement a "schedule of transition." Father also appeals the juvenile court's decision denying his motion for contempt

against defendant-appellee, Susan Tuttle nka Susan Crooks (Mother). For the reasons outlined below, we affirm in part, reverse in part, and remand for further proceedings.

{¶2} Daughter was born on July 13, 2005. At the time of Daughter's birth, Mother was married to Jeremy Tuttle. Tuttle is listed as father on Daughter's birth certificate.

{¶3} On August 12, 2005, Father, who was involved in a romantic relationship with Mother during her marriage to Tuttle, obtained genetic test results that confirmed he was, in fact, Daughter's biological father. After learning of the genetic test results, Tuttle and Mother were divorced on November 2, 2005.

{¶4} On January 29, 2007, once his romantic relationship with Mother turned sour, Father filed a complaint with the Clermont County Juvenile Court to establish his parental rights and responsibilities. Shortly thereafter, Mother filed her own parentage action against Father in the same court. The cases were subsequently consolidated.

{¶5} On April 13, 2007, Mother married Kevin Crooks (Husband). On April 20, 2007, one week after the marriage, Husband filed a petition to adopted Daughter in the Hamilton County Court of Common Pleas, Probate Division. On June 6, 2007, the probate court stayed the adoption proceeding pending resolution of the parties' parentage action.

{¶6} On August 22, 2007, after holding a hearing on the matter, a juvenile court magistrate issued an amended decision declaring Father to be Daughter's biological father. Despite this finding, the magistrate determined that it would "not be in the best interest of [Daughter], to grant parenting time to [Father] at present as any parenting orders issued by this court may be superseded by a decree of adoption issued by the Hamilton County Probate Court * * *." Father filed objections to the magistrate's decision, which the juvenile court overruled on December 11, 2007. Father then appealed the juvenile court's decision to this court, but, upon his request, the appeal was dismissed on February 29, 2008.

{¶7} On March 10, 2008, shortly after Father's appeal was dismissed, the juvenile

court magistrate issued an order awarding Mother custody of Daughter and granting Father standard parenting time. On May 16, 2008, after holding a hearing on Mother's objections, the juvenile court adopted the magistrate's decision granting Father standard parenting time.

On May 21, 2008, Mother appealed the juvenile court's decision and filed a motion to stay the juvenile court's order granting Father standard parenting time. On June 5, 2008, the juvenile court granted Mother's motion to stay by finding "that it is in the best interest of the child to stay the execution of [its] order regarding the child's visitation with [Father.]"

{¶8} On November 5, 2008, after lifting its stay, the probate court dismissed Husband's petition to adopt Daughter because Father did not consent to the adoption as required by R.C. 3107.06. The Ohio Supreme Court later affirmed the probate court's decision. See *In re Adoption of P.A.C.*, 126 Ohio St.3d 236, 2010-Ohio-3351.

{¶9} On June 29, 2009, after a number of further delays, this court affirmed the juvenile court's decision granting Father standard parenting time. See *Otten v. Tuttle*, Clermont App. No. CA2008-05-053, 2009-Ohio-3158. In that decision, we explicitly stated, in pertinent part, the following:

{¶10} "Because of excessive delay in this case that has prevented [Father] from visiting [Daughter] for over two years, we instruct that the juvenile court's order awarding [Father] standard parenting time be put into effect on an immediate basis with the issuance of this opinion." *Id.* at ¶17.

{¶11} After our decision was released, Father attempted to schedule visitation with Daughter in accordance with the juvenile court's May 16, 2008 standard parenting time order. However, instead of following our clear instructions, Mother sent Father a notice indicating she wanted to implement "transitional time." Father refused Mother's offer, and, as a result,

was denied access to his daughter.¹ Thereafter, on July 6, 2009, Mother filed a motion with the juvenile court seeking to "Modify Guideline Parenting Time."

{¶12} On August 10, 2009, after holding a hearing on Mother's motion, and without first putting its standard parenting order into effect in accordance with this court's mandate, the juvenile court determined that it was "in the best interest of the child, and in the best interest of a healthy, positive, and long term relationship with both parents, that a graduated schedule of contact and visitation be implemented." The juvenile court then amended its May 16, 2008 order granting Father standard parenting time and implemented a "schedule of transition" effective from August 10, 2009 through October 4, 2010. Father appealed the juvenile court's decision implementing the "schedule of transition" on September 1, 2009.

{¶13} On September 21, 2009, while his original appeal was still pending, Father filed a motion for contempt alleging Mother violated the juvenile court's August 10, 2009 order implementing the "schedule of transition." The juvenile court denied Father's motion on February 10, 2010. Father appealed the juvenile court's decision denying his motion for contempt on February 23, 2010.

{¶14} On March 16, 2010, this court granted Father's motion to consolidate his appeals.

{¶15} Now pending before this court is Father's consolidated appeal, which raises a total of eight assignments of error for our review. For ease of discussion, Father's first, second, third, fourth, fifth, and sixth assignments of error addressing the juvenile court's decision to impose a "schedule of transition" will be addressed together, as will his seventh and eighth assignments of error addressing the juvenile court's decision denying his motion for contempt.

{¶16} Assignment of Error No. 1:

1. Father did visit Daughter briefly on July 30, July 31, and again on August 6, 2009.

{¶17} "THE TRIAL COURT ABUSED IT'S DISCRETION WHEN IT REDUCED [FATHER'S] PARENTING TIME DOWN TO 4 HOURS." [sic]

{¶18} Assignment of Error No. 2:

{¶19} "THE TRIAL COURT'S DECISION PLACED UNDUE BURDEN ON [FATHER]."

{¶20} Assignment of Error No. 3:

{¶21} "THE TRIAL COURT'S DECISION INVOLVED PARTIES OUTSIDE THE COURT'S JURISDICTION."

{¶22} Assignment of Error No. 4:

{¶23} "THE TRIAL COURTS DECISION VIOLATED [FATHER'S] CONSTITUTIONAL RIGHTS BECAUSE IT DID NOT ALLOW HIM ENOUGH TIME TO TEACH HIS ETHICAL AND RELIGIOUS BELIEFS TO HIS DAUGHTER."

{¶24} Assignment of Error No. 5:

{¶25} "THE TRIAL COURTS DECISION VIOLATED [FATHER'S] RIGHT TO PROCEDURAL DUE PROCESS."

{¶26} Assignment of Error No. 6:

{¶27} "THE TRIAL COURTS DECISION VIOLATED [FATHER'S] EQUAL PROTECTION RIGHTS."

{¶28} In his first six assignments of error, Father presents numerous challenges to the juvenile court's August 10, 2009 decision to amend its May 16, 2008 order granting him standard parenting time, something which this court ordered be put into effect on an immediate basis, and implement a "schedule of transition." Without addressing Father's specific arguments, we find the juvenile court abused its discretion by failing to comply with this court's clear instructions to put its May 16, 2008 order granting standard time into effect immediately, and therefore, erroneously deviated from the law of the case.

{¶29} It is well-established that decisions made by a reviewing court regarding legal

questions remain the law of that case for all subsequent proceedings at both the trial and appellate levels. *Marder v. Marder*, Clermont App. No. CA2008-11-108, 2009-Ohio-3420, ¶14; *Nolan v. Nolan* (1984), 11 Ohio St.3d 1, syllabus. Absent extraordinary circumstances, such as an intervening decision by the Ohio Supreme Court, an inferior court has no discretion to disregard the mandate of a superior court in a prior appeal in the same case. *Roush v. Brown*, Butler App. No. CA2009-09-225, 2010-Ohio-1520, ¶15; *Nolan* at 3-4. In turn, upon remand, an inferior court is without authority to extend or vary the mandate given. *Singleton v. Singleton* (1994), 95 Ohio App.3d 467, 471. While this doctrine is generally considered a rule of practice, the rule is necessary to ensure consistency of results in a case, to avoid endless litigation by settling the issues, and to preserve the structure of superior and inferior courts as designed by the Ohio Constitution. *Hopkins v. Dyer*, 104 Ohio St.3d 461, 2004-Ohio-6769, ¶15.

{¶30} As noted above, this court ordered the juvenile court's May 16, 2008 decision granting Father standard parenting time "be put into effect on an immediate basis" with the issuance of our June 29, 2009 opinion. However, instead of following our clear mandate, the juvenile court determined that ignoring our instructions by amending the order to implement a "schedule of transition" was more appropriate. While we are certainly mindful that a juvenile court is vested with broad discretion in determining the parenting rights of a nonresidential parent, to permit the juvenile court to deviate so markedly from this court's order would essentially defeat the purposes behind the law of the case doctrine. *Otten*, 2009-Ohio-3158 at ¶13; *Roush* at ¶21, citing *Nolan* at 5. In turn, as much as it may disagree with our ruling, the juvenile court's August 10, 2009 decision to amend its May 16, 2008 order and implement a "schedule of transition" is reversed. In addition, because the juvenile court failed to follow our original mandate, we again remand this matter with the unambiguous instruction to grant

Father standard parenting time in accordance with its May 16, 2008 decision *immediately*.² Accordingly, based on the facts and circumstances of this case, Father's first, second, third, fourth, fifth, and sixth assignments of error are sustained.

{¶31} Assignment of Error No. 7:

{¶32} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DID NOT FIND TUTTLE IN CONTEMPT OF COURT." [sic]

{¶33} Assignment of Error No. 8:

{¶34} "THE TRIAL COURT'S SHOULDN'T HAVE LET IT'S DECISION BE INFLUENCED BY A PENDING ADOPTION MATTER." [sic]

{¶35} In his seventh and eighth assignments of error, Father argues that the trial court erred by not finding Mother in contempt because, according to him, she refused to follow the juvenile court's August 10, 2009 order implementing the "schedule of transition." However, after a thorough review of the record, and even though there may be some evidence indicating Mother was less than accommodating during the initial parenting time visits under the "schedule of transition," as the juvenile court found, and for which we agree, Father did not provide sufficient evidence to find Mother in contempt. *Kranz v. Kranz*, Warren App. No. CA2008-04-054, 2009-Ohio-2451, ¶29; *Hueber v. Hueber*, Clermont App. Nos. CA2006-01-004, CA2006-02-019, CA2006-02-020, 2007-Ohio-913, ¶16, citing *Arthur Young & Co. v. Kelly* (1990), 68 Ohio App.3d 287, 295. Therefore, based on the evidence presented, we find the juvenile court did not abuse its discretion by denying Father's motion. *Rapp v. Pride*, Butler App. No. CA2009-12-311, 2010-Ohio-3138, ¶17. Accordingly, Father's seventh and eighth assignments of error are overruled.

2. Our decision should not be construed as prohibiting the juvenile court from any future modifications of Father's parenting time. However, for obvious reasons, any modification to the parenting time order can occur only after the order has been put into effect, and then, only after it considers the enumerated factors set forth in R.C. 3109.051(D). See *Shafor v. Shafor*, Warren App. No. CA2008-01-015, 2009-Ohio-191, ¶8.

{¶36} Judgment affirmed in part, reversed in part, and remanded for further proceedings.

RINGLAND and HENDRICKSON, JJ., concur.

[Cite as *Otten v. Tuttle*, 2010-Ohio-5424.]