[Cite as *In re F.D.*, 2009-Ohio-4788.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

In Re: :
F.D. : Appellate Case No. 23358
:
: Trial Court Case No. JC 2008-4380
:
: (Juvenile Appeal from
: Common Pleas Court)
:
:

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<u>O P I N I O N</u>

Rendered on the 11th day of September, 2009.

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BROGAN, J.

{¶ 1} Bryan Dycus appeals from the trial court's decision and entry granting visitation rights to appellee June Taylor, the maternal grandmother of his three-year-old daughter, F.D.

{¶ 2} Dycus advances two assignments of error on appeal. First, he contends the trial court erred in failing to give "special weight" to his wishes regarding nonparent visitation. Second, he claims the trial court's decision to grant Taylor visitation with F.D. is against the manifest weight of the evidence.

{¶ 3} The record reflects that Dycus was married to Taylor's daughter, Christy. In September 2002, Dycus and Christy discovered that she had a brain tumor. Christy underwent treatment, and she believed the cancer successfully had been removed. In the fall of 2004, when she was two months pregnant with F.D., Christy discovered that the tumor had returned and that she was terminally ill. Dycus and Christy decided to continue with the pregnancy. F.D. was born in May 2005. Christy died in June 2006, when the child was thirteen months old.

{¶ 4} In the fall of 2006, Dycus met his current wife, Angela. They became engaged in January 2008. Dycus rented an apartment in northern Michigan and moved there with F.D. and Angela in June 2008. Dycus and Angela married two months later while living in Michigan. Taylor commenced the present action for court-ordered visitation with F.D. in May 2008 upon discovering Dycus' planned move. She brought her complaint under R.C. 3109.11, which authorizes relatives of a deceased parent to seek visitation with the deceased parent's child. Joining her as plaintiffs were her son, Joshua Bingham, who is F.D.'s uncle, and her husband, Lawrence Taylor, who is F.D.'s step-grandfather.[1]

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[1]June Taylor, Lawrence Taylor, and Joshua Bingham will be referred to collectively as the "maternal relatives."

{¶ 5} A magistrate held an October 2008 evidentiary hearing on the maternal relatives' complaint for visitation. Following the hearing, the magistrate filed a December 2008 decision granting them visitation with F.D. for one week every two months. The magistrate also authorized the maternal relatives to speak with F.D. on the telephone once a week and ordered Dycus not to interfere with any letters or packages sent to the child. Dycus filed objections to the magistrate's ruling. In a February 2009 decision and judgment entry, the trial court sustained the objections in part and overruled them in part. After considering applicable statutory factors and indicating that it had given special weight to Dycus' wishes, the trial court concluded that it was in F.D.'s best interest for visitation to be granted. The trial court narrowed the magistrate's order, however, by (1) granting visitation only to Taylor, the maternal grandmother, while encouraging the other maternal relatives to see the child during Taylor's visitation time, (2) limiting visitation to one week per year, and (3) requiring Dycus to allow telephone contact between F.D. and the maternal relatives on holidays and the child's birthdays. The trial court expressed its belief that "this order [is] narrowly tailored [to] maintain contact between said child and the maternal relatives in accordance with the child's best interest, and at the same time allow Mr. Dycus to exercise his constitutional right to make decisions concerning the care, custody, and control of his child." This timely appeal followed.

{¶ 6} In his first assignment of error, Dycus contends the trial court erred in failing to give special weight to his wishes regarding visitation. This argument emanates from *Troxel v. Granville* (2000), 530 U.S. 57, which recognized that parents have a fundamental right to make decisions regarding the care, custody, and control of their children and established that a parent's decision regarding nonparent visitation is entitled to "some special weight."

{¶ 7} The Ohio Supreme Court applied *Troxel* to Ohio's nonparent visitation statutes in *Harrold v. Collier*, 107 Ohio St.3d 44, 2005-Ohio-5334. It held that "Ohio courts are obligated to afford some special weight to the wishes of parents of minor children when considering petitions for nonparental visitation made pursuant to R.C. 3109.11 or 3109.12." Those statutes allow a trial court to grant visitation to a minor child's relatives under certain circumstances. Before granting visitation, however, the statutes require a trial court to consider all relevant factors, including those set forth in R.C. 3109.051(D), and to find that nonparent visitation is in the best interest of the child.

{¶ 8} One of the sixteen factors specifically enumerated in R.C. 3109.051(D) is "the wishes and concerns of the child's parents, as expressed by them to the court[.]" See R.C. 3109.051(D)(15). Under *Troxel* and *Harrold*, "a trial court must give special weight to [this] factor in making its visitation determination, thus protecting a parent's due process rights." *Harrold*, 107 Ohio St.3d at 51. This does not mean that a parent's wishes regarding nonparent visitation necessarily will prevail. As the *Harrold* court recognized, "Ohio's nonparental visitation statutes not only allow the trial court to afford parental decisions the requisite special weight, but they also allow the court to take into consideration the best interest of the child and balance that interest against the parent's desires." Id. "[W]hile *Troxel* states that there is a presumption that fit parents act in the best interest of their children, nothing in *Troxel* indicates that this presumption is irrefutable. The trial court's analysis of the best interests of a child need not end once a parent has articulated his or her wishes. By stating in *Troxel* that a trial court must accord at least some special weight to the parent's wishes, the United States Supreme Court plurality did not declare that factor to be the sole determinant of the child's best interest. Moreover, nothing in *Troxel* suggests that a parent's wishes should be placed before a child's best interest." Id. at 51-52.

{¶ 9} We applied *Troxel* and *Harrold* in *In re Madison C*., Montgomery App. No. 22029, 2007-Ohio-5983, a case involving a great aunt's attempt to obtain visitation with a three-year-old child. In that case, a magistrate found that the child and the great aunt had a strong bond, the great aunt had cared for the child since infancy and had a genuine concern for the child's welfare, and visitation with the great aunt was in the child's best interest. Id. at ¶20. We pointed out that these "bare bones findings" by the magistrate totally ignored the wishes of the parent. Although the trial court itself gave "lip service" to the parent's wishes when ruling on objections, we noted that it provided no rationale for contravening those wishes and giving the great aunt visitation. Id. Finally, we examined the evidence ourselves and found that it did not support court-ordered visitation. We explained that the parent's wishes to deny the great aunt visitation were "based upon reasonably objective reasons." We also saw "no evidence that the mother's choice to deny the visitation would result in any physical or emotional harm to the child." Id. at ¶21. Finding no evidence to support the trial court's interference with the mother's fundamental liberty interest in raising her daughter, we reversed the trial court's judgment on manifest-weight grounds.

{¶ 10} In the present case, the magistrate and the trial court addressed *Troxel*, *Harrold*, and *In re Madison C*. in their respective rulings. They also made findings regarding the "best interest" factors found in R.C. 3109.051(D) while stating that they were giving special weight to Dycus' wishes. After conducting this analysis, the magistrate and the trial court both found visitation with Taylor to be in F.D.'s best interest, notwithstanding Dycus' wishes to the contrary. As set forth above, however, the trial court significantly narrowed the magistrate's order. The trial court opined that its reduced visitation order struck a proper balance between respecting Dycus' wishes and maintaining some contact between F.D. and the maternal relatives, which the trial court found to be in F.D.'s best interest. We review the trial court's decision regarding nonparent visitation and its corresponding analysis of the best-interest factors, including the wishes of a parent, for an abuse of discretion. *King v. King*, Warren App. No. CA2006-01-009, 2006-Ohio-5985, ¶8-12.

{¶ 11} In the hearing before the magistrate, Dycus testified that he wanted no contact between F.D. and the child's maternal relatives. In his first assignment of error, he contends the trial court failed to give his wishes the "special weight" required by *Troxel* and *Harrold*. Dycus contends he and his new wife, Angela, who at the time of the hearing had filed papers to adopt F.D., articulated valid concerns regarding F.D.'s visitation with Taylor and the other maternal relatives. Relying on *In re Madison C.*, Dycus claims those concerns warranted the denial of nonparent visitation absent evidence that such denial would cause physical or emotional harm to F.D.

{¶ 12} Upon review, we conclude that the trial court gave the required special weight to Dycus' wishes regarding nonparent visitation. The trial court evaluated the requisite factors, including Dycus' wishes. It noted his concerns regarding visitation with the maternal relatives and took those concerns into account when evaluating the other best-interest factors and crafting a relatively narrow visitation order.[2] Unlike *In re Madison C.*, we are unpersuaded that the trial court merely gave "lip service" to Dycus' wishes. Instead, it gave them considerable weight in its analysis and crafted a visitation order taking them into account while still allowing F.D. to maintain some contact with her deceased mother's side of the family, which the trial court ultimately found to be in the child's best interest.

{¶ 13} As set forth above, Dycus cites *In re Madison C.* and suggests that his wishes may be overcome only if there is evidence that denying nonparent visitation would cause "physical or emotional harm" to F.D. We have difficulty envisioning circumstances where the denial of visitation would cause *physical* harm to a child. But even if Dycus' narrow reading of *In re Madison C*. is correct, the trial court essentially did find that denying contact between F.D. and the maternal relatives would result in *emotional* harm to the child. It opined that "[c]onsidering the bond the child has with the maternal relatives, and the amount of time the maternal relatives have spent with said child, it would be detrimental to the child to discontinue all contact as desired by Mr. Dycus." The trial court's reference to a lack of contact being "detrimental to the child" reasonably may be interpreted as a finding of emotional harm if visitation were disallowed. Although the trial court did not specify the particular "detriment" that would befall F.D., the record fairly supports an inference

[2]Dycus' specific concerns will be set forth more fully, infra, under his second assignment of error. Likewise, the trial court's findings regarding the sixteen statutory best-interest factors are addressed in our analysis of the second assignment of error.

that it would be emotional harm. This is particularly true given the trial court's emphasis on F.D.'s "bond" with the maternal relatives and the amount of time the child had spent with them. Thus, we find no conflict between the law set forth in *In re Madison C*. and the trial court's ruling. Because the trial court gave the required special weight to Dycus' wishes regarding nonparent visitation, his first assignment of error is overruled.

{¶ 14} The remaining and potentially more difficult issue concerns whether granting Taylor visitation with F.D., despite Dycus' wishes to the contrary, is against the weight of the evidence. Dycus raises this issue in his second assignment of error, arguing that trial court "entered numerous erroneous findings and overlooked numerous important facts" in its analysis of the best-interest factors found in R.C. 3109.051(D). Those factors are:

{¶ 15} "(1) The prior interaction and interrelationships of the child with the child's parents, siblings, and other persons related by consanguinity or affinity, and with the person who requested companionship or visitation if that person is not a parent, sibling, or relative of the child;

{¶ 16} "(2) The geographical location of the residence of each parent and the distance between those residences, and if the person is not a parent, the geographical location of that person's residence and the distance between that person's residence and the child's residence;

{¶ 17} "(3) The child's and parents' available time, including, but not limited to, each parent's employment schedule, the child's school schedule, and the child's and the parents' holiday and vacation schedule;

{¶ 18} "(4) The age of the child;

{¶ 19} "(5) The child's adjustment to home, school, and community;

{¶ 20} "(6) If the court has interviewed the child in chambers, pursuant to division (C) of this section, regarding the wishes and concerns of the child as to parenting time by the parent who is not the residential parent or companionship or visitation by the grandparent, relative, or other person who requested companionship or visitation, as to a specific parenting time or visitation schedule, or as to other parenting time or visitation matters, the wishes and concerns of the child, as expressed to the court;

{¶ 21} "(7) The health and safety of the child;

{¶ 22} "(8) The amount of time that will be available for the child to spend with siblings;

{¶ 23} "(9) The mental and physical health of all parties;

{¶ 24} "(10) Each parent's willingness to reschedule missed parenting time and to facilitate the other parent's parenting time rights, and with respect to a person who requested companionship or visitation, the willingness of that person to reschedule missed visitation;

{¶ 25} "(11) In relation to parenting time, whether either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether either parent, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of the adjudication; and whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child;

{¶ 26} "(12) In relation to requested companionship or visitation by a person other than a parent, whether the person previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether the person, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of the adjudication; whether either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding; whether either parent previously has been convicted of an offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense; and whether there is reason to believe that the person has acted in a manner resulting in a child being an abused child or a neglected child;

{¶ 27} "(13) Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court;

{¶ 28} "(14) Whether either parent has established a residence or is planning to establish a residence outside this state;

{¶ 29} "(15) In relation to requested companionship or visitation by a person other than a parent, the wishes and concerns of the child's parents, as expressed by them to the court;

{¶ 30} "(16) Any other factor in the best interest of the child."[3]

{¶ 31} The trial court addressed the foregoing factors and made findings concerning those it found relevant. As a means of analysis, we will set forth the trial court's findings with regard to each factor, followed by Dycus' argument on appeal and then our own conclusion.

{¶ 32} Concerning the first factor, the trial court found:

{¶ 33} "In regards to the first factor, the interaction and interrelationships of the parties weighs in favor of granting the maternal relatives visitation. Testimony is conflicted as to the exact amount of time, but the record shows that after the child's birth the maternal relatives provided shelter and care for Mr. Dycus, his late wife, and said child. Tr. Vol. [II], Pgs. 11-14, 58-59. Further, after the death of the child's biological mother, Mr. Dycus continued to maintain a family relationship with the maternal relatives [and] allowed the child to visit with the [maternal relatives] several times a month. Id. at 11-14."[4]

{¶ 34} On appeal, Dycus disputes the trial court's finding that the maternal relatives provided "shelter" for him, his late wife Christy, and F.D. He contends the word "shelter" improperly implies that his family had nowhere else to live. We

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[3]A review of the sixteen best-interest factors reveals that they are not all relevant in every case. The factors apply not only to disputes about nonparent visitation but also to disputes between parents.

[4]All references to page numbers in the trial court's ruling are from an October 1, 2008 hearing transcript.

disagree. Taylor testified that during Christy's illness, the Dycus family alternated spending several nights at Taylor's house and then roughly the same amount of time at Dycus' parents' house. Taylor testified that Dycus, Christy, and F.D. did not have their own residence at the time. This testimony, which the trial court was entitled to credit, supports a finding that Taylor provided "shelter" for the Dycus family.

{¶ 35} More importantly, the record supports the trial court's finding that Taylor continued to maintain a "family relationship" with Dycus after her daughter's death and saw F.D. frequently. Although Dycus slowly began "pulling away" the child's visitation with Taylor, he admits not beginning to do so until after F.D. was more than two years old. The evidence supports the trial court's finding that the first factor weighs in favor of nonparent visitation.

{¶ 36} With regard to the second factor, the trial court found:

{¶ 37} "The Court finds the second factor weighs against granting the maternal relatives visitation. The father testified that he lives in East Jordan, Michigan, which is approximately 500 miles from Dayton, Ohio. Id. at 56. Further, the difficult winters of Michigan make highway travel difficult especially for drivers not accustomed to heavy snowfall. Id. at 81-82. The distance and difficult travel weighs against frequent and regular visitation."

{¶ 38} On appeal, Dycus does not dispute the foregoing findings.

{¶ 39} Concerning the third factor, the trial court found:

{¶ 40} "The third factor revolves around the parties' available time. The Court finds this factor does not weigh in favor of either of the parties' position. Mr. Dycus testified as to the child's various commitments with pre-school and gymnastics, however these commitments are not sufficient enough to preclude visitation to maternal relatives. Id. at 103. Further, there is no evidence of a scheduling conflict that has kept the parties from exercising visitation in the past."

{¶ 41} Dycus does not dispute the trial court's findings regarding the third factor.

{¶ 42} With regard to the fourth factor, the trial court found:

{¶ 43} "The age of the child weighs in favor of granting visitation. The young age of the child allows for flexibility in scheduling visitation. Also, at a young age it is important for the child to visit with the maternal relatives to continue the bond the maternal relatives and the child have developed."

{¶ 44} On appeal, Dycus contends the child's age militates against court-ordered visitation because (1) most of her contact with the maternal relatives came when she was one year old or younger, (2) Taylor admitted the child might not even remember her if visitation were terminated, (3) there was no testimony about any "bond" between Taylor and F.D., and (4) there was no testimony about F.D.'s reaction to spending time with her maternal relatives.

{¶ 45} Dycus' arguments fail to persuade us that the trial court abused its discretion in its analysis of the fourth factor. Even if most of F.D.'s contact with the maternal relatives took place prior to age one, the record contains evidence of frequent contact between Taylor and the child after that age. At the time of the hearing, F.D. was nearly three and one-half years old. Dycus himself admitted that the maternal relatives had been "very active" in the child's life. The fact that F.D. eventually might have no recollection of Taylor if visitation stopped actually supports the trial court's decision to allow limited visitation, particularly in light of Dycus' admission at trial that he did not want to "wipe out all memory" the child has of Taylor and the other maternal relatives. The record also contains evidence from which the trial court reasonably could have inferred the existence of a bond between Taylor and F.D. The child spent a significant amount of time around Taylor and the other maternal relatives, even after reaching age one. Taylor testified about numerous enjoyable activities that she and F.D. engaged in together. As noted above, Dycus conceded that Taylor and the maternal relatives had been "very active" in the child's life. He also noted that F.D. had come home sometimes asking why she was "not allowed to go to grandma and grandpa's." A reasonable inference from this statement is that the child enjoyed going to Taylor's house and that a bond existed between Taylor and the child. The foregoing evidence also refutes Dycus' claim that the record does not indicate the child's reaction to spending time with the maternal relatives. The trial court's analysis of the fourth factor is not against the weight of the evidence.

{¶ 46} Concerning the fifth, sixth, seventh, and eighth factors, the trial court stated:

{¶ 47} "Factors five through eight do not cut in favor of either parties' position because there is either a lack of testimony on the matter or the matter is inapplicable to the case."

{¶ 48} On appeal, Dycus disputes the foregoing conclusion. With regard to the fifth factor, the child's adjustment to home, school, and community, he points to his own testimony that, prior to his move, F.D. was not adjusting well to being shuffled between relatives' houses, that she became difficult for him to control, and that she needed more stability and socialization with children. Dycus testified that F.D. now is well adjusted and happy in Michigan, where she has stability, activities, and friends her age. Although we do not dispute Dycus' testimony, the trial court reasonably could have concluded that F.D.'s successful adjustment to Michigan life would not be significantly impacted if Taylor had visitation just one week out of every fifty two. The weight of the evidence supports a finding that allowing Taylor to spend one week each year with F.D. would not significantly interfere with F.D.'s adjustment and would be in the child's best interest.

{¶ 49} As for the sixth and eighth factors, Dycus agrees with the trial court's finding that they are not applicable. He does dispute, however, the trial court's conclusion that the seventh factor, the health and safety of the child, did not favor either party. Dycus points to testimony that Taylor once removed F.D. from Ohio and did not call to advise him of their safe arrival in Kentucky. He also testified about his belief that Taylor might kidnap F.D. Finally, he points to an e-mail Taylor once sent about F.D. being half hers and to the fact that the child once called Taylor's husband "Daddy."

{¶ 50} We believe the trial court acted within its discretion in concluding that the foregoing testimony did not establish any real threat to the F.D.'s health or safety. The trip to Kentucky was a one-time incident. Dycus permitted F.D. to accompany Taylor and other maternal relatives on the trip. Although they did not call him upon their arrival, they spoke to him the following day. Even if the failure to call was very inconsiderate, the trial court reasonably could have found that it did not evidence a real threat to F.D.'s health or safety. The trial court also appears to have discounted

Dycus' testimony about fears of kidnaping, and we see very little evidence to support these fears. In addition, the trial court reasonably could have concluded that the e-mail and the one-time "Daddy" statement made by a toddler did not reflect a genuine threat to the child's health or safety.

{¶ 51} With regard to the ninth factor, the trial court found:

{¶ 52} "The mental and physical health of the parties weighs in favor of granting the maternal relatives visitation. All the parties are mentally and physically healthy. Mr. Dycus has testified to the step-grandfather's use of prescription medication for anger management, but has not provided the Court with any incidents to show a legitimate reason to restrict the child from visiting with the maternal relatives. Id. at 118. Further, Mr. Dycus testified that the maternal relatives need the child to be happy, and that visitation is in their best interest not the child's. The Court does not find this assertion supported by the record."

{¶ 53} On appeal, Dycus contends the trial court ignored evidence that the maternal step-grandfather takes anti-psychotic medications. He also claims the trial court ignored evidence that Taylor and her husband do not get along, that they suffer from depression, and that they need F.D. in their lives to be happy. Dycus further contends the maternal step-grandfather has a history of illegal drug use and anger-management issues.

{¶ 54} Upon review, we do not find that the trial court's evaluation of the ninth factor is against the weight of the evidence. The record reflects that Lawrence Taylor, F.D.'s step-grandfather, takes Lorazepam and Klonopin. As the magistrate pointed out, however, no testimony about the step-grandfather's interaction with F.D. raised any issue about his fitness to have contact with the child. We are unpersuaded that his act of controlling a problem with medication militates against visitation. As for Dycus' testimony that the Taylors need F.D. in their lives for their own happiness, and that grandparent visitation was in their best interest, the trial court had the discretion to reject this contention based on its evaluation of the witnesses and the testimony it heard. Moreover, even if F.D. was a primary source of the Taylors' own happiness, this does not preclude visitation from also being in the child's best interest. Ohio law does not disfavor visitation simply because spending time with a grandchild relieves a grandparent's depression and serves as a source of joy. Finally, with regard to drug use and anger management, Dycus testified that Lawrence Taylor sometimes smoked marijuana inside the Taylors' house when Dycus, his now-deceased wife Christy, and F.D. visited there. In her own testimony, June Taylor disputed this claim. She testified that her husband had used marijuana years ago and that F.D. never was exposed to marijuana smoking. Because it did not mention marijuana smoking as a potential hazard to the child, the trial court appears to have resolved this conflict in favor of Taylor. But even if occasional smoking did occur, Dycus' professed concerns are undermined somewhat by the fact that he allowed June and Lawrence Taylor to baby-sit for F.D. and to spend substantial amounts of time with her even after his first wife's death. As for "anger-management issues," Dycus cites his own testimony about a telephone conversation in which Lawrence Taylor yelled at him and later apologized, explaining that he was being treated for an "anger problem." Once again, the trial court had the discretion to conclude that this one-time incident was relatively insignificant.

{¶ 55} Concerning the tenth factor, the trial court found:

{¶ 56} "In regards to the tenth factor, Mr. Dycus' lack of willingness to allow the child visitation with the maternal relatives weighs in favor of granting visitation to the maternal relatives. Mr. Dycus has intentionally been decreasing the amount of visitation between the child and the maternal relatives, and has not taken any steps to effectively facilitate the Court ordered phone communication between the child and the maternal relatives. Id. at 13-14, 62, 69-70. Further, Mr. Dycus has made it clear that he believes the maternal relatives should not have contact with his daughter. Id. at 69."

{¶ 57} On appeal, Dycus disputes the trial court's finding that he did not facilitate court-ordered phone communication during the pendency of proceedings below. He contends he had problems with cell phone coverage. According to Taylor, however, she frequently called in accordance with the court order and got an answering machine. When she left messages asking for her calls to be returned, they often were not. Even when the calls were returned, Dycus would not get on the phone to schedule an agreeable time for her to talk to D.F. Instead, he would dial and then put D.F. on the line, usually for only a short time. Based on Taylor's testimony, the trial court acted within its discretion in finding that Dycus did not facilitate court-ordered phone communication.

{¶ 58} In addressing the tenth factor, Dycus also stresses his belief that nonparent visitation is not in F.D.'s "best interest **at this time**." (Emphasis in appellant's brief). He implies that visitation will be in the child's best interest in the future. He also claims to understand F.D.'s need to know about her biological mother and the maternal relatives at some point. If this is true, the trial court certainly acted within its discretion in reasoning that, despite Dycus' present wishes to the contrary, maintaining at least minimal contact between F.D. and Taylor now is in the child's best interest. Cf. *In re Newsome*, Ashtabula App. No. 2007-A-0030, 2008-Ohio-2132, ¶47-48 (finding grandparent visitation in the grandchildren's best interest in part because they eventually would have contact with their father's family and "[t]he more time that passes, the more traumatized and the bigger transition these children will have when contact is allowed").

{¶ 59} Concerning the eleventh, twelfth, and thirteenth factors, the trial court found: "Factors eleven, twelve, and thirteen are not applicable to this case." On appeal, Dycus agrees that these factors are not applicable.

{¶ 60} With regard to the fourteenth factor, the trial court found: "The fourteenth factor is similar to the second factor, and again the distance between the parties weighs against visitation with the maternal relatives." Once again, Dycus does not dispute the trial court's conclusion.

{¶ 61} Addressing the fifteenth factor, Dycus' wishes concerning visitation, the trial court found:

{¶ 62} "The wishes of Mr. Dycus weigh against granting the maternal relatives visitation. Mr. Dycus is concerned that the child is not adjusting well to being shuffled between the maternal relatives, the paternal relatives, and the relatives of his current wife. Id. at 63. Mr. Dycus is also concerned with the mental health of the step-grandfather, as well as his use of marijuana. Id. at 118. Mr. Dycus is concerned with the maternal relatives taking the child to a family reunion out of state without calling him to let him know they arrived. Id. at 71-72. Mr. Dycus is concerned that the maternal relatives take the child to visit her biological mother's grave without permission. Id. at 65. Mr. Dycus is concerned that the child does not receive enough structure from the maternal relatives, and he wants them to respect his decisions as a parent. Id. at 94-99. The Court finds that Mr. Dycus wants control over decisions regarding the care and custody of his child."

{¶ 63} On appeal, Dycus agrees with the trial court's finding that his wishes weigh against allowing nonparent visitation. He contends, however, that the trial court failed to give this factor "some special weight," as required by *Troxel* and *Harrold*. We addressed and rejected this argument in our analysis of Dycus' first assignment of error above.

{¶ 64} With regard to the catch-all sixteenth factor, the trial court found:

{¶ 65} "The final factor as well as the language of R.C. 3109.11allows the Court to consider any other relevant factors in the best interest of the child. The Court finds that maintaining a relationship with her biological maternal relatives is in the best interest of the child. The maternal relatives have helped care for the child while her mother was ill and her father was working hard at school and his employment. Tr. Vol. I, Pgs. 11-14. Considering the bond the child has with the maternal relatives, and the amount of time the maternal relatives have spent with said child, it would be detrimental to the child to discontinue all contact as desired by Mr. Dycus. This final factor weighs in favor of granting visitation to the maternal relatives."

{¶ 66} In opposition to the trial court's conclusion, Dycus denies the existence of a bond between Taylor and F.D. He claims the trial court overstated the child's interaction with Taylor and made an unsupported "assumption" that discontinuing contact would be detrimental to F.D. We disagree. Much of Taylor's testimony supports the existence of a bond between her and the child. So does Dycus' own testimony about F.D. questioning why she was "not allowed to go to grandma and grandpa's," and his acknowledgment that Taylor and the other maternal relatives had been "very active" in the child's life. The trial court's findings under the sixteenth factor are not against the weight of the evidence.

{¶ 67} Based on our review of the record, we see no abuse of discretion in the trial court's relatively narrow order, which permits annual visitation and limited phone contact between Taylor and F.D., while seeking to respect Dycus' desire to establish stability in his child's life and to allow F.D. to bond with her new mother. Although resolution of the issue before us requires consideration of numerous factors, two factors stand out in this case: Dycus' wishes and F.D.'s relationship with Taylor. As set forth above, Dycus' wishes are entitled to special weight. At the same time, those wishes do not automatically trump all other considerations. *Harrold*, 107 Ohio St.3d at 51-52. The trial court also was entitled to take into consideration F.D.'s existing relationship with Taylor, as well as the fact that Dycus does not want to "wipe out all memory" the child has of her. In short, the record persuades us that the trial court properly gave special weight to Dycus' wishes but, after considering all relevant factors, determined that some visitation and phone contact was in F.D.'s best interest. This decision is not against the weight of the evidence. Accordingly, Dycus' second assignment of error is overruled.

{¶ 68} The judgment of the Montgomery County Common Pleas Court, Juvenile Division, is affirmed.

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FAIN and FROELICH, JJ., concur.

Copies mailed to:

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