

**COURT OF APPEALS  
THIRD APPELLATE DISTRICT  
DEFIANCE COUNTY**

**KELLIS HATTON, JR.**

**CASE NUMBER 4-04-26**

**PLAINTIFF-APPELLANT**

**v.**

**OPINION**

**MONICA ANKNEY**

**DEFENDANT-APPELLEE**

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**CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas Court, Juvenile Division.**

**JUDGMENT: Judgment reversed and cause remanded.**

**DATE OF JUDGMENT ENTRY: March 21, 2005.**

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**ATTORNEYS:**

**KELLIS HATTON, JR.  
In Propria Persona  
Inmate #A427-654  
Oakwood Correctional Facility  
3200 North West Street Road  
Lima, OH 45801  
Appellant.**

**MONICA ANKNEY  
In Propria Persona  
125 Main Street  
Defiance, OH 43512  
Appellee.**

**Shaw, J.**

{¶1} The plaintiff-appellant, Kellis Hatton, pro se, appeals the September 28, 2004 judgment of the Defiance County Juvenile Court denying him appointed counsel and visitation rights.

{¶2} On August 17, 2004, Hatton, who was incarcerated,<sup>1</sup> filed a complaint for visitation rights pursuant to R.C. 3109.12 and 3109.051 and a motion for appointment of counsel pursuant to R.C. 2151.352 and Juv.R. 4(A). Furthermore, Hatton filed an affidavit of indigency with the complaint and the motion for appointment of counsel.

{¶3} The record indicates that Kellis Chino Hatton III was born of issue to Monica Ankney and Hatton on May 22, 2002. On May 29, 2002, Hatton was sentenced to four years and three months incarceration. Early in Hatton's prison term, Ankney brought the child to the prison for visitation purposes. However, after a year, Ankney stopped bringing their son to visit Hatton, but continually maintained verbal contact with him.

{¶4} Hatton initiated this lawsuit to obtain court ordered visitation rights. On September 16, 2004, a hearing was held in the Defiance County Juvenile Court. The court denied both of Hatton's requests. The court stated:

**Court notes that Mr. Hatton is currently incarcerated under sentence of the general division of this court, and that this action**

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<sup>1</sup> The record indicates that Hatton is incarcerated until 2006.

was filed from Oakwood Correctional Facility in Lima, Ohio. The court allowed plaintiff to proceed in form of prosperous [sic] based upon an affidavit of indigency, and issued summons to the defendant for this date. The court did not grant the motion for the appointment of counsel, as the sole issue is visitation, and such appointment is not required under current rules of the Ohio Supreme Court.

On the 16<sup>th</sup> of September, 2004, the defendant appeared pro se, and the court proceeded to hearing, accepting the complaint and memorandum in support as the position, in argument, of the plaintiff. The court proceeded to inquire of the defendant as to any reasons she has for not taking the minor child of the parties, Kellis Chino Hatton III, now two years and four months old [sic]. Miss Ankney, the natural mother of said child, expressed to the court her reasons for believing that visitation at the Oakwood Correctional Facility was not appropriate and most important being the child's very young age and that she did not believe children of such young age should be visiting in a prison facility. Other reasons expressed were not relevant (transportation, etc.).

The court has reviewed the three cases cited by the plaintiff in his memorandum, and agrees that incarceration alone does not prohibit visitation. However, none of those cases require visitation with an incarcerated parent. Were the child on this case [sic] to be of an understanding age, the court would be more inclined to consider relief prayed for in plaintiff's complaint, however, it is the court['s] feeling that the defendant is correct in her believe [sic] that a child of only 26 months age [sic] should not be subjected to the setting of a correctional institution. The court notes that Mr. Hatton will be eligible for release in approximately two years of which time the child will be barely four [sic]. The court further notes that this child is not alone in being without the ability to visit father [sic], and that many fathers of extremely young children are currently serving lengthy tours in the United States Military, in far away places such as Afghanistan and Iraq, and also do not have an ability to have visitation with their children of the same age [sic]. In both

**instances children will be young enough upon their fathers return [sic] to establish a parent/child relationship. \*\*\***

Judgment Denying Appointment of Counsel and Visitation. Hatton appeals alleging two assignments of error. The assignments will be consolidated for the sake of judicial economy.

**THE TRIAL COURT[']S DETERMINATION AND FINDING THAT THE PLAINTIFF/APPELLANT[']S REQUEST FOR COURT APPOINTED COUNSEL IS NOT REQUIRED UNDER THE CURRENT RULES OF THE OHIO SUPREME COURT IS BASED UPON THE ABUSE OF DISCRETION OF THE TRIAL COURT JUDGE.**

**THE TRIAL COURT[']S DETERMINATION AND FINDING THAT THE PLAINTIFF/APPELLANT['] REQUEST FOR VISITATION WHILE INCARCARATED IS NOT WELL FOUNDED IS BASE[D] UPON THE ABUSE OF DISCRETION OF THE TRIAL COURT JUDGE.**

{¶5} We begin with whether Hutton has a legal right to obtain appointed counsel for a visitation proceeding. R.C. 2151.352 states:

***A child, his parents, custodian, or other person in loco parentis of such child is entitled to representation by legal counsel at all stages of the proceedings and if, as an indigent person, he is unable to employ counsel, to have counsel provided for him pursuant to Chapter 120. of the Revised Code. If a party appears without counsel, the court shall ascertain whether he knows of his right to counsel and of his right to be provided with counsel if he is an indigent person.***

R.C. 2151.352 (emphasis added).

{¶6} In *State ex rel. Asberry v. Payne* (1998), 82 Ohio St.3d 44, 693 N.E.2d 794, the Ohio Supreme Court held that an indigent grandmother who was

in loco parentis to a child had a legal right to appointed counsel in a custody proceeding. The Court stated, “[t]herefore, under the plain language of R.C. 2151.352, indigent children, parents, custodians, or other persons *in loco parentis* are entitled to appointed counsel in all juvenile proceedings.” *Id.* at 48 (emphasis in original); see also, *McKinney v. McClure* (1995), 102 Ohio App.3d 165, 167, 656 N.E.2d 1310 (“The right to appointed counsel applies to all matters properly brought before the juvenile court, including custody and visitation issues.”).

{¶7} Based on the ruling in *Asberry*, Hutton, an indigent father, does have a legal right to appointed counsel in his attempt to obtain visitation rights of his child. Thus, the first assignment of error is sustained.

{¶8} In accordance with the foregoing conclusion, we need not address Hutton’s second assignment of error. This case is remanded to the juvenile court for a visitation proceeding in accordance with the ruling in this case.

***Judgment reversed and cause remanded.***

**CUPP, P.J., and ROGERS, J., concur.**

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