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APPELLANT PRO SE:

J.L.M.
Greencastle, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE PATERNITY OF K.M.	)	
J.L.M.,	)	
Appellant - Respondent,	)	
vs.	)	No. 47A01-0810-JV-500
K.J.S.	)	
Appellee - Petitioner.	)	

APPEAL FROM THE LAWRENCE CIRCUIT COURT
The Honorable Timothy M. Sledd, Judge
Cause No. 47C01-0305-JP-206

August 5, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

J.L.M. (Father) appeals the denial of his pro se petition for visitation with his daughter, K.A.M.[1] He presents the following consolidated and restated issue for review: Did the trial court abuse its discretion in denying Father's petition?

We affirm.

The facts favorable to the judgment follow. K.A.M. was born out of wedlock to Father and K.J.S. (Mother) on July 15, 2000. Father has been incarcerated the majority of his daughter's life and has only seen her on a handful of occasions. The record reveals that he had infrequent contact with K.A.M. during her infancy and then no further contact until one time prior to his most recent incarceration, which began in August 2006.[2] Father has sent some cards and letters, though they often included inappropriate comments to or about Mother.

In May 2003, the State filed a petition to establish paternity, but the matter was continued due to Father's incarceration. The paternity hearing was finally held on June 23, 2006, during one of Father's brief periods of non-incarceration. At the hearing, Father indicated that he was not interested in visitation, despite Mother's offer to meet him halfway for exchanges.[3] On June 28, 2006, the court issued an order establishing Father's paternity and setting child support. No parenting time was ordered.

The CCS reveals that Father filed a pro se petition for visitation and modification of

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[1] Father has not included said petition in his appendix.

[2] His expected release date is June 18, 2012.

[3] Father disputes this fact on appeal. We note, however, that he did not directly deny this allegation at the hearing after Mother testified to that effect.

child support in January 2007. Following a hearing in March 2007, the court took the issue of child support modification under advisement and denied the request for visitation. Father's child support obligation was subsequently modified due to his incarceration.

On January 17, 2008, Father, pro se, filed the instant petition seeking visitation. During the hearing on September 11, 2008,[4] Father indicated that he wanted to visit with K.A.M. once a month and that his mother (Grandmother) would transport the child to the prison for visitation. Mother objected to Father's request, noting that K.A.M. did not really know Father or Grandmother. Mother did not feel that prison was a place for them to finally become acquainted after so many years. She testified that the eight-year-old child had expressed no interest in seeing Father in prison and that she (Mother) believed her daughter would be scared to visit him in prison. Finally, Mother indicated that she would allow visitation once he is out of prison. At the conclusion of the hearing, the court denied Father's request for visitation.[5] Father now appeals pro se.

We initially observe that Mother has not filed an appellee's brief in this case.[6] "Where

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[4] Father participated in the hearing telephonically from prison.

[5] In its written order issued the same day, the court found as follows:

> 1. That [Father] has never been granted parenting time with the minor child of this action.
> 2. That [Father] agreed at a hearing held on June 23, 2006 that he did not want visitation and visitation has never been ordered.
> 3. That [Father] has been incarcerated much of the child's life and has failed to establish a parental bond with the now 8 year old.
> 4. That [K.A.M.] has a fear of strangers and exhibits trepidation of going with people she does not know.
> 5. That visitation by and between [Father] and [K.A.M.], while [Father] is incarcerated, would be detrimental to the best interests and welfare of the child.

Appendix at 34.

[6] Father's appellate materials improperly indicate that the State is the appellee in the instant case. After being served with a copy of Father's appellate brief, the Attorney General of Indiana filed a Notice of Non-

the appellee fails to file a brief on appeal, we may in our discretion reverse the trial court's decision if the appellant makes a prima facie showing of reversible error." *Burkett v. W.T.*, 857 N.E.2d 1031, 1032 (Ind. Ct. App. 2006). "Prima facie" is defined as "at first sight, on first appearance, or on the face of it." *Maser v. Hicks*, 809 N.E.2d 429, 432 (Ind. Ct. App. 2004) (quoting *Parkhurst v. Van Winkle*, 786 N.E.2d 1159, 1160 (Ind. Ct. App. 2003)).

"Decisions involving visitation rights under the paternity statutes are committed to the sound discretion of the trial court." *Taylor v. Buehler*, 694 N.E.2d 1156, 1159 (Ind. Ct. App. 1998). Thus, reversal is appropriate only upon a showing of abuse of discretion. *Taylor v. Buehler*, 694 N.E.2d 1156.

> No abuse of discretion occurs if there is a rational basis in the record supporting the trial court's determination. We will neither reweigh evidence nor judge the credibility of witnesses. In all visitation controversies, courts are required to give foremost consideration to the best interests of the child.

Lasater v. Lasater, 809 N.E.2d 380, 400 (Ind. Ct. App. 2004) (citations omitted).

"Indiana has long recognized that the rights of parents to visit their children is a precious privilege that should be enjoyed by noncustodial parents." *Id*. Accordingly, a noncustodial parent in a paternity action is generally entitled to reasonable parenting time rights. *See* Ind. Code Ann. § 31-14-14-1 (West, PREMISE through 2009 Public Laws approved and effective through 4/20/2009). The right of parenting time, however, is subordinated to the best interests of the child. *See Lasater v. Lasater*, 809 N.E.2d 380.

Involvement of the State of Indiana and Indiana Attorney General, indicating that the Attorney General did not represent any party in this appeal and that the interests of the State were not implicated. By order dated May 5, 2009, Father was directed by our court to serve copies of his appellate brief and appendix upon Mother, the appellee, within fifteen days. Father timely followed our directive.

Particularly applicable to this case, I.C. § 31-14-14-2 (West, PREMISE through 2009 Public Laws approved and effective through 4/20/2009) provides that the "court may modify an order granting or denying parenting time rights whenever modification would serve the best interests of the child."

Our review of the record reveals that Father wholly failed to establish that visitation with him in prison was in K.A.M.'s best interests. In fact, unlike Mother, Father made no effort to address his child's best interests. Rather, Father's entire focus at the hearing was on his own needs, wants, and rights. Specifically, Father testified that he was trying to change and that "it would be a good part of my life to…be able to see my daughter". *Transcript* at 18. Father stated further, "I just feel that I am her biological father and that I should be allowed to see her no matter if I am in prison or if I am on the street". *Id*. at 28.

As found by the trial court, the evidence reveals that for over eight years Father has failed to establish a parental bond with his child. While he may now truly desire to develop such a relationship with K.A.M., Mother opined at trial that it would not be in the child's best interest to visit him in prison. On appeal, Father argues that Mother is not a licensed expert or child psychologist and, therefore, is not qualified to determine K.A.M.'s "emotional stability". *Appellant's Brief* at 5. He claims that the court should have had the child evaluated by a qualified child psychologist or the court should have interviewed the child. We note that Father made no such requests below. Moreover, it was well within the court's discretion to credit Mother's testimony regarding the best interests of her daughter, whom she has cared for since birth while Father was in and out of prison. Father has failed to establish

a prima facie case of abuse of discretion.

Judgment affirmed.

BAKER, C.J., and RILEY, J., concur.