

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

BRIAN P. KOLB,	:	APPEAL NO. C-1000152
Plaintiff-Appellant,	:	TRIAL NO. DR-9802435
vs.	:	<i>JUDGMENT ENTRY.</i>
MAGGIE YUN KOLB,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant Brian Kolb (“the father”) appeals the trial court’s judgment denying his motion to reinstate a visitation schedule and prohibiting him from attending his son’s extracurricular activities. For the following reasons, we affirm.

The father and defendant-appellee Maggie Yun Kolb (“the mother”) were divorced on August 19, 1999. They have two children, Jordan, now emancipated, and Nathan, born on November 30, 1994, who is now 16 years old. Since the parents’ divorce, the relationship between the father and Nathan has progressively deteriorated despite many attempts at family counseling.² It is apparent from a review of the record, which includes several reports from parenting specialists, that

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² Because the oldest child is emancipated, we focus solely on information in the record related to the youngest child, Nathan.

both the mother and the father have contributed to this problem. In the beginning, the mother did not encourage Nathan to maintain a relationship with his father, and the father did not have (and, it appears, has not developed) effective and appropriating parenting skills. Several therapists have recommended that the father stop telling Nathan that he has been “brainwashed” by his mother.

Initially, after the divorce, the father had standard visitation, including every other weekend and one night a week. Eventually, that time was reduced to supervised visitation for a few hours a week at a local restaurant. Finally, in 2004, the father entered into an agreed order suspending his parenting time pending initiation of counseling. In 2005, the father and Nathan participated in counseling, which the father unilaterally terminated. The father secretly tape-recorded one of the therapy sessions, which upset Nathan and caused him to distrust his father.

Since the termination of counseling, the father has not visited Nathan, but has continued to attend his football and baseball games. However, there have been incidents at these games. Despite previous counselors’ recommendations that the father stop telling Nathan that he has been “brainwashed” by his mother, and that the father stop approaching Nathan at football games and allow Nathan to initiate contact, the father continued to approach Nathan at his games and tell him that he was being “brainwashed” or that his mind was being “poisoned.” This embarrassed and upset Nathan, as well as some of Nathan’s teammates. After a few of these incidents, the school arranged for Nathan to be escorted off the field by a coach. But eventually, the principal of Sycamore Junior High School, in October 2008, notified the father that he would no longer be allowed to attend any of Nathan’s extracurricular activities on or off campus. Thus, in December 2008, the father filed

a motion to reinstate visitation and family counseling. In March 2009, the mother filed a motion requesting that the father be prohibited from attending Nathan's extracurricular activities.

These motions were combined, and a hearing was held before a magistrate. At the hearing, Gena Iames, the court-appointed parenting specialist, testified that the father's reason for then seeking parenting time was to have the opportunity to convince Nathan that he had been "brainwashed" by his mother. After meeting with the family members, including Nathan, who told her that he did not want any contact with his father, and reviewing prior parenting reports, Iames opined that it was not in Nathan's best interest to force him to visit or engage in counseling with the father. Iames noted in her written report that in cases of estrangement between a child and a parent, it was best not to force parental contact. Further, she recommended that the father not be allowed to attend Nathan's extracurricular activities because the father had approached Nathan at those events and made inappropriate comments to him. Iames testified that despite a previous parenting specialist's recommendation in 2007 that the father not approach Nathan at school events, the father continued to do so. Because of the degree of estrangement between the father and Nathan (they have not had any visitation in over five years), Iames noted in her report that it was more productive in these types of situations to allow the estranged child to initiate contact rather than to have the parent force contact.

The father testified at the hearing that he would not follow Iames's recommendation not to approach Nathan at football games. He also testified that he had only told Nathan that he was being "brainwashed" during counseling and had not done so at any of Nathan's football games. The mother testified that she heard

the father tell Nathan that he had been brainwashed at an October 2008 football game.

The assistant principal of Sycamore Junior High School, Brian Wallace, testified that, after two incidents in August and September of 2007, he had met with the father and asked him not to initiate contact with Nathan because it was upsetting Nathan and some of his teammates. Further, as we have already noted, the school felt it necessary to arrange for Nathan to be escorted off the field at the end of each game by a coach.

After considering all the evidence, the magistrate found that it was in Nathan's best interest to deny the father's request to restore parenting time and to prohibit the father from attending Nathan's extracurricular events. The father filed objections, which the trial court overruled.

In this appeal, the father brings forth two assignments of error, which we consider together. In his first assignment of error, the father contends that the trial court abused its discretion by not restoring parenting time and by prohibiting him from attending Nathan's extracurricular events. In his second assignment of error, the father maintains that the trial lacked sufficient evidence, under a "strict scrutiny test," to order that the father not attend Nathan's extracurricular activities and to refuse to restore a visitation schedule. These assignments of error are not well taken.

First, we note that the trial court was not required to apply a strict scrutiny analysis in determining whether to modify a visitation order. R.C. 3109.051 governs the modification of parenting time or visitation rights.³ In modifying visitation rights, a court must determine whether a change in the visitation order is in the

³ *Braatz v. Braatz*, 85 Ohio St.3d 40, 44-45, 1999-Ohio-203, 706 N.E.2d 1218.

child's best interest, and it must consider the factors set forth in R.C. 3109.051(D) in making that determination.⁴ The trial court has broad discretion in modifying visitation rights. That discretion includes the power to restrict the time and place of visitation, to determine the conditions under which visitation will occur, and to deny visitation altogether if it would not be in the child's best interest.⁵ Additionally, under R.C. 3109.051(J)(1), a trial court may, if it is in the best interest of the child, limit a nonresidential parent's access to "student activities."

In this case, the record shows that the court considered the statutory factors and the child's best interest in determining not to restore visitation to the father. After reviewing the record, we cannot say that the trial court abused its discretion in not granting parenting time to the father when (1) the father had voluntarily given up his visitation rights in 2005, after choosing to terminate counseling with Nathan; (2) this period of no visitation (over 5 years) had further estranged Nathan from the father; (3) the court-appointed parenting specialist recommended that, based on this estrangement, it was not in Nathan's best interest to force contact between Nathan and the father, but rather to let Nathan initiate the contact; and (4) the father's impetus for seeking to restore visitation was apparently to convince Nathan that he had been brainwashed by his mother, even though several counselors had advised the father to stop that behavior.

We also hold that the trial court did not abuse its discretion in prohibiting the father from attending Nathan's extracurricular activities. The father was using those opportunities to tell Nathan that he had been brainwashed or that his mind had been poisoned. These events had upset Nathan to such an extent that the school met with

⁴ Id.

⁵ *In re Bailey*, 1st Dist. Nos. C-040014 and C-040479, 2005-Ohio-3039, ¶25.

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the father and asked him not to initiate contact with Nathan at the football games. When that did not work, the school had to arrange for one of the coaches to walk Nathan off the field after each game. Because the father testified that he would not stop approaching Nathan on the field, and because, despite recommendations from several counselors, the father had not stopped trying to convince Nathan he had been brainwashed, we cannot say that the trial court erred in determining that it was in the best interest of Nathan to prohibit the father from attending Nathan's student activities, whether athletic or otherwise. The Father's prior acts and determination to continue to attempt unwanted contact brings him squarely into the conduct intended to be governed by R.C. 3109.051(J)(1).

Accordingly, the two assignments of error are overruled, and the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., HENDON and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on December 23, 2010

per order of the Court _____
Presiding Judge