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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2018

2160997

TaMarkus J. King

v.

Kimberly Tillman-Gilbert

Appeal from Elmore Circuit Court
(DR-15-7)

PITTMAN, Judge.

TaMarkus J. King ("the father") appeals from a judgment of the Elmore Circuit Court ("the circuit court") awarding him limited visitation with C.T. ("the child"), a boy to whom

Kimberly Tillman-Gilbert ("the mother") gave birth in 2007. We reverse and remand.

In late 2006, the mother and the father had a three-month sexual relationship during which the child was conceived. The mother and the father never married. The father subsequently married another woman and had two daughters by her, and the mother subsequently married another man and had three children by him. In 2008, the mother brought a child-support action against the father in the Perry Juvenile Court ("the juvenile court"); however, the juvenile court dismissed that action in March 2010 "due to [the mother's] refusal to abide by any orders of [the juvenile court]."

In January 2015, when the child was seven years old, the father brought the present action against the mother in the circuit court, seeking visitation with the child. In April 2016, the circuit court entered a pendente lite order determining that the father was the biological father of the child; awarding custody of the child to the mother; ordering the father to pay child support in the amount of $451 per month commencing May 1, 2016; ordering the father not to "directly or indirectly state to [the child] that [the father]

is [the child's] father; and ordering the mother and the father "to establish a meeting (play date) for the children to all get together, and know one another," with "no restrictions as to who may come."

In May 2016, the father sent the circuit court a letter reporting that he could communicate with the mother only through Facebook, a social-media Web site; that he had attempted to contact the mother through Facebook twice in April and once in May about scheduling a play date; and that the mother had failed to respond. The circuit court treated the father's letter as a motion to find the mother in contempt and ordered the mother to appear and show cause why she should not be held in contempt for violating the circuit court's pendente lite order. After several continuances, the circuit court held the show-cause hearing. Thereafter, in September 2016, the circuit court entered an order finding that the play dates required by the pendente lite order had not occurred, ordering "the parties ... to meet for 3 hours beginning at 12:00 noon on 9-10-16 and 10-1-16 at [a designated restaurant] for the parties' child to be with and communicate with his father," and setting a hearing in October 2016 to review the

parties' compliance with that order. Following that compliance hearing, the circuit court entered an order finding that the parties were in compliance.

In December 2016, the father filed a motion asking the circuit court to set a final hearing in the action. In response, the circuit court scheduled a final hearing in February 2017; however, that hearing was subsequently continued. In March 2017, the circuit court held another compliance hearing. Thereafter, the circuit court entered an order finding that the parties were in compliance and noting that the child still did not know that the father was his biological father and thought that the mother's husband was his father.

The circuit court commenced a final hearing in May 2017 and concluded it in August 2017. After the final hearing was concluded, the circuit court, in August 2017, entered a final judgment providing "that the parties have been exercising a play-date visitation schedule, whereby the parties and their children appear at a previously [designated] restaurant for the children and parents to see and visit with one another"; ordering that the parties were to continue to adhere to that

play-date visitation schedule; ordering that the father was to continue to adhere to the provision in the pendente lite order prohibiting him from informing the child of the father's paternity; and ordering that the father was to continue paying child support in the amount of $451 per month.

The father timely filed a postjudgment motion challenging the circuit court's judgment insofar as it limited his visitation and prohibited him from informing the child of the father's paternity. Following a hearing on the father's postjudgment motion, the circuit court entered an order amending the judgment to specify that the monthly play dates were to occur on the last Saturday of each month but otherwise denying the relief sought by the father. The father then timely appealed to this court.

On appeal, the father argues that the circuit court erred in limiting his visitation because, he says, one three-hour play date per month does not afford him sufficient time with the child and because, he says, allowing the mother and her husband to attend his visits with the child has resulted in de facto supervised visitation because the mother and her husband have attended every play date. He also argues that the circuit

court exceeded its discretion in prohibiting him from informing the child of the father's paternity.

The father acknowledges that "[a] trial court has broad discretion in determining the visitation rights of a noncustodial parent" and that "its decision in this regard will not be reversed absent an abuse of discretion," Carr v. Broyles, 652 So. 2d 299, 303 (Ala. Civ. App. 1994); however, he asserts that, under Alabama law, "[a] noncustodial parent generally enjoys 'reasonable rights of visitation' with his or her child[]," Pratt v. Pratt, 56 So. 3d 638, 641 (Ala. Civ. App. 2010) (quoting Naylor v. Oden, 415 So. 2d 1118, 1120 (Ala. Civ. App. 1982)). He acknowledges that a trial court may restrict a noncustodial parent's visitation to protect a child from conduct, conditions, or circumstances surrounding the noncustodial parent that endanger the child's health, safety, or well-being; however, he asserts that the circuit court had no evidence before it indicating that the father's conduct, conditions, or circumstances posed a danger to the child's health, safety, or well-being. To the contrary, the father argues that the undisputed evidence indicated that he is willing and able to care for the child; that he has a job;

that he has been married for seven years; that he has two daughters, who are the child's half sisters; and that he is eager to form and maintain a meaningful parent-child relationship with the child. The mother's opposition to the father's being awarded "standard" visitation was based solely on her contention that the father had not come forward to assume the responsibilities of a parent earlier in the child's life. However, she admitted that the father had sought visitation in the child-support action she had brought in 2008; that, in that child-support action, she would agree only to the father's being awarded the limited, de facto supervised visitation that was later awarded the father by the circuit court in the pendente lite order entered in the present action; that the father had been unwilling to settle for such limited visitation; and that the juvenile court had dismissed the child-support action before ruling on the father's visitation. The record is clear that the mother has never been willing to facilitate or encourage a relationship between the father and the child. For example, she testified:

> "Q. [By the father's counsel:] Let me ask you since these visits have been established, what have you done to make sure that [the child] feels comfortable around [the father]?

"A. I have brought him to the visitations.

"Q. Did you explain to him that he was there to see [the father]?

"A. The Court documentation does not say that he is there to come see [the father]. The Court documentation says play dates.

"Q. So as far as you're concerned, you just took [the child] there to just eat and play at Burger King?

"A. That's correct, according to what it says.

"Q. Do you understand that the reason for the visits were so that [the child] could establish a relationship with [the father]? Do you understand that?

"A. I understand that I'm to bring my child to the place that is designated and that's what we have done.

"Q. But you made no attempt to make sure that a relationship was established between [the child] and [the father]?

"A. It wasn't in the court -- I was not told that I had to do anything other than bring my child to the play dates.

"Q. So regarding [the child's] relationship with [the father], you are not going to do anything unless it is Court ordered; is that true?

"A. At this time, that's what I'm supposed to do, abide by the Court order because he brought it to court. That's what we're doing."

The United States Supreme Court has held that the parental rights of an unwed father who does not come forward to accept his responsibilities as a parent when his child is born is not entitled to the full protection of the United States Constitution. See, e.g., Lehr v. Robertson, 463 U.S. 248 (1983). However, the United States Supreme Court's decisions are not controlling in determining whether Alabama law affords an unwed father's parental rights protection. See Ex parte D.J., 645 So. 2d 303 (Ala. 1994). As the father states in his brief, "[t]he State of Alabama has a public policy encouraging interaction between noncustodial parents and their children." See, e.g., Pratt, 56 So. 3d at 641.

> "In fashioning the appropriate restrictions [on the visitation awarded a noncustodial parent], out of respect for the public policy encouraging interaction between noncustodial parents and their children, see Ala. Code 1975, § 30-3-150 (addressing joint custody), and § 30-3-160 (addressing Alabama Parent-Child Relationship Protection Act), the trial court may not use an overbroad restriction that does more than necessary to protect the child[]. See Smith v. Smith, 887 So. 2d 257 (Ala. Civ. App. 2003), and Smith v. Smith, 599 So. 2d 1182, 1187 (Ala. Civ. App. 1991)."

Pratt, 56 So. 3d at 641.

This court's decision in Carr v. Broyles, supra, is instructive. In Carr,

> "Sandra Gail Broyles Carr [('Sandra')] and Mike Lane Broyles [('Mike')] were divorced in 1990. [Mike] was awarded custody of the parties' minor child [('the daughter'], a daughter who [was] five years old. [Sandra] was ordered to pay child support in the amount of $192.42 per month and was awarded visitation every other weekend, plus time in the summer and on holidays. [Sandra] made no child support payments to [Mike]. Her exercise of her visitation rights was sporadic, but she contended that [Mike] refused to let her see the daughter because she had not paid child support. [Mike] did let the daughter visit her maternal grandparents, but he informed them that he did not want the [daughter] around [Sandra].
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> "In February 1994 [Sandra] petitioned the trial court for a reduction in child support and for enforcement of her visitation rights. [Mike] counterpetitioned, asking the court to terminate [Sandra's] parental rights and to hold her in contempt for nonpayment of child support. After a hearing, the trial court refused to terminate [Sandra's] parental rights, found her to be in contempt of its prior order because of her failure to pay child support, ordered her incarcerated unless she paid $3,000 toward her arrearage within 60 days, modified her current child support obligation to $156.32 per month, ordered her to pay an additional $150 per month toward an arrearage of $9,012, and modified her visitation to one weekend each month and 48 hours at Christmas, with all visitation to be supervised by her parents."

652 So. 2d at 300-01. Sandra then appealed to this court and asserted, among other things, that the trial court had exceeded its discretion in modifying her visitation privileges with the daughter. Reversing the trial court's judgment

insofar as it had modified Sandra's visitation privileges, this court stated:

> "Finally, we review the trial court's modification of [Sandra's] visitation privileges with the daughter. The trial court has broad discretion in determining the visitation rights of a noncustodial parent, and its decision in this regard will not be reversed absent an abuse of discretion. Alexander v. Alexander, 625 So. 2d 433, 435 (Ala. Civ. App. 1993). Every case involving a visitation issue must be decided on its own facts and circumstances, but the primary consideration in establishing the visitation rights accorded a noncustodial parent is always the best interests and welfare of the child. Fanning v. Fanning, 504 So. 2d 737, 739 (Ala. Civ. App. 1987).
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> "The record in this case reflects the following: [Sandra's] last regular visitation with the daughter occurred in February 1993, and she last saw the child in November 1993. The daughter has visited more recently with her maternal grandparents. [Mike] is in part responsible for this situation, because of his refusing to allow the daughter to visit with [Sandra] and his discouraging the grandparents from allowing the daughter to see [Sandra]. [Sandra's] financial situation has hampered her ability to obtain legal assistance in enforcing the visitation afforded her in the divorce judgment. She does not seek an increase in that visitation, but only to exercise the visitation privileges she was granted previously.
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> "Aside from [Sandra's] failure to pay child support, [Mike] stated that he denied visitation because of [Sandra's] lifestyle, especially the men whom she dates and with whom she has occasionally lived. The record reflects, however, that [Sandra] says she has never allowed a man to stay overnight if the daughter was staying with her and that the

daughter has spent very little time around any of the men whom the mother has dated. [Mike] and his present wife, Christine, testified that in their opinions, the daughter's best interests would be best served if [Sandra's] parental rights are terminated and if Christine Broyles is allowed to adopt the daughter. Testimony reflected, however, that the daughter asks about [Sandra] and wants to see [Sandra] and her stepbrother.

"Our examination of the record reveals no evidence to indicate that [Sandra] is in any way incapable of caring for the daughter when the child is visiting with her. [Sandra's] 16-month-old son from her second marriage lives with her, and nothing in the record demonstrates any concern about the welfare of this child in her care. Of equal importance, no evidence in the record suggests that visiting with [Sandra] is in any way detrimental to the daughter. This court has previously held that if a divorce judgment is modified to limit a parent's visitation based on misconduct, the limitation ordered must be supported by evidence that the misconduct of the parent is detrimental to the child. Jones v. Haraway, 537 So. 2d 946, 947 (Ala. Civ. App. 1988).

"Based on the record before us, we conclude that the trial court abused its discretion in reducing [Sandra's] visitation with the daughter. The trial court appears to have reduced [Sandra's] visitation privileges primarily because of her failure to meet her financial obligations toward her daughter. Reduced visitation on that basis is not in the best interests of this child. A noncustodial parent should be given the opportunity to maintain a meaningful relationship with her child. Speakman v. Speakman, 627 So. 2d 963, 965 (Ala. Civ. App. 1993). The trial court's reduction of [Sandra's] visitation rights is not reasonable, given the evidence that the daughter wants to visit with [Sandra] and [her] sibling and that [Sandra] seeks the opportunity to

> re-establish her relationship with her daughter. We have previously approved limited visitation structured by a trial court to allow for a gradual reacquaintance between a [noncustodial parent] and his children who had not seen each other for some time. Fanning, 504 So. 2d at 738-39. In Fanning, however, the trial court set time limits on the limited visitation and expanded the [noncustodial parent's] visitation schedule after allowing for time in which the [noncustodial parent] could re-establish his relationship with his children. The trial court in this case has allowed [Sandra] to become reacquainted with her daughter, but has made no provisions to allow her a reasonable opportunity to develop their relationship.
>
> "Likewise, we conclude that the trial court abused its discretion in ordering that all visitation be supervised by the maternal grandparents. The testimony that [Sandra] is capable of caring for her daughter during visitation was undisputed. There is no evidence that visiting in [Sandra's] home has ever been, or will be, harmful to the daughter. This court has upheld supervised visitation in cases in which there were allegations of abuse on the part of the noncustodial parent or in instances in which the noncustodial parent experienced severe psychological problems. See, e.g., I.L. v. L.D.L., Jr., 604 So. 2d 425 (Ala. Civ. App. 1992); Y.A.M. v. M.R.M., 600 So. 2d 1035 (Ala. Civ. App. 1992); Watson v. Watson, 555 So. 2d 1115 (Ala. Civ. App. 1989); Caldwell v. Fisk, 523 So. 2d 464 (Ala. Civ. App. 1988). Those concerns are not present in this case. We reverse that portion of the trial court's judgment reducing and restricting [Sandra's] visitation with her daughter and remand this case to the trial court with instructions to set a more reasonable, expanded schedule of unsupervised visitation between [Sandra] and the daughter."

652 So. 2d at 303-04.

In Carr, Sandra had not paid some of the child support she had been ordered to pay and had visited the daughter only sporadically. The record indicated that Sandra was solely responsible for her failure to pay child support and that both Sandra and Mike were responsible to some extent for Sandra's sporadic visitation with the daughter. This court held that Sandra's failure to pay child support and her failure to visit the child regularly, even to the extent that she was responsible for that failure, were not valid bases for limiting her visitation to 1 weekend each month and 48 hours at Christmas. In the present case, the record indicates that the father failed to pay child support at some unspecified times in the past and failed to visit the child regularly. The father testified that his failure to pay child support had resulted from his inability to locate the mother to pay her; the mother testified that he knew where she was located at all times. Even if we assume that the father was solely responsible for his failure to pay child support in the past, the mother's own testimony indicates that she shares some of the responsibility for the father's failure to visit the child regularly. Consequently, based on the authority of Carr, we

conclude that the father's failure to pay child support in the past and his failure to visit the child regularly were not valid bases for limiting his visitation to one three-hour play date per month. As we noted in Carr, this court has "approved limited visitation structured by a trial court to allow for a gradual reacquaintance between a [noncustodial parent] and his child[] who have not seen each other for some time," 652 So. 2d at 304. Thus, the limited play-date visitation the father was awarded pendente lite in the present case was appropriate; however, the record does not support the circuit court's maintaining such limited visitation in the final judgment.

In Carr, this court held that the trial court had exceeded its discretion in restricting Sandra's visitation to supervised visitation in the absence of any evidence indicating that her conduct, conditions, or circumstances posed a danger to the daughter's health, safety, or well-being. In the present case, the record contains no evidence indicating that the father's conduct, conditions, or circumstances pose a danger to the child's health, safety, or well-being. Therefore, we conclude that the circuit court exceeded its discretion in imposing de facto supervision on

the father's visitation by allowing the mother and her husband to attend the father's visits.

"A noncustodial parent should be given the opportunity to maintain a meaningful relationship with [his] child." Carr, 652 So. 2d at 304. The father and the child cannot form and maintain a meaningful parent-child relationship if the child does not even know that the father is one of his parents. Therefore, we conclude that the circuit court exceeded its discretion by prohibiting the father from telling the child about his paternity. Accordingly, we reverse the judgment of the circuit court and remand the cause for the entry of a judgment consistent with this opinion.

REVERSED AND REMANDED.

Thomas and Donaldson, JJ., concur in the result, without writings.

Moore, J., dissents, with writing, which Thompson, P.J., joins.

MOORE, Judge, dissenting.

I respectfully dissent.

In his brief to this court, TaMarkus J. King ("the biological father") argues that the Elmore Circuit Court ("the trial court") exceeded its discretion in limiting his visitation with C.T. ("the child") to three hours per month and in precluding the biological father from informing the child of his paternity. Specifically, the biological father cites Lehr v. Robertson, 463 U.S. 248, 262 (1983), and a passage from Lehr quoted in K.H.M. v. D.L.I., 895 So. 2d 950, 956 (Ala. Civ. App. 2003) (plurality opinion), for the proposition that he, as the biological father of the child, has certain parental rights to the child. The biological father argues that "the trial court's denial of [the biological father's] right to express to [the child] that [the biological father] is [the child's] father and its relegation of only three hours' visitation with his child essentially strips [the biological father] of all parental rights" and that the limited visitation awarded to the biological father "has greatly infringed on the parental rights of [the biological father] without justification or cause."

In Lehr, supra, the United States Supreme Court considered whether an unwed biological father had an absolute right to notice and an opportunity to be heard before his child could be adopted. The Court acknowledged that an unwed father has an inchoate interest in establishing a relationship with his child, but concluded that the mere existence of a biological link does not, in and of itself, establish any constitutional right to a continuing parental relationship with the child. Rather, the Court explained, an unwed biological father develops a liberty interest in personal association with his child when he demonstrates a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of the child and building a substantial relationship with the child. The Court said:

> "The significance of the biological connection is that it offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring. If he grasps that opportunity and accepts some measure of responsibility for the child's future, he may enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development. If he fails to do so, the Federal Constitution will not automatically compel a state to listen to his opinion of where the child's best interests lie."

463 U.S. at 262 (footnote omitted). Because the unwed biological father in Lehr had not supported his child and had only rarely seen the child in the two years since her birth, the Court concluded that he did not have a sufficient liberty interest in maintaining a relationship with the child requiring the State of New York to provide him notice and an opportunity to be heard before the child could be adopted. In K.H.M., Presiding Judge Yates relied on the above-quoted passage from Lehr in deciding that an unwed father, whom the Montgomery Juvenile Court found had not abandoned his child, was entitled to pursue a relationship with that child.

In his brief to this court, the biological father argues that Lehr and K.H.M. support his claim that he has a right to unsupervised visitation and the right to inform the child of his parentage. By citing Lehr and quoting K.H.M. only insofar as it quoted Lehr, it is clear that the biological father in this case asserts that he has a federal constitutional right to a parental relationship with the child that, he says, has been infringed upon by the trial court. However, the United States Supreme Court has been very clear that the constitutional rights of an unwed father depend not on his

biological connection to the child, but on the extent that the unwed father has seized his opportunity to develop an actual parenting relationship to the child. Based on those precedents, an unwed father who has not forged an actual parental relationship with his child despite ample opportunity to do so has no fundamental right to parent the child that would be entitled to the due-process and other protections afforded by the United States Constitution. See Lehr, supra; see also Quilloin v. Walcott, 434 U.S. 246 (1978) (unwed biological father who assumed no substantial child-rearing responsibilities was not entitled to due process to prevent adoption of his child).

In this case, Kimberly Tillman-Gilbert ("the mother") presented more than sufficient evidence to prove that the biological father had failed to grasp his opportunities to act as a real parent to the child. According to the mother, the biological father did not provide the mother any emotional or financial support during her pregnancy despite his knowledge of his paternity. After the child was born, the biological father first failed to show for genetic testing, but eventually did undergo testing that revealed his paternity.

The biological father showed some interest in the child after the results of the genetic testing were obtained, but failed to consistently communicate or visit with the child. The mother married another man who, according to the mother, has served as the actual father figure for the child. The father did not communicate with the mother about the child except very sporadically and often failed to give the child birthday or Christmas gifts. The father did not file the underlying action to seek visitation with the child until 2015, when the child was already seven and a half years old. By that time, the biological father was essentially a stranger to the child, having had no interaction of any kind with the child for years.

The biological father disputed the mother's account by presenting some evidence indicating that the mother had not facilitated his relationship with the child and that her actions had led him to lose contact with the mother and the child. The trial court observed the parties while testifying, and its determination obviously indicates that the trial court did not believe that the father presented satisfactory evidence to explain his dereliction of his child-rearing

duties. The trial court did not explicitly reject the father's version of events but, when it reviews a judgment, this court must presume that the trial court made those implied findings of fact necessary to sustain its judgment provided those findings are supported by the evidence. M.J.C. v. G.R.W., 69 So. 3d 197, 200 (Ala. Civ. App. 2011). The biological father specifically argued to the trial court in his postjudgment motion that the judgment violated his constitutional rights. In rejecting that argument, the trial court must have impliedly found that, despite his opportunities, the father had not formed a sufficient parental relationship with the child to be treated as a real father with constitutionally protected parental rights to the child. Based on the record before this court, I cannot conclude that the trial court was plainly and palpably wrong in reaching that factual determination. Therefore, the judgment limiting the visitation between the biological father and the child and prohibiting the biological father from informing the child of his paternity does not violate federal constitutional law as the biological father argues.

To the extent that the father argues that the trial court's judgment violates his parental rights under Alabama law, I disagree with the main opinion on that point. First, the biological father has not cited any authority for the proposition that he has a right under Alabama law to disclose his paternity to the child. Thus, pursuant to Rule 28, Ala. R. App. P., his argument on that point should not even be considered. Assuming we could consider that argument, I cannot locate any Alabama cases, or cases from other jurisdictions, recognizing the right of an unwed father to inform his natural child of his paternity. Alabama law generally holds that the mother, as the sole custodian of a child born out of wedlock, see D.D. v. E.E.B., 707 So. 2d 247 (Ala. Civ. App. 1997); Danford v. Dupree, 272 Ala. 517, 132 So. 2d 734 (1961), has the right to name the child without using the surname of the natural father, see J.M.V. v. J.K.H., 149 So. 3d 1100, 1103 (Ala. Civ. App. 2014). Upon establishing paternity, a legal father of a child born out of wedlock may petition to change the surname of the child, but a trial court may deny that petition if it concludes that changing the name of the child is not in the child's best

interests. Id. By analogy, it would seem that a state court adjudicating the paternity of a child may likewise prohibit the legal father from disclosing his paternity if doing so is in the best interests of the child.

As in name-change cases, it would seem that the burden would have rested on the biological father to prove that disclosing his paternity to the child would be in the best interests of the child. However, the biological father did not introduce any evidence showing how the best interests of the child would be promoted by the sudden discovery of his paternity. He merely maintained, as he does on appeal, that the child should know him as his father because of their biological connection. On the other hand, the trial court heard from the mother that the child would be confused by the disclosure of his familial connection to the biological father because the child knows her husband as his father. The mother explained that the revelation of the true paternity of the child would only destabilize the family setting in which the child had thrived. Those exact same factors recently led this court, in J.M.V. v. J.K.H., supra, to conclude that a circuit court had erred in changing the surname of a child because it

was not proven to be in the child's best interests. That same reasoning convinces me that the trial court did not err in prohibiting the biological father from disclosing his paternity to the child given the absence of any evidence indicating that such disclosure would serve the best interests of the child.

Turning to the visitation issue, once a court adjudicates the paternity of a child, that adjudication does not automatically bestow upon the newly declared legal father a right to standard visitation with his child. Rather, by statute, a court adjudicating paternity may include in its judgment "any other provision ... concerning ... visitation of the child." Ala. Code 1975, § 26-17-636(g). The mode and manner of visitation awarded to an unwed father in a paternity judgment is governed by the best interests of the child. See C.W.S. v. C.M.P., 99 So. 3d 864, 869 (Ala. Civ. App. 2012) (stating, in an action to determine paternity of child in which juvenile court, among other things, awarded biological father supervised visitation with child, that "[a] determination of a noncustodial parent's visitation with a child is left to the sound discretion of the juvenile court,

after a consideration of the best interests of the child, and this court will not reverse an award of visitation unless the record demonstrates that the juvenile court exceeded its discretion in determining the visitation award").

In deciding what form of visitation serves the best interests of the child, a trial court must consider, among many other factors, the history of the interpersonal relationship between the biological father and the child. See Ex parte Devine, 398 So. 2d 686, 697 (Ala. 1981). In this case, it is undisputed that the biological father had no substantial relationship with the child. The mother summarized the history between the biological father and the child as follows:

> "When you know that someone is your child, you will do anything to see them, and that is not what [the biological father] did. ... Now, for a parent that knows that a child is their biological child and for them to decide to stop making any effort to take care of them and see them, that is on that person. It is not on the other parent. I will not beg anybody to take care of my son. My child has been taken care of. [The child] has been taken care of for nine whole years by me.
>
> "....
>
> "And by his father, [the mother's husband], without any need or effort from anybody else. ..."

The mother argued before the trial court that it would be unconscionable to award the biological father standard visitation in light of that history. The main opinion basically concludes that the trial court should have determined that the mother had alienated the child from the biological father, but, based on its judgment denying the biological father standard visitation, the trial court obviously viewed the conflicting evidence differently. The trial court evidently determined that the biological father had voluntarily remained absent from the life of the child and that his past failures to discharge his parental responsibilities to and for the child weighed heavily against his claim for standard visitation. On appeal from ore tenus proceedings in visitation disputes, "this court does not substitute its resolution of disputed facts for the trial court's resolution of those facts." K.D.H. v. T.L.H. III, 3 So. 3d 894, 899 (Ala. Civ. App. 2008).

In reaching my conclusion that the judgment should be affirmed, I do not disagree with the general propositions that a noncustodial parent should have a meaningful opportunity to maintain a relationship with a child and that visitation

between a child and a noncustodial parent should be restricted only when necessary to protect the health, safety, and well-being of the child. ___ So. 3d at ___. However, when a trial court determines from sufficient evidence that an unwed father squandered his opportunity to develop a meaningful relationship with his child and that it would not be in the child's best interests to thrust the child into his unsupervised care, I find that those general propositions of law do not warrant interference with that judgment. Based on the record before us, I cannot agree that the trial court abused its discretion such that its judgment should be reversed.

Thompson, P.J., concurs.