[Cite as *Benner v. Benner*, 2011-Ohio-416.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

PREBLE COUNTY

JOHN E. BENNER,	:	
Plaintiff-Appellant,	:	CASE NO. CA2010-02-003
	:	O P I N I O N
- vs -		1/31/2011
	:	
JAMIE B. BENNER,	:	
Defendant-Appellee.	:	

APPEAL FROM PREBLE COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. 07-DR-5087

George A. Katchmer, 115 Brookside Drive, Yellow Springs, Ohio 45387, for plaintiff-appellant

H. Steven Hobbs, 119 N. Commerce Street, P.O. Box 489, Lewisburg, Ohio 45338, for defendant-appellee

RINGLAND, J.

{¶1} Plaintiff-appellant, John E. Benner (Father), appeals from the decision of the Preble County Court of Common Pleas, Domestic Relations Division, denying his motion to modify the visitation time of defendant-appellee, Jamie B. Benner (Mother). For the reasons outlined below, we affirm.

{¶2} Mother and Father were married on June 10, 2005. On December 3, 2007, Father filed a complaint for divorce. The marriage produced one child, Madeline

(Daughter), born July 5, 2006.

{¶3} On December 5, 2008, the trial court issued a judgment entry and final decree of divorce designating Father as residential parent and granting Mother visitation time. On July 17, 2009, Father filed a motion seeking to "suspend" Mother's visitation time alleging, among other things, that Daughter "is not safe with her mother at visitation * * * as the child returns injured."

{¶4} On October 19, 2009, after holding a hearing on the matter, a magistrate filed a decision denying Father's motion to modify Mother's visitation time. Thereafter, Father filed an objection to the magistrate's decision, which the trial court overruled. Father now appeals from the trial court's decision, raising one assignment of error for review.

{¶5} "THE COURT ABUSED ITS DISCRETION IN ACCEPTING THE MAGISTRATE'S REPORT AND RECOMMENDATIONS SINCE THESE RECOMMENDATIONS WERE UNSUPPORTED BY ANY EVIDENCE AND DO NOT SUFFICIENTLY ENSURE THE SAFETY OF THE CHILD UNDER R.C. 3109.051(D)."

{¶6} In his sole assignment of error, Father argues that the trial court erred by overruling his objections to the magistrate's decision denying his motion to modify Mother's visitation time. We disagree.

{¶7} Pursuant to R.C. 3109.051, "a trial court is permitted to modify visitation rights if it determines that the modification is in the child's best interest." *Lisboa v. Lisboa*, Cuyahoga App. No. 92321, 2009-Ohio-5228, ¶11; *In re McCaleb*, Butler App. No. CA2003-01-012, 2003-Ohio-4333, ¶6; *Braatz v. Braatz*, 85 Ohio St.3d 40, 45, 1999-Ohio-203. In determining whether a modification is in the child's best interest, the court is guided by the enumerated factors listed in R.C. 3109.051(D), which includes, among other things, the health and safety of the child, as well as whether there is reason to

believe that either parent has acted in a manner resulting in the child being an abused or neglected child. See *In re Allen*, Butler App. No. CA2002-10-238, 2003-Ohio-2548, ¶10.

{¶8} "The trial court has broad discretion in deciding matters regarding the visitation rights of nonresidential parents." *Shafor v. Shafor*, Warren App. No. CA2008-01-015, 2009-Ohio-191, ¶7, citing *Appleby v. Appleby* (1986), 24 Ohio St.3d 39, 41; *Bristow v. Bristow*, Butler App. No. CA2009-05-139, 2010-Ohio-3469, ¶18. Accordingly, while a trial court's decision regarding visitation time must be just, reasonable, and consistent with the best interest of the child, this court will not reverse the trial court's decision absent an abuse of discretion. *Wilson v. Redman*, Madison App. No. CA2003-09-033, 2004-Ohio-3910, ¶9, citing *King v. King* (1992), 78 Ohio App.3d 599, 602, 605. An abuse of discretion is more than an error of law; it implies the trial court acted unreasonably, arbitrarily or unconscionably. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶9} In this case, the magistrate determined that there was "no evidence that [Mother] has struck [Daughter] or harmed her in any way," and that the alleged "injuries" Father complained of were simply the "normal consequence of life of a three-year-old child." In addition, the magistrate found Father's constant complaints regarding Daughter's "barely visible injuries" were based on nothing more than his desire to prevent "[Mother] from exercising overnight visitation." The trial court, in its decision overruling Father's objections to the magistrate's decision, stated that it was "absolutely convinced * * * that the magistrate got it right."

{¶10} After a thorough review of the record, we find no error in the trial court's decision overruling Father's objections to the magistrate's decision. While there was some evidence indicating Daughter sustained slight abrasions on her mouth, lip, hip,

and face during Mother's visitation time, the record is devoid of any evidence indicating these "injuries" resulted from anything other than the normal playful activity of an outgoing well-developed three-year-old child. In turn, because there was absolutely no evidence Mother caused Daughter's minor "injuries," nor any evidence that Daughter was ever placed in an unhealthy or unsafe environment during her visitation time with Mother, we find no error in the trial court's decision overruling Father's objections to the magistrate's decision denying his motion to modify Mother's visitation time.[1] Accordingly, Father's single assignment of error is overruled.

Judgment affirmed.

BRESSLER, P.J., and HENDRICKSON, J., concur.

1. The majority of these alleged "injuries" occurred after Daughter spent the afternoon playing outdoors at Hueston Woods State Park with other young children during her third birthday party.