

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 03/30/2010
PHILIP G. URRY, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JACQUELINE HATCH,)
) Court of Appeals
) Division One
)
) Petitioner/Appellee,) 1 CA-CV 09-0245
)
)
) v.) Coconino County
) Superior Court
)
) SAGE KILLMEYER,) No. DO 2006-0432
)
) Respondent/Appellant.) Department E
)

DECISION ORDER

Pursuant to an order by Department M of this court directing that this appeal be considered a special action, this matter came on for conference on March 17, 2010 before Presiding Judge Sheldon H. Weisberg and Judges Philip Hall and John C. Gemmill. After the conference, we issued an order taking the matter under advisement. We accept jurisdiction because Killmeyer has no "equally plain, speedy, and adequate remedy by appeal" from the court's civil contempt order. See Ariz. R.P. Spec. Act 3(a); see also *Danielson v. Evans*, 201 Ariz. 401, 411, ¶ 35, 36 P.3d 749, 759 (App. 2001).

Killmeyer was represented on a limited basis by an Arizona attorney when the contempt hearing commenced on November 25, 2008. The hearing was continued to January 30, 2009. The court denied Killmeyer's motion to continue that hearing and she appeared

telephonically without counsel. After the hearing commenced, Killmeyer contended that she was entitled to be represented by counsel and again requested a continuance to allow time for her California attorney's *pro hac vice* application to be processed. Although her claim on appeal is not entirely clear, it appears that Killmeyer is asserting that the court abused its discretion by denying her motion to continue the hearing until her California attorney could appear. (The written motion to continue filed January 21, 2009 notified the trial court that the California attorney could not appear on January 30th "because of previously scheduled obligations.").

We review the denial of a continuance for an abuse of discretion. *In re Estate of Kerr*, 137 Ariz. 25, 29, 667 P.2d 1351, 1355 (App. 1983). We conclude that the court did not abuse its discretion by refusing to postpone the hearing. Preliminarily, we note that an indigent person has a federal due process right to appointed counsel "only where the litigant may lose his physical liberty if he loses the litigation." *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 25 (1981). In her motion for contempt of court filed October 9, 2008, Hatch sought an order compelling Killmeyer to comply with a previous visitation order but did not seek to have Killmeyer incarcerated. Therefore, Killmeyer had no right to appointed counsel at the January 30th hearing. Although she was entitled to retain counsel to represent her at the contempt hearing, Killmeyer received more than two months advance notice of

the hearing date. Thus, she had a sufficient opportunity to retain substitute counsel to appear and represent her at the hearing. That she was unable to do so did not require the court to grant her a continuance.

Killmeyer also argues that she could not be held in contempt for violating the visitation rights previously granted the child's grandmother because Killmeyer had obtained a superseding emergency order in California under the Uniform Child Custody Jurisdiction and Enforcement Act that suspended the grandmother's visitation rights. This argument also lacks merit because the court did not find her in contempt for violating grandmother's visitation rights during the pendency of the emergency order. Instead, the court found Killmeyer in contempt for violating orders preventing her from relocating the child outside Flagstaff without first obtaining a modified visitation order and for failing to notify the court and counsel of the child's change of address. Accordingly,

IT IS ORDERED denying relief.

 /s/
PHILIP HALL, Judge