RENDERED: AUGUST 3, 2007; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000695-MR

KIMBERLY K. BREIDENBACH (FORMERLY SHROYER) — APPELLANT

v.

APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE STEPHEN M. GEORGE, JUDGE
ACTION NO. 95-FC-002110

ROBERT DEAN GRIMM, II — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: MOORE AND THOMPSON, JUDGES; GRAVES,[1] SENIOR JUDGE.

GRAVES, SENIOR JUDGE: Kimberly K. Breidenbach (formerly Shroyer) appeals from an order of the Jefferson Family Court holding her in contempt for the unilateral termination of the therapeutic relationship between the parties' son, Payson, and therapist Claudia Crawford in violation of a prior court order directing that the parties cooperate with Crawford. We affirm.

[1] Senior Judge J. William Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute 21.580.

FACTUAL AND PROCEDURAL BACKGROUND

Kimberly and Grimm are the parents of Payson Grimm, born April 17, 1995. Since the divorce extensive litigation has occurred involving the child, resulting in a family court record exceeding 5,000 pages in length.

Payson suffers from emotional and psychological problems and has been diagnosed as having, among other things, Oppositional Defiant Disorder. Because of his problems, over the years Payson has been treated by various psychiatrists, therapists, and counselors. In May 2004, Payson's therapist was Claudia Crawford. During this time the parties were in court again, this time on an issue concerning Grimm's visitation rights. On May 12, 2004, the family court entered an order concerning the visitation conflict. Included in the order was a directive that "[e]ach parent shall cooperate with the child's therapist and psychiatrist." Because Crawford was the child's therapist at the time, an effect of the directive was that Kimberly was placed under court order to cooperate with Crawford.

At some point Kimberly became engaged to Dr. Warren Breidenbach. In December 2004, Dr. Breidenbach called Crawford and, among other things, canceled scheduled appointments between Kimberly and Crawford and Payson and Crawford. According to Crawford, Breidenbach also identified certain conditions Crawford would be required to follow if she were to continue as Payson therapist. The discussions between Breidenbach and Crawford degenerated into an impasse, with Crawford feeling

that she could not continue as Payson's therapist if to do so would require her to comply with Breidenbach's conditions. As a result, the therapeutic relationship between Payson and Crawford ended in December 2004. Because Grimm had his visitations with Payson at Crawford's office and under her oversight, a collateral effect of the ending of the relationship was that Grimm was unable to exercise court ordered visitations with Payson.

On January 18, 2005, Payson's Guardian Ad Litem filed a motion informing the court of the breakdown of the therapeutic relationship between Payson and Crawford and seeking the court's review in light of the development. Shortly thereafter Grimm filed a pro se motion seeking to hold Kimberly in contempt as a result of the Crawford-related events. The issue was initially taken up at a hearing held on February 17, 2005, but the matter was continued until March 10, 2005, pending the taking of the deposition of Crawford. Crawford's deposition was taken on March 7, 2005, and an evidentiary hearing on the contempt issue was held March 10, 2005.

On August 25, 2005, the family court entered an order holding Kimberly in contempt "for her unilateral termination of the therapeutic relationship between Payson and Ms. Crawford." The order further stated that "the unilateral termination of that relationship, without Court Order, was a clear violation of this Court's Order." Noting that the events had resulted in missed visitations and that "[t]his is consistent with [Kimberly's] past conduct," the order provided that Kimberly "may purge herself of this finding of contempt by complying with this Court's Order, and ensuring that Payson is

where he needs to be to ensure that Mr. Grimm is permitted to exercise his visitation." This appeal followed.

Before us, Kimberly contends (1) that for procedural reasons the family court's finding of contempt was in violation of Kentucky law and violated her federal constitutional rights, and (2) that the court's finding of contempt was not supported by the evidence admitted at the hearing. We consider these arguments in turn.

PROCEDURAL ISSUES

Kimberly contends that the family court's finding of contempt was improper because of various procedural shortcomings. Specifically, Kimberly contends that the contempt proceedings were procedurally flawed because Grimm's pro se motion was not accompanied by an attached affidavit; because the motion failed to identify the specific order which Kimberly was alleged to have violated; because a hearing was held even though Crawford's pre-hearing deposition testimony established that Crawford, not Kimberly, terminated the relationship; because the motion failed to identify whether Grimm was seeking civil or criminal sanctions for the contempt; and because Kimberly was not served with a show cause order.

Though Kimberly sharply critiques the supposed procedural shortcomings of the family court proceedings, ironically, in her appeal before us she is in violation of a fundamental rule of this Court. CR 76.12(4)(c)(v) requires that the appellant's brief "shall contain at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner."

Kimberly's brief contains no reference identifying whether her present challenges were properly preserved. As such, we are under no obligation to review this issue. *Brooks v. Lexington-Fayette Urban County Housing Authority*, 132 S.W.3d 790, 807 n. 3 (Ky. 2004) However, the record discloses that Kimberly's procedural due process rights were not violated in the course of the contempt proceedings, or, alternatively, that any error was harmless.

Ordinarily, notice and an opportunity to be heard are the basic requirements of due process. *Storm v. Mullins*, 199 S.W.3d 156, 162 (Ky. 2006) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 656, 94 L.Ed. 865 (1950)). Kimberly had notice from multiple sources that the issue in the present round of litigation was the allegation that she was in contempt for failure to cooperate with Crawford. The first indicator was the Guardian Ad Litem's January 18, 2005, motion first bringing the issue to the court's attention. Next, Grimm's motion to hold her in contempt for Crawford-related matters placed her on notice of the issue; then the family court's order entered on February 22, 2005, alerted her that on March 10, 2005, a hearing would be held on Grimm's "motion to hold Ms. Shoyer in contempt for her failure to cooperate with Ms. Crawford as required by prior order of the Court"; and finally, at the March 7, 2005, deposition of Crawford, Crawford repeatedly referred to the family court's order that the parties cooperate with her. Moreover, it is obvious from Kimberly's counsel's questioning at the deposition that his objective was to shift the blame for the

breakdown to Crawford, which, contrary to appellant's present position, evidences an understanding of the issue at bar.

In summary, the record discloses that Kimberly was provided adequate notice - and that she had actual knowledge - that the issue at bar was the allegation that she had failed to cooperate with Crawford in violation of a prior family court order. Accordingly, any procedural defects, including those identified by her in the present argument, were harmless. CR 61.01 ("No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.").

Further, Kimberly had an opportunity to be heard on the issue. Kimberly identifies no constraints on her opportunity to defend against the contempt allegation at the March 10, 2005, evidentiary hearing on the matter.

Because Kimberly was afforded adequate notice and an opportunity to be heard, the basic requirements of procedural due process were complied with in this case. As such, we will not disturb the decision of the family court upon the grounds alleged in this argument.

SUBSTANTIALITY OF EVIDENCE

Kimberly also argues that the family court's decision was not supported by the evidence. We disagree.

The power of the courts to punish for contempt is one of the powers inherently belonging to the judiciary. *Arnett v. Meade*, 462 S.W.2d 940, 947 (Ky.1971). "As necessary to the due exercise of their functions, it was recognized at common law, and has been from time immemorial, that courts have the inherent power to enforce their processes and orders and so to attain the ends of their creation and existence." *Crook v. Schumann*, 292 Ky. 750, 167 S.W.2d 836, 840 (1943). "The purpose of civil contempt authority is to provide courts with a means for enforcing their judgments and orders, and trial courts have almost unlimited discretion in applying this power." *Smith v. City of Loyall*, 702 S.W.2d 838, 838 -839 (Ky.App. 1986)

It is undisputed that Kimberly was under court order to cooperate with Crawford. As there was a complete breakdown in Payson's relationship with Crawford as a result of a conflict between Kimberly and Crawford, if that breakdown was the fault of Kimberly, then it follows that she failed in her duty to cooperate. The family court found that Kimberly was at fault. We will not disturb the finding unless it was clearly erroneous. CR 52.01. Upon the record as a whole, the finding was not clearly erroneous.

We particularly note that the deposition testimony of Crawford supports the family court's finding. In her deposition Crawford describes two phone conversations with Dr. Breidenbach on December 9, 2005, in which Breidenbach canceled scheduled

appointments for Kimberly and Payson; indicated that there would be no further appointments until Crawford agreed to meet with him and go over a list of points; and stated until Crawford complied with this, she would not be paid. Crawford further testified that

> I asked them to -- I begged him in an hour and a half, two phone calls, to please produce Payson and they refused. He said he talked with Kim, and they absolutely refused. What more am I supposed to do at that point, Mr. Helmers.
> . . . .
>
> They discharged me as far as I was concerned.

March 7, 2005, Crawford testimony, pg. 39.

In light of the foregoing, the family court's findings that Kimberly unilaterally terminated Payson's therapeutic relationship with Crawford and that such was a violation of its order to cooperate with the therapist were not clearly erroneous. As such, its decision to hold Kimberly in contempt of its order to cooperate with Crawford was not an abuse of discretion.

CONCLUSION

For the foregoing reason the judgment of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

John H. Helmers, Jr.
Louisville, Kentucky

BRIEF FOR APPELLEE:

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