[Cite as *Norman v. Music*, 2021-Ohio-824.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HIGHLAND COUNTY

CHRISTOPHER NORMAN,	:	
Plaintiff-Appellee,	:	CASE NO. 20CA07
vs.	:	
BETHANY MUSIC,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Suellen M. Brafford, Batavia, Ohio, for appellant.

Christopher Norman, Hillsboro, pro se, for appellee.

CIVIL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 3-10-21
ABELE, J.

{¶ 1} This is an appeal from a Highland County Common Pleas Court judgment that dismissed contempt motions filed by Bethany Brafford, defendant below and appellant herein.

{¶ 2} Appellant assigns one error for review:

> "THE DISMISSAL OF APPELLANT'S MOTIONS FOR CONTEMPT WAS JUDICIAL ERROR AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 3} On October 4, 2018, Christopher Norman, plaintiff below and appellee herein, filed a complaint to establish a father-child relationship and parenting time. The complaint averred that appellee and appellant, who never married, are the natural parents of P.A.M., born November 25,

2014. On February 13, 2019, the parties entered into an agreed entry that: (1) established appellee's paternity, (2) adopted the child support order previously filed in the Highland County Child Support Enforcement Agency (HCCSEA), and (3) agreed that the parties equally divide the child's uninsured medical expenses. Further, the parties entered into an agreed entry regarding parenting time.

{¶ 4} On November 1, 2019, appellant filed a motion for contempt against appellee and alleged that appellee: (1) failed to attend counseling consistently, (2) failed to provide AA Meeting Attendance Sheets, and (3) allowed Jocelyn Pownell to be left alone with P.A.M. On January 2, 2020, appellee filed a contempt motion against appellant and alleged that appellant had denied appellee visitation since September 2019. Finally, on January 7, 2020, appellant filed a second contempt motion against appellee and alleged that appellee "has failed to pay his half of their daughter's medical/dental not covered by insurance. * * * Father only paid $605 of his $2,049.60 portion of the costs, so [appellant] had to pay both his remaining costs and hers."

{¶ 5} On February 27, 2020, the parties appeared for a hearing on the three contempt motions. The following day, the trial court issued its entry and disposed of the motions as follows:

> As to the motion filed January 7, 2020, concerning the uninsured medical/dental expenses the parties stipulate that PLAINTIFF still owes $103.60. Based on the stipulation the Court finds PLAINTIFF paid $1341.00 towards his obligation and therefore is in substantial compliance with the orders of the Court. The motion is therefore dismissed.
>
> As to the motion filed November 1, 2019, the Court finds the father failed under Phase 2 of the parenting order to provide the mother his AA attendance sheets and failed to timely provide the mother his counseling information from Scioto Paint Valley Mental Health Center (See paragraph #15 in the February 20, 2019 Entry). The Court finds those requirements are qualifiers for PLAINTIFF to be granted parenting time under Phase 2 and failure to provide that information to DEFENDANT does not constitute contempt as anticipated under R.C. 2705.031(B)(2). The motion is therefore dismissed.

> As to the motion filed January 2, 2020, the Court finds the DEFENDANT has elected not to let the PLAINTIFF have any contact with [child] since September 15, 2019. The Court finds PLAINTIFF did not provide DEFENDANT any AA attendance sheets or counselling [sic.] information as required under Phase 2. PLAINTIFF admits he is an alcoholic but sober since May 15, 2018. Because of PLAINTIFFS alcohol issue the DEFENDANT was justified in withholding parenting time until the records/information as required in Phase 2 was provided her. The Court therefore finds DEFENDANT acted in 'good faith' in withholding the parenting time of PLAINTIFF. The motion filed January 2, 2020 is therefore dismissed.

This appeal followed.

{¶ 6} In her sole assignment of error, appellant asserts that the trial court erred when it dismissed her contempt motions. We, however, disagree with appellant.

{¶ 7} Generally, a trial court possesses broad discretion when it considers a contempt motion. *State ex rel. Cincinnati Enquirer v. Hunter*, 138 Ohio St.3d 51, 2013-Ohio-5614, 3 N.E.3d 179, ¶ 29, citing *Denovchek v. Trumbull Cty. Bd. of Commrs.*, 36 Ohio St.3d 14, 16, 520 N.E.2d 1362 (1988) ("the primary interest involved in a contempt proceeding is the authority and proper functioning of the court, [and therefore] great reliance should be placed upon the discretion of the [court]"). Therefore, an appellate court will uphold a trial court's contempt decision absent an abuse of discretion. *Burchett v. Burchett*, 4th Dist. Scioto No. 16CA3784, 2017-Ohio-8124; *Welch v. Muir*, 4th Dist. Washington No. 08CA32, 2009-Ohio-3575, ¶ 10. Moreover, an appellate court will not lightly substitute its judgment for that of the issuing court. *Windland v. Windland*, 4th Dist. Washington No. 17CA1, 2017-Ohio-9039, ¶ 14; *Wall v. Wall,* 4th Dist. Pike No. 14CA848, 2015-Ohio-1928, ¶ 6; *Robinette v. Bryant*, 4th Dist. Lawrence No. 14CA28, 2015-Ohio-119, ¶ 31.

{¶ 8} " '[A]buse of discretion' [means] an 'unreasonable, arbitrary, or unconscionable use of discretion, or * * * a view or action that no conscientious judge could honestly have taken.' " *State v. Kirkland*, 140 Ohio St.3d 73, 2014-Ohio-1966, 15 N.E.3d 818, ¶ 67, quoting *State v. Brady*, 119

Ohio St.3d 375, 2008-Ohio-4493, 894 N.E.2d 671, ¶ 23. "An abuse of discretion includes a situation in which a trial court did not engage in a ' " sound reasoning process." ' " *State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34, quoting *State v. Morris*, 132 Ohio St.3d 337, 2012-Ohio-2407, 972 N.E.2d 528, ¶ 14, quoting *AAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990).

{¶ 9} Contempt is conduct that " 'brings the administration of justice into disrespect, or which tends to embarrass, impede or obstruct a court in the performance of its functions.' " *Denovcheck, supra,* 36 Ohio St.3d at 15, quoting *Windham Bank v. Tomaszczyk,* 27 Ohio St.2d 55, 271 N.E.2d 815 (1971), paragraph one of the syllabus; *Burchett, supra,* at ¶ 20. "The law of contempt is intended to uphold and ensure the effective administration of justice," "to secure the dignity of the court and to affirm the supremacy of law." *Cramer v. Petrie*, 70 Ohio St.3d 131, 133, 637 N.E.3d 882 (1994). Contempt proceedings are classified as civil or criminal based on the purpose to be served by the sanction. *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 554-555, 740 N.E.2d 265 (2001). The purpose of a civil contempt motion is to compel compliance with the court's order rather than punish disobedience. *Robinette*, *supra*, at ¶ 47.

{¶ 10} In the case at bar, appellant alleged that appellee violated the trial court's orders because he: (1) appellee failed to follow parenting time requirements outlined in the February 20, 2019 Agreed Entry, and (2) appellee failed to pay half of the child's uninsured medical and dental expenses as the February 20, 2019 Agreed Entry requires. Appellant also asked the court to suspend appellee's parenting time until he satisfies certain conditions.

{¶ 11} A party seeking to enforce a court order must establish, by clear and convincing evidence, the existence of a court order and the nonmoving party's noncompliance with the terms of

that order. *Burchett, supra,* at ¶ 22, citing *Wolf v. Wolf,* 1st Dist. Hamilton No. C-090587, 2010-Ohio-2762, ¶ 4; *Morford v. Morford*, 85 Ohio App.3d 50, 55, 619 N.E.2d 71 (4th Dist.1993).

> Clear and convincing evidence is that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.

Cross v. Ledford, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus; *Burchett* at ¶ 22; *Windland* at ¶ 18.

{¶ 12} R.C. 2705.02(A) defines contempt as "disobedience of, or resistance to, a lawful writ, process, order, rule, judgment or command of a court or officer." "Proof of purposeful, willing or intentional violation of a court order is not a prerequisite to a finding of contempt." *Pugh v. Pugh*, 15 Ohio St.3d 136, 472 N.E.2d 1085 (1984), paragraph one of the syllabus. On the other hand, numerous courts have held that "technical violations of a court order do not necessarily require a finding of contempt." See, e.g., *Rath v. Rath*, 2013 ND 243, 840 N.W.2d 656, ¶ 11. In *Rath,* the North Dakota Supreme Court held that a mother did not violate the divorce judgment by failing to provide the father with copies of the children's medical expenses, and thus, was not in contempt. The *Rath* court cited cases from around the country in support. *See e.g., M.B. v. E.B.*, 28 A.3d 495, 500 (Del. Fam. Ct. 2011)(a court generally does not make a contempt finding for a mere technical violation, but the violation must constitute a failure to obey the Court in a meaningful way.); *Kicken v. Kicken*, 798 N.E.2d 529, 534 (Ind. Ct. App. 2003) (upheld trial court's denial of contempt motions as an "attempt to improve upon the acrimonious family situation" and "impress upon Mother and Father the larger picture: the well-being of their children."); *State v. Wilmouth*, 302 N.J.Super. 20, 694 A.2d 584, 586 (1997) (contempt statutes are "not intended to attempt to regulate and adjudicate

every loss of temper, angry word, or quarrel between persons connected by a familial relationship."); *Quint v. Lomakoski*, 173 Ohio App.3d 146, 877 N.E.2d 738, 743 (2007)(loss of 45 minutes of parenting time is at best a technical violation.).

{¶ 13} This court agrees with the rationale that technical violations of a court order do not necessarily require a finding of contempt:

> This is especially true in domestic relations cases, because granting contempt motions for every single possible technical violation of court orders would do nothing to further the best interests of children, but would simply increase the animosity between the parties and discourage them from cooperating to resolve disputes by themselves.

Rath at ¶ 11, citing *Kicken* at 534. *See also Miller v. Miller*, 3d Dist. Henry No. 7-03-09, 2004-Ohio-2358 (while both parties committed technical violations by failure to pay spousal support and denial of visitation, technical violations of prior court orders did not warrant contempt findings); *Cook v. Cook*, 937 N.W.2d 286, 2020 ND 11, (even if former wife violated terms of parties' divorce judgment, the trial court finding that former wife was not in contempt was not an abuse of discretion).

{¶ 14} In the case sub judice although the trial court found that both parties committed technical violations, it did not find that these violations rose to the level of contempt. As for appellant's January 7, 2020 uninsured medical/dental expense contempt motion, the trial court found that the appellee paid $1341 toward his obligation and concluded that this action constituted "substantial compliance with the orders of the Court." Substantial compliance with a court order can be a defense to a contempt charge. See *Koehler v. Koehler*, 12th Dist. Brown Nos. CA2017-12-016, CA2017-12-017, 2018-Ohio-4933, ¶ 72 (failing to ensure supervised parenting time was de minimis violation of parenting agreement and the circumstances constituted substantial

compliance and did not warrant contempt). As for the November 1, 2019 contempt motion, the trial court determined that appellee "failed under Phase 2 of the parenting order to provide the mother his AA attendance sheets and failed to timely provide the mother his counseling information." However, the court found those requirements are qualifiers for appellee to be granted parenting time under Phase 2, and the failure to provide that information "does not constitute contempt as anticipated under R.C. 2705.031(B)(2)." Thus, the trial court dismissed the contempt motions.

{¶ 15} As indicated above, it is generally within a trial court's sound discretion to decline to enter a contempt finding. After our review of the record in the case sub judice, we conclude that the trial court did not abuse its discretion when it denied appellant's contempt motions. Here, the trial court's judgment reflects an attempt to resolve minor violations of the Agreed Entry in a way that will promote family harmony for the sake of the child. Likewise, we also encourage both parties to endeavor to act in the child's best interest.

{¶ 16} Accordingly, based upon the foregoing reasons, we overrule appellant's assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed. Appellee shall recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Highland County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Wilkin, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.