

[Cite as *Welty v. Casper*, 2011-Ohio-6128.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Howard P. Welty, III, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 10AP-803
 : (C.P.C. No. 08JU-03-3585)
 Kristine L. Casper, :
 : (REGULAR CALENDAR)
 Defendant-Appellant. :

D E C I S I O N

Rendered on November 29, 2011

Kokensparger & Ryan, L.L.C., and Corinne N. Ryan, for appellee.

Tyack, Blackmore & Liston Co., L.P.A., and Thomas M. Tyack, for appellant.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations, Juvenile Branch.

CONNOR, J.

{¶1} Defendant-appellant, Kristine L. Casper, appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, disposing of two motions for contempt filed by plaintiff-appellee, Howard P. Welty, III.

{¶2} The parties are the unmarried parents of a minor child born September 7, 2007. According to those aspects of the trial court decision that are not disputed in this appeal, the parties at first were able to amicably establish an informal schedule under

which the child resided primarily with Casper, and Welty, a police officer working late-afternoon shifts, enjoyed companionship with the child at Casper's home during parts of the day. This benefited the child's contact with both parents as well as providing efficient child care in light of the parents' staggered work schedules.

{¶3} In March 2008, the informal arrangement between the parents broke down. Welty began this custody action in April 2008. While Welty continued to have some contact with his child after this, there were continuing disagreements between the parties over the specific times and locations of Welty's visits and his desire to exercise some degree of autonomous parenting during the period that the child was in his care.

{¶4} The first court order addressing the parties' custody arrangements issued from a magistrate on August 1, 2008. This temporary custody order determined that Casper would be the temporary residential parent and legal custodian, granted Welty temporary parenting time, and specified transportation details for the parties to effectuate child exchanges. Although actual paternity of the child does not appear to be at the core of the dispute, a related proceeding to formally establish paternity was not resolved until September 9, 2008.

{¶5} Welty filed his first contempt motion on August 13, 2008 alleging that he was denied parenting time under the temporary order between August 1 and 7, 2008, and that Casper had refused to provide the name and contact information for the child's day care provider. He also alleged that Casper had failed to appear for genetic testing, causing a delay of two weeks in settling the paternity question.

{¶6} Welty filed a second contempt motion on August 27, 2008 asserting further violations of his parenting time under the magistrate's order, including multiple occasions

in which Casper had failed to deliver the child to a drop-off point or refused to make the child available for pickup.

{¶7} In addition, Casper herself filed a pair of contempt motions that are addressed in the trial court's decision. She has not in this appeal assigned error regarding the trial court's determination of these motions, and issues raised therein are not properly before us.

{¶8} The trial court found that both of Welty's August 13 and 27, 2008 motions for contempt had merit and should be granted. The court ordered 14 days of "make-up parenting time" as equitable compensation for the previously-denied parenting time. (Aug. 17, 2010 order, at 10.)

{¶9} Casper has timely appealed and brings the following three assignments of error:

ASSIGNMENT OF ERROR NO. I:

THE TRIAL COURT ERRED IN FINDING THE DEFENDANT GUILTY OF CONTEMPT FOR ALLEGEDLY FAILING TO COMPLY WITH AN INVALID TEMPORARY VISITATION ORDER ISSUED IN THE PARENTAGE ACTION BROUGHT PURSUANT TO CHAPTER 3111.01 ET SEQ. OF THE OHIO REVISED CODE.

ASSIGNMENT OF ERROR NO. II:

THE TRIAL COURT ERRED IN FINDING THE DEFENDANT GUILTY OF CONTEMPT FOR ALLEGEDLY FAILING TO COMPLY WITH THE TEMPORARY VISITATION ORDER ISSUED IN THE PARENTAGE ACTION BROUGHT PURSUANT TO CHAPTER 3111 ET SEQ. OF THE OHIO REVISED CODE WHERE NO FINDING OF PARENTAGE HAD BEEN MADE AS OF THE DATE OF THE ISSUANCE OF THE TEMPO[R]ARY VISITATION ORDER.

ASSIGNMENT OF ERROR NO. III:

THE TRIAL COURT ERRED IN RELYING ON UNRELATED INFORMATION OCCURRING AFTER THE DATE OF THE FILING OF CONTEMPT CITATIONS AND UNRELATED TO THE ISSUES SET FORTH IN THE CONTEMPT CITATIONS.

{¶10} Casper's first and second assignments of error assert that all contempt proceedings arising from purported violations of the magistrate's order governing visitation cannot be sustained because that order is void ab initio. Casper asserts that Ohio law does not provide for an adjudication, even temporary, of visitation rights before parentage is conclusively established and, thus, the temporary order here is invalid because it preceded the final determination in the paternity action. We find that this assessment of the law is inaccurate.

{¶11} Casper relies on R.C. 3113.13(C) as interpreted by our decision in *Burns v. Darnell* (1995), 100 Ohio App.3d 419. After our decision in *Burns*, however, the Ohio Supreme Court in *Peegan v. Crawmer*, 76 Ohio St.3d 97, 1996-Ohio-419, essentially overruled some pertinent aspects of *Burns*. Moreover, the legislature in 2006 enacted R.C. 3109.043, which clearly contemplates temporary orders allocating parental rights and responsibilities while a paternity action is pending:

In any proceeding pertaining to the allocation of parental rights and responsibilities for the care of a child, when requested in the complaint, answer, or counterclaim, or by motion served with the pleading, upon satisfactory proof by affidavit duly filed with the clerk of the court, the court, without oral hearing and for good cause shown, may make a temporary order regarding the allocation of parental rights and responsibilities for the care of the child while the action is pending.

If a parent and child relationship has not already been established pursuant to section 3111.02 of the Revised Code, the court may take into consideration when determining

whether to award parenting time, visitation rights, or temporary custody to a putative father that the putative father is named on the birth record of the child, the child has the putative father's surname, or a clear pattern of a parent and child relationship between the child and the putative father exists.

{¶12} Since the statute clearly contemplates such temporary orders as were issued by the trial court in the present case, Casper's first and second assignments of error are not well-taken and are overruled.

{¶13} Casper's third assignment of error asserts that the trial court erred in relying upon allegations of non-compliance that occurred after the filing of the contempt motions that were the object of current judgment. The only specific example cited is found on page seven of the trial court's decision, discussing events occurring in January and March 2009.

{¶14} Admitting, arguendo, that the trial court could not consider ongoing patterns of non-compliance when addressing specific contempt issues raised within the chronological scope of the contempt motions, the mention of subsequent conduct by Casper in the present case is tangential to the issues actually determined. More to the point, the court's judgment appealed from in the present matter does not directly attribute any make-up visitation time to events occurring outside the pertinent time frame.

{¶15} To the contrary, the court's decision addresses numerous alleged denials of parenting time that were detailed in the two contempt motions and occurred between August 1, and September 6, 2008. The trial court serially reviewed the evidence of each of these incidents in detail, accepting most, while nonetheless finding some of the actions by Casper to be warranted based on the parents' respective conduct. Casper largely does not, on appeal, dispute the events in question, but emphasizes and restates her

argument that the actions she took were warranted and in the best interests of the child. These arguments were considered and not entirely rejected by the trial court, but do not establish that the trial court erred in its contempt finding. Once the underlying magistrate's order is found valid, the evidence, if accepted by a trier of fact, establishes sufficient incidents of denial of visitation to support the 14 days of make-up visitation time awarded.

{¶16} In addition, Casper argues that subsequent developments indicate that Welty may have been affected by a dependency on pain-killing medication, resulting from the back surgery that eventually compelled his disability retirement from the police force. Casper does not articulate the manner in which this affected her compliance with the temporary order during the period in question. We further note that, to the extent that subsequent developments may affect the permanent parenting arrangement ordered by the trial court, this court has yet to review on appeal any permanent award of custody and visitation in the matter, and evidence of this nature is outside the scope of this appeal.

{¶17} In accordance with the foregoing, Casper's third assignment of error is overruled.

{¶18} In summary, Casper's first, second, and third assignments of error are overruled and the judgment of contempt entered by the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is affirmed.

Judgment affirmed.

KLATT and SADLER, JJ., concur.
