

IN THE UTAH COURT OF APPEALS

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| Ronald W. Hardy, |) | MEMORANDUM DECISION |
| |) | (Not For Official Publication) |
| Plaintiff and Appellant, |) | |
| |) | Case No. 20040812-CA |
| v. |) | |
| |) | F I L E D |
| Jean Hardy (Smeltzer), |) | (November 25, 2005) |
| |) | |
| Defendant and Appellee. |) | <u>2005 UT App 504</u> |

Fifth District, Cedar City Department, 944500067
The Honorable J. Philip Eves

Attorneys: Blaine T. Hofeling, Cedar City, for Appellant
Jennifer P. Lee, Murray, for Appellee

Before Judges Billings, Davis, and McHugh.

BILLINGS, Presiding Judge:

Plaintiff Ronald Hardy appeals the trial court's denial of his motion requesting that Defendant Jean Hardy be found in contempt of court in a parent visitation dispute. Plaintiff argues that Defendant should be found in contempt of court because she delivered the parties' child for visitation two days later than required by statute. See Utah Code Ann. § 30-3-35(2)(g)(ii) (2004).

For the court to find contempt, "the person [must have] . . . kn[own] what was required, had the ability to comply, and intentionally failed or refused to do so." Von Hake v. Thomas, 759 P.2d 1162, 1172 (Utah 1988). In the instant case, the trial court concluded that "[e]ven though Defendant denied Plaintiff visitation, because Defendant was relying upon an old version of the statute and did in fact deliver the parties' minor child for part of the visitation, the [c]ourt cannot conclude that Defendant's denial was willful. Defendant cannot, therefore, be held in contempt." Plaintiff has not properly challenged this finding, therefore we accept it. Thus, Defendant's conduct was not willful, and as a result, the trial court did not err by finding that Defendant was not in contempt.

Plaintiff next argues that the trial court erred by failing to hold Defendant in contempt for being unaware of the current visitation statute. However, even if Defendant had a duty to stay up to date on any changes to the visitation statute, Defendant would not be in contempt because Plaintiff cannot prove that Defendant knew that she had such a duty or that she willfully failed to remain current in the law.

Accordingly, we determine that the trial court did not err in failing to find that Defendant was in contempt, and we affirm.

Judith M. Billings,
Presiding Judge

WE CONCUR:

James Z. Davis, Judge

Carolyn B. McHugh, Judge