Cite as 2018 Ark. App. 359

ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-17-1030

	Opinion Delivered: June 6, 2018
JONATHAN GOODMAN APPELLANT	APPEAL FROM THE UNION COUNTY CIRCUIT COURT [NO. 70DR-14-121]
V.	
MISTY GOODMAN APPELLEE	HONORABLE SPENCER G. SINGLETON, JUDGE
	REMANDED TO SETTLE THE RECORD AND REBRIEFING ORDERED

WAYMOND M. BROWN, Judge

Appellant appeals from the circuit court's order denying his motion for change in custody and limiting his visitation with J.G., born 04/25/2001, and C.G., born 05/31/2005. On appeal, he argues that the circuit court abused its discretion (1) in denying C.G.'s clear desire to live with her father, absent a report or recommendation from the ad litem about why that desire should not be met; (2) in failing to require a report detailing why the ad litem's recommendation was anything other than the expressed intent of his client as required by Administrative Order No. 15; and (3) for withholding visitation as punishment for contempt. We are unable to address the merits of appellant's arguments. We remand to settle the record and order rebriefing.

Arkansas Supreme Court Administrative Order No. 4 provides that, "[u]nless waived on the record by the parties, it shall be the duty of any circuit court to require that a verbatim record be made of all proceedings pertaining to any contested matter before it."[1] Our supreme court has said that Administrative Order No. 4 should be strictly construed and applied.[2] If anything material to either party is omitted from the record, by error or by accident, we may direct that the omission or misstatement be corrected, and, if necessary, that a supplemental record be certified and transmitted.[3] In its June 30, 2017 order, the circuit court states:

> 8. At the present hearing, the Court took testimony from both children, both parties, Judy Bailey, Ashton Lewis, Danielle Goodman, Sue Giles, and Jennifer Eley. The Court also admitted into evidence multiple exhibits including numerous text messages and the video of the April 2017 exchange.
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> . . . .
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> As shown, on the video, [Appellant] and his wife repeatedly told the children that they could decide whether to go with [Appellee]. [Appellant] and his wife spoke to [Appellee] in a manner that was disgraceful and permitted and encouraged [C.G.] to do the same.

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[1] *Evangelical Lutheran Good Samaritan Soc. v. Kolesar*, 2013 Ark. App. 195, at 3 (citing Ark. Code Ann. § 16-13-510 (Repl. 1999); *Evins v. Carvin*, 2012 Ark. App. 622).

[2] *Id.*, 2013 Ark. App. 195, at 4 (citing *Thompson v. Guthrie*, 373 Ark. 443, 284 S.W.3d 455 (2008); *Robinson v. State*, 353 Ark. 372, 108 S.W.3d 622 (2003); *Bradford v. State*, 351 Ark. 394, 94 S.W.3d 904 (2003) (emphasizing that a verbatim record of the proceedings is a requirement)).

[3] *Id.* (citing Ark. R. App. P.–Civ. 6(e) (2012); *Jenkins v. APS Ins., LLC*, 2012 Ark. App. 368, at 6).

There is no transcription of the video and the record shows no waiver. Accordingly, the contents of the recording are relevant to appellant's visitation argument on appeal, in addition to the sufficiency of the evidence, though not specifically argued by appellant on appeal.[4]

Arkansas Supreme Court Rule 4-2(5) states that "The appellant shall create an abstract of the material parts of all the transcripts (stenographically reported material) in the record." It states that information is material "if the information is essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal." All material information recorded in a transcript (stenographically reported material) must be abstracted.[5] Depending on the issues on appeal, material information may be found in, for example, counsel's statements and arguments, voir dire, testimony, objections, admissions of evidence, proffers, colloquies between the court and counsel, jury instructions (if transcribed), and rulings.[6] The abstract shall be an impartial condensation, without comment or emphasis, of the transcript (stenographically reported material) with no more than one page of a transcript abstracted without giving a record page reference.[7] A review of the record shows that appellant has failed to abstract any colloquies between

[4]*See Brisher v. State*, 2016 Ark. App. 108, at 2.

[5]Ark. Sup. Ct. R. 4-2(a)(5)(A).

[6]*Id.*

[7]Ark. Sup. Ct. R. 4-2(a)(5)(B).

the court and counsel of the parties, some which involve matters currently before this court, such as the admission of exhibits that were later relied on by the circuit court in the order from which he appeals. This is not permitted.

The opening sentence of the circuit court's July 14, 2016 order states "A hearing was held July 13, 2016, in connection with [Appellee]'s Petition for Modification of Decree, filed June 8, 2015, [Appellant]'s Counterclaim, Motion for Contempt, Motion to Change Child Support and Spousal Support and Motion to Modify Summer Visitation filed June 9, 2015, and [Appellee]'s Petition for Contempt of Court filed June 28, 2016." We first note that appellee's June 28, 2016 petition is specifically referenced in the circuit court's June 30, 2017 order. We further note that while all three referenced documents appear in the record, none appear in the addendum; the circumstances are the same with regard to the answers to the referenced documents. All three documents contain allegations pertaining to custody, which is the issue before this court.[8] Furthermore, the record shows that appellee filed a petition for immediate custody due to appellant's failure to return the children as scheduled as the end of his first period of summer visitation on June 26, 2016; this was one of the issues in appellee's June 28, 2016 petition. Neither the petition for immediate custody nor the answer thereto appear in the addendum.

[8]*Shannon v. McJunkins*, 2010 Ark. App. 440, at 10, 376 S.W.3d 489, 494 (citing *Hollinger v. Hollinger*, 65 Ark. App. 110, 116, 986 S.W.2d 105, 108 (1999) (The combined, cumulative effect of particular facts may constitute a material change in circumstances.)).

On July 29, 2016, appellant asked that an attorney ad litem be appointed in the matter. On the same date, the circuit court appointed an attorney ad litem for the benefit of the parties' minor children. Both the letter and the order appear in the record but not the addendum. One of appellant's arguments on appeal expressly deals with the lack of a report from the ad litem. Without these documents, it is not clear how an attorney ad litem came into the case.

In the circuit court's June 30, 2017 order, it denied appellant's motion for change in custody and found him in contempt for willful violation of its orders. The order states that these rulings were based on evidence that included the above-referenced, non-transcribed vide, and text message exchanges involving appellant and/or the children. The order stated that:

> Evidence admitted in the court shows that [Appellant]—in the presence of the children and in communications with the children—has continued to demean [Appellee] and to accuse [Appellee] of only fighting for custody of the children in order for her to continue receiving child support. The Court also finds that [Appellant] has manipulated his children into expressing desires to change custody and into fabricating grounds for such a change.

Based on these findings, it limited appellant's visitation and appellant argues against this decision before this court. A disc containing three videos, as well as copies of the referenced text messages is in the record; however, no copy of the disc or the text messages is in the addendum.

We therefore remand this case to the circuit court for it to settle the record by requiring that a verbatim transcription be made of the video recording that was played for

the court at the hearing and to supplement the record with the addition of this transcription within thirty days of this court's opinion. After settlement of the record and the filing of a supplemental record with this court, we further order rebriefing and direct appellant to file a substituted abstract, brief, and addendum incorporating this transcript and curing all above-referenced deficiencies in compliance with Arkansas Supreme Court Rule 4-2 within fifteen days after the supplemental record has been filed with this court.

We encourage counsel to review Rule 4-2 of the Rules of the Arkansas Supreme Court and Court of Appeals to ensure that his brief complies with the rules and that no additional deficiencies are present as the deficiencies we have noted are not to be taken as an exhaustive list.

Remanded to settle the record and rebriefing ordered.

GRUBER, C.J., and HARRISON, J., agree.

F. Mattison Thomas III, for appellant.

Stone & Sawyer, PLLC, by: *Phillip A. Stone*, for appellee.