

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-350

SARAH LYNNE,

Appellant,

v.

MATTHEW LANDSMAN,

Appellee.

On appeal from the Circuit Court for Alachua County.
Gloria R. Walker, Judge.

November 4, 2020

ROBERTS, J.

In this post-dissolution appeal, the former wife argues the trial court erred by holding her in indirect civil contempt for failing to comply with a provision of the final judgment that was not sufficiently precise or explicit to support the contempt. We agree and reverse.

Facts

The parties were divorced in 2018 and share custody of two minor children. The final judgment of dissolution incorporates the parties' consent parenting plan, which provides in relevant part:

The children may have reasonable telephone or video-conferencing contact with the other parent any time. Neither parent shall use this provision as a pretext for unreasonably interfering with the other parent's time with the children.

In 2019, the former husband filed a motion for contempt and enforcement in which he argued the former wife was not abiding by the above provision as she was not allowing him to have "frequent (i.e., daily, or close thereto) communication" with the children on her time-sharing days. At the contempt hearing, the former wife argued she did not interpret the above provision to mandate daily phone calls from the former husband to the children during her time. She acknowledged that daily calls had been the parties' practice for two years prior, but claimed as the children aged, they became distressed about the daily calls from the former husband when they were with her. She testified that she sought to maintain a bond between the children and the former husband; that she encouraged them to call the former husband; and that she facilitated any of their requests to call the former husband.

The former wife argued she could not be held in contempt because the above provision was not sufficiently precise or explicit to put her on notice of what she may or may not do to support a conclusion that she willfully or wantonly violated the final judgment. The trial court disagreed, finding the provision clear and unambiguous. The court found the only way for such young children* to have reasonable contact with the former husband was for the former wife to put them on the phone when he called and that by refusing to do so, she was unreasonably interfering with his access to the children. The court entered an order holding the former wife in indirect civil contempt for failing to abide by the final judgment and imposed a monetary sanction, which the parties agreed the former wife would pay in the form of a charitable donation. In the order, the court also held, "The Former Husband needs to be allowed to call the children once a day when they are with the Former Wife."

* At the time of the hearing the children were four and six years old.

The former wife moved for reconsideration of the contempt order, arguing it was premature and could not be based upon ambiguous language. She also argued the court improperly modified the final judgment by mandating her to accept daily calls from the former husband absent his request for such a modification. On reconsideration, the court agreed and removed the language mandating daily calls from the former husband, but maintained the portion of its order holding the former wife in contempt. This appeal follows.

Analysis

A judgment of contempt comes to the Court clothed with a presumption of correctness and will not be overturned absent an abuse of discretion. *Wilcoxon v. Moller*, 132 So. 3d 281, 286 (Fla. 4th DCA 2014). However, contempt cannot be based upon noncompliance with something an order does not say, and under such circumstances, the standard of review is *de novo*, not abuse of discretion. *Id.* (citing *DeMello v. Buckman*, 914 So. 2d 1090, 1093 (Fla. 4th DCA 2005)). *See also Quillen v. Quillen*, 247 So. 3d 40, 46–47 (Fla. 1st DCA 2018) (recognizing a *de novo* standard of review applies when the decision turns on interpretation of the terms of a marital settlement agreement). The trial court’s interpretation of the terms of the final judgment is reviewed *de novo*, and its decision to hold the former wife in contempt is reviewed for an abuse of discretion.

A party cannot be held in contempt for noncompliance with a provision of a final judgment that “is not clear and definite so as to make the party aware of its command and direction.” *Keitel v. Keitel*, 716 So. 2d 842, 844 (Fla. 4th DCA 1998) (quoting *Lawrence v. Lawrence*, 384 So. 2d 279, 280 (Fla. 4th DCA 1980)); *see also Dep’t of Health v. Rehab. Ctr. at Hollywood Hills, LLC*, 259 So. 3d 979, 981 (Fla. 1st DCA 2018). The language of the provision is not clear and precise to place the former wife on notice of what her conduct had to be when the former husband called during her time-sharing. The final judgment mandates that the children have “reasonable” contact with the other parent “any time,” but does not define what those terms mean. Because the exact terms of contact were not defined and the terms were ambiguous, more detail was

needed to be clear about each party's rights and responsibilities. While daily calls may have been the parties' practice in the past, it was not written into the final judgment. The final judgment is silent as to the frequency or details of what parent-initiated contact during the other parent's time-sharing was to be. "Implied or inherent provisions of a final judgment cannot serve as a basis for an order of contempt." *DeMello*, 914 So. 2d at 1094. Had the former husband filed a petition to modify, the trial court could have addressed the ambiguity. Contempt was simply not the right remedy given the ambiguous language of the provision being enforced. The trial court erred in holding the former wife in contempt for conduct that was not precisely or explicitly prohibited in the final judgment. *See Preudhomme v. Bailey*, 257 So. 3d 1032, 1035 (Fla. 4th DCA 2018).

In order to be held in contempt, the former wife's conduct must have been willful. "[W]hen a final judgment or order is not sufficiently explicit or precise to put the party on notice of what the party may or may not do, it cannot support a conclusion that the party willfully or wantonly violated that order." *Keitel*, 716 So. 2d at 844. While the trial court concluded the former wife's conduct was unreasonable, it erred in finding it was contemptuous because it was "a pretext for unreasonably interfering with the other parent's time with the children." Again, the provision is not clear as to whether the other parent's "time" means their time-sharing physical custody or simply time spent with the children on the telephone. The trial court read this provision to mean the former wife was unreasonably interfering with the former husband's "access" to the children; however, that is not what the provision states. As the final judgment did not address the specifics of parent-initiated contact during the other parent's time-sharing other than in general terms, the trial court erred in finding a willful violation for purposes of contempt.

We agree with the former wife that the trial court improperly held her to a standard it imposed after clarifying the parties' final judgment during the contempt proceedings. The contempt was premature and improper. *See Gerber v. Gerber*, 153 So. 3d 304, 307 (Fla. 2d DCA 2014) (finding contempt based on husband's unreasonable interpretation of a partial settlement agreement was premature because the agreement was not sufficiently clear and

required clarification by the trial court). The order on appeal is REVERSED.

KELSEY, J., concurs; ROWE, J., concurs with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

ROWE, J., concurring.

When the parties divorced in 2018, their children were three and five years old. The parties had equal time sharing under the parenting plan. And for two and a half years after the parties separated in November 2016, each parent allowed the non-custodial parent to have daily phone calls with the children. But this practice ended abruptly in June 2019, when the former wife allowed her new spouse to care for the children while the former wife travelled. The first time the former husband called the former wife's spouse to reach his children, the former wife told former husband that he should not try to contact the children while they were in the care of the former wife's spouse. Former wife then advised former husband that his calls caused the children distress and she would allow him to communicate with them only when the children expressed a desire to speak to the former husband.

For the next six months, when the children were in the former wife's care—eighty-five days—the former wife allowed the former husband to speak with the children only thirteen times. This led the former husband to move to enforce the final judgment of dissolution and for contempt against the former wife for violating the contact provision of the judgment. That provision requires that the children have reasonable telephone contact with the other parent “at any time.”

Former wife argued that the trial court could not hold her in contempt because the requirement of allowing contact at “any time” did not require the custodial parent to ensure daily telephone

contact between the noncustodial parent and the children. Former wife’s counsel argued, “[t]here is nothing requiring the parties to initiate or ensure that a phone call is made by one parent to the other. It is for the children to the parent.”

The trial court rejected the former wife’s interpretation of the final judgment and found it unreasonable for her to expect that their then-four and six-year-old children would initiate phone calls with the former husband when they were in her care. The trial court’s apparent frustration with the former wife’s radical departure from the long-established practice between the parties of allowing daily phone calls and her failure to provide the former husband with regular phone contact with the parties’ young children is understandable. And its reading of the contact provision of the final judgment is not an unreasonable one. Even so, it’s not the only way the “at any time” language of the contact provision can be read. And for this reason, although the former wife’s interpretation of the contact provision is at odds with the trial court’s reasonable interpretation, I concur that the final judgment was not clear and definite enough to allow the trial court to hold the former wife in contempt for violating the contact provision. *See Tarantola v. Henghold*, 233 So. 3d 508, 510–11 (Fla. 1st DCA 2017).

Tee Hoa Lee of Tee Lee Law, PLLC, Gainesville, for Appellant.

Adam S. Vorhis of Vorhis Legal, PLLC, Asheville, NC, for Appellee.