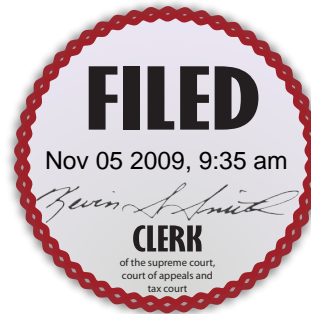


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

RICHARD RANUCCI
Indianapolis, Indiana

ANDREW Z. SOSHICK
TERESA A. GRIFFIN
Baker & Daniels LLP
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DALE ALBERT CHRIST,)
)
Appellant-Respondent,)

vs.)

No. 29A05-0905-CV-274

SUSAN MAGINN CHRIST,)
)
Appellee-Petitioner.)

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable William J. Hughes, Judge
Cause No. 29D03-0505-DR-631

November 5, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Dale Albert Christ (“Dale”) appeals the trial court’s order finding him in contempt, imposing a thirty-day suspended sentence, and ordering him to pay attorney fees. He raises two issues, of which we find the following dispositive: whether the trial court abused its discretion in finding Dale to be in contempt for pre-registering his children at Our Lady of Mount Carmel (“OLMC”) for school without notifying the children’s mother, Susan Maginn Christ (“Susan”).

We reverse.

FACTS AND PROCEDURAL HISTORY

As part of their divorce proceedings, Dale and Susan entered into a Child Custody and Support Agreement, which was approved by the trial court on February 27, 2006. This agreement provided that the parties’ children “shall attend [OLMC], if accepted by the school or, in the alternative, may attend another Catholic school or public school as agreed by the parties.” *Appellant’s App.* at 19. On August 19, 2008, the trial court approved a modification of the prior agreement between Dale and Susan, which stated:

1. The parties’ children shall attend and complete the 2008-2009 school year at [OLMC] and/or Heartland Hall.
2. Beginning with the 2009-2010 school year both children shall attend Harrison Parkway Elementary and remain in the Hamilton Southeastern School District.
3. Agreed order to follow in writing.

Id. at 28. On October 7, 2008, the trial court approved and entered the “Agreed Modification of Mediated Agreement of Property Settlement Incorporating Child Custody and Child Support Agreement,” which formalized the entry of August 19, 2008.

Sometime after August 19, 2008, Dale pre-registered the children at OLMC for the 2009-2010 school year by filling out registration forms. He did not notify Susan of this pre-registration. On February 26, 2009, Susan filed a petition requesting that Dale be found in contempt for pre-registering the children at OLMC for the 2009-2010 school year, which she claimed was in violation of the trial court's October 7, 2008 order. A hearing was held on Susan's petition, and the trial court found Dale to be in contempt and ordered him to serve thirty days in jail, but suspended this commitment on the condition that Dale comply with all orders of the court regarding custody and parenting time. Additionally, Dale was ordered to pay Susan's attorney \$2,500 in attorney fees incurred by Susan in pursuing the petition for contempt. Dale now appeals.

DISCUSSION AND DECISION

“Civil contempt is failing to do something a court in a civil action has ordered to be done for the benefit of an opposing party.” *Bartlemy v. Witt*, 892 N.E.2d 219, 227 (Ind. Ct. App. 2008). A party who has been injured or damaged by the failure of another to conform to or comply with a court order may seek a finding of contempt. *Id.* Whether a person is in contempt is a matter left to the sound discretion of the trial court, and we will reverse the trial court's finding of contempt only for an abuse of that discretion. *Mitchell v. Mitchell*, 785 N.E.2d 1194, 1198 (Ind. Ct. App. 2003). An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it. *Id.* When we review a contempt order, we neither reweigh the evidence nor judge the credibility of the witnesses. *Id.*

Dale argues that the trial court abused its discretion when it found him in contempt for pre-registering the children at OLMC and not notifying Susan of the pre-registration. He contends that the trial court's contempt order was an abuse of discretion because he did not violate any express command or prohibition of the court's October 7, 2008 order. Dale further claims that there was no evidence that his action of pre-registering the children at OLMC showed willful disobedience by him, prevented his compliance with the October 7, 2008 school placement order, or resulted in any harm to Susan.

The trial court must find "willful disobedience" of its order to hold a party in contempt for violation of such court orders. *Swadner v Swadner*, 897 N.E.2d 966, 973 (Ind. Ct. App. 2008). The order allegedly violated must have been so clear and certain that there could be no question as to what a party must do, or not do, and so there could be no question regarding when the order is violated. *Id.* A party may not be held in contempt for failing to comply with an ambiguous or indefinite order. *Id.*

Here, the parties agreed, and the trial court ordered that, "the parties' two children . . . shall attend and complete the 2008-09 school year at [OLMC] and/or Heartland Hall," and "[b]eginning with the 2009-10 school year, [the children] shall attend Harrison Parkway Elementary *and* shall remain in the Hamilton Southeastern School District." *Appellant's App.* at 29 (emphasis in original). Subsequently, Dale pre-registered the children at OLMC for the 2009-10 school year by filling out registration forms. We do not believe that Dale violated any order of the trial court, ambiguous or not, by the mere act of pre-registering the children at a school other than that set out in the parties' agreement and the trial court's order. The act of pre-registering the children did not

interfere in any way with where the children would attend school and did not prevent them from attending Harrison Parkway Elementary as provided for in the order. It merely had the effect of providing an option to the parties. Nothing in the parties' agreement or the trial court's order prohibited Dale from pre-registering the children in another school in order to allow an option if the parties changed their minds. We therefore conclude that the trial court abused its discretion when it found Dale to be in contempt.

Reversed.

NAJAM, J., and BARNES, J., concur.