

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002404-MR

JENNIFER L. HUCK

APPELLANT

v. APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE DENNIS A. FRITZ, JUDGE
ACTION NO. 95-CI-00203

BENJAMIN F. HUCK, JR.
and HON. DENNIS A. FRITZ, JUDGE

APPELLEES

OPINION
AFFIRMING
** **

BEFORE: DYCHE, McANULTY AND MILLER, JUDGES.

McANULTY, JUDGE: This is an appeal from multiple orders in a marriage dissolution. Appellant, Jennifer Huck, asserts that the trial court erred in holding her in contempt in its order dated September 15, 1998. We conclude that the trial court acted within its discretion and therefore affirm.

Jennifer and Benjamin Huck were divorced by decree entered March 14, 1996. However, a trial was held to resolve contested issues and the trial court then entered three sets of findings and orders on December 18, 1997, another findings and

order on January 27, 1998, and another findings and order on January 29, 1998.

Of crucial import to this appeal is Order #1 entered on December 18, 1997, which provides, in pertinent part:

2. The Court enters the finding and gives significant weight to the established pattern of contact between the mother and father concerning the children's visitation which has been established during the last three years. The Court notes that the contact between the mother and father has been responsibly handled by both parties, that they have cooperated in the inevitable problems incident to the adjustments necessary in their schedules and those of the children, and that they have been very open in allowing complete and full contact with both parents and with the extended family.

3. The Court enters the finding that based upon this established pattern both parents have adequate parenting skills to care for the children. Accordingly, the Court finds that it is in the best interest of the children that joint custody be imposed, with the understanding that the mother is the primary custodian. The mother is to determine the residency of the children and their education. With this order concerning joint custody the Court would further direct that both parties appear to be in agreement that the children should remain within the same school district to provide as much continuity as possible.

4. The Court finds that Kentucky is the home state of the children and directs that neither parent is to remove the children from the state of Kentucky with the intent to establish a separate residence, absent an agreement between the parties or as otherwise Ordered by the Court. This finding by the Court will avoid one party and/or the children being detrimentally impacted by a possible change of residency without prior agreement as to how contacts are to be handled. (Emphasis added)

When Jennifer and the children left the marital home, which was owned by Benjamin's parents, they went to live with Jennifer's parents. At that time, her parents were preparing to sell their home in Oldham County and move to Tennessee. Jennifer filed a motion on June 1, 1998, to seek leave of the trial court to move with the children to Tennessee. Because the trial judge was experiencing health problems, the matter was set for hearing on September 16, 1998, by order dated June 12, 1998.

On July 15, 1998, Jennifer filed with the trial court a notice that the residence in which she and the children had been residing had been sold and that the children's school in Tennessee was scheduled to start on August 11. She further advised that she had attempted to arrange a visitation schedule agreeable to Benjamin but that he had failed to respond. Petitioner stated that she "desires not to be in contempt of this Court by relocating with the parties' children from Oldham County."

On August 11, 1998, Benjamin filed a motion requesting a hearing at which Jennifer could show cause why she should not be held in contempt for moving the children to Tennessee and thereby failing to comply with the December 18, 1997 order of the trial court. The Court scheduled a hearing for August 28, 1998 and ordered that the children be present.

After the hearing the trial court found that Jennifer had offered several reasons for her move with the children to Tennessee. The first consideration was purely financial. Her parents were allowing her to live rent-free. Jennifer also

indicated that she wanted the children to be educated in a Seventh Day Adventist School and they were enrolled in such a school in Tennessee. She explained that there was a sense of urgency because school began in August, before the September hearing date. The trial court further found that she did not intend to violate court orders and that she relied on that part of Order #1 which provides that as primary custodian, she is permitted to determine the residency of the children.

However, the trial court concluded that Jennifer failed to advance reasons sufficient to justify a change of residence for the children to Tennessee. He noted that the move was not the result of a job reassignment, a remarriage and transfer or other factors that were beyond Jennifer's control. The trial court then held Jennifer in contempt of court and directed that she could purge the contempt by returning the children to Kentucky and enrolling them in Oldham County schools by September 28, 1998.

Jennifer filed an original action in this Court, No. 1998-CA-002365-OA, requesting emergency relief. Judge Guidugli granted the motion and stayed the contempt order until a three judge motion panel could consider the motion for intermediate relief pending appeal. The motion panel then rendered an opinion and order granting her request for relief pending appeal.

Jennifer asserts that the trial court erred in finding her in contempt. She further attacks the trial court's ability to restrict her from moving with the children from Oldham County.

Recently, a panel of this Court held that “[a]bsent an order in the decree or a provision in the agreement between the parties, a custodial parent - whether joint or sole - is not required to seek court approval prior to moving to another location.” Stroud v. Stroud, Ky. App., 9 S.W.3d 579, 581 (1999). There is no question that in the case *sub judice*, the decree specifically states that as primary custodian, Jennifer should obtain either the agreement of the parties or an order of the court allowing her to move with the children from Kentucky. The reason given for this requirement is to “avoid one party and/or the children being detrimentally impacted by a possible change of residency without prior agreement as to how contacts are to be handled.”

In this case, while Jennifer may have attempted to seek court approval, the fact is that she moved with the children before she obtained a court order permitting her to do so. In so doing, she violated an express order of the court. Contempt is the willful disobedience of -- or open disrespect for -- the rules or orders of a court. Commonwealth v. Burge, Ky., 947 S.W.2d 805 (1996).

“The purpose of civil contempt authority is to provide courts with a means for enforcing their judgments and orders, and trial courts have almost unlimited discretion in applying this power.” Smith v. City of Loyall, Ky. App., 702 S.W.2d 838 (1986). We decline to hold that the trial court abused its discretion in ordering Jennifer to return the children to Kentucky. To permit Jennifer to circumvent the procedure

required by the court's order would in effect vitiate the court's power to enforce its order. As such, we cannot find an abuse of discretion.

We next turn to the question of whether the trial court may deny Jennifer's request to move with the children to Tennessee. Obviously, the trial court cannot prevent Jennifer from seeking employment, marrying or being involved in other circumstances which would result in her move from the Commonwealth of Kentucky. However, the court certainly retains jurisdiction to resolve issues concerning the children. KRS 403.340. In that respect, the trial court has the authority to review custody arrangements should there be any change of circumstance. The prospect of a move out of state may qualify as a change in circumstance which could result in a modification of custody, provided that the statutory guidelines in KRS 403.340 are followed. As such, we cannot conclude that the trial court erred in restricting Jennifer's ability to move the children out of state.

The order of the Oldham Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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