

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001139-MR

JOHNATHAN MATTHEW BROWN

APPELLANT

v. APPEAL FROM HOPKINS CIRCUIT COURT
HONORABLE SUSAN WESLEY MCCLURE, JUDGE
ACTION NO. 11-CI-00261

KIMBERLY DAWN
(DICKERSON) BROWN

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: KRAMER, CHIEF JUDGE; COMBS AND THOMPSON, JUDGES.

COMBS, JUDGE: Johnathan Brown appeals an order of the Hopkins Family Court that denied his motion to hold Kimberly Brown, his former spouse, in contempt of court for failing to provide him with a photograph. He also appeals the family court's denial of his motion to hold Kimberly in contempt for failing to pay the parties' American Express bill. Over the years, Johnathan has made

numerous attempts to have Kimberly held in contempt -- all to no avail. In the case now before us, we affirm the order of the family court denying his most recent motion.

The parties were married on October 8, 1994. They separated on February 22, 2011. On March 25, 2011, Kimberly filed a petition for dissolution of the marriage. At that time, their four children were minors. Johnathan had been indicted and was being housed in the Hopkins County Detention Center.

On January 19, 2012, Johnathan entered a plea of guilty to five counts of incest and five counts of use of a minor in a sexual performance. He was sentenced to serve two terms of imprisonment of twenty years each for his crimes against a fourteen-year-old victim. These terms were set to run concurrently. Johnathan is currently housed at the Kentucky State Reformatory in LaGrange.

After the petition for dissolution was filed, the parties reached an agreement with respect to the care and control of their children, the value of Johnathan's monthly child support obligation, and the division of their property. They agreed that Johnathan would have no visitation with the children while he was in prison. However, Kimberly agreed to provide photographs of the children to Johnathan during his incarceration. The family court found the terms of the parties' agreement to be fair, and it entered a decree of dissolution incorporating the terms of the agreement on March 30, 2012.

On April 29, 2016, Johnathan filed a motion requesting the family court to hold Kimberly in contempt for her failure to provide to him any photographs of the children in 2016. He also sought an order of contempt for her failure to make a timely monthly installment toward the parties' revolving account with American Express.

On June 17, 2016, Kimberly filed in the family court's record a copy of a U.S. Postal Service certified mail receipt dated January 28, 2016; a receipt for certified mail dated January 28, 2016, for a package that was to be delivered to LaGrange; and a U.S. Postal Service tracking record indicating that the package was placed with the postal service on January 28, 2016 at 2:38 p.m. and was delivered to an agent of the addressee in LaGrange on February 1, 2016 at 9:18 a.m. Kimberly also submitted documentary evidence to show that she had reduced the parties' debt to American Express from \$13,500 to \$7,327.09. Following a hearing, the family court found that Kimberly had not violated any term of the court's order and denied Johnathan's motion to hold her in contempt. Its order was entered on July 5, 2016. This appeal followed.

On appeal, Jonathan contends that the trial court erred by failing to find Kimberly in contempt. We disagree.

When a court exercises its contempt powers, it has nearly unlimited discretion. *Smith v. City of Loyall*, 702 S.W.2d 838 (Ky. App. 1986).

Consequently, we will not disturb a court's decision regarding contempt absent an abuse of its discretion. "The test for abuse of discretion is whether the trial [court's] decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citations omitted). In light of the evidence before it, the family court committed no abuse of discretion.

We affirm the order of the Hopkins Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Johnathan M. Brown, *pro se*
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Marc Wells
Princeton, Kentucky