

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018 CU 0524

RUSSELL COLE AND KIM COLE

VERSUS

ALLISON COLE



Judgment rendered September 21, 2018.

Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany, State of Louisiana
Trial Court No. 2016-14587
Honorable Mary C. Devereux, Judge

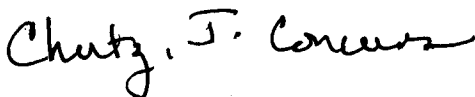
ANGELA COX WILLIAMS
JESMIN BASANTI FINLEY
SLIDELL, LA

ATTORNEYS FOR
PLAINTIFFS-APPELLEES
RUSSELL COLE AND KIM COLE

RICHARD DUCOTE
COVINGTON, LA

ATTORNEYS FOR
DEFENDANT-APPELLANT
ALLISON COLE

BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.



PETTIGREW, J.

This appeal challenges numerous aspects of the trial court's December 13, 2017 judgment finding Allison Cole, the widowed mother of two young daughters, in contempt of a previous court order entered in connection with a stipulated judgment regarding grandparent visitation to be allowed to Russell and Kim Cole, her deceased husband's parents. In this memorandum opinion, we affirm for the reasons that follow.

Following the death of their son John Cole, the grandparents filed a petition for visitation, alleging that Ms. Cole had refused to allow them to visit with their granddaughters. In response, Ms. Cole filed exceptions raising the objections of non-conformity, vagueness, and no cause of action. The matter proceeded to a hearing on February 22, 2017, at which time counsel for the grandparents advised the trial court that there was a "stipulation on all matters" that would "render the exceptions filed by [Ms.] Cole moot." At that time, the stipulation was read into the record by the grandparents' counsel, and all parties present indicated their full understanding of the stipulation. However, when the trial court inquired as to the parties' understanding of the stipulation's binding effect on them, there is no indication that Ms. Cole expressed her acquiescence thereto. Rather, only the grandparents answered in the affirmative when the trial court asked, "Does everybody understand that?"

On March 14, 2017, the trial court signed the stipulated judgment, granting the grandparents specific periods of weekend, summer, and holiday visitation. The stipulated judgment further provided that Ms. Cole was precluded from scheduling any activities for the children during the grandparents' visitation. Moreover, while the stipulated judgment afforded the grandparents the option to call and/or text the children, it prohibited Ms. Cole from calling her children during the grandparents' visitation, absent an emergency.¹

¹ See **Cole v. Cole**, 2018-0523 (La. App. 1 Cir. 9/21/18), ___ So.3d ___, where this court affirmed the trial court's judgment granting the grandparents' motion to strike and sustaining the grandparents' exception raising the objection of no cause of action and dismissing, with prejudice, Ms. Cole's petition to annul the stipulated judgment.

After "constantly" being denied visitation and having their grandchildren alienated from them, the grandparents filed a "Rule for Contempt and Incidental Matters" against Ms. Cole. Following a hearing, the trial court held Ms. Cole in contempt of court for denying the grandparents their court-ordered visitation and/or failing to allow them to make up several missed visitation dates. The trial court sentenced Ms. Cole to one week in the Parish Jail, suspending said sentence pending no further findings of contempt. The trial court further ordered six, twenty-four hour blocks of compensatory make-up visitation to occur over the Christmas and Easter holidays; ordered Ms. Cole to provide information to the grandparents about any of the children's activities that they could attend; provided for certain "rules" that would apply during the grandparents' visitation regarding bedtime, social media, animal restrictions, and consumption of fruit juices; and awarded the grandparents attorney fees and costs. The trial court signed a judgment in accordance with these findings on December 13, 2017.

Ms. Cole appealed, asserting three assignments of error. Initially, we note that in one assignment of error, Ms. Cole challenges the trial court's contempt finding based on the stipulated judgment, arguing that she never consented to said judgment. As previously indicated, the dismissal of Ms. Cole's petition to annul the stipulated judgment has been upheld by this court in the companion case rendered this same date. See **Cole v. Cole**, 2018-0523 (La. App. 1 Cir. 9/21/18), ___ So.3d ___. Thus, we need not address the issue raised in this assignment of error in this appeal.

Ms. Cole's remaining assignments of error relate to the trial court's discretion in finding her in contempt relative to visitation dates that Ms. Cole avers were never pled as constituting contempt of court and in authorizing the grandparents to override Ms. Cole's right to make basic decisions for her children by imposing certain "rules" during the grandparents' visitation, rules that Ms. Cole alleges constitute an abuse of discretion as an unconstitutional infringement of her parental rights and authority.

A contempt of court is any act or omission tending to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its

authority. La. Code Civ. P. art. 221. The willful disobedience of any lawful judgment or order of the court constitutes a constructive contempt of court. La. Code Civ. P. art. 224(2). To find a person guilty of constructive contempt, the court must find that he or she violated the order of the court intentionally, knowingly, and purposely, without justifiable excuse. The trial court is vested with great discretion in determining whether a party should be held in contempt for disobeying the court's order and its decision will only be reversed when the appellate court can discern an abuse of that discretion. **Rogers v. Pastureau**, 2012-2008 (La. App. 1 Cir. 4/26/13), 117 So.3d 517, 532, writ denied, 2013-1833 (La. 8/8/13), 120 So.3d 247.

After a thorough review of the record herein, we cannot determine that the trial court abused its vast discretion in finding that Ms. Cole acted willfully and in contempt of the court's order as alleged in the grandparents' contempt rule. The record overwhelmingly supports the trial court's findings in this regard. Concerning the visitation dates that Ms. Cole alleges were never pled as a basis for contempt, the trial court noted that Ms. Cole had exhibited "the same pattern of behavior" and found that Ms. Cole's continued refusal to allow the grandparents' visitation even after the contempt rule was filed was a "continuation of the same contempt." Moreover, with regard to the trial court's decision on the "rules" to be applied during the grandparents' visitation, we note that as it relates to decision-making, parents and grandparents are not equals before the court and should never be treated as such. However, based on the record before us and the trial court's finding that Russell Cole was "much more credible" than Ms. Cole with regard to incidents that actually happened to the children, we find no error or abuse of discretion by the trial court in its imposition of these "rules" to the grandparents' visitation.

For the above and foregoing reasons, we affirm the trial court's December 13, 2017 judgment in accordance with Uniform Rules--Courts of Appeal, Rule 2-16.1B and assess appeal costs against appellant, Allison Cole.

AFFIRMED.