

DA 18-0353

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 59N

IN RE THE MARRIAGE OF:

DARIN BROCKINGTON,

Petitioner and Appellee,

and

DEBORAH BROCKINGTON,
n/k/a DEBORAH BROWN,

Respondent and Appellant.

APPEAL FROM: District Court of the Eleventh Judicial District,
In and For the County of Flathead, Cause No. DR-06-110 (C)
Honorable Heidi Ulbricht, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Katherine P. Maxwell, Maxwell Law, PLLC, Kalispell, Montana

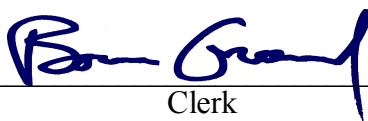
For Appellee:

Peter F. Carroll, Attorney at Law, Kalispell, Montana

Submitted on Briefs: December 19, 2018

Decided: March 12, 2019

Filed:


Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Deborah Brown (Mother) appeals from an order of the Eleventh Judicial District Court, Flathead County, finding her in contempt and ordering her to pay Darin Brockington's (Father's) attorney fees and costs. We affirm.

¶3 We previously set forth the extensive procedural and factual history of this parenting dispute in *In re Marriage of Brockington*, 2017 MT 92, ¶¶ 3-17, 387 Mont. 260, 400 P.3d 205. In that appeal, Mother appealed the District Court's order finding her in contempt for failing to transfer the parties' minor child, A.E.B., to Father. *Brockington*, ¶¶ 32-35. The District Court, however, had not yet determined how much Mother owed Father. We accordingly concluded that, while Mother could appeal the contempt order in this family law matter, the District Court's order was not a final judgment. *Brockington*, ¶ 35 (citing M. R. App. P. 6(3)(j) and *Kuzara v. Kuzara*, 211 Mont. 43, 48, 682 P.2d 1371, 1374 (1984)). We therefore dismissed Mother's appeal without prejudice. *Brockington*, ¶ 35.

¶4 The District Court subsequently issued its decision ordering Mother to pay Father \$5,572.73, from which Mother appeals. An aggrieved party may appeal from "a

contempt judgment or order in a family law proceeding when, and only when, the judgment or order appealed from includes an ancillary order entered as a result of the contemptuous conduct which affects the substantial rights of the parties involved.” M. R. App. P. 6(3)(j); *accord* § 3-1-523(2), MCA. We already determined Mother’s appeal is appropriate. *In re Marriage of Brockington*, No. DA 18-0353, Or. (Mont. Sept. 25, 2018).

¶5 A contempt proceeding in a family law matter “is entirely independent of the civil action out of which it arose.” *Kuzara*, 211 Mont. at 48, 682 P.2d at 1374. We review a contempt order to determine whether the District Court acted within its jurisdiction and whether the evidence supports the contempt. *Marez v. Marshall*, 2014 MT 333, ¶ 23, 377 Mont. 304, 340 P.3d 520; *Novak v. Novak*, 2014 MT 62, ¶ 37, 374 Mont. 182, 320 P.3d 459. Because trial courts have continuing jurisdiction over parenting matters, the District Court acted within its continuing jurisdiction when it held Mother in contempt. *See Marez*, ¶ 26.

¶6 We conclude the evidence supports the District Court’s contempt order. Disobedience of a lawful court order is grounds for contempt. Section 3-1-501(1)(e), MCA; *Novak*, ¶ 37. The District Court held that Mother disobeyed its order by not transferring A.E.B. to Father for his parenting time. Mother contends she did everything within her power to get A.E.B. to board the plane to visit Father but that the teenager steadfastly refused. The District Court specifically found, however, that Mother “encouraged, if not solicited outright, A.E.B.’s active involvement in defiant actions to

withhold from [Father] parenting time granted to him in a court ordered parenting plan.” *Brockington*, ¶ 16. We will not substitute our judgment for that of the District Court when the evidence supports the court’s contempt order, as it does here. We further conclude the District Court acted within its discretion by awarding Father his reasonable attorney fees and costs. We accordingly affirm the District Court’s decision ordering Mother to pay Father \$5,572.73.

¶7 Father asks us to award him his attorney fees and costs for defending Mother’s appeal. We already denied Father’s request for an award of attorney fees and costs in defending this appeal and no new facts have arisen necessitating a need to reconsider that decision. *See In re Marriage of Brockington*, No. DA 18-0353, Or. (Mont. Sept. 25, 2018).

¶8 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶9 Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ JAMES JEREMIAH SHEA
/S/ JIM RICE
/S/ BETH BAKER