

[Cite as *Estate of Harrold v. Collier*, 2010-Ohio-3457.]

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

THE ESTATE OF RENEE HARROLD

Plaintiff

v.

BRIAN S. COLLIER

Appellant

v.

GARY HARROLD
AND CAROL HARROLD

Appellees

C.A. No. 09CA0060

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF WAYNE, OHIO
CASE No. 97-1440-PAR

DECISION AND JOURNAL ENTRY

Dated: July 26, 2010

WHITMORE, Judge.

{¶1} Appellant, Brian Collier, appeals from the judgment of the Wayne County Court of Common Pleas, Juvenile Division, requiring he provide compensatory visitation time and attorney fees to Appellees, Gary and Carol Harrold (“the Harrolds”), based on a finding of contempt. This Court affirms.

I

{¶2} The acrimonious and longstanding dispute over the Harrolds’ visitation rights with their granddaughter has been well documented by this Court and others. See *Harrold v. Collier*, 107 Ohio St.3d 44, 2005-Ohio-5334; *Harrold v. Collier*, 9th Dist. Nos. 07CA0074 &

08CA0024, 2009-Ohio-2782; *Harrold v. Collier*, 9th Dist. No. 06CA0010, 2006-Ohio-5634; *Harrold v. Collier*, 9th Dist. No. 03CA0064, 2004-Ohio-4331; *Harrold v. Collier*, 9th Dist. No. 02CA0005, 2002-Ohio-3864. The Harrolds' daughter, Renee Harold, and Collier had a relationship that resulted in a child, B.C., born in July 1997. When B.C. was two years old, her mother died from cancer and the Harrolds were given legal custody of B.C. Collier exercised his visitation rights with B.C. throughout that time and, in 2001, sought full custody of B.C. In 2002, Collier obtained full custody of B.C. and the Harrolds were awarded visitation rights. Since that time, however, Collier has repeatedly denied the Harrolds visitation with B.C. and was ultimately held in contempt based on his unwillingness to abide by the trial court's visitation schedule.

{¶3} The underlying motion for contempt was originally filed by the Harrolds on June 28, 2006, based on Collier's failure to permit the Harrolds to exercise their five weeks of summer visitation. In addition to seeking contempt, the Harrolds also sought payment for their attorney fees and compensatory visitation. The trial court scheduled a later hearing on the contempt motion, but in the interim ordered Collier to provide the Harrolds with an abbreviated three weeks of visitation, with which he complied. In late November 2006, and again in December 2006, the Harrolds amended their contempt motion based on Collier's failure to allow them to exercise their Thanksgiving visitation and subsequent weekend visitations with B.C. Each amended motion maintained a claim for attorney fees and compensatory visitation.

{¶4} After a brief continuance, the trial court held a hearing on May 3, 2007. On May 24, 2007, the trial court issued its judgment entry in which it: (1) held Collier in contempt; (2) delayed sentencing on the contempt finding; (3) ordered mediation on the remaining visitation issue; and (4) continued the issue of attorney fees. On September 18, 2007, Collier was

sentenced to twenty days in jail, but his sentence was suspended “on the condition [] Collier not be again found in Contempt of Court for denial of visitation.”

{¶5} On October 16, 2007, the trial court ordered a visitation schedule between the parties. The trial court’s order, however, left pending the issues of compensatory visitation and attorney fees as requested in the Harrolds’ motions for contempt. On October 23, 2007, the Harrolds filed a “request for decision” as to these two issues. On October 19, 2007, however, Collier filed his notice of appeal from the May 2007 contempt order and the September 2007 sentencing order. Despite Collier having filed a notice of appeal, on December 7, 2007, the trial court ordered Collier to pay attorney fees to the Harrolds in the amount of \$1,971.75 and to provide the Harrolds with three weeks of compensatory visitation in the summer of 2008. That order was subsequently clarified on December 13, 2007, to state that Collier had until March 31, 2008, to reimburse the Harrolds’ attorney fees. In January 2008, Collier filed a motion to strike the trial court’s order for lack of jurisdiction based on his pending appeal. Ultimately, the trial court denied Collier’s motion to strike in March 2008, which Collier also appealed.

{¶6} Collier’s appeals were consolidated for review by this Court. We concluded that the trial court’s finding of contempt was not against the manifest weight of the evidence. *Harrold v. Collier*, 9th Dist. Nos. 07CA0074 & 08CA0024, 2009-Ohio-2782, at ¶15-23. Specific to this appeal, we noted that the trial court was without jurisdiction to consider any other matters once Collier filed his notice of appeal on October 19, 2007, namely the Harrolds’ “request for decision” as to compensatory visitation time and attorney fees which was filed on October 23, 2007. *Id.* at ¶27-28. In turn, we construed Collier’s motion to strike as a motion to vacate a void judgment and concluded that he had not timely appealed from the denial of that motion. *Id.* at ¶28-30. Consequently, this Court lacked jurisdiction to consider his appeal with

respect to the award of attorney fees and compensatory visitation and therefore dismissed that portion of Collier's consolidated appeal. *Id.* at ¶30.

{¶7} Upon our remand and the Harrolds' motion for an order on the outstanding issues of attorney fees and compensatory visitation, the trial court held a hearing on September 2, 2009. On September 4, 2009, the trial court awarded the Harrolds three weeks of compensatory time to be taken in seven day increments over the 2010 summer and reimbursement of \$1,971.75 in attorney fees for the prosecution of the contempt action. Collier has timely appealed from this judgment, asserting one assignment of error for our review.

II

Assignment of Error

“THE TRIAL COURT’S SEPTEMBER 4, 2009 JUDGMENT ENTRY IMPOSING ADDITIONAL SANCTIONS AGAINST APPELLANT VIOLATES THE DOUBLE JEOPARDY CLAUSE OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION.”

{¶8} In his sole assignment of error, Collier argues that the trial court violated the Double Jeopardy Clauses by imposing multiple sentences for the same offense. Specifically, he alleges that, by being sentenced to a conditionally suspended term of twenty days in jail, and upon remand being ordered to pay attorney fees and provide compensatory visitation, the trial court has imposed multiple punishments against him in separate proceedings, in violation of the protections against double jeopardy. We disagree.

{¶9} As indicated in our last review of this matter, indirect contempt “may be may be classified as either criminal or civil depending on the ‘character and purpose of the punishment’ imposed.” *Id.* at ¶12, quoting *Brown v. Executive 200, Inc.* (1980), 64 Ohio St.2d 250, 253. “It is well settled that ‘conduct can amount to both civil and criminal contempt,’ and that both

aspects may be dealt with in the same proceeding.” (Internal citation omitted.) *Cincinnati v. Cincinnati Dist. Council 51, Am. Federation of State, County and Municipal Emp., AFL-CIO* (1973), 35 Ohio St.2d 197, 206, quoting *United States v. United Mine Workers of America* (1947), 330 U.S. 258, 299. Consequently, contempt proceedings “are neither wholly civil nor wholly criminal actions.” *Brown*, 64 Ohio St.2d at 253. Thus, “[a] sanction for contempt may have both civil and criminal components.” *Smith v. Smith* (Dec. 27, 1995), 9th Dist. No. 95CA0017, at *1, citing *Brown*, 64 Ohio St.2d at 253-54.

{¶10} Our review of the record reveals that, upon this Court’s remand and at the request of the Harrolds, the trial court held a hearing in September 2009. At that hearing, both parties stipulated to the testimony previously provided to the trial court on those issues at hearing held on May 3, 2007. Neither party presented any supplemental testimony. The testimony from the May 2007 hearing addressed the amount of attorney fees the Harrolds incurred in pursuit of Collier’s contemptuous actions and the propriety of awarding compensatory visitation based on the terms of R.C. 3109.051(K) under which the Harrolds were acting. Thus, it is essential we first consider the nature of the sanctions imposed by the trial court in response to the Harrolds’ request for statutory relief under R.C. 3109.051(K).

{¶11} R.C. 3109.051(K) provides, in relevant part, that:

“[I]f any person is found in contempt of court for failing to comply *** with any order or decree granting *** visitation rights[,] *** the court *** shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney’s fees of any adverse party *** and may award reasonable compensatory parenting time or visitation to the person whose right of *** visitation was affected by the failure or interference if such compensatory *** visitation is in the best interest of the child.”

These sanctions outlined in the statute are provided “in addition to any other penalty or remedy imposed.” R.C. 3109.051(K). On its face, the statute employs remedial language designed to

compensate the person seeking contempt sanctions under R.C. 3109.051, not only for the cost of having to bring such an action, but for the loss of visitation the party incurred based on the contemnor's misconduct. Because of the imperative language employed, however, the trial court is statutorily obligated to impose costs and fees against the contemnor irrespective of what other contempt sanctions are imposed. *Huff v. Huff* (Oct. 13, 1995), 2d Dist. No. 14823, at *4. Moreover, this Court has repeatedly stated that the imposition of court costs and attorney fees under R.C. 3109.051(K) is mandatory. *Mann v. Mendez*, 9th Dist. No. 04CA008562, 2005-Ohio-3114, at ¶21; *Kimball v. Austin* (Aug. 1, 2001), 9th Dist. No. 01CA007760, at *2; *Kress v. Kress* (Dec. 23, 1998), 9th Dist. Nos. 18804 & 18854, at *3. Accord *Sloat v. James*, 5th Dist. No. 2008CA00048, 2009-Ohio-2849, at ¶33; *Robinson v. Robinson*, 8th Dist. No. 85980, 2005-Ohio-6240, at ¶14; *Beadle v. Beadle*, 4th Dist. No. 03CA2911, 2004-Ohio-1400, at ¶18; and *Huff*, at *4.

{¶12} It is equally apparent that the trial court's discretionary ability to award compensatory visitation is a statutory remedy designed to provide the aggrieved party with an opportunity to recover that time, in the form of later-occurring visitation, should the trial court consider it to be in the child's best interests. The award of compensatory visitation is designed to remedy or replace the visitation time that the aggrieved party lost with the child, just as the remedy of costs and attorney fees is designed to repay the aggrieved party for the funds expended in the pursuit of a contempt action. In both scenarios, the sanctions imposed were designed to remedy the effects of Collier's contempt.

{¶13} The Supreme Court has indicated that “[p]unishment is remedial or coercive and for the benefit of the complainant in civil contempt.” *Brown*, 64 Ohio St.2d at 253. On the other hand, criminal contempt sanctions are “usually characterized by an unconditional prison

sentence” which is intended “as punishment for the completed act of disobedience.” *Id.* at 254. When the trial court imposed further sanctions against Collier based on his contemptuous conduct, the sanctions were in the form of civil sanctions pursuant to the mandatory and discretionary provisions of R.C. 3109.051(K). The trial court’s failure to incorporate these sanctions into its September 2007 sentencing entry does not preclude it from doing so at a later point in time, nor does it implicate double jeopardy principles as the sanctions imposed constitute civil, not criminal, sanctions. See *State v. Owens*, 9th Dist. No. 21860, 2004-Ohio-5170, at ¶4 (explaining that double jeopardy protections apply only in situations where criminal contempt sanctions are imposed).

{¶14} Because the sanctions imposed by the trial court upon remand were civil sanctions, Collier’s claim that the trial court’s actions violated the Double Jeopardy Clauses lacks merit. Accordingly, Collier’s sole assignment of error is overruled.

III

{¶15} Collier’s sole assignment of error is overruled. The judgment of the Wayne County Court of Common Pleas, Juvenile Division, is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

BELFANCE, P. J.
BAIRD, J.
CONCUR

(Baird, J., retired, of the Ninth District Court of Appeals, sitting by assignment pursuant to §6(C), Article IV, Constitution.)

APPEARANCES:

GREGORY L. HAIL, Attorney at Law, for Appellant.

RENEE J. JACKWOOD, Attorney at Law, for Appellees.