[Cite as *In re D.L.L.*, 2024-Ohio-25.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

IN RE: D.L.L.	:	
	:	
	:	C.A. No. 29883
	:	
	:	Trial Court Case No. G-2013-001905-0L, 0M
	:	
	:	(Appeal from Common Pleas Court-Juvenile Division)
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O P I N I O N

Rendered on January 5, 2024

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JESSICA R. ANDRESS, Attorney for Appellee

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HUFFMAN, J.

{¶ 1} Mother appeals from an order the juvenile court which found that Father was not in contempt for failing to notifying Mother of a change in his work schedule during which he left the parties' minor child in the care of relatives or for consuming alcohol within 24 hours of transporting the child. We find no abuse of discretion and affirm the judgment

of the juvenile court.

FACTS AND PROCEDURAL HISTORY

{¶ 2} Mother filed a motion for contempt on November 17, 2021, arguing that on the weekend of November 5-7, 2021, Father had violated the parties' October 7, 2021 agreed order by failing to notify her of a change in his work schedule and to request a change in his parenting time, and also by consuming alcohol less than 24 hours before transporting their child, D.L.L. After a hearing, the magistrate denied Mother's motion on November 14, 2022, and the juvenile court adopted the magistrate's decision.

{¶ 3} Mother filed timely objections on November 28, 2022, and supplemented her objections on March 16, 2023. In overruling her objections, the juvenile court determined that, although Father did not notify Mother of an unplanned change to his schedule, it did "not appear that he was seeking to modify his parenting time," and that despite working on the days in question, November 6 and 7, 2021, he did spend time with the child each of those days. The court noted that the agreed order did not prevent Father from leaving the child with a caregiver or provide Mother a right of first refusal when Father was unable to care for the child. The court further determined that Mother had failed to prove that Father was in contempt of court for consuming alcohol within 24 hours of picking up D.L.L.; with respect to this issue, the court noted that Mother testified that she had allowed Father to pick up the child, that she had not smelled alcohol on Father at the time, and that she would not have allowed Father to transport the child if she had believed Father was under the influence.

ASSIGNMENT OF ERROR AND ANALYSIS

{¶ 4} Mother asserts the following assignment of error:

THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED IN NOT FINDING FATHER IN CONTEMPT.

{¶ 5} Mother argues that Father "failed to present any defenses to his noncompliance" with the agreed order and admitted that he had failed to comply. Father did not file a responsive brief.

{¶ 6} "A prima facie case of civil contempt is made when the moving party proves both the existence of a court order and the nonmoving party's noncompliance with the terms of that order." *Wolf v. Wolf*, 1st Dist. Hamilton No. C-090587, 2010-Ohio-2762, ¶ 4. Clear and convincing evidence is the standard of proof in civil contempt proceedings. *Flowers v. Flowers*, 10th Dist. Franklin No. 10AP-1176, 2011-Ohio-5972, ¶ 13. We review the trial court's decision whether to find a party in contempt under an abuse-of-discretion standard. *DeWitt v. DeWitt*, 2d Dist. Darke No. 1386, 1996 WL 125920, *2 (Mar. 22, 1996), citing *State ex rel. Ventrone v. Birkel*, 65 Ohio St.2d 10, 11, 417 N.E.2d 1249 (1981). (Other citations omitted.) " 'Abuse of discretion' has been defined as an attitude that is unreasonable, arbitrary, or unconscionable." *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990), citing *Huffman v. Hair Surgeon, Inc.*, 19 Ohio St.3d 83, 482 N.E.2d 1248 (1985). "It is to be expected that most instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary." *Id*. "A decision is unreasonable if there is no sound reasoning process that would support that decision." *Id.*

{¶ 7} Mother has not demonstrated an abuse of discretion in this case. The hearings on the motion for contempt occurred on August 25 and November 10, 2022. At the first hearing, Frances Duncan, the child's counselor, testified that D.L.L., who was six years old at the time, had told her in a therapy session on November 10, 2021, that Father worked on the weekend of November 5-7, 2021, and D.L.L. had spent time with her aunt and brother.

{¶ 8} A.H., a friend of D.L.L.'s maternal grandmother ("Grandmother"), testified that she observed Father on the evening of November 8, 2021, at around 9:10 p.m., at A&G Pizza in Franklin. She stated that she was in a booth with Grandmother when Father entered the restaurant and sat at the bar. A.H. testified that the two women left the restaurant, but they looked back into the bar from the parking lot, and Father was drinking a beer. On cross-examination, A.H. acknowledged that she did not hear Father order a beer, that she did not know what was in his glass but believed it to be a beer, and that there were people seated on either side of Father at the bar. She stated that Grandmother had been "quite concerned" for her granddaughter's future safety because Father was supposed to pick D.L.L. up the next morning; D.L.L. was not present at A&G. A.H. also testified that A&G serves beer in a frosted mug, that a mug near Father was frosted and contained a yellow liquid, and that she observed Father drink from it.

{¶ 9} Grandmother testified that she observed Father enter A&G Pizza with another male on the evening of November 8, 2021, while she was having dinner there with A.H. She stated that at no time did she or A.H. speak with Father. Grandmother observed Father drink what she believed to be beer at least three times through a window

after she and A.H. left the restaurant. According to Grandmother, "there was a beer sitting right by [Father]"; she stated that A&G Pizza only serves beer in plastic frosted cups and that she observed Father drink an "amber color of beer" from a frosted plastic cup around 9:18 p.m. Grandmother testified that Father was scheduled to pick up D.L.L. the following day when the child left school.

{¶ 10} Mother testified that Father failed to notify her that he was working on November 6-7, 2021, and that he failed to request a change of visitation, in violation of the agreed order. She stated that, pursuant to the agreed order, Father was not to consume alcohol within 24 hours of transporting D.L.L., yet Father picked up D.L.L. from Mother's place of employment on November 9, 2021, at 11:30 a.m., within 24 hours of being at A&G Pizza on November 8, 2021. On cross-examination, Mother testified that she would "[a]bsolutely not" have put D.L.L. into Father's vehicle if she had believed he was under the influence of alcohol and that she did not smell alcohol when she put the child in Father's car on November 9, 2021.

{¶ 11} At the hearing on November 10, 2022, Father testified that he had worked additional time on the weekend at issue because a co-worker "used a vacation day" and it had been a one-time change to his work schedule. Father denied ordering or drinking beer on November 8, 2021, at A&G Pizza, and he stated that Grandmother and A.H. and were not near him while he was there. He stated that he drank soda at the restaurant.

{¶ 12} On cross-examination, Father stated that he interpreted the agreed order to require him to notify Mother if there was a "permanent" change to his work schedule; he did not contact Mother about his schedule change on the November 2021 weekend for

that reason. On the weekend in question, Father's sister spent the night at his home with D.L.L. while he worked the first night, and his son, D.L.L.'s 24-year-old half-brother, spent the night at Father's home with D.L.L. the following night. Father stated that he left for work around 3:15 a.m. on November 6 and 7, 2021, arrived home around 3:15 p.m. both days, and he was able to spend time with D.L.L. then. Father testified that he had been at A&G Pizza at around 9:00 p.m. on November 8, 2021, and that the restaurant closed at 10:00 p.m. He stated that he picked up D.L.L. at approximately 11:40 a.m. the following day after she got off the bus at Mother's work.

{¶ 13} The agreed entry stated, in part: "If Father's work schedule changes, he will inform Mother as soon as possible, and the parents will cooperate in modifying his parenting time to accommodate his changed work schedule as best as they can. The minor child will be riding the bus on these dates and the Father is to pick her up at Mother's work or house or wherever she is dropped off." It further stated that "anyone, including the parties, transporting the child shall not participate in alcoholic beverages 24 hours before and not during transferring the child." The order did not prevent Father from leaving D.L.L. with a caregiver except that one particular person was excluded, and that person was not at issue in the events on which the contempt motion was based.

{¶ 14} Regarding the change to Father's work schedule, the juvenile court reasonably concluded that the October 7, 2021 agreed order did not contemplate reporting an isolated change to Father's schedule but rather a change to Father's ongoing schedule. This conclusion was supported by the fact that the agreed order did not grant Mother a right of first refusal for an isolated change and did not prohibit Father from

leaving D.L.L. with caregivers, as he did on this occasion.

{¶ 15} Regarding Mother's allegation that Father had consumed alcohol within 24 hours of transporting D.L.L., we note that while A.H. testified that she observed Father drinking beer, there were other people on either side of him potentially consuming alcohol at the bar, and neither she nor Grandmother spoke to Father or heard him specifically order a beer. They primarily observed Father from outside of A&G Pizza through a window. Under these circumstances, A.H.'s testimony expressing her and Grandmother's concern for D.L.L.'s "future safety" was speculative, and the court was free to credit Father's testimony over theirs. Significantly, Mother testified that under no circumstances would she have placed D.L.L. into Father's car if she had believed he was under the influence of alcohol and that she did not smell alcohol when she allowed Father to transport the child.

{¶ 16} Mother's assignment of error is overruled.

{¶ 17} The judgment of the juvenile court is affirmed.

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WELBAUM, P.J. and TUCKER, J., concur.