

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

Melissa Schwarzentraub

Court of Appeals No. H-09-012

Appellant

Trial Court No. CU 2005 00018

v.

Jon M. Schwarzentraub

DECISION AND JUDGMENT

Appellee

Decided: February 12, 2010

* * * * *

Thomas H. Freeman, for appellant.

Eric R. Weisenburger, for appellee.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Huron County Court of Common Pleas, Juvenile Division, which found appellant in contempt of a court parental visitation order. Appellant was sentenced to a suspended sentence of ten days of incarceration with accompanying purge conditions. The purge conditions included the provision of three

days of compensatory visitation to appellee, payment of court costs, and payment of \$250 in attorney's fees. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Melissa Schwarzentraub, sets forth the following two assignments of error:

{¶ 3} "I. The trial court erred in finding appellant in contempt for failing to comply with an order granting parenting time to appellee when appellee admitted he agreed to cancel the first day and the last day of the week scheduled for parenting time.

{¶ 4} "II. The trial court erred in finding that appellant picked up the children up [sic] Sunday, July 29, 2009 and erred in finding appellant in contempt for interference with that parenting time date [sic] when the testimony of both appellant and appellee was that mother picked up up [sic] the children on Monday, July 30, 2009."

{¶ 5} The following undisputed facts are relevant to the issues raised on appeal. On November 3, 2005, the trial court issued an order directing the parties to comply with specific allocations of visitation time awarded to appellee. This parental visitation court order pertains to the three minor children shared by the parties.

{¶ 6} Pursuant to the dictates of the visitation order, appellee timely notified appellant in the summer of 2007 of his intention to exercise his court ordered extended summer parenting from July 25, 2007, through July 31, 2007. With the knowledge of appellant, one of the minor children, their 13-year-old daughter, notified appellee that the children would not be available for him to pick up until July 26, 2007. Appellee did not

object to this breach of his allotted parenting time. Appellee testified that he elected not to object to the infringement upon his parental time based upon concern that in doing so it could strain his relationship with his teenage daughter.

{¶ 7} Upon the untimely arrival of the children for visitation with their father, the same above-referenced daughter informed appellee that her visitation would likewise prematurely cease on July 30, 2007. Appellee again elected not to raise objections at that time to the infringement upon his court ordered parental visitation time. When appellant arrived on July 30, 2007, to pick up the 13-year-old daughter, appellant indicated that she would likewise have the other two minor children return early with her to avoid the inconvenience of traveling to appellee's home on two successive days. In order to avoid a potentially adversarial dispute in front of the minor children, appellee once again did not immediately object to the breach of his allotted parenting time.

{¶ 8} Subsequent to these infringements upon his court ordered parental time, appellee filed a contempt action against appellant regarding both Easter visitation and the above-described summer incident. On July 28, 2008, the contempt motion was heard by the trial court. Following an evidentiary hearing, appellant was found in contempt of the visitation order with respect to the summer incident and found not in contempt with respect to the Easter incident. Appellant was sentenced to a suspended ten-day term of incarceration with corresponding purge conditions. The purge conditions consisted of three days of compensatory visitation time to appellee, payment of court costs, and payment of \$250 in attorney's fees. Timely notice of appeal was filed.

{¶ 9} Both of appellant's assignments of error are similarly premised upon the contention that the trial court erred and abused its discretion in its contempt finding. Given their common legal basis, we will address the assignments simultaneously.

{¶ 10} It is well-established that trial courts possess the inherent authority to enforce their prior orders through contempt proceedings. *Dozer v. Dozer* (1993), 88 Ohio App.3d 296, 302. A contempt finding must be established by clear and convincing evidence. *Id.* An appellate court will not reverse a trial court's contempt finding absent demonstration of an abuse of discretion. *Johnson v. Johnson*, 3d Dist. No. 5-07-34, 2008-Ohio-514. An abuse of discretion requires more than a mere error of law or judgment. It must be shown that the trial court's decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 11} In conjunction with the above analysis, it should be noted that a prima facie case of contempt is shown by establishing a prior court order and noncompliance with its terms. Significantly, proof of a purposeful, willing, or intentional violation of the court order is not a prerequisite to a contempt finding. *Pedone v. Pedone* (1983), 11 Ohio App.3d 164.

{¶ 12} Given these guiding legal parameters, we need not belabor our analysis of this matter. We have carefully reviewed and considered the record of evidence. The record clearly shows that appellee elected not to object at the time of the breaches out of concern that by voicing his objections at that time he could potentially damage his relationship with the children, particularly the 13-year-old daughter.

{¶ 13} In support of her appeal, appellant places determinative reliance upon the notion that appellee's arguable assent to the breaches somehow serves as an effective affirmative defense. As set forth in *Pedone*, it is legally irrelevant that a party breaching a court order such as the one at issue in this case did not perceive his or her conduct to be in breach of that order. There is no intent requirement.

{¶ 14} The record clearly demonstrates that appellee was entitled, via a valid court order, to visitation time with the minor children from July 25, 2007, through July 31, 2007. The record clearly shows that appellee complied with the notice requirement regarding the visitation. The record clearly demonstrates that appellee's visitation time with the children was not fully provided on July 25, 30, and 31, 2007.

{¶ 15} On the contrary, the record shows that it was unilaterally announced to appellee that he would not receive his court ordered allotment of visitation time. The fact that appellee did not immediately raise objections does not negate the contempt of the underlying court order. The transcript of the contempt hearing establishes that the trial court had clear and convincing evidence of these breaches of the court order. Given these facts and circumstances, the trial court did not abuse its discretion in its contempt determination. We find appellant's assignments of error not well-taken.

{¶ 16} Wherefore, we find substantial justice has been done in this matter. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

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