

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In the Matter of: S.V.C.W. et al., :
Minor Children, : No. 12AP-450
(K.L.C., : (C.P.C. No. 11JU-09-11919)
Appellant, : (REGULAR CALENDAR)
v. :
T.J.W., :
Appellee). :

D E C I S I O N

Rendered on November 29, 2012

Carol Ann Fey, for appellee.

Dougherty, Hanneman & Snedaker, LLC, Douglas B. Dougherty and Gary S. Wellbaum, for appellant.

Blythe M. Bethel, Guardian ad litem.

APPEAL from the Franklin County Court of Common Pleas
Division of Domestic Relations, Juvenile Branch.

SADLER, J.

{¶ 1} Respondent-appellant, K.L.C., appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, finding her in contempt of court. For the reasons that follow, we affirm the judgment of the trial court.

I. Facts and Procedural History

{¶ 2} On December 12, 2002, appellant gave birth to twin boys conceived through artificial insemination. At the time of the children's birth, appellant and petitioner-appellee, T.J.W., were involved in a relationship. The parties resided together with the

children until July 2005, at which time the relationship between the parties ended and appellant and the children moved out of the residence.

{¶ 3} This litigation began on September 12, 2011 with the filing of appellee's complaint for custody of the children and a request for temporary orders establishing "Parenting time (visitation)." (Sept. 12, 2011 Motion for temporary orders, 1.) In her complaint, appellee requested that, pursuant to R.C. 2151.23, the trial court determine custody, parenting time, and parenting responsibilities concerning the children. On December 22, 2011, a magistrate issued temporary orders indicating that while appellant would serve as the children's residential parent for school placement purposes, both parties would serve as the temporary shared legal custodians of the children. The December 22 order also provided appellee with visitation in accordance with Loc.R. 22¹ and required each party to adhere to the children's medication schedules and dietary restrictions. Additionally, the order appointed a guardian ad litem and denied appellant's motions to bifurcate and to dismiss.

{¶ 4} On March 8, 2012, appellee filed a motion for contempt based upon appellant's failure to comply with the December 22 order. The contempt motion alleged appellant's "consistent refusal" to allow appellee time with the children violated the December 22 temporary order awarding appellee alternate weekend and every week weekday time with the children. A hearing on appellee's motion for contempt was held on April 30, 2012. At the hearing, a stipulation was entered that "during the period of time since having received notice of the issuance of the Magistrate's Temporary Order herein (on or about December 22, 2011) through the time and date of her execution of this stipulation, [appellant] has not permitted [appellee] any time with or possession of the minor children herein." (Apr. 20, 2012 Stipulation, 1.)

{¶ 5} By written decision filed April 30, 2012, the trial court found that though knowing appellee wished to exercise her "Court ordered parenting time," appellant purposefully and intentionally violated the court's temporary orders by not permitting same. (Apr. 30, 2012 Decision, 5.) Therefore, the trial court found appellant guilty of civil contempt. The trial court sentenced appellant to nine days in jail, ordered make-up parenting time, and awarded appellee \$1,500 in attorney fees. Additionally, the trial

¹ Loc.R. 22 of the Court of Common Pleas of Franklin County, Domestic Relations Division, Juvenile Branch, titled "Model parenting time schedule."

court suspended the jail sentence to provide appellant an opportunity to purge the contempt.

II. Assignment of Error

{¶ 6} This appeal followed, and appellant brings the following assignment of error for our review:

The trial court erred and abused its discretion in finding appellant in contempt of an invalid order.

III. Discussion

{¶ 7} Temporary orders are generally not appealable because they are interlocutory in nature and subject to modification by the trial court. *Brooks v. Brooks*, 117 Ohio App.3d 19, 21 (10th Dist.1996); *Nicewicz v. Nicewicz*, 10th Dist. No. 94APF06-956 (Feb. 9, 1995). However, though generally not appealable, "[w]here a non-appealable interlocutory order results in a judgment of contempt, including fine or imprisonment, such a judgment is a final and appealable order and presents to the appellate court for review the propriety of the interlocutory order which is the underlying basis for the contempt adjudication." *Smith v. Chester Twp. Bd. of Trustees*, 60 Ohio St.2d 13 (1979), paragraph one of the syllabus.

{¶ 8} Contempt results when a party before a court disregards or disobeys an order or command of judicial authority. *Flowers v. Flowers*, 10th Dist. No. 10AP-1176, 2011-Ohio-5972, ¶ 7, citing *Fidler v. Fidler*, 10th Dist. No. 08AP-284, 2008-Ohio-4688, ¶ 10, citing *First Bank of Marietta v. Mascrote, Inc.*, 125 Ohio App.3d 257, 263 (4th Dist.1998). The law surrounding contempt was created to uphold and ensure the effective administration of justice, secure the dignity of the court, and affirm the supremacy of law. *Fidler* at ¶10, citing *Cramer v. Petrie*, 70 Ohio St.3d 131, 133 (1994).

{¶ 9} To establish contempt, a party must prove the existence of a valid court order, the respondent had knowledge of the order, and violation of the order. *Benjamin v. Credit General Ins. Co.*, 10th Dist. No. 04AP-459, 2004-Ohio-6354, ¶ 7, citing *Arthur Young & Co. v. Kelly*, 68 Ohio App.3d 287, 295 (10th Dist.1990). Civil contempt must be established by clear and convincing evidence. *Flowers* at ¶ 9, citing *Sansom v. Sansom*, 10th Dist. No. 05AP-645, 2006-Ohio-3909, ¶ 23.

{¶ 10} When reviewing a finding of contempt, including a trial court's imposition of penalties, an appellate court applies an abuse of discretion standard. *Fidler* at ¶ 12,

citing *In re Contempt of Morris*, 110 Ohio App.3d 475, 479 (8th Dist.1996), citing *Dozer v. Dozer*, 88 Ohio App.3d 296 (4th Dist.1993); *Arthur Young* at 294. An abuse of discretion connotes more than an error of law or judgment; it implies the trial court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 11} The temporary orders here provided for a temporary custodial designation, the designation of a residential parent, the appointment of a guardian ad litem, and a temporary schedule of parenting time for appellee. On appeal, appellant does not contest the trial court's finding that she had knowledge of and violated the December 22, 2011 order, nor does she challenge the penalties imposed by the trial court. Instead, appellant contends the December 22, 2011 temporary order from which she was found in contempt is invalid. According to appellant, this is so because (1) the order lacks a finding that she contractually relinquished any custodial rights to appellee, (2) a finding of an implied contract regarding custodial rights violates Ohio's statute of frauds, (3) there is no statutory authority for an award of temporary shared custody in a case filed under R.C. 2151.23, (4) the juvenile rules do not provide for an award of temporary shared custody in this case, and (5) appellee did not properly request temporary custody.

{¶ 12} Appellant's arguments are based on the premise that a magistrate cannot award temporary shared custody to a nonparent during the pendency of a custody case filed pursuant to R.C. 2151.23. According to appellant, because the trial court's temporary order of shared custody is not valid, she cannot be found guilty of contempt for violating the order. We conclude the order of which appellant was found in contempt concerns temporary visitation, and, on this issue, we find the recent decision of the Supreme Court of Ohio in *Rowell v. Smith*, ___ Ohio St.3d ___, 2012-Ohio-4313, rendered on September 26, 2012, to be dispositive.

{¶ 13} The temporary orders granted appellee's September 12, 2011 request for "Parenting time (visitation)" and awarded appellee "time with and possession of the minor children" pursuant to Loc.R. 22. The motion for contempt alleged appellant's failure to permit appellee "time with the children." The issue before us is whether the trial court's temporary order providing parenting time to appellee issued during the pendency of a custody action filed pursuant to R.C. 2151.23 is valid such that it can serve as the

underlying basis for a contempt finding. As will be discussed, this is the same issue presented in *Rowell*, a case with facts markedly similar to those presented herein.

{¶ 14} The parties in *Rowell* were involved in a relationship at the time Smith gave birth to a daughter conceived through artificial insemination. Several years after the child's birth, the relationship ended. Litigation began in *Rowell*, as it did here, with the filing of a complaint for custody pursuant to R.C. 2151.23, and a contemporaneous request for temporary orders. In *Rowell*, a juvenile court magistrate issued temporary orders designating Smith temporary custodian of the child and granting Rowell modified Loc.R. 22 temporary visitation and custodial rights. Rowell filed a motion for an order finding Smith in contempt of court based on Smith's failure to comply with the magistrate's temporary orders. The trial court issued a decision finding Smith in contempt.

{¶ 15} On appeal to this court, Smith argued the trial court lacked subject-matter jurisdiction to enter the underlying temporary order because it did not have statutory authority in an R.C. 2151.23 custody action to issue visitation to a non-relative. In a split decision, this court agreed and held the juvenile court lacked authority to order temporary visitation in an R.C. 2151.23(A)(2) custody case; thus, the underlying temporary order of the magistrate was invalid and Smith could not be in contempt of an invalid order.

{¶ 16} In reversing this court's decision, the Supreme Court of Ohio first recognized that R.C. 2151.23(A)(2) grants juvenile court's exclusive original jurisdiction " 'to determine the custody of any child not a ward of another court of this state.' " This includes " 'custodial claims brought by the persons considered nonparents at law.' " *Rowell* at ¶ 14, quoting *In re Bonfield*, 97 Ohio St.3d 387, 2002-Ohio-6660, ¶ 43. The court also noted that, pursuant to Juv.R. 13(B)(1), a "judge or magistrate may issue temporary orders with respect to the relations and conduct of other persons toward a child who is the subject of the complaint as the child's interest and welfare may require." Construing the juvenile rules in accordance with Juv.R. 1(B), the *Rowell* court held, "[i]n exercising its jurisdiction under R.C. 2151.23(A)(2), a juvenile court may issue temporary visitation orders that are in the best interest of the minor child during the litigation." *Rowell* at syllabus.

{¶ 17} In *Rowell*, the Supreme Court of Ohio expressly rejected arguments, similar to those made here by appellant, that such an interpretation of Ohio's juvenile rules violates her fundamental parental rights and provides juvenile courts with "summary

power" and "unfettered discretion" to grant temporary visitation to a non-relative. *Id.* at ¶ 20-23. Thus, because the juvenile court had subject-matter jurisdiction over the case and afforded Smith an opportunity to be heard on the issue of visitation, the Supreme Court of Ohio held the juvenile court had discretion under Juv.R. 13(B) to issue temporary visitation orders during the pendency of the case so long as it was found to be in the child's best interest to do so.

{¶ 18} Likewise, in the present matter, the trial court had the authority and discretion to act in the children's best interest and order temporary visitation to appellee during the pendency of this case. *Rowell*. The trial court afforded appellant an opportunity to be heard on the issue of visitation as the matter was submitted to the court on November 21, 2011. At the April 30, 2012 hearing on the contempt motion, appellant stipulated to her non-compliance with the court's temporary order that she provide appellee time with and possession of the children, and on appeal appellant does not challenge the penalties imposed. Because the trial court's order was valid and because appellant violated the terms of the order, we conclude the trial court did not abuse its discretion in finding appellant in contempt for failure to comply with the trial court's December 22, 2011 order.

IV. Conclusion

{¶ 19} For the foregoing reasons, appellant's single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is hereby affirmed.

Judgment affirmed.

TYACK and CONNOR, JJ., concur.
