

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

MELISSA HUNKER

Appellee

v.

TODD HUNKER

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1061 WDA 2011

Appeal from the Order June 8, 2011
In the Court of Common Pleas of Washington County
Civil Division at No(s): 2001-2882

BEFORE: PANELLA, J., ALLEN, J., and STRASSBURGER, J.*

MEMORANDUM BY PANELLA, J.

Filed: March 1, 2013

Appellant, Todd Hunker ("Father"), appeals from the order entered on June 8, 2011, in the Court of Common Pleas of Washington County, which found him in civil contempt. We affirm.

As we write primarily for the parties, who are familiar with the factual context and legal history of this case, we set forth only so much of the facts and procedural history as is necessary to our analysis.

Pursuant to a custody order entered in 2009, Melissa Hunker ("Mother") had primary physical custody of child. On June 6, 2011, Mother filed, *pro se*, a petition for emergency relief alleging that Father had taken the child two days prior, without Mother's consent, and refused to return

* Retired Senior Judge assigned to the Superior Court.

her. The petition further alleged that Father refused to either inform Mother of where he was keeping the child or permit Mother to speak with the child. The trial court issued a rule to show cause on Father as to why he should not be held in civil contempt for violating the custody order and set a hearing date for June 8, 2011. The trial court also ordered Father to provide Mother with his address, to keep her informed of the whereabouts of the child, and to permit Mother to speak with child by telephone.

Father, through counsel, filed an answer to the petition and a counter petition for relief. In his answer, Father listed his address and noted that Mother had his telephone number. Father further provided an explanation as to why he refused to return the child and requested that the trial court permit the child to remain in his custody.

Neither Father nor his counsel appeared for the hearing. Mother appeared with counsel. After the hearing, the trial court ordered the child to be returned to Mother immediately. The trial court also ordered, among other things, that the parties continue to follow the 2009 custody order. The trial court further found Father in civil contempt and ordered Father to pay \$500.00 in attorney's fees to Mother. This timely appeal followed.

On appeal, Father argues that the trial court abused its discretion in finding him in contempt. "As each court is the exclusive judge of contempts against its process, we will reverse an order of contempt only upon a

showing of a plain abuse of discretion." *In re Contempt of Cullen*, 849 A.2d 1207, 1210 (Pa. Super. 2004) (citation omitted).

We further explained in *In re Contempt of Cullen* the following:

To be punished for contempt, a party must not only have violated a court order, but that order must have been definite, clear, and specific—leaving no doubt or uncertainty in the mind of the contemnor of the prohibited conduct. Because the order forming the basis for civil contempt must be strictly construed, any ambiguities or omissions in the order must be construed in favor of the defendant. In such cases, a contradictory order or an order whose specific terms have not been violated will not serve as the basis for a finding of contempt. To sustain a finding of civil contempt, the complainant must prove certain distinct elements: (1) that the contemnor had notice of the specific order or decree which he is alleged to have disobeyed; (2) that the act constituting the contemnor's violation was volitional; and (3) that the contemnor acted with wrongful intent. A person may not be held in contempt of court for failing to obey an order that is too vague or that cannot be enforced.

When holding a person in civil contempt, the court must undertake (1) a rule to show cause; (2) an answer and hearing; (3) a rule absolute; (4) a hearing on the contempt citation; and (5) an adjudication of contempt....

Fulfillment of all five factors is not mandated, however. [T]he essential due process requisites for a finding of civil contempt are notice and an opportunity to be heard.

Id., at 1210-1211 (internal citations, quotation marks, and emphasis omitted).

Here, the trial court issued an order containing a rule to show cause why Father "should not held in contempt of the custody order dated 11/12/2009" and which also set a hearing date—"Rule Returnable the 8th day of June, 2011 at 11:30 a.m. before the undersigned in Courtroom 3."

Order, 6/6/11 (emphasis in original). There is no question that Father received notice of this order as he promptly filed an answer and counter petition. Father, however, failed to appear at the hearing.

The trial court found Father in civil contempt and ordered him to pay Mother's attorney's fees because of "Father's disregard for the Custody Order and failure to appear for the scheduled hearing." Trial Court Opinion, 5/8/12, at 8. We can find no abuse of discretion.

By withholding the child from Mother Father clearly violated the custody order. Father also violated the June 6 order, which set the hearing date. Father had notice of the hearing and an opportunity to be heard. Father simply did not show up. The trial court cannot countenance such behavior as it demonstrates a complete lack of respect for the trial court and the opposing party. We find that the trial court did not abuse its discretion.¹

Order affirmed.

Strassburger, J., files a dissenting statement.

¹ Father makes much of the fact that the trial court did not set conditions for purging the contempt. The trial court was not required to. The trial court must set conditions to purge the contempt when imposing *coercive imprisonment* for civil contempt. *See, e.g., Hyle v. Hyle*, 868 A.2d 601, 604 (Pa. Super. 2005).