

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

M.B.,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
L.G.,	:	
	:	
Appellant	:	No. 2947 EDA 2013

Appeal from the Order entered on August 1, 2013
in the Court of Common Pleas of Montgomery County,
Domestic Relations Division, No. 2010-31483

BEFORE: BOWES, SHOGAN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED JULY 18, 2014

L.G. ("Mother") appeals, *pro se*, from an Order finding her in contempt of the Custody Order between her and M.B. ("Father") relating to their son, K.G.B., and requiring her to pay a fine and counsel fees. We affirm.

The trial court set forth the relevant underlying facts as follows:

The parties are the parents of one child: [K.G.B.] (DOB: 10/10/02). On July 18, 2012, Father filed a petition for contempt against Mother in which he alleged that Mother willfully interfered with his custodial time by filing a frivolous protection from abuse ("PFA") petition on or about May 3, 2012[,], and a complaint with the New Jersey Division of Youth and Family Services ("DYFS") on or about June 1, 2012. Father further alleged that Mother withheld custody on the weekend of June 15, 2012[,], and prevented contact between Father and child at the child's graduation. Father also testified that Mother did not create a 2012 summer schedule per the current [C]ustody [O]rder, does not utilize the *Our Family Wizard* program per the [C]ustody [O]rder^[fn] and violated the legal custody provision of the [C]ustody [O]rder.

^[fn] On March 6, 2012, the [trial court] found Mother in contempt, in part, for her failure to utilize the *Our Family Wizard* program. Mother appealed this Order, which was consequently affirmed by the Superior Court in [a memorandum] filed January 29, 2013. [**See M.B. v. L.G.**, 64 A.3d 289 (Pa. Super. 2013) (unpublished memorandum).] ...

On January 11, 2013, Mother filed a contempt petition in which she alleged that, on December 9, 2012, Father was 33 minutes late, and on December 12, 2012, Father was 16 minutes late, returning the child. Mother also alleged that on January 6, 2013, Father failed to return [K.G.B.] until the next day at 10:04 p.m. On January 23, 2013, Mother filed a Petition for Contempt in which she alleged that, on January 21, 2013, Father was ten minutes late returning [K.G.B.] On February 28, 2013, Mother filed a Contempt Petition in which she alleged that, on February 3, 2013, Father was 20 minutes late returning [K.G.B.] Mother also objected to the fact that Father picked [K.G.B.] up from school approximately 12 minutes early as [K.G.B.] missed school work. On June 8, 2013, Mother filed a petition for contempt with regard to the weekends of April 26, 2013[,] and June 14, 2013, in which she had custody of [K.G.B.] Mother also generally alleged that, per messages relayed from [K.G.B.], Father makes derogatory comments about her to [K.G.B.] and to representatives at [K.G.B.]'s school. Mother also alleged that Father discusses court-related information with [K.G.B.]

Trial Court Opinion, 7/30/13, at 1-2 (footnote in original, some footnotes omitted).

Thereafter, the trial court held a hearing on the contempt Petitions. The trial court found both parties in contempt for violating the terms of the Custody Order. Specifically, Mother was found in contempt of the Custody

Order dated October 19, 2011, and ordered to pay a fine and attorney's fees. Mother filed a timely Notice of Appeal.¹

On appeal, Mother raises the following questions for our review:

1. Whether the court erred by find[ing] Mother in civil contempt when Mother attempted to comply [with the Custody Order?]
2. Whether the court erred in finding Mother's behavior in blatant violation of the parties legal custody provision[?]
3. Whether the court erred and showed bias in not finding Father in contempt on all contempt motions brought by Mother[?]
4. Whether court abused its power by denying Mother's request to have minor child testify[?]
5. Whether court erred in imposing [excessive] [] fees and fines[?]

Brief for Appellant at 5 (numbers added).²

In reviewing contempt orders, we must consider that

[e]ach court is the exclusive judge of contempt against its process. The contempt power is essential to the preservation of the court's authority and prevents the administration of justice from falling into disrepute. When reviewing an appeal from a contempt order, the appellate court must place great reliance upon the discretion of the trial judge. On appeal from a court order holding a party in contempt of court, our scope of review is very narrow. We are limited to determining whether the trial court committed a clear abuse of discretion.

Garr v. Peters, 773 A.2d 183, 189 (Pa. Super. 2001).

¹ Father does not appeal the contempt findings against him.

² We note that Mother has failed to divide her argument "into as many parts as there are questions to be argued," as required by Pa.R.A.P. 2119(a). Nevertheless, while Mother's brief essentially contains a single argument section, we will address those claims that Mother has properly preserved.

In her first issue, Mother asserts that the trial court improperly found her in contempt because she made a good faith attempt to comply with the custody order. Brief for Appellant at 10. She argues that she did not use the *Our Family Wizard* program because she could not afford to do so and contends that she was not in contempt because she provided emails regarding [K.G.B.'s] activities to Father. ***Id.***

The trial court addressed Mother's claims as follows:

Father introduced evidence that Mother last logged in to the *Our Family Wizard Program* on June 1, 2012, and Mother conceded that the last email she sent from the program was in 2012. Pursuant to paragraph four of [the trial court's] Order, "[t]he party with custody shall be responsible to input [K.G.B.'s] schedules (including activities that occur during his or her custodial time) so that the other party may be kept abreast of the school activities, school holidays, doctor/dentist appointments and any activities, including but not limited to, sports activities, games and extracurricular activities." Since testimony revealed that [K.G.B.] has been involved in many activities since 2012 (which were obviously not inputted on the *Our Family Wizard* program), and Mother's lack of utilization of the program has a direct effect on [F]ather, the [trial c]ourt finds Mother in contempt on this issue.^[fn]

^[fn] Mother attempted to argue that Father agreed to use means of communication other than the *Our Family Wizard* program. However, [the trial court] was not persuaded by this argument as Father's October 25, 2011 email regarding communication (introduced as M-1) stated, "[y]ou can also use my email...as well as *Our Family Wizard*." Mother then attempted to argue that she could not use the *Our Family Wizard* program because she could not afford its cost of \$99 per month. However, when questioned by defense counsel[,] it was revealed that Mother did not attempt to contact any representatives from the program to inquire about a payment plan or a price reduction.

Trial Court Opinion, 7/30/13, at 2-3 (footnote in original). Upon our review of the record, we agree with the sound reasoning of the trial court. **See id.**

Mother also argues that the trial court failed to remain impartial and unbiased in finding her in contempt. Brief for Appellant at 10-11. Initially, we note that Mother did not raise this claim in her brief's Statement of Questions. **See** Pa.R.A.P. 2116(a). Further, she has not demonstrated that the trial court was biased in finding her in contempt of the custody Order. Thus, we cannot grant Mother relief.

In her third issue, Mother argues that the trial court erred in not finding Father in contempt on all contempt Petitions. Brief for Appellant at 10.

The trial court addressed Mother's argument as follows:

With regard to Mother's contempt Petitions, paragraph 2(a) of the custody Order (regarding transportation) states, in pertinent part, "[t]he parties shall contact the other party by text when he or she is approximately 10 minutes from the assigned meeting place. The parties shall make every effort to be on time, and in the event one party is repeatedly late, the court will entertain sanctions in favor of the parent who is on time."

With regard to December 12, 2012, January 21, 2013, and February 3, 2013, Mother did not provide evidence that she complied with the ten minute notification provision, and therefore, the [trial c]ourt cannot find [F]ather in contempt. Nor does [the trial court] find Father in contempt with regard to the weekends of April 26, 2013[,], and June 14, 2013[,], as Mother maintained physical custody of [K.G.B.] during these times.

Trial Court Opinion, 7/30/13, at 5-6. (footnotes omitted). We agree with the sound reasoning of the trial court and affirm on this basis. **See id.**

Mother next argues that the trial court abused its discretion by denying Mother's request to have K.G.B. testify at the hearing, ostensibly about Father's disparaging comments about her. Brief for Appellant at 11-12.

The trial court denied Mother's request because it had "interviewed K.G.B. twice already. It is evident that the child is weary of the battle between his parents and [the trial court] did not want to place him in the position of testifying once again." Trial Court Opinion, 7/30/13, at 6. Upon our review of the record, we conclude that the trial court did not abuse its discretion in denying Mother's request. Indeed, Mother has not demonstrated that such testimony is required, as the trial court found both parties engaged in disparagement. **See id.** Accordingly, we adopt the reasoning of the trial court on this issue. **See id.**

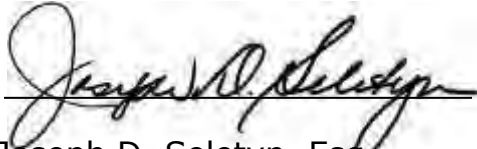
Based upon the foregoing, we affirm the trial court's Order.³

³ We note Mother also raised a claim regarding the fines in her Statement of Questions. However, Mother does not set forth a supporting argument in the Argument section of her brief. Thus, this claim is waived. **See** Pa.R.A.P. 2119(a); **See also Commonwealth v. Beshore**, 916 A.2d 1128, 1140 (Pa. Super. 2007) (waiving appellant's claim for failure to develop an adequate argument in appellant's brief). Nevertheless, we conclude that the \$500 fine and \$600 attorney's fees imposed by the trial court are not excessive and discerns no abuse of discretion in this regard. **See** 23 Pa.C.S.A. § 5323(g) (stating that a party who willfully fails to comply with a custody order may be punished by, *inter alia*, a fine of not more than \$500 and/or counsel fees).

J-S31035-14

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/18/2014