NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

C.S.H. Appellee v. C.A.H. Appellant v. D.H. & K.H., ADDITIONAL DEFENDANTS Appellees	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 807 MDA 2013

Appeal from the Order Entered April 10, 2013
In the Court of Common Pleas of York County
Civil Division at No.: 2011-FC-1930-03

BEFORE: BENDER, J., WECHT, J., and FITZGERALD, J.*

MEMORANDUM BY WECHT, J.: **FILED DECEMBER 09, 2013**

C.A.H. ("Mother") appeals, *pro se*,[1] the order entered on April 10, 2013.[2] In that order, the trial court found Mother in contempt of that court's custody order entered on December 4, 2012, and directed Mother to pay

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* Former Justice specially assigned to the Superior Court.

[1] Mother was represented by counsel who filed a petition to withdraw after Mother filed her petition for contempt. On January 22, 2013, the trial court granted the attorney's petition to withdraw.

[2] The April 10 order was amended on May 10, 2013 as discussed, *infra* at 10-12.

attorney's fees in the sum of six hundred dollars to counsel for C.S.H. ("Father"). We affirm.

Mother and Father are the parents of two minor children, B.H. and W.H. (collectively, "Children").[3] On January 23, 2012, Father filed a custody complaint. On March 21, 2012, the trial court entered an interim custody order. That order mandated, in pertinent part, that the parties cooperate with psychological evaluations should either party request such an evaluation. On December 4, 2012, the trial court, after a hearing, entered a custody order.[4] On February 26, 2013, Mother filed a petition for contempt against Father. On April 2, 2013, Father filed an answer and cross-petition for contempt against Mother. On April 5, 2013, Mother filed an amended petition for contempt. After a hearing on April 9, 2013, the trial court entered the April 10 order that is the subject of this appeal.

Mother presents the following questions for our review:

> 1. Whether or not the Trial Court abused its discretion in that it manipulated the wording of the Mother's contempt charge so that the Father would not be found in Contempt of Court.

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[3] Additional defendants D.H. and K.H. are the paternal grandparents. They were joined by order entered March 20, 2012, following their complaint for partial custody.

[4] Mother also appealed that custody order. The December 4 order was affirmed at ***C.S.H. v. C.A.H.***, 27 MDA 2013 (Pa. Super. July 9, 2013) (unpublished memorandum).

> 2. Whether or not the Trial Court abused its discretion in not being faithful to the law in that the Father is in disobedience of Rule 1915.8.a.2 and was not found to be in Contempt of Court.
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> 3. Whether or not the Trial Court abused its discretion in willfully turning a blind eye to the Father's misleading testimony and not charging the Father with perjury. In that the Father's inconsistent and non-factual statements made while under oath are potentially placing two minor children in harm's way as well as the Father wrongfully defaming people's characters with no consequences.
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> 4. Whether or not the Trial Court is abusing its discretion in that the Mother's liberty and right to due process is being taken away due to the unjust favoritism for [Father] and prejudice the Trial Court has towards the Mother.
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> 5. Whether or not the Trial Court abused its discretion in that the Trial Court's rulings are unsubstantiated and based on biased and prejudice opinions not the relevant exhibits and/or the facts presented.
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> 6. Whether or not the Trial Court erred in finding that the Mother's sister was making disparaging remarks effectively defaming her character based solely on hearsay. No due process was granted to [Mother]'s sister in where her constitutional right to protect her reputation was taken away by the Trial Court.
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> 7. Whether or not the Trial Court abused its discretion by not lowering the $600 fine after amending the Final Order. In that the Trial Court verbally convicted the Mother with 3 contempt charges and assigned a $600 fine however, the Amended Order excused two of those charges but did not excuse any of the monetary value assigned to those charges.
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> 8. Whether or not the Trial Court abused its discretion in finding the Mother in contempt of court for violating the provisions as it relates to spring break. In that the Mother was charged on the unknown intentions of the Trial Court not the explicate Custody Order.
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> 9. Whether or not the Trial Court abused its discretion in preforming [*sic*] a Modification to the Final Custody Order when no such Modification was requested or filed.

Mother's Brief at 2-3.

Our standard of review is as follows:

> In reviewing a trial court's finding on a contempt petition, we are limited to determining whether the trial court committed a clear abuse of discretion. This Court must place great reliance on the sound discretion of the trial judge when reviewing an order of contempt.

P.H.D. v. R.R.D., 56 A.3d 702, 706 (Pa. Super. 2012) (quoting ***Flannery v. Iberti***, 763 A.2d 927, 929 (Pa. Super. 2000)). We must accept the trial court's findings that are supported by competent evidence of record, and we defer to the trial court on issues of credibility and weight of the evidence. ***G.A. v. D.L.***, 72 A.3d 264, 268 (Pa. Super. 2013).

In her first issue,[5] Mother complains that the trial court did not address Mother's first allegation in her petition for contempt. Mother made two allegations in Count I of her petition for contempt. The first was that Father did not "make his paramour . . . available to Dr. Shienvold" until a certain date.[6] The second was that Father contemptuously delayed Dr. Shienvold's report by not releasing Father's personal psychological records

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[5] Although Mother lists nine issues in her "Questions Involved", she only discusses five of them in the argument section of her brief. We find, however, that Mother's nine questions are subsumed by her five issues. We remind Mother that she is obligated to follow our briefing rules. ***See*** Pa.R.A.P. 2119(a). Neither Father nor the paternal grandparents have filed a brief.

[6] Mother retained Dr. Shienvold to conduct a custody psychological evaluation.

to Dr. Shienvold. ***See*** Mother's Amended Petition for Contempt, 4/5/2013, at 2-5.

In regard to these issues, the trial court found:

> First, with respect to [M]other's petition regarding [F]ather's participation in the custody evaluation, [F]ather's response is that he complied completely with that order.
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> We note that he met with Dr. Shienvold immediately after the pretrial conference which occurred in April, and then, as directed as part of the pretrial order, he [and his paramour] met again with Dr. Shienvold . . ., which was done in June.
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> There were releases that were ultimately submitted to him for the [C]hildren and also for his medical records. He declined to sign the releases for himself but did execute the releases as it relates to the [C]hildren, and we note that under the current law, the Court cannot compel [F]ather to release his medical records. As such, we cannot conclude that he is in contempt of the court order as it relates to scheduling the evaluation with Dr. Shienvold.

Trial Court Order ("Order"), 4/10/13, at 3.

In her Brief, however, in response to the trial court's conclusion that Father was not in contempt "as it relates to scheduling the evaluation with Dr. Shienvold[,]" Mother states that "there was never an issue of the Father not complying for scheduling visits." Instead, "the only issue pertained to the Paternal Grandparents and the Father's paramour." Mother's Brief at 9. Mother referenced a letter from Dr. Shienvold's office that was read into the record. The letter stated, in part, that "Dr. Shienvold completed his final interviews this week." Mother argues that the letter indicates that "there was not a problem with the parties scheduling their interviews as they were

completed.” ***Id.*** at 9-10. Mother continues: “If the Honorable Judge Joseph Adams reviewed the exhibits that were presented with the Contempt [petition] . . . as well as listened to [Father’s testimony at the contempt trial], the [c]ourt would have seen that there was not a problem with the Father scheduling his visits with Dr. Shienvold.” ***Id.*** at 10. Mother concludes:

> In being that the Trial Court is prejudice [*sic*] and seems partisan with the Father, the allegation that [M]other brought forward was obfuscated by the Trial Court and never addressed. This apparent favoritism towards Father does not allow the Mother and the two minor [C]hildren involved their proper due process and their civil liberty diminished [*sic*].

Id.

Mother has contradicted herself. Mother complains that Father did not make his paramour available to Dr. Shienvold. Yet she also states that there were no problems scheduling the visits and that everyone completed his or her interviews. Thus, we cannot grant Mother relief on this issue.

Mother next challenges Father’s refusal to release his psychological records. Here, Mother complains that Father was in contempt for failing to provide Dr. Shienvold with copies of those records pursuant to Pa.R.C.P. 1915.8(a)(2). Mother’s Brief at 11-19. Rule 1915.8(a)(2) provides that a person who is ordered by a court to undergo a physical or mental examination shall execute the “appropriate authorizations and/or consents to facilitate the examination.” The trial court addressed this issue, stating that

"under the current law, the [c]ourt cannot compel [F]ather to release his medical records." Order, 4/10/2013, at 3. We agree.

In ***Gates v. Gates***, 967 A.2d 1024, 1029-32 (Pa. Super. 2009), we reviewed a case in which the trial court, ruling upon a petition for contempt in a custody matter, had found the mother in contempt for failing to authorize the release of her mental health records after she had agreed to a mental health evaluation. In reliance upon our Supreme Court's decision in ***Zane v. Friends Hospital,*** 836 A.2d 25 (Pa. 2003), we vacated the trial court's order. In ***Zane***, our Supreme Court held that:

> The importance of confidentiality cannot be overemphasized. To require the Hospital to disclose mental health records . . . would not only violate [the] statutory guarantee of confidentiality, but would have a chilling effect on mental health treatment in general. The purpose of the Mental Health Procedures Act of seeking "to assure the availability of adequate treatment to persons who are mentally ill," 50 P.S. § 7102, would be severely crippled if a patient's records could be the subject of discovery in a panoply of possible legal proceedings.

836 A.2d at 34. The ***Gates*** Court distinguished Rule 1915.8, stating that the rule provided the trial court with the authority to order a psychological evaluation, but did not compel the disclosure of mental health records when a claim of privilege properly was invoked. ***Gates***, 967 A.2d at 1032.[7] In

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[7] ***Gates*** relied upon the broad protection of 50 P.S. § 7111(a) to hold that the mental health records were protected. ***Gates***, 967 A.2d at 1029; 50 P.S. § 7111 (a) (providing "[a]ll documents concerning persons in treatment shall be kept confidential and, without the person's written *(Footnote Continued Next Page)*

light of ***Gates***, the trial court here did not err in finding that it could not compel the release of Father's psychological records for a custody psychological evaluation. Therefore, the court did not err in failing to find Father in contempt on this issue.

In her second issue, Mother questions Father's credibility with regard to his testimony that he executed releases after taking their younger child, W.H., to see a physician while W.H. was in Father's care. On December 28, 2012, while W.H. was in Father's custody, Father took W.H. to a physician. Father did this because, when he picked W.H. up, Mother told Father that W.H. was not feeling well. Notes of Testimony ("N.T."), 4/9/2013, at 21-22. When asked whether he had signed medical releases that would allow Mother to see W.H.'s records, Father testified, "I did. I signed releases for [W.H.]" ***Id.*** at 22. Mother claimed that Father never signed those releases. The trial court stated that:

> We do not find [F]ather in contempt as it relates to this allegation. We find him credible when he has testified that he signed releases. However, we will direct that he follow up with Eastern Carolina Pediatrics to make sure that the records are sent to [M]other and [W.H.]'s pediatrician in York.

Order at 4.

(Footnote Continued)

consent, may not be released or their contents disclosed to anyone . . . ," with a few exceptions not applicable to the instant circumstances).

In an attempt to prove that Father did not execute the releases when W.H. visited the physician in December 2012, Mother offered a medical release form that Father executed on April 10, 2013. The existence of this document proves only that Father complied with the trial court's order directing him to follow up on the release. Mother offered no evidence to demonstrate that Father did not execute a release near the time of the December 28, 2012 visit. Father testified that he signed such a release. The trial court found that testimony credible. We are bound to accept the trial court's determination that Father testified credibly. ***G.A.***, *supra.* Mother's second issue is unavailing.

In her third issue, Mother contends that the trial court took away her sister's "due process and constitutional right to protect her reputation." Mother's Brief at 22-24. This claim stems from Father's counterclaim in the contempt action, in which he accused Mother's sister of making disparaging remarks about him within the hearing of the Children. The trial court stated that "[w]e will not find [M]other in contempt of court for this allegation. However, should Miss [S.] make statements in the future, the [c]ourt will enter an order directing that she not appear during any custody exchanges." Order at 5. Mother asked the trial court to find her sister "not guilty of this allegation as to protect her reputation since no proof was given to the trial court." Mother's Brief at 25.

The trial court made no specific finding that Mother's sister made disparaging remarks in front of the Children. Instead, notwithstanding

Father's allegation, the court declined to find Mother in contempt. Mother does not explain how Father's allegation or the court's failure to hold Mother in contempt in any way affected her sister's reputation. Mother's sister's "guilt" or "innocence" was never in question. The issue before the court solely was Mother's possible contempt. The court merely reminded the parties that no disparaging remarks were to be made, and that repercussions were possible should the parties or their representatives disobey that order. Mother's third issue fails.

In her fourth issue, Mother claims that the trial court abused its discretion "by filing an amended order as to try to cover up its prejudice toward [Mother]." Mother's Brief at 25-26. Mother misapprehends the purpose of the amended order.

On page five of the April 10 order, the trial court stated:

> The next allegation is that [M]other made disparaging remarks about [F]ather in front of the [Children]. Mother vehemently denies making those remarks. At this point the [c]ourt **can** conclude [M]other has made those remarks.
>
> The next allegation is that [M]other prevents [F]ather from talking to the [Children]. Father states that when he does make calls, they are returned to him during times that the [Children] are otherwise preoccupied.
>
> At this point the [c]ourt **can** conclude that [M]other is in willful violation of the order. However, we direct that [M]other continue to cooperate with [F]ather in scheduling phone calls during times that the [Children] are not otherwise preoccupied.

Order at 5-6 (emphasis added).

In an order entered on May 10, 2013, after Mother filed her May 7, 2013 notice of appeal, the trial court amended the language of the April 10, 2013 order as follows:

> The second full paragraph on page five should read: At this point, the [c]ourt ***cannot*** conclude [M]other has made those remarks. And the [fourth[8]] full paragraph on page five should read: At this point the [c]ourt ***cannot*** conclude that [M]other is in willful violation of the order
>
> As a result, the [c]ourt did not find Mother in contempt for making disparaging remarks about [F]ather in front of the [C]hildren or preventing [F]ather from talking to the [C]hildren.

Amended Order, 5/10/13, at 1 (emphasis in original) (unpaginated).

According to Mother:

> This act by the [t]rial [c]ourt again shows the prejudice that it has toward [Mother]. For if the [Mother] had not filed the appeal with this Honorable Superior Court, those charges would have never been removed and fines would have never been imposed.

Mother's Brief at 26.

In its opinion, the trial court addressed Mother's claim:

> In regards to Father's allegations of contempt against Mother, this [c]ourt first notes that Mother was found in contempt solely for violating the provisions of the Custody Order as it relates to Father's rights of custody over spring break. Therefore, there is no need to address Mother's contention that this court abused [its] discretion for holding her in contempt for Mother's sister making disparaging remarks, Mother making disparaging

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[8] In the order, the trial court refers to the "fifth" full paragraph. It is clear from the context that the trial court miscounted the paragraphs.

> remarks, or Mother preventing Father from talking to the [C]hildren.

Trial Court Opinion, 5/23/13, at 4 (unpaginated).

Having read the order complained of and the trial court's amended order, we are satisfied that the amended order does no more than correct two typographical errors. The only specific finding of contempt that the trial court made in the April 10 order was "for violating the provisions as it relates to the spring break." Order, 4/10/13, at 7.

Mother next asks "this Honorable Superior Court to reduce the fine imposed on [her] accordingly since the Trial Court removed two of the three charges but never adjusted the attached fine of $600." Mother's Brief at 26. However, the trial court did not "remove" any "charges"; it simply corrected two typographical errors. What Mother characterized as a "fine" is actually an award of attorney fees that the trial court imposed on her for (as we discuss below) violating the custody order as it related to spring break. Thus, Mother's fourth claim of error fails as well.

In her final issue, Mother complains that the trial court abused its discretion by finding her in contempt of the custody order for failing to make the Children available to Father during their spring break in 2013, and by requiring her to pay $600 of Father's attorney fees. Mother contends that the Children did not have a spring break, and that Father accordingly was not entitled to any custody time. Mother's Brief at 26-29.

The custody order of December 4, 2012, provided that, "[s]hould the Children have spring break, Father shall have the rights of custody at Noon

the day after school adjourns for the spring break until Noon the day before school resumes." Order, 12/4/2012, at 4. In her brief, Mother explains that the Children's school had a caveat regarding days missed due to bad weather:

> The Southern School System's calendar for the 2012-2013 school year gave the [C]hildren time off from school for a break, around Easter, from Thursday, March 28th, prior Easter, through the Monday after Easter, April 1st. However, if the [C]hildren had too many days off because of weather conditions that length of time would be eliminated for make-up days. If this occurred the Children would only have off for Good Friday or as the principal of Friendship Elementary states in her email a 'Spring Holiday not a spring break.'

Mother's Brief at 26-27.[9] As it turned out, the school lost enough days to bad weather that the Children only were excused from school for Good Friday. Mother explains why she did not make the Children available to Father for the shortened period as follows:

> With the use of the word "should" [the order] set the pretense that there could be a probability that there would not be a "spring break." As already stated, if the [C]hildren had time off due to weather conditions the [C]hildren would only have a "Spring Holiday." In being that the statement by the [trial] court was not explicit with dates and since the [C]hildren lost their break due to weather conditions, Hurricane Sandy and snow, no custody exchange happened.

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[9] Mother quoted an email from the school principal to Father that noted that the school calendar listed the school's time off as spring holiday, not spring break. April 9, 2013 Hearing, Exhibit 3, at 11 (unpaginated).

Mother's Brief at 27. In other words, Mother refused to permit Father to exercise custody of the Children over Easter weekend because the school recharacterized its spring break as a spring holiday.

The trial court considered Mother's refusal to permit Father to exercise custody and stated that:

> The next allegation is regarding spring break. There were several exhibits that were introduced into court regarding [B.H.]'s spring break.[10]
>
> The court order that was entered in December of this past year states under page 4, spring break, Should the [C]hildren have spring break, [F]ather shall have rights of custody at noon the day after school adjourns for the break until noon the day before school resumes.
>
> [B.H.] was originally scheduled to have spring break from March 20th to April 1st. However, that was shortened due to snow days and occurred from March 29th through 31st. Mother's position is that she did not violate the order because it is listed as a holiday and not a spring break and the order specifically uses the word spring break.
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> It is clear that the court order intend[ed that] there would be rights of custody for father during spring holiday/break. Although it does not specifically use the term holiday, it is clear that was the intent of the order. We, therefore, do find Mother in contempt of court for violating the provisions of the order as it relates to the spring break.

Order, 4/10/13, at 6-7.

When ruling on a contempt claim, a trial court must consider the following:

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[10] Only B.H. attends school, but the order provides that both Children would be in Father's custody during the spring break time period.

> To sustain a finding of civil contempt, the complainant must prove certain distinct elements by a preponderance of the evidence: (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.

P.H.D., 56 A.3d at 706 n.7. Instantly, there is no doubt that Mother had notice of the specific order. Additionally, the record reflects that Mother's acts were volitional and intentional. Father testified that he contacted Mother regarding picking up the Children for the spring break. N.T. at 25. Mother refused to allow Father his custodial time. ***Id.*** at 26. Mother argued that, because the time off was called a holiday, there was no spring break. ***Id.*** at 50.

The email exchange between Father and the school principal is instructive. In that exchange, Father referred to the time off on Good Friday as spring break. The principal confirmed the time off, but noted that: "Just to clarify, this is on our calendar as a spring holiday, not a spring break." April 9, 2013 Hearing, Exhibit 3, at 11 (unpaginated) (hereinafter "Exhibit 3"). As the actual calendar was not introduced, it is unclear whether B.H.'s school called its entire time off a "spring holiday" or if only Good Friday was referred to as a holiday and the other days off were "spring break." However, that distinction is not dispositive.

We agree with the trial court that the intent of the order was clear: Father was to have custody during the period of time that school was in recess around the Easter holiday, whether it was termed a "holiday" or a

"break." The record supports the trial court's conclusion that Mother willfully misconstrued the order with the intention of depriving Father of his custodial time. Thus, we find no abuse of discretion in the court's contempt finding.

Mother also questions the attorney fee award. We have held that:

> the award of attorney's fees is a proper exercise of the trial court's civil contempt power. Because an award of counsel fees is intended to reimburse an innocent litigant for expenses made necessary by the conduct of an opponent, it is coercive and compensatory, and not punitive.

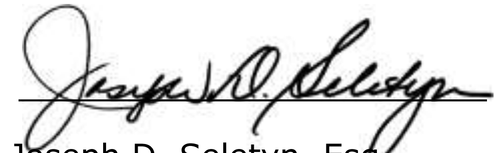
Luminella v. Marcocci, 814 A.2d 711, 719 (Pa. Super. 2002) (citation and quotation marks omitted). An award should be reasonable, and lies within the trial court's discretion. ***Id.***

Father requested the amount of $1,000.00 in counsel fees as a sanction against Mother for this contempt proceeding based upon the time that his counsel spent preparing the petition and participating in the hearing. Father also noted his expenses in traveling from his home in North Carolina for the hearing and his time away from his job. N.T. at 31-32. The trial court awarded $600. This was reasonable under the circumstances. The trial court did not abuse its discretion in making this award. Mother's final claim of error is without merit.

Order affirmed.

Fitzgerald, J. concurs in the result.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/9/2013