

IN THE UTAH COURT OF APPEALS

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In re J.B.P.)	MEMORANDUM DECISION
_____)	(Not For Official Publication)
J.P.,)	Case No. 20090629-CA
Appellant,)	
v.)	F I L E D
Second District Juvenile)	(July 9, 2010)
Court,)	
Appellee.)	2010 UT App 160

Second District Juvenile, Ogden Department, 1016157
The Honorable Paul F. Iwasaki

Attorneys: J.P., Riverdale, Appellant Pro Se
Brent M. Johnson, Salt Lake City, for Appellee

Before Judges Davis, Orme, and Roth.

PER CURIAM:

J.P. (Father) appeals the juvenile court's July 2, 2009 order holding him in contempt of court. We affirm.

Father asserts that the juvenile court erred by holding him in contempt of court because he lacked notice that he was required to appear at his son's April 2, 2009 hearing. Utah Code section 78A-6-111(2) provides that in all cases where a minor is required to appear in court, the parent, guardian, or other person with legal custody shall appear with the minor unless excused by the judge. See Utah Code Ann. § 78A-6-111(2) (2008). A parent required to appear in court who, without reasonable cause, fails to appear may be held in contempt of court. See *id.* § 78A-6-111(1).

Utah Code section 78B-6-302(1) provides that when contempt is committed in the immediate view and presence of the court, or a judge in chambers, the contempt may be summarily punished. See Utah Code Ann. § 78B-6-302(1) (2008). The Utah Supreme Court has determined that a person's failure to appear at a scheduled

hearing is committed in the presence of the court as such failure directly and immediately interferes with the court's ability to conduct the hearing. See Von Hake v. Thomas, 759 P.2d 1162, 1171 (Utah 1988). Thus, the failure to appear in court when ordered to do so may be treated as direct contempt. See id. The supreme court has determined that direct contempt proceedings satisfy due process requirements. See id. at 1170. In order to establish contempt for failure to comply with a court order it must be shown that the person cited for contempt "knew what was required, had the ability to comply, and intentionally failed or refused to do so." Id. at 1172.

The record demonstrates that Father had notice that he was required to attend the April 2, 2009 hearing. Father signed his son's November 20, 2008 Statement and Plea acknowledging that he understood that he was required to "attend all court hearings and reviews." Furthermore, the January 8, 2009 review and order also informed Father that he could be held in contempt for failure to appear at the April 2, 2009 hearing.¹ Father also contacted his son's probation officer and informed the probation officer that Father had a conflict with the April 2, 2009 hearing. Father had the ability to comply with the court's order and attend the April 2, 2009 hearing. However, Father elected to travel to Nevada to attend to other obligations instead of attending the April 2, 2009 hearing. The juvenile court determined that Father's decision to attend to his other obligations instead of attending the hearing was unreasonable. The record demonstrates that the juvenile court complied with the appropriate statutory authority and satisfied the contempt criteria set forth in Von Hake. Thus, we cannot say that the juvenile court erred by holding Father in contempt of court. We note that the sanction imposed was minimal with a generous deferred payment schedule.

¹Father asserts that this court should not consider the November 20, 2008 Statement and Plea because he questions the authenticity of his signature and asserts that it was not contained in the record. The Statement and Plea is contained in the record pertaining to Father's son's case. If we disregard the Statement and Plea, the January 8, 2009 review and order as well as Father's communication with his son's probation officer are adequate to establish that Father had notice that he was required to attend the April 2, 2009 hearing.

Accordingly, the juvenile court's order is affirmed.

James Z. Davis,
Presiding Judge

Gregory K. Orme, Judge

Stephen L. Roth, Judge