

IN THE UTAH COURT OF APPEALS

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Kathy Lenae Huish,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner and Appellant,	)	
	)	Case No. 20050440-CA
v.	)	
	)	F I L E D
Glen Frank Munro,	)	(June 28, 2007)
	)	
Respondent and Appellee.	)	<span style="border: 1px solid black; padding: 2px;">2007 UT App 232</span>

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Third District, Salt Lake Department, 994907668  
The Honorable Glenn K. Iwasaki

Attorneys: David Drake, Midvale, for Appellant  
Paige Bigelow, Salt Lake City, for Appellee

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Before Judges Greenwood, Davis, and McHugh.

PER CURIAM:

This appeal is before the court on Appellee Glen Frank Munro's Motion to Dismiss Appeal of Contumacious Appellant and on Appellant Kathy Lenae Huish's motion to strike that motion.

Huish appeals the district court's order modifying a custody decree to grant sole custody of the parties' child to Munro. That order required Huish to pay one-third of the cost of the custody evaluation prepared by Dr. Monica Christy. Because Munro paid the entire cost of the evaluation, the court ordered Huish to reimburse Munro for one-third of that cost within sixty days of the entry of the order on April 11, 2005. Huish appealed the order modifying custody and also appeals the provision requiring her to pay a portion of the cost of Dr. Christy's custody evaluation. The April 2005 order was not stayed pending this appeal.

Munro has diligently pursued payment through proceedings in the district court. An order dated March 14, 2006, required Munro to provide verification of the amounts paid to Dr. Christy, and gave Huish 30 days after receipt of verification to make payment. Following a contempt hearing in December 2006, the court found Huish in contempt, specifically finding that she knew

of the order, had the ability to comply, and willfully and voluntarily failed to make the payments required by the same order she appeals. Accordingly, the district court's order of March 19, 2007 gave Huish sixty days in which to make a "substantial payment toward the amount of \$8,344.26 owed by her." The court rejected her proposal that she pay \$200 per month. The district court ordered that after the expiration of sixty days, Huish would report what payments were made and the court would determine whether to stay further contempt proceedings, impose a jail term, or require community service.

Huish contends that we cannot consider her in contempt of the order she appeals because the contempt occurred while the appeal was pending and she was not yet in contempt when she filed her notice of appeal. She further claims that the order requiring her to pay one-third of the costs already paid by Munro was too vague for enforcement. Finally, she claims that Munro has delayed pursuing the remedy of dismissal based upon her contempt. We find these contentions to be without merit.

We conclude that our holding in D'Aston v. D'Aston, 790 P.2d 590 (Utah Ct. App. 1990), applies to the facts of this case. See id. at 591. D'Aston stands for the proposition that a party may not remain in contempt of an order while pursuing an appeal of the same order. The approach adopted by this court in D'Aston does not deny an appellant a right to appeal, but requires a party in contempt to "satisfy the court's concerns before she may exercise that right." Id. We defer a ruling on Munro's motion to dismiss for thirty days from the date of this decision to allow Huish "to submit to the process of the trial court and to give this court notice of her actions." Id. Under the circumstances of this case, Huish is required to comply with the district court's order finding her in contempt by providing verification to that court that she has made a substantial payment, to be determined by the district court, toward the amount that she is required to pay. "If appellant complies with this court's order and gives this court written verification of her compliance within the 30-day period, then we will consider her appeal on the merits." Id. "[I]f appellant fails to submit to the process of the trial court within the 30-day period, the motion to dismiss her appeal will be granted." Id. If Huish fails to comply within the 30-day period, her appeal will be dismissed by order of this court without further notice or argument.

In the interest of expediting disposition of the motion to dismiss, we temporarily remand this case to the district court to conduct further proceedings contemplated by the district court's order of March 19, 2007. We request that the district court

promptly advise this court of its disposition on remand. Nothing in this order shall be construed to limit any relief available in the district court. We deny Huish's motion to strike Munro's motion to dismiss.

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Pamela T. Greenwood,  
Associate Presiding Judge

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge