

IN THE UTAH COURT OF APPEALS

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Laura Lawson,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner and Appellant,	)	Case No. 20070641-CA
	)	
v.	)	F I L E D
	)	(October 23, 2008)
James Lawson,	)	
	)	<span style="border: 1px solid black; padding: 2px;">2008 UT App 376</span>
Respondent and Appellee.	)	

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Third District, Salt Lake Department, 024906709  
The Honorable L.A. Dever

Attorneys: Mary C. Corporon, Jarrod H. Jennings, and Allison R. Librett, Salt Lake City, for Appellant  
James H. Woodall, South Jordan; and Sharon S. Sipes, Ogden, for Appellee

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Before Judges Thorne, Billings, and McHugh.

THORNE, Associate Presiding Judge:

Laura Lawson (Mother) appeals from a district court order and judgment finding her in contempt of court and ordering her to pay \$700 in attorney fees to James Lawson (Father). We affirm.

Mother has sole custody of the parties' two minor children, subject to Father's court-ordered visitation rights. After Mother refused to allow a scheduled visitation in February 2007, Father sought an order to show cause why Mother should not be held in contempt of court. The district court held a hearing on Father's motion, at which Mother detailed her reasons for denying visitation. According to Mother, there had been recent fights between Father and his live-in girlfriend in front of the children, as well as threatened physical abuse against the children by Father's girlfriend's teenage son. Mother had reported these problems to the Division of Child and Family Services (DCFS) and alleged at the hearing that DCFS had informed her that she could deny visitation under the circumstances.

At the conclusion of the hearing, the district court indicated its disbelief of Mother's version of events. The district court noted that there was conflicting evidence as to

what DCFS told Mother about denying visitation and stated that it believed that DCFS "did tell [Mother] it was okay for the children to go and she ignored that." The district court further stated:

It seems to me what we have here is an attempt by the mother to deny visitation to the father and use whatever excuse she can to deny visitation. And it seems to me that she's encouraged her daughters to complain about anything and to raise issues that may or may not be true.

The district court also noted that this was not the first incident of denied visitation.<sup>1</sup> The district court then entered an oral finding of contempt against Mother and ordered her to pay \$700 in attorney fees, as reflected in the subsequent written order and judgment.

On appeal, Mother raises various challenges to the contempt finding and the resulting fees award. "The decision to hold a party in contempt of court rests within the sound discretion of the trial court and will not be disturbed on appeal unless the trial court's action 'is so unreasonable as to be classified as capricious and arbitrary, or a clear abuse of discretion.'" Anderson v. Thompson, 2008 UT App 3, ¶ 11, 176 P.3d 464 (quoting Marsh v. Marsh, 1999 UT App 14, ¶ 8, 973 P.2d 988). To the extent Mother challenges the district court's factual findings, we review those findings for clear error. See Arnold v. Arnold, 2008 UT App 17, ¶ 5, 177 P.3d 89.

Mother first argues that the district court's contempt finding must be reversed because she faced exigent circumstances and had DCFS's support in her decision to withhold visitation. Accordingly, Mother argues that she lacked the ability to comply with the visitation order and cannot be held in contempt. See generally Anderson, 2008 UT App 3, ¶ 16 (stating that contempt for failure to comply with a court order must be based on a showing of knowledge, ability to comply, and intentional noncompliance). We reject this argument in light of the district court's express oral finding that DCFS informed Mother that "it was okay for the children to go," as well as its general finding

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<sup>1</sup>The record also reflects Father's testimony that Mother had called police "four or five times" to do "welfare checks" on the children while they were with Father and that DCFS had been to his house "four or six times" to investigate Mother's allegations of abuse or misconduct. None of these incidents revealed any substantiated abuse or misconduct.

that Mother was making excuses to deny visitation. The district court's findings and comments represent a clear rejection of Mother's exigent circumstances argument,<sup>2</sup> and that rejection is not unreasonable under the circumstances. Accordingly, the district court acted within its discretion in concluding that Mother acted of her own volition in failing to comply with the visitation order.

In a closely related argument, Mother argues that the district court's findings of fact regarding DCFS's instructions are clearly erroneous. See generally Arnold, 2008 UT App 17, ¶ 5 (stating that we review factual findings for clear error). Mother overstates the clarity of the testimony below. The involved DCFS witness testified that after he had spoken with Mother, he told her that he thought visitation would be safe in light of plans to have the alleged abuser out of the house during visitation. It was only later, after Mother spoke with the children and called DCFS back to further discuss the matter, that the DCFS witness recalled telling Mother that he "could support her decision."

Looking at the district court's findings and comments as a whole, we see no clear error by the district court as to Mother's interactions with DCFS. While the undisputed testimony was that DCFS eventually informed Mother of its "support," whatever that may have meant, the district court apparently found DCFS's initial assessment of the situation to be more credible. The district court's comment that Mother had "encouraged her daughters to complain about anything and to raise issues that may or may not be true" suggests a suspicion by the district court that Mother had improperly coached the children prior to the follow-up call to DCFS and that DCFS's support of Mother's decision was therefore obtained by Mother in less than good faith. Accordingly, we cannot say that the district court's rejection of Mother's interpretation of DCFS's advice constitutes plain error under the circumstances or demonstrates any abuse of discretion on the part of the district court.

Mother also alleges that the district court erred in refusing to allow her to develop a defense of "unclean hands" against Father. See generally Parduhn v. Bennett, 2005 UT 22, ¶ 42, 112 P.3d 495. A district court's application of the doctrine of unclean hands is also subject to review for an abuse of discretion. See id. Mother's vague reference in her

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<sup>2</sup>We note that at the time of the scheduled visitation, Mother had been informed that arrangements had been made so that Father's girlfriend's son would not be present in Father's home during the visit.

appellate brief to Father's prior failures to exercise full visitation and comply with court orders does not establish such an abuse of discretion here. The hearing below was on Father's motion for order to show cause, not Mother's, and the testimony at the hearing revealed behavior by Mother that the district court described as "very disturbing." We cannot say that the district court exceeded the bounds of its discretion in limiting the testimony below to that directly relating to the denial of visitation complained of in Father's motion.

Finally, Mother challenges the award of attorney fees below and argues that she should be awarded fees on appeal. Mother's argument in this regard is that the district court clearly erred in its substantive ruling below and that she was acting in good faith to protect the children. We have affirmed the district court's findings against Mother's challenge for clear error, and those findings are incompatible with Mother's assertion of good faith. For the same reasons that we have rejected Mother's other arguments, we also reject her arguments regarding attorney fees. Further, as the prevailing party on appeal who was awarded attorney fees below, Father is entitled to an award of reasonable attorney fees incurred in this appeal. See Elman v. Elman, 2002 UT App 83, ¶ 43, 45 P.3d 176.

For the reasons expressed herein, we determine that the district court acted within its discretion in finding Mother in contempt of court and ordering her to pay Father's attorney fees. Accordingly, we affirm the order and judgment of the district court and remand this matter for a determination of Father's reasonable attorney fees incurred on appeal.

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William A. Thorne Jr.,  
Associate Presiding Judge

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WE CONCUR:

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Judith M. Billings, Judge

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Carolyn B. McHugh, Judge