IN THE UTAH COURT OF APPEALS

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Linda Anderson fka Linda LaRee Thompson, Petitioner and Appellee, v. Glenn Hunter Thompson, Respondent and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20070514-CA F I L E D (May 15, 2008) 2008 UT App 170

Third District, Tooele Department, 994300102
The Honorable Mark S. Kouris

Attorneys: Bruce L. Richards and Dean A. Stuart, Salt Lake City, for Appellant
David J. Friel, Salt Lake City, for Appellee

Before Judges Thorne, Bench, and Davis.

DAVIS, Judge:

Glenn Hunter Thompson (Husband) appeals from the district court's order holding him in contempt. He also appeals the district court's determination in that same order that Linda Anderson fka Linda LaRee Thompson (Wife) need not refund him a child support overpayment. Husband further argues that because of these errors, the district court improperly awarded Wife attorney fees and costs, and should have instead awarded attorney fees and costs to him. We reverse and remand.

Husband primarily challenges the contempt ruling. "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.'" Marsh v. Marsh, 1999 UT App 14, ¶ 8, 973 P.2d 988 (quoting Bartholomew v. Bartholomew, 548 P.2d 238, 240 (Utah 1976)). "'To find contempt [in a civil case], the [district] court must find from clear and convincing proof that the contemnor knew what was required, had the ability to comply, and willfully and knowingly failed and refused to do so.'" Id. ¶ 10

(quoting Kunzler v. O'Dell, 855 P.2d 270, 275 (Utah Ct. App. 1993)).[1]

Here, the first action causing the district court to hold Husband in contempt was Husband's holding of a family meeting in which he told the children to forgive Wife and made statements that because of Wife he could no longer give them a big Christmas or take them on trips and vacations. The actions causing the court to hold Husband in contempt the second time were his knowing that his new wife made the notation "B" on the memo area of two support checks and his delivery of one of these checks to the parties' oldest child for him to give to Wife. The district court determined that such actions violated a provision of the parties' divorce decree, which stated that "[t]he parties shall work together to resolve issues involving the children."[2] The court made the specific finding that "[Husband] was aware of the

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1. Wife argues that we should not reach Husband's argument regarding contempt because he has failed to marshal the evidence as required by Chen v. Stewart, 2004 UT 82, ¶¶ 76-80, 100 P.3d 1177. Although often referred to as a "finding" of contempt, the contempt determination here is not a true factual finding that would require a party challenging it to marshal the evidence. Rather, this is a legal conclusion that must be supported by factual findings. We do not see that Husband is challenging any of the findings of the district court regarding his actions or his awareness of the divorce decree; he instead challenges the legal conclusion that his actions and knowledge allowed the court to exercise its discretion and hold him in contempt.

Wife also argues that because Husband sets forth the incorrect standard of review, his challenges must fail. Wife provides no support for this reasoning, and we know of no rule to this effect. Although in his initial statement of the issues Husband provides the burden of proof for contempt as opposed to the standard of review, this appears to result from the fact that his primary contention is that the standard of proof was not met and, thus, the district court had no discretion to exercise in this matter. Further, Husband quotes both the appropriate standard of review and the related standard of proof in the analysis portion of his brief.

2. The district court also held Husband in contempt based on the court's understanding that in an earlier proceeding it had instructed that the children not "be involved." Such instruction, however, was never memorialized in the corresponding written order. Further, neither party addressed this instruction at oral argument, neither party provided a record citation for the instruction, and we see no such instruction in our cursory review of the court's ruling from the bench. Thus, we do not address this oral instruction allegedly given from the bench.

[d]ecree and certainly had the capacity to follow the decree."[3] However, the issue is not whether Husband was aware of the divorce decree but whether he knew that his actions were prohibited by the divorce decree. We determine that the language of the divorce decree does not establish the basis for clear and convincing proof that Husband knew what was required, i.e., that he knew his actions relating to the family meeting and the support checks were in violation of the divorce decree.

The paragraph of the divorce decree relied upon by the district court states, in its entirety:

> That the parties are both fit and proper persons to be awarded the care, custody and control of the minor children and therefore the parties should be awarded joint legal custody with [Wife] being granted primary physical custody. The parties shall work together to resolve issues involving the children, however [Wife] as custodial parent shall make the final decision.

When reading the entire provision containing the "work together" phrase, it appears that the term references making decisions regarding the children. Wife argues that this sentence should be read to prevent the parties from "working against each other." But the "work together" phrase, sandwiched between phrases clearly addressing custody arrangements and referencing decisions involving the children, does not prohibit any and all actions on the part of Husband that would be less than friendly. Although Husband's actions may have been, as the district court found, "deplorable," "upset[ting]," and "appall[ing]," such does not alone meet the standard of proof required to hold a person in contempt. As inappropriate as the actions may be, the simple fact that one party behaves in a petty or childish manner is not sufficient to justify holding that party in contempt for violating the general direction to work with the other party regarding the children. Indeed, "[for] a court order to be the basis of a finding of guilty of contempt for disobedience thereof[, it] must be clear and unambiguous." Foreman v. Foreman, 111 Utah 72, 176 P.2d 144, 156 (1946) (Wolfe, J., concurring). Thus, when it is not clear as to what the language of the order references, "the order [is] not sufficiently clear on that point to support the finding of guilty of contempt for disobedience of that element of the order or to base a judgment for damages for disobedience of that element of the order." See id.

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3. The district court determined that Husband could have followed the decree by taking the blame for his challenging financial situation, even suggesting that Husband should have told the children less than truthful reasons for the money shortage.

Wife points to the fact that this court recently upheld other holdings of contempt in prior proceedings of this case, see Anderson v. Thompson, 2008 UT App 3, 176 P.3d 464. Husband's actions at that time, however, highlight the issue here. Husband was previously held in contempt for his failure to pay child support, a portion of the children's activity costs, and spousal support. See id. ¶¶ 19-20. Each of these responsibilities was specifically set forth in the divorce decree. See id. Husband was also held in contempt for his failure to provide, as previously stipulated, the tax documents from which the decree-ordered support would be calculated. See id. ¶ 18. Husband's obligations on these matters are set forth in clear language in the divorce decree and are not derived from the general statement that the parties must work together on issues involving the children. Thus, we remain unconvinced that there is clear and convincing proof that Husband knew what was required here, let alone that he willfully and knowingly refused to comply.

Husband next argues that Wife should have been ordered to refund his child support overpayment for January 2007.[4] Having determined that Husband overpaid, the court's entire reference to this issue is the following: "Regarding the issue of refunding $455.08 from [Wife] to [Husband] concerning the difference in the January child support payment is ruled in favor of [Wife]. Therefore, [Wife] has no need to refund those monies." Without findings supporting this ruling, we cannot determine the basis for the denial of the refund. Indeed, in response to Husband's argument, Wife only speculates that this denial was "probably" because Husband was held in contempt and because monies were still owing to Wife. Adequate findings of fact "'show that the court's judgment or decree follows logically from, and is

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4. Wife argues that we should not consider this issue, asserting that Husband failed to "properly raise[]" the issue because he did not include it among those issues listed in his "Statement of Issues" section. We agree that rule 24 of the Utah Rules of Appellate Procedure requires that this issue be included among the initial listing of issues in Husband's brief. See Utah R. App. P. 24(a)(5). And we recognize that we may disregard or strike briefs that do not comply with the requirements of rule 24. See id. R. 24(k). "However, we are not obligated to strike or disregard a marginal or inadequate brief," State v. Gamblin, 2000 UT 44, ¶ 8, 1 P.3d 1108 (emphasis added), and we usually reserve such a harsh sanction for cases where the noncompliance with rule 24 is much more egregious than that here, see, e.g., MacKay v. Hardy, 973 P.2d 941, 948 (Utah 1998) (disregarding issues raised in a brief that "fail[ed] to comply with almost every requirement set forth in rule 24"). Here, where the failure to comply with the requirements of rule 24 was fairly minor, where the argument was presented with sufficient clarity in the analysis portion of the brief, and where the noncompliance does not frustrate the purposes behind rule 24, see id. at 949, we decline to exercise our discretion to impose a sanction under rule 24.

supported by, the evidence. The findings should be sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached.'" Armed Forces Ins. Exch. v. Harrison, 2003 UT 14, ¶ 28, 70 P.3d 35 (quoting Acton v. Deliran, 737 P.2d 996, 999 (Utah 1987)).

> If the findings of fact in a case are incomplete, the court may order the trial court . . . to supplement, modify, or complete the findings to make them conform to the issues presented and the facts as found from the evidence and may direct the trial court . . . to enter judgment in accordance with the findings as revised.

Utah R. App. P. 30(a). We therefore remand to the district court for entry of findings on this issue and an entry of an order in accordance with those findings.

Because we reverse on the issue of contempt, we reverse the award of attorney fees and costs to Wife, which award was based on the holding of contempt. Likewise, there is no basis to grant Wife's request for an award of attorney fees and costs on appeal. Husband argues that with a reversal, he should be awarded his attorney fees and costs below. Utah Code section 30-3-3(2) provides that "[i]n any action to enforce an order of custody, parent-time, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense." Utah Code Ann. § 30-3-3(2) (2007). Accordingly, we remand to the district court to determine if an award of costs and attorney fees should be awarded to Husband and, if so, to determine the amount.

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James Z. Davis, Judge

WE CONCUR:

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William A. Thorne Jr.,
Associate Presiding Judge

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Russell W. Bench, Judge