

HAMILTON COUNTY JUVENILE COURT

Case No. F/20/001255 X

Decision of Magistrate

IN RE: [REDACTED]

The matter came to be heard on May 10, 2024.

This matter came to be heard on the Motion herein filed by [REDACTED] Mother, on 12/14/2023 for [REDACTED] born on [REDACTED].

Motion for Motion, filed by [REDACTED] on 04/09/2024, is granted. The Court has found Father to be a vexatious litigant. See the decision below.

The Court, after having reviewed all the evidence and testimony previously presented at trial, does hereby issue a Decision.

No parties were required to appear as the matter was set for entry.

DECISION

PROCEDURAL HISTORY

[REDACTED] (Mother) and Maxime Tchinda Tiomagwou, Sr. (Father) are the parents of the Child [REDACTED].

On 12/21/20, Father filed custody complaint and on 2/9/21, Father filed an additional petition for custody and visitation. At the time of the initial pre-trial, on 4/9/21, there was a restraining order between the parties. That order was eventually dissolved.

A trial was scheduled on 8/11/21. However, a motion to compel discovery and a request for continuance were filed on 8/10/21 by Mother. The trial was rescheduled to 1/3/22. Father then requested mediation, Mother had a substitution of counsel, and Father retained counsel.

On 11/10/21, the Court ordered supervised visitation at the Children's Home Family Visitation Center.

On 1/3/22, Father requested a continuance on the basis that the parties were near a resolution. The Court granted the continuance and reset the trial to 5/6/22. An agreement was not reached and the trial was held. The Court again ordered four supervised visits through the Children's Home Family Center. The Court further ordered that once the four visits had occurred that Father would have supervised visits at his house every Saturday from 12 noon to 4:00 PM.

On 7/19/22, there was another substitution of counsel for Mother.

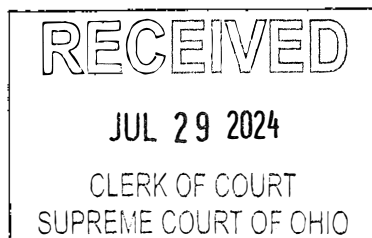
On 7/20/22, the Court suspended Father's visits at the Family Visitation Center based on issues that arose during Father's visit. The Court then scheduled a pre-trial in response to the termination of the visits and continued the entry date of its decision for the 1/3/22 trial.

On 10/6/22, the Court issued its decision and granted Father supervised visitation with Mother and maternal grandmother to provide the supervision. Father then, on 10/17/23, filed Objections to the Magistrate's Decision. On 1/24/23, Father, acting Pro Se, withdrew his Objections to the Magistrate's Decision.

On February 7, 2023, Mother filed a Motion for Clarification regarding visitation



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Date: 7-24-2024
Mark A. Bloom
Judge, Juvenile Court
By: [Signature]
Deputy Clerk

On 3/9/23, Father then filed a Motion for Contempt of Visitation. The trial was set for 6/7/23. On March 16, 2023, Father filed another Petition for Custody and a request for an Emergency Order. The emergency order was denied.

On 4/21/23, the Court dismissed all Father's pending matters as he had not filed proof of income or paid the filing fee.

On 5/8/23, Father filed a new Petition for Custody. On 5/22/23, Mother filed a Motion to Declare Father a Vexatious Litigant. Service does not appear to have been completed, as the return said deemed lost.

On 6/9/23, Mother filed a Notice of Name Change. The Hamilton County Probate Court had ordered the Child's name to be changed from [REDACTED]

On 8/15/23, Mother filed a Notice of Substitution of Counsel.

The trial on Father's Motion for Custody, Mother's Motion for Clarification, and Mother's Motion to Declare Father a Vexatious Litigant was heard on 8/15/23. On 9/22/23, the Court issued a decision and found that Father failed to establish a change of circumstances and denied Father's request for custody. On the issue of parenting time, the Court ordered supervised visitation to occur and created a schedule that would allow for a transition for Father to spend more time with the Child. The Court denied the Motion to Find Father a Vexatious Litigant. The Decision was adopted by the Judge on 10/9/23

On 10/11/23, Father filed a Motion to Modify Visitation and on 12/14/23, Mother filed a Motion to Dismiss. On 12/14/23, the Court held the first pre-trial on the new round of litigation and ordered Father to submit proof of income for his affidavit of indigency by 1/18/24. Father objected to having to file another affidavit or to pay the filing fee as he was already paying child support. Father was disruptive on Zoom and was muted several times. Father admitted that he had not complied with supervised visitation.

On 12/14/23, Mother filed another request to have Father found to be a vexatious litigant.

On 1/19/24, the Court dismissed Father's Motion to Modify because he had not filed the proof of income by 1/18/24. The Court dismissed Mother's Motion to Dismiss as moot. The Court left open the vexatious litigant action. The action was captioned as a motion, but pursuant to ORC 2323.52, the Court referred to the matter in its 1/19/24 entry as a separate action.

On 1/31/24, Father did not appear for pre-trial and the Court scheduled a trial date for the vexatious litigant action.

On 4/9/24, Father appeared for trial but thought he was appearing for a child support/paternity action under P/24/154, which had actually been scheduled for the prior week on 4/4/24. The paternity action was dismissed due to Father's failure to show. The custody court denied Father's request for a continuance as he been properly served and notified. A trial was held and the matter was taken under advisement.

Mother filed a request for attorney fees on the same day.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

The Court will reiterate portions of the procedural history as relevant to the finding of facts.

[REDACTED] was born on [REDACTED]. The Child has resided with Mother since birth. Litigation has been ongoing since immediately after the Child's birth. As part of the litigation history, Father has been ordered on three separate occasion to participate in supervised visitation. The first time, Father attended supervised visits and his behavior was so disruptive that the Children's Home Family Center refused to continue with any visits.

The second order for supervised visitation occurred on 10/6/22 and Father was granted time with the Child as follows:

Visits were to occur every other Sunday from 12-2:00 PM supervised by Mother or Maternal Grandmother at Dahn Park (5125 Foley Road, Cincinnati, Ohio 45238).

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Karin L. Blum
Judge, Juvenile Court
By: [Signature]
Deputy Clerk

In the case of bad weather, visits were to occur at Holly Hill (2816 Bluegrass Drive, Highland Heights KY 41076) or the Family Nurturing Center (7162 Reading Road, Cincinnati, Ohio 45237) or Lily Pad (2008 Madison Road, Cincinnati, Ohio 45208). Father was to bear the costs of any fees required.

Father was, for the months of October 2022 to January 2023, to have public visits, every other Sunday for 12:00 Noon to 2:00 PM supervised by Mother or Maternal Grandmother. If those visits were successful and by agreement of the parties, the visits would then transition to Father's house, still supervised, every other Sunday for February-April 2023. From May 2023-July 2023, Father would have unsupervised visits every other Sunday from 12:00 Noon to 2:00 PM. Starting in August 2023, Father would have unsupervised visits from 12:00 Noon to 6:00 PM every other Sunday.

Father failed to comply with the Court order and his behavior was such that neither maternal grandmother or Mother were willing to provide supervision.

Father then filed another custody motion and after trial, Father was ordered on 9/22/23 to attend Supervised visits at Holly Hill. Father did not follow through and immediately filed a motion to modify the custody order.

Father appeared for trial on the vexatious litigant action on 4/9/24 under the impression that he was appearing for his hearing on the paternity docket to de-establish paternity. That hearing was scheduled for the prior week and Father failed to show resulting in a dismissal of the paternity action. Father was unruly with the custody court and argued that he should not be required to file proof of income as it related to the dismissal of his custody motion because he had provided the information on a prior round of litigation. The Court also had to repeat that the proceeding was one for vexatious litigant and not paternity.

Father requested a continuance on the vexatious litigant action which the Court denied as Father has been properly served and notified. The Court reminded him that he was held to the same standard as an attorney and that an attorney would have been aware of a trial date.

Father eventually testified and indicated that he could not comply with the court order because of Holly Hill. He presented no evidence as to specific circumstances as to Holly Hill not being willing to supervise. As he filed his motion to modify custody immediately after he was ordered again to engage in supervised visits, the Court finds that his explanation not credible.

Mother testified that Father had filed multiple actions over the years and that each time Father filed an action, she retained counsel and incurred attorney fees. She reiterated that Father filed actions and did not follow through and indicated that he would keep filing until he got what he wanted.

The matter concluded with Father indicating that he was going to refile the paternity action when he left the custody court. He then made a rude comment about de-establishing paternity because of Mother's alleged sexual behavior.

CONCLUSIONS OF LAW

1. VEXATIOUS LITIGATION

R.C. 2323.51 (A) provides that As used in this section:

(1) Conduct has the same meaning as in section 2323.51 of the Revised Code.

(2) Vexatious conduct means conduct of a party in a civil action that satisfies any of the following:

(a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action.

(b) The conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

(c) The conduct is imposed solely for delay.

(3) Vexatious litigator means any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions and whether the vexatious conduct was against the same party or against different parties in the civil action or actions.

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Date: 2/24/2024
Diana L. Bloom
Judge, Juvenile Court
By: Sharon C. Clark
Deputy Clerk

On 5/22/23, Mother filed the first Motion to Declare Father a Vexatious Litigant and alleged that Father has habitually, persistently, and without reasonable grounds engaged in vexatious conduct obviously serving merely to harass or maliciously injure Mother to civil action and the conduct is not warranted under existing law and cannot be support by a good faith argument. The Court denied that request in its 9/22/23 decision. The Court, however, warned Father in the decision that his conduct was close to the line and the Court would not be receptive of future filings until he established a relationship with the Child through the supervised visit process.

The Court specifically stated:

Therefore, the Court warns Father against filing additional matters without taking the steps the Court has previously outlined regarding supervised visitation. At this point, Father has not successfully completed a sufficient number of supervised visits with the Child, as previously ordered. He has not seen the Child except for a problematic visit at the Children's Home.

The Child will need to be introduced to Father while in the company of people with whom the Child is already familiar. Father CANNOT SKIP STEPS if he wishes at some point, in the future, to have unsupervised and extended time with the Child.

Father immediately filed another Petition to Modify Custody without having complied with the any of the Court's previous orders on supervised visitation.

Additionally, the Court notes that Father was told on two separate occasions to either pay the filing or provide proof of income for a fee waiver and failed to do, which resulted in two dismissals and more filings.

Father also has missed court dates and when informed that he had confused the custody court date with his paternity action, which was dismissed due to his failure to show, he informed the custody court when its proceeding was over that he was going to immediately refile the paternity action.

The Court GRANTS Mother's request to have Father declared a vexatious litigant and finds that he has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court.

The Court further finds that Father's conduct obviously serves merely to harass or maliciously injure another party to the civil action.

Once a party has been declared to be a vexatious litigant, they must seek leave of the Court to file additional actions.

2. ATTORNEY FEES

For a court to order one party to pay another's attorney fees, the shifting of fees must be: (1) authorized by statute, or (2) based on the court's determination that the party ordered to pay fees has acted in bad faith, vexatiously, wantonly, obdurately, or for oppressive reasons.Curtis v. Curtis, 140 Ohio App.3d 812 (12-8-2000).

Mother submitted billing records and Counsel certified by affidavit that the fees were reasonable.

Invoice 18804 125.00
Invoice 19027 120.00
Invoice 19331 557.50
Invoice 19615 150.00
Invoice 19884 107.50
Invoice 20138 457.50
Invoice 4/1/24 375.00

TOTAL LEGAL FEES: 1892.00

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Paul L. Bloom
Judge, Juvenile Court
By: [Signature]
Deputy Clerk

The Courts finds that Father has acted in bad faith, vexatiously, wantonly, obdurately, or for oppressive reasons, and awards Mother attorney fees in the amount of \$1892.00, fees which have accrued since the date of Father's Motion to

Modify. The Court finds that the attorney fees are reasonable. Maxime Tchinda is therefore ORDERED to reimburse Mother in the amount of \$1892.00.

If the matter is not paid in full by November 10, 2024, Attorney Whitfield is to contact the Court to schedule a show-cause hearing.

Willful non-compliance with this ORDER may result in a finding of contempt resulting in thirty (30) days to ninety (90) days incarceration, a \$250.00 to \$1,000.0 fine, and an award of the moving party's attorney fees and costs.

Nancy Cutler

Magistrate Nancy Cutler

CD # NCUT

I have received a copy of the above Decision of Magistrate and therefore waive service by the Clerk.

Objection of Magistrate's Decision

Any party may file written objections to a Magistrate's Decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the Court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Juv. R. 40 (D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Juv. R. 40(D)(3)(b).

Pursuant to the First District Loc R. 13.2(B)(1), any juvenile's name must be redacted to initials in the notice of appeal and any attachments to the notice.

Electronically Filed

Juvenile Court
Hamilton County, Ohio
5/10/2024 12:17 PM
KARI L. BLOOM, Judge
& Ex-Officio Clerk

Kari L. Bloom
Judge

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Date: 7-24-2024
Kari L. Bloom
Judge, Juvenile Court
By: Anna Jackson
Deputy Clerk