

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

NANCY J. RAPP,	:	
Plaintiff-Appellant,	:	CASE NO. CA2011-05-091
- vs -	:	<u>OPINION</u>
	:	5/7/2012
ROBERT A. PRIDE,	:	
Defendant-Appellee.	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DR 02070885

Michael P. Masana, 220 South Monument Avenue, Hamilton, Ohio 45011-2836, for plaintiff-appellant

M. Lynn Lampe, 1248 Nilles Road, Suite 7, Fairfield, Ohio 45014, for defendant-appellee

RINGLAND, J.

{¶ 1} Appellant, Nancy J. Rapp (Mother), appeals a decision of the Butler County Court of Common Pleas, Division of Domestic Relations, finding her in contempt for removing her children from the greater Cincinnati area without a signed agreement with their father, appellee, Robert A. Pride. For the reasons discussed below, we reverse.

{¶ 2} On March 20, 2003, the parties filed a shared parenting plan in the Butler County Domestic Relations Court. The plan provided for certain notice requirements if a parent desired to move and required that, "neither parent shall remove the children from the Greater Cincinnati Area without a signed agreement with the other parent and filed with the Butler County Domestic Relations Court."

{¶ 3} On July 27, 2010, Mother filed a notice of intent to relocate within Butler County. On August 19, 2010, Mother filed a second notice of intent to relocate, this time outside of Butler County. On October 16, 2010, Mother moved to Independence, Kentucky, taking the minor children with her. On December 2, 2010, Father filed a motion for contempt against mother for removing the minor children from the greater Cincinnati area without a signed agreement in violation of the shared parenting plan. Following hearings on December 16, 2010, and December 20, 2010, the magistrate filed a decision on December 27, 2010. The magistrate subsequently filed a second decision on January 20, 2011, that addressed additional parenting issues. That decision also found Mother in contempt for removing the children from the greater Cincinnati area. On April 26, 2011, the trial court affirmed that part of the magistrate's January 20, 2010 decision that found Mother in contempt.

{¶ 4} Mother now appeals from the April 26, 2011 entry, advancing a single assignment of error for our review.

{¶ 5} Assignment of Error No. 1:

{¶ 6} THE TRIAL COURT ERRED TO THE PREJUDICE OF THE [MOTHER] WHEN IT IGNORED THE INFORMATION CONTAINED IN [MOTHER'S] EXHIBIT 25.

{¶ 7} Within this assignment of error, Mother argues that, "[w]hen the parties enter into a Shared Parenting Plan that has specific language indicating that neither parent shall remove the children from 'the greater Cincinnati area' it is error and an abuse of discretion for the court to ignore specific information in the [Mother's] Exhibit 25 proving that her relocation

was within the greater Cincinnati area." Mother essentially argues that by ignoring the information contained in Exhibit 25, the trial court erred in finding her in contempt for removing the children from the greater Cincinnati area.

{¶ 8} An appellate court reviews a trial court's decision regarding contempt proceedings for an abuse of discretion. *Sparks v. Sparks*, 12th Dist. No. CA2010-10-096, 2011-Ohio-5746. An "'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 9} As stated above, the parties' shared parenting plan required that "neither parent shall remove the children from the Greater Cincinnati Area without a signed agreement with the other parent and filed with the Butler County Domestic Relations Court." The trial court stated that, "Mother's Exhibit 25 lists by name Covington, Kentucky (in Kenton County) and Ft. Thomas, Kentucky (in Campbell County) as being suburbs within the Greater-Cincinnati Area. However, Independence, Kentucky is not specified within Exhibit 25, nor is the entirety of Kenton County listed." Later in the decision, the court again found that, "Mother's own Exhibit does not specifically include a reference to either the entirety of Kenton County, Kentucky, or to Independence, Kentucky. The court cannot find that Independence, Kentucky is included in the defined area of Greater-Cincinnati." Finally, in finding Mother in contempt for moving the children, the court stated that, "Mother's Exhibit 25 does not include Independence, Kentucky as being part of the Greater-Cincinnati Area, nor does the Exhibit list the entire area of Kenton County as part of the Greater-Cincinnati Area."

{¶ 10} A thorough review of Mother's Exhibit 25 finds that Independence, Kentucky and the entirety of Kenton County are in fact included in the definition of greater Cincinnati. The trial court appears to have erroneously limited its definition of the greater Cincinnati area to the "Suburbs" section of Exhibit 25. A complete reading of the exhibit reveals that it

specifically includes the city of Independence in the section titled "Main Cities." In addition, Exhibit 25 provides a list of counties that are included in the greater Cincinnati metropolitan area. That list includes Kenton County in its entirety. By combining the populations of each of the listed counties, we find that the sum of these counties' populations is equal to the population for the greater Cincinnati area as defined by the United States Census.¹ Therefore, according to the U.S. Census data as presented in Exhibit 25, the entirety of Kenton County, and thus the city of Independence, Kentucky, are included in the greater Cincinnati area. Accordingly, we find that the trial court abused its discretion in finding mother in contempt for removing her children from the greater Cincinnati area when she moved them to Independence, Kentucky.

{¶ 11} Mother also attempts to argue that all of the court's findings in the April 26, 2011 entry stemmed from the court's determination that Mother moved outside the greater Cincinnati area. She flatly states that the trial court's failure to properly acknowledge Exhibit 25 tainted the entire decision of the court. Mother, however, cites to nothing in the record supporting this argument, nor does she specify any assignments of error as to these additional findings by the trial court. Therefore we do not reach the merits of those arguments.

{¶ 12} In light of the foregoing, having found that the trial court abused its discretion in failing to recognize Independence, Kentucky and the entirety of Kenton County as part of greater Cincinnati pursuant to appellant's Exhibit 25, appellant's first assignment of error is sustained.

{¶ 13} Judgment reversed only as it pertains to the contempt order for removing the

1. Defined by the United States Census as the Cincinnati-Middletown Metropolitan Statistical Area and having a total population of 2,009,632 as of the 2000 census. This is the same total population of the combined fifteen counties, including Kenton County, listed in Exhibit 25 as of the 2000 census.

children from greater Cincinnati.

POWELL, P.J., and PIPER, J., concur.