

[Cite as *B.B. v. O.D.*, 2024-Ohio-2388.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
DARKE COUNTY

B.B.	:	
	:	
Appellee	:	C.A. No. 2023-CA-30
	:	
v.	:	Trial Court Case No. 21540043
	:	
O.D.	:	(Appeal from Common Pleas Court-
	:	Juvenile Division)
Appellant	:	
	:	

.....

OPINION

Rendered on June 21, 2024

.....

MARY ADELIN R. LEWIS, Attorney for Appellant

JAY M. LOPEZ and CHARLYNE L. ADAMS, Attorneys for Appellee

.....

TUCKER, J.

{¶ 1} Defendant-appellant O.D. (“Mother”) appeals from a judgment of the trial court finding her in contempt of court. For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} B.B. (“Father”) and Mother, who were never married, had a child who was

born in 2008. The parents maintained an informal schedule of parenting time with the child until 2015, when Father filed a complaint to establish paternity and allocate parental rights. In September 2016, the trial court entered a judgment adopting the parties' proposed order for shared parenting. In 2017, both parties filed motions to terminate the shared parenting agreement, but the order of shared parenting was continued by order filed in 2018. In 2021, Father again sought to terminate shared parenting. A guardian ad litem (GAL) was appointed. The GAL recommended that Father be awarded legal custody of the child. On February 7, 2023, the parties executed an agreed judgment designating Father as both residential parent and legal custodian, and Mother was given parenting time.

{¶ 3} In March 2023, Father filed a motion to suspend Mother's parenting time and a motion to show cause for interfering with and alienating his parenting time and custody rights. A hearing was conducted in July 2023.

{¶ 4} At the hearing, Father testified that he had not seen or been granted access to the child since the February 7 agreed judgment was filed. He testified that the day the agreed order was entered, he went to pick up the child at the home of the maternal grandparents; when he arrived, he texted Mother, but Mother indicated that she was not present at the home and that he would have to "deal with [the grandmother]." Neither the child nor the grandmother came outside to meet him, so he contacted the Darke County Sheriff's Department. The deputies went into the home, but the child refused to leave.

{¶ 5} Father further testified that he attempted to retrieve his daughter after school

on multiple occasions, but the child always left with Mother or the grandmother. He testified that during a March pretrial hearing, the parties came to an understanding that they would attempt to exchange the child at the Greenville police station. According to Father, he would go to the station every time Mother's parenting was scheduled to end and he would text Mother that he was ready for the exchange. However, Mother would not respond, and the child was not returned to Father.

{¶ 6} Mother testified that the child has been with her continuously since the entry of the agreed order. She testified that she attempted to comply with the exchanges, and had the child ready, but Father would show up at the police station rather than her mother's home. She testified that the agreed order did not require her to exchange the child at the police station. She further testified that she did not attempt to transport the child to Father's home because the agreed order did not require her to do so. Mother also claimed that Father is "supposed to do pickup at my mom's house."¹

{¶ 7} Mother also claimed the child was "in fear for her life," so Mother would not force her to go with Father. Although Mother was not specific as to the reasons the child did not want to go with Father, it is clear those reasons existed prior to the entry of the agreed order.

{¶ 8} Mother testified that she attempted to encourage the child to go to Father. She also testified that she grounded the child and took away her social media access as punishment for the child's failure to go with Father. However, the maternal grandmother's testimony belied Mother's claims that she would punish the child.

¹ The order does not contain such a provision.

{¶ 9} After the hearing, the magistrate found Mother in contempt and ordered her to serve 10 days in jail. The magistrate explicitly stated that Mother was not a credible witness. The order permitted Mother to purge the contempt by returning the child to Father's custody, abiding by the February 2023 agreed order, and paying costs and Father's attorney fees in the amount of \$500. Mother filed objections.

{¶ 10} On November 22, 2023, the trial court adopted and affirmed the decision of the magistrate. The trial court's judgment stated:

The Court believes that the Magistrate's finding of contempt in this matter was legal and appropriate. In some respects, however, the Court does not feel the Magistrate went far enough in analyzing [Mother's] actions in this matter. The court will explain as follows.

This matter was before the Court during 2022 and 2023 as the parties were contesting the custody of their daughter. A Guardian ad Litem had been appointed. Each party had retained counsel. The Guardian ad Litem had issued a final report recommending custody to [Father]. The matter was set for a final hearing on January 17, 2023. At the final hearing, the parties prepared a handwritten Agreed Temporary Order signed by all parties and counsel, which named [Father] as the residential parent and legal custodian. * * * Thereafter, counsel presented an Agreed Judgment Entry on February 7, 2023, reflecting the terms of the January 17, 2023 entry.

* * *

On March 3, 2023, [Father] filed an “Ex Parte Motion to Suspend Mother’s Parenting Time; Motion for Police Assistance; Motion to Show Cause; Motion for Attorney Fees.” The Court did not grant ex parte relief and the matter was set for proceedings before the Magistrate.

A hearing was ultimately held on July 6, 2023, at which time all parties agree that [the child] was still in the physical custody of [Mother]. Further, [the child] had not even visited with [Father] at any point since the custody agreement was made in January 2023. The Court hesitates to even use the word “visited” as [Father] was legally the residential parent throughout the entire period.

[Mother], through counsel, has set forth two objections to the contempt finding: 1) The prima facie contempt was against the manifest weight of the evidence, thus the Magistrate’s decision should be rejected, and 2) There was not a clear court order that Mother violated, as such Mother should not have been found in contempt and the Magistrate’s decision should be rejected.

In the hearing, [Mother] made two general arguments in her defense. First, she argued that the child did not want to go with her father, and in fact was afraid of being in his household. Because of this, the child simply refused to go with her father. [Mother] argued that she did everything she could to enforce the Court Orders, and in fact the child was punished when she did not do as told. Second, [Mother] argued that – technically- [Father]

never showed to pick up [the child] as required by Court Orders. [Mother's] counsel picks up on this testimony by arguing there was no specific Court Order that was violated.

* * *

There is plenty of case law on this issue of contempt in a visitation scenario. But that case law is almost always based upon a situation in which a custodial parent is denying parenting time to a noncustodial parent. The Court feels that case law is relevant, but this case goes far beyond those cases. In this case, [Mother] voluntarily entered into a Court Order giving custody to [Father]. It is obvious from the transcript that [Mother] did not want to surrender custody, but she did. So when [Father] did not receive physical custody of [the child], it was not technically a parenting time issue. [Father] was denied the custody to which [Mother] voluntarily agreed.

The Court does not believe it is a valid argument for [Mother] to say [the child] was reluctant (or afraid, or anything else) to go with her father. [Mother's] agreement before the Court on January 17, 2023, presumes her stipulation that it is in [the child's] best interests to live with her father.

The Court further rejects the idea that there is no Court Order that was violated. [Mother's] counsel is making a hyper-technical argument in the Court's opinion. If a party enters into a custody order, it is presumed that the order will be executed. In retrospect, [Father] probably wishes

language was included describing specifically how the custody would be transferred. But given the record, the Court is not confident that would have helped. The record establishes to the Court's satisfaction that [Mother] had no intention of honoring the custody agreement she made before the Court. The Court sees this as a matter of common sense as much as anything. * * *

* * *

The Agreed Temporary Order of January 17, 2023, gave custody to [Father]. [Mother] signed the Order. [Father] attempted but failed to get physical custody of the child.

The formal Agreed Judgment Entry was filed February 7, 2023. [Father] continued to try and failed.

If somehow [Mother] did not realize that [Father] wanted the child, it should have been painfully obvious when [Father] filed new paperwork asking for Court assistance in getting physical custody of the child. And yet still [the child] remained with [Mother] for three more months until the July hearing.

The record clearly shows that [Father] tried to get physical custody of [the child] on many occasions, in multiple places, and attempted to enlist the help of law enforcement and [the child's] school. [Mother's] actions, in their entirety, showed a lack of respect and reverence not only for the Court's Orders, but also complete disrespect for the Court process. The

Court oversaw a lengthy period of litigation as to the custody of [the child]. That litigation ended on February 7, 2023. Yet litigation has now continued on for several more months just to get to the same point everyone was back in February. The Court has held new hearings, appointed new counsel, ordered transcript, etc. *That* is contempt of and for the court.

Judgment Entry p. 4-6.

{¶ 11} Mother appeals.

II. Contempt

{¶ 12} The sole assignment of error asserted by Mother states:

THE TRIAL COURT ERRED WHEN [IT] FOUND THE APPELLANT IN CONTEMPT OF THE PARENTING ORDER ISSUED IN FEBRUARY OF 2023 AS SHE DID NOT ACTUALLY OBSTRUCT OR DISOBEY THE MUTUALLY AGREED UPON ORDER

{¶ 13} Mother contends the record does not demonstrate that Father met his burden of demonstrating, by clear and convincing evidence, that she violated the February 2023 order.

{¶ 14} Courts have certain inherent powers to ensure “the orderly and efficient exercise of justice * * *.” (Citations omitted). *Zakany v. Zakany*, 9 Ohio St.3d 192, 194, 459 N.E.2d 870 (1984). These powers include “the authority to punish the disobedience of the court's orders with contempt proceedings.” (Citations omitted.) *Id.*

{¶ 15} “Civil contempt is a remedy whereby an aggrieved party to a lawsuit can

enforce a civil remedy and thereby protect its rights. * * * A finding of civil contempt requires clear and convincing evidence that the alleged contemnor has failed to comply with the court's prior orders. * * * In order to be clear and convincing, evidence must leave the trier of fact with the firm conviction or belief that the allegations involved are true.” (Citations omitted.) *Moraine v. Steger Motors, Inc.*, 111 Ohio App.3d 265, 268, 675 N.E.2d 1345 (2d Dist.1996), citing *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954).

{¶ 16} “A prima facie case of civil contempt is made when the moving party proves both the existence of a court order and the nonmoving party's noncompliance with the terms of that order.” (Citations omitted.) *Wolf v. Wolf*, 1st Dist. Hamilton No. C-090587, 2010-Ohio-2762, ¶ 4; *Hoagland v. Hoagland*, 2d Dist. Miami No. 2014-CA-30, 2015-Ohio-2426, ¶ 6. “The burden then shifts to the nonmoving party to establish a defense for its noncompliance.” *Wolf* at ¶ 4.

{¶ 17} A trial court's order in a contempt case is reviewed for an abuse of discretion. *State v. Chavez–Juarez*, 185 Ohio App.3d 189, 2009-Ohio-6130, 923 N.E.2d 670, ¶ 56 (2d Dist.). An abuse of discretion occurs when a trial court's decision is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). “It is to be expected that most instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary.” *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990). Decisions are unreasonable if no sound reasoning supports the decision. *Id.*

{¶ 18} The trial court, as the trier of fact, “is in the best position to determine a

witness's credibility through its observation of his or her demeanor, gestures, and voice inflections.” *State v. Clark*, 8th Dist. Cuyahoga No. 94050, 2010-Ohio-4354, ¶ 17. Thus, “[t]he decision whether, and to what extent, to credit the testimony of particular witnesses is within the peculiar competence of the factfinder, who has seen and heard the witness.” *State v. Lawson*, 2d Dist. Montgomery No. 16288, 1997 WL 476684, *4 (Aug. 22, 1997). “Further, “[a] trier of fact is free to believe all, part or none of the testimony of each witness.” *State v. Hartman*, 2016-Ohio-2883, 64 N.E.3d 519, ¶ 42 (2d Dist.), quoting *State v. Lewis*, 4th Dist. Scioto No. 01CA2787, 2002 WL 368625, * 3 (Feb. 25, 2002), citing *State v. Long*, 127 Ohio App.3d 328, 335, 713 N.E.2d 1 (4th Dist.1998). Therefore, “[t]his court will not substitute its judgment for that of the trier of fact on the issue of witness credibility unless it is patently apparent that the factfinder lost its way.” *State v. Bradley*, 2d Dist. Champaign No. 1997-CA-3, 1997 WL 691510, *4 (Oct. 24, 1997).

{¶ 19} We initially note that a parent may have a defense to a contempt motion for interference with parenting time if she has a reasonable, good faith belief that denial of parenting time is necessary to protect the child. *Thompson v. Thompson*, 12th Dist. Clinton No. CA2022-05-014, 2023-Ohio-667, ¶ 57. However, there is nothing in this record to support a finding that the child’s safety was threatened by Father. Mother did not report any alleged incidents to the police or court, nor did she file any motions seeking a change in custody and visitation. Further, she admitted her concerns were related to issues that occurred prior to the entry of the February 2023 agreed order granting Father custody.

{¶ 20} From our review of the record, Father has been denied his custodial right to the child. It is undisputed that Father repeatedly attempted to take custody of the child. Mother claims she had the child ready for the exchanges, but the exchanges did not occur because the child refused to go with Father. However, Mother’s own testimony demonstrated that she had failed to facilitate many of the exchanges simply because she believed she was only required to do so when Father came to the maternal grandparents’ residence. As noted by the trial court, this defies common sense.

{¶ 21} The trial court did not find Mother’s explanations either credible or sufficient to demonstrate that she had not violated the February 7, 2023 agreed order. Upon review, we cannot conclude the trial court erred in finding Mother’s arguments unpersuasive. Therefore, we cannot conclude the trial court abused its discretion in finding Mother in contempt of court.

{¶ 22} Accordingly, the sole assignment of error is overruled.

III. Conclusion

{¶ 23} Mother’s sole assignment of error being overruled, the judgment of the trial court is affirmed.

.....

EPLEY, P.J. and HUFFMAN, J., concur.