

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE: E.M.D.	:	
	:	No. 108164
A Minor Child	:	
	:	
[Appeal by K.D., Father]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: November 14, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. PR 13711690

Appearances:

K.D., *pro se*.

A.H., *pro se*.

LARRY A. JONES, SR., P.J.:

{¶ 1} This case was initiated in 2013, when appellant-father K.D. (“Father”) filed an application to establish paternity, a motion for custody or shared parenting, and a mutual restraining order in the Cuyahoga County Juvenile Court. The subject child of the case is E.M.D., who was born in April 2013. Father’s paternity was established, and over the years Father and A.H. (“Mother”) have engaged in contentious litigation over E.M.D. The judgment at issue in this appeal is the trial

court's December 27, 2018 judgment overruling Father's objections to the magistrate's December 11, 2018 decision and affirming, approving, and adopting the magistrate's decision. For the reasons that follow, we affirm.

{¶ 2} During the course of these proceedings, Mother was designated as the residential parent and legal custodian of the child and Father was granted parenting time. The trial court ordered that parenting time would change as E.M.D. aged; that is, in relevant part, (1) until the age of two, Father was granted, time "every Wednesday from 5:00 p.m. until 7:00 p.m."; (2) from age two to three, both parents were granted two weeks' vacation time with the child; (3) from age three and above, Father was granted parenting time every other weekend; and (4) beginning at age six, both parents were granted four weeks of vacation time with the child.

{¶ 3} Relevant to this appeal, Father challenged his Wednesday parenting time. Specifically, he believed that his Wednesday time should have included overnight visits as E.M.D. got older. Mother was not allowing overnight visitations on Wednesdays, and Father filed a motion for the court to hold her in contempt. A hearing before the magistrate was held on Father's motion. The magistrate told Father at the hearing that the trial court's judgment, as written, did not include overnight visitations on Wednesdays, but that if Father believed that was the agreement of the parties, or something that should be included, he should file a motion to modify the trial court's order.

{¶ 4} A review of the record shows that Father generally believed Mother was "winning" in these proceedings, he was being treated unfairly, and he wanted

Mother punished for what he felt was her bad behavior. The magistrate explained that, because the trial court did not order overnight Wednesday visitations, she could not find Mother in contempt for not allowing overnight Wednesday visitations. Although the magistrate did not find that Mother violated the court's order, the magistrate ordered that going forward Father "shall have overnight visitation with [the child] on Wednesdays * * *." The magistrate ordered that the exchange of the child take place at the Strongsville Police Department. Father filed written objections to the magistrate's decision, and the trial court affirmed, approved, and adopted the magistrate's decision. Father now challenges the trial court's judgment.¹

{¶ 5} "The purpose of contempt proceedings is to secure the dignity of the courts and the uninterrupted and unimpeded administration of justice." *Windham Bank v. Tomaszczyk*, 27 Ohio St.2d 55, 271 N.E.2d 815 (1971), paragraph two of the syllabus. There are two types of contempt: criminal contempt and civil contempt. Sanctions in a case of civil contempt are to coerce the contemnor in order to obtain compliance with the lawful orders of the court. *Id.* at paragraph three of the syllabus. The purpose of sanctions in a case of criminal contempt is to punish. *Brown v. Executive 200, Inc.*, 64 Ohio St.2d 250, 253, 416 N.E.2d 610 (1980).

{¶ 6} Our standard of reviewing a court's judgment in a civil contempt proceeding is the abuse-of-discretion standard. *State ex rel. Celebrezze v. Gibbs*, 60

¹We only consider the judgment appealed from. Other arguments presented by Father are not properly before us now for consideration. Father's assignments of error are set forth in the appendix to this opinion.

Ohio St.3d 69, 75, 573 N.E.2d 62 (1991). An abuse of discretion implies the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). Generally, appellate courts do not substitute their judgment for that of the trial court and do not impose punishment for the violation of a court order when the court that issued the original order finds a legitimate excuse. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621, 614 N.E.2d 748 (1993). Moreover, to show that a party is guilty of contempt of a prior court order, "it is necessary to establish a valid court order, knowledge of the order, and violation of it." *Arthur Young & Co. v. Kelly*, 68 Ohio App.3d 287, 295, 588 N.E.2d 233 (10th Dist.1990).

{¶ 7} Here, the magistrate declined to hold Mother in contempt because the trial court's order did not make it clear that the Wednesday visitation would graduate to overnight visits, and the trial court agreed with the magistrate. We agree as well. The trial court's order does not specify that the Wednesday visits would at some point turn into overnight visits. It may very well be that the parties contemplated that arrangement, but the court did not make that a term of its judgment, and the court speaks through its judgment entries. *Kaine v. Marion Prison Warden*, 88 Ohio St.3d 454, 455, 727 N.E.2d 907 (2000). There was no violation here because the arrangement that Father complains of, which Mother does not follow, was never an order of the trial court.

{¶ 8} In regard to the court's order changing the exchange location of the child from the Independence Police Department to the Strongsville Police Department, the magistrate explained the need for the change:

[T]o the extent that dad doesn't take [E.M.D.] to school, [the exchange] should be at the Strongsville Police Station, which is what your [civil protection order ("CPO")] by the other Court [orders]. When it started, [the trial court judge] specifically ordered Independence because [she] thought that was [what the CPO] required * * *. She did not specifically modify the CPO because she didn't know about it at that time, but the CPO as to pick-up and drop-off should take precedence and that orders Strongsville.

{¶ 9} Other than stating that the trial court was biased and prejudiced against him for changing the exchange location, Father offers no evidence of error or abuse of discretion. We find none — the court was merely ensuring that its order was compliant with the CPO from another court to which the parties were bound.

{¶ 10} In light of the above, the trial court's judgment overruling Father's objections to the magistrate's decision and affirming, approving, and adopting the decision is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue of this court directing the common pleas court, juvenile division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27
of the Rules of Appellate Procedure.

LARRY A. JONES, SR., PRESIDING JUDGE

MICHELLE J. SHEEHAN, J., and
RAYMOND C. HEADEN, J., CONCUR

APPENDIX

Father's Assignments of Error

1. The Court erred not putting mother in Contempt over Wednesday Visitation time with father and daughter. It's VERY CLEAR on the Judge's Court order signed on August 10, 2015 about Wednesday Visit's [sic] with Father. Page 6, under **Age three to age six:** (2) Every Wednesday from 5:00 p.m. through Thursday at the start of the school or daycare, or if school/daycare in not in session then 9:00 a.m. Father lost 10 months of visitation time.
2. The Court erred when the Magistrate said it's unclear about [the trial judge's] order. [The] Magistrate * * * says it's unclear, but then * * * on December 31, 2018 * * * states on her order; In the court order signed on August 10, 2015 by [the trial court judge], the parties are to notify the other party of the planned vacation time by May 1. The Father failed to comply with that order, and did not notify the Mother until September. Now the Magistrate thinks that the [trial court judge's] order is clear? Page 5, (3) May 1, right above it talks about Wednesday visits. Magistrate is now contradicting herself.
3. The Court Erred by saying Strongsville police station is the pick up location. [The trial court judge's] court order on August 10, 2015 * * * Page 7 it states; IT IS FURTHER OREDERED, ADJUDGED AND DECREED that the parties shall exchange at the Independence Police Station until further order of the court.
4. The Court erred and [is] being Bias about May 1 vacation time. May 2, 2017 transcript * * * shows on **Page 27** through **30** on the Magistrate saying you don't have to tell the parent by May 1. ??? Then the Magistrate just Decided to take father[s] vacation time away to punish him and the child. Magistrate clearly shows on the transcript **page 29** bottom to page **30** quotes; So just because she told you the one week, she didn't tell you the rest of time because she doesn't know, doesn't mean she doesn't get to exercise her time. Magistrate says mother will not lose her time but father will lose his time. That's bias and prejudice by letting one person follow the court order and the other person doesn't have to follow the court order.
5. The Court erred on May 2, 2017 transcript * * * on page 47 the Magistrate Quoted; **So I don't have to see Our Family Wizard. You won.** Magistrate says I won but then **19 MONTHS LATER**, comes out with a decision saying he failed to state a claim. You need a trial to state a claim.
6. The Court erred by not allowing Father K.D. his rights to go forward with his trial, Exhibits and call his witnesses to the stand. I objected in open court that I wasn't allowed * * * Due Process.

7. The Court Erred saying that mother wasn't in Contempt for not allowing Father to have Father's Day. It is Very Clear On the Court Order about Father's day.

(Emphasis, capitalization, and punctuation sic; parenthetical references to exhibits deleted for ease of reading; references by name of trial court judge and magistrate deleted.)