

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Yahya Hamed,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 09AP-1020
	:	(C.P.C. No. 07DR-11-4491)
Toni Delmatto,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 3, 2010

Eric J. Hoffman, for appellee.

George C. Georgeff, for appellant.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations

TYACK, P.J.

{¶1} Toni Delmatto is appealing from the finding of the Franklin County Court of Common Pleas, Division of Domestic Relations, that she was in contempt of court for failing to provide court ordered parenting time to her ex-husband, Yahya Hamed. She assigns a single error for our consideration:

THE TRIAL COURT ABUSED ITS DISCRETION IN FINDING DEFENDANT APPELLANT DELMATTO IN CONTEMPT BEFORE ANY ATTEMPT WAS MADE TO IMPLEMENT THE REQUIREMENTS OF LOCAL DOMESTIC COURT RULE 27.

{¶2} The basic facts are not in dispute. Yahya Hamed was entitled to spend time with his young son Zachery on alternate weekends from 6:00 p.m. on Friday until 6:00 p.m. on Sunday. Yahya Hamed was also entitled to spend three hours with his son on Wednesday evenings.

{¶3} The divorce between the parties was finalized on July 2, 2009. Eight days later, Yahya Hamed arrived at his ex-wife's house approximately 10 minutes before the commencement of his parenting time. Neither his ex-wife nor his son were there.

{¶4} Yahya Hamed waited approximately 25 minutes for his ex-wife to come home. When she had not done so, he went to the local police station to make a report. After signing a police report, he went looking for his ex-wife and child. He found her in her car in her mother's driveway.

{¶5} When Toni Delmatto saw her ex-husband, she did not communicate with him either via texting him or by direct oral communication. Instead, she fled at a high rate of speed. He found her at her home, but she was not accompanied by their son.

{¶6} Instead of communicating with her ex-husband about his time with their son, Toni Delmatto called the local police and claimed that Yahya Hamed was in violation of a civil protection order. As a result, Yahya Hamed was arrested and he was provided no parenting time.

{¶7} The following Wednesday, Yahya Hamed sent his brother to his ex-wife's house to pick up the child for Yahya's three hours of time the court had ordered. Neither Toni Delmatto nor the child were present at the scheduled pick-up time and place.

{¶8} As a result of these two incidents within two weeks of the divorce becoming final, Yahya Hamed filed a motion asking that his ex-wife be found to have been in contempt of court.

{¶9} Contempt may be defined, in general terms, as disobedience of a court order. *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 554, 2001-Ohio-15. Civil contempt is characterized as a violation against the party for whose benefit the order was made, and sanctions for civil contempt are designed to compel obedience with the court order. *Id.* at 555. Contempt proceedings in domestic relations matters tend to be civil in nature because their purpose is to coerce or encourage future compliance with the court's orders. *Williamson v. Cooke*, 10th Dist. No. 09AP-222, 2009-Ohio-6842; *Fidler v. Fidler*, 10th Dist. No. 08AP-284, 2008-Ohio-4688, ¶11. The failure to abide by a shared parenting plan is a basis for civil contempt.

{¶10} When reviewing a finding of contempt, an appellate court applies an abuse of discretion standard. *Id.* at ¶12. An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. An abuse of discretion demonstrates "perversity of will, passion, prejudice, partiality, or moral delinquency." *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. When applying the abuse of discretion standard, this court may not substitute its judgment for that of the trial court. *Id.*

{¶11} Toni Delmatto did not deny that she failed to have the child available at the scheduled place and time on either occasion. She did not deny that her actions deprived her ex-husband of the time with their child which the court had ordered. Instead, she

argued that she was afraid of her ex-husband so she attempted to avoid having contact with him on both days. Her fear, however well founded, does not excuse her from abiding by court orders. The trial court was well within its discretion to find her in contempt of court.

{¶12} Counsel for Toni Delmatto argues that certain interpretations of Loc.R. 27 involving parenting time bar a contempt finding in this case. Counsel's interpretation of the rule does not excuse his client's failure to abide by the court order.

{¶13} Specifically, Loc.R. 27 provides at paragraph 14:

Make-Up Parenting time: Any make-up parenting time required by this schedule shall occur the first weekend of the other parent immediately following the missed parenting time and shall continue during the other parent's weekends until made up in full, including partial weekends.

{¶14} Paragraph 13 seems to primarily address parenting time lost as a result of a child's illness. Paragraph 13 reads:

Illness: If a child is ill, the residential parent should give 24 hour notice, if possible, so appropriate plans can be made. However, if any parenting time, weekend, holiday/birthday, or vacation is missed due to non-emergency and/or critical illness, then any missed parenting time shall be made up as provided in paragraph 14.

Loc.R. 27 does not otherwise mandate make-up time.

{¶15} Counsel for Toni Delmatto also argues that paragraph 11 of Loc.R. 27 somehow excuses his client's conduct. Paragraph 11 reads:

Waiting: Neither parent shall be more than 30 minutes late picking up the children. If the non-residential parent has not arrived to pick up the children within the 30 minute period, parenting time is forfeited and shall not be made up.

{¶16} Paragraph 11 addresses situations where the non-residential parent leaves an ex-spouse and child waiting more than 30 minutes for the non-residential parent to arrive to pick up the child. Paragraph 11 does not give the residential parent the right to avoid having the child ready for pick-up at the appointed place and time.

{¶17} The trial court was well within its discretion to find that Toni Delmatto did not demonstrate a valid affirmative defense to the claim that she was in contempt of court.

{¶18} Counsel for Yahya Hamed has filed a motion asking that attorney fees be awarded to offset the costs of his client defending the trial court's order on appeal. A court has discretion to award attorney fees as part of costs taxable to a party found in contempt. *State ex rel. Fraternal Order of Police v. Dayton* (1977), 49 Ohio St.2d 219, syllabus. We do not find that the arguments of counsel on behalf of Toni Delmatto are so devoid of merit as to cause additional attorney fees to be awarded.

{¶19} As a result of the foregoing, we overrule the sole assignment of error and we overrule the motion for additional attorney fees.

{¶20} The judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is affirmed.

*Motion for additional attorney
fees denied. Judgment affirmed.*

BRYANT and FRENCH, JJ., concur.
