[Cite as *Sumerford v. Sumerford*, 2012-Ohio-1842.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Rachel Sumerford (nka Tjaden),	:	
Plaintiff-Appellant,	:	
v.	:	Nos. 11AP-29 and 11AP-358
Michael Sumerford,	:	(C.P.C. No. 07JU-01-809)
Defendant-Appellee.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on April 26, 2012

Hillard M. Abroms, for appellant.

Tyack, Blackmore, Liston & Nigh Co., LPA, Margaret L. Blackmore, and *Siobhan R. Boyd*, for appellee.

APPEALS from the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch

CONNOR, J.

{¶ 1} Plaintiff-appellant, Rachel Sumerford (nka Tjaden) ("appellant" or "Rachel"), appeals from two judgments of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, finding appellant in contempt of court for violations involving defendant-appellee, Michael Sumerford's ("appellee" or "Michael"), parenting time originally established pursuant to a foreign divorce decree in the state of Oklahoma. Appellant contends the trial court lacked jurisdiction to make such a finding because the Oklahoma court did not relinquish jurisdiction. For the reasons that follow, we find the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch properly exercised jurisdiction, and we affirm the judgments of that court.

I. Facts and Procedural Background

{¶ 2} Rachel and Michael were married on October 25, 1997. During the marriage, two children were born, both of whom are currently minors. The parties were divorced by a decree of divorce filed on March 4, 2002, in LeFlore County, Oklahoma. Rachel was granted custody of the two children and Michael was granted standard visitation rights. At the time of the divorce, Rachel and the two minor children were living in Oklahoma. At or following the time of the divorce, Michael relocated to Louisiana. In early 2005, Rachel remarried and, with the two minor children, relocated to Franklin County, Ohio, where they continue to reside.

{¶ 3} In April 2006, Rachel's husband filed a step-parent adoption petition in the probate court in Franklin County on the grounds that Michael had failed to support the minor children for the preceding twelve months and, therefore, his consent to the adoption was not required. While the step-parent adoption petition was pending, Michael filed a request for registration of the out-of-state Oklahoma divorce decree on January 18, 2007. On March 8, 2007, Rachel filed a motion to dismiss the registration of the out-of-state decree or, in the alternative, to stay the proceedings pending resolution of the adoption petition. Rachel also asserted the registration was faulty. On May 2, 2007, the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, issued an order confirming the request to register the foreign order and asserting jurisdiction over the orders of parental rights and responsibilities issued by the Oklahoma court as it pertains to the two minor children. However, the juvenile court declined to proceed further until the probate court issued a final order.

{¶ 4} In the interim, on February 23, 2007, the probate court determined Michael had unjustifiably failed to support the two minor children and, thus, his consent to the adoption was not required. However, the probate court subsequently found the adoption was not in the best interest of the children and, thus, the adoption petition was denied on July 27, 2010.[1]

[1] We affirmed the judgment of the Franklin County Court of Common Pleas, Probate Division, on February 11, 2011. *See In re: B.M.S.*, 192 Ohio App.3d 394, 2011-Ohio-714 (10th Dist.). The Supreme Court of Ohio declined jurisdiction to hear the case and dismissed the appeal on June 8, 2011. *See In re: B.M.S.*, 128 Ohio St.3d 1516, 2011-Ohio-2686.

{¶ 5} Following the probate court's dismissal of the adoption petition, Michael sought to exercise his parenting time pursuant to the Oklahoma divorce decree. On August 9, 2010, Michael filed a motion for contempt, asserting Rachel refused to comply with previous orders regarding parenting time and telephone communication. On August 20, 2010, the domestic court filed an "interim order" establishing parenting time for Michael for the weekend of August 20 through August 22, 2010. The order, which stated it was "[b]y agreement of the parties," was signed by the trial judge, but not by either party or counsel. Also, on August 20, 2010, Michael filed a parenting proceeding affidavit pursuant to R.C. 3127.23(A).

{¶ 6} On August 23, 2010, Michael filed a motion for modification of the parenting time schedule. On September 1, 2010, the trial court filed an entry ordering the minor children to attend reunification/reintegration counseling with their father, along with an entry ordering both parents and the children to undergo psychological evaluations. On September 28, 2010, Michael filed a second motion for contempt, asserting he had attempted to exercise his visitation rights since the last hearing, but Rachel denied the visitation. A contempt hearing was scheduled for October 4, 2010.

{¶ 7} On October 4, 2010, Rachel filed a motion to supplement the record with the July 24, 2008 order of the LeFlore County, Oklahoma court, in which that judge stated neither the parties nor an Ohio judge or an Ohio attorney had ever requested the Oklahoma court relinquish jurisdiction to Ohio or requested that the file be transferred to Ohio. The Oklahoma court declared that the Franklin County court's registration order declaring the LeFlore County court had relinquished jurisdiction was inaccurate. The motion to supplement the record was denied on October 4, 2010. Appellant then filed an amended motion to supplement the record on October 13, 2010. Again, the request to supplement the record was denied.[2] Subsequently, on December 9, 2010, Michael filed another motion for contempt against Rachel, alleging additional violations of parenting time and her failure to comply with court orders regarding making the children available for court-ordered appointments.

[2] On appeal, this court permitted appellant to supplement the record on March 15, 2011 with the July 24, 2008 entry from the Oklahoma court.

{¶ 8} On December 10, 2010, the Franklin County juvenile court ruled on Michael's August 9 and September 28, 2010 motions for contempt. The court denied the August 9, 2010 motion for contempt, which addressed missed parenting time from January 2007 to early August 2010, finding Michael had failed to meet the required clear and convincing standard of proof to establish Rachel had withheld parenting time during the applicable time period. However, the trial court granted Michael's September 28, 2010 motion for contempt for Rachel's failure to allow parenting time for the time period after August 9, 2010, specifically finding, inter alia, that Rachel violated the parenting time orders with respect to the weekend of August 20, 21, and 22, 2010.

{¶ 9} On December 21, 2010, Rachel filed her own motion for contempt. On March 10, 2011, the juvenile court issued a decision on Michael's December 9, 2010 motion for contempt, and Rachel's December 21, 2010 motion for contempt. The trial court granted Michael's December 9, 2010 motion, finding Rachel violated the parenting time orders with respect to the weekend of December 4 and 5, 2010, and also violated the court's orders with respect to making the children available for a court-ordered appointment. The trial court denied Rachel's December 21, 2010 motion for contempt, finding appellant failed to present evidence in support of her motion.[3]

{¶ 10} This timely appeal now follows and appellant raises the following two assignments of error for our review:

> [I.] Whether the Trial Court had jurisdiction to make a finding of Contempt.
>
> [II.] Whether there was judicial misconduct or interference relative to the Trial Court's confirmation order of 2007 and its multiple refusals to Supplement the Record.

II. First Assignment of Error—Jurisdiction

{¶ 11} In her first assignment of error, appellant challenges the jurisdiction of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, arguing that court is without jurisdiction to find appellant in contempt of court

[3] At an oral hearing held on February 7, 2011, counsel for appellant appeared to agree to withdraw her motion for contempt and for attorney fees, but the trial court formally denied both in its March 10, 2011 decision and entry.

for failing to comply with the applicable parenting time provisions because the Oklahoma court having original jurisdiction has not relinquished its jurisdiction.

{¶ 12} Appellant makes numerous arguments in support of this challenge, claiming: (1) appellee's failure to attach a custody affidavit to the request for registration of the foreign decree was a fatal error, thereby making the registration confirmation invalid; (2) the trial court's failure to officially lift the stay imposed during the time period when the probate court was considering the adoption petition means the juvenile court's refusal to exercise jurisdiction remains undeclared; (3) even if the registration of the foreign decree was valid, the juvenile court only possessed jurisdiction to enforce the Oklahoma decree, and it did not have jurisdiction to modify the decree, since the Oklahoma court never relinquished jurisdiction; (4) the trial court's failure to comply with R.C. 3127.01 et. seq., particularly R.C. 3127.09, constitutes partiality and overreaching; and (5) the February 7, 2011 entry, in which the trial court explicitly stated that it "accepts jurisdiction over the matter, in its entirety," nullified the prior confirmation of the registration of the foreign decree, thereby establishing the presumption that said confirmation was in fact invalid.

A. The Custody Affidavit

{¶ 13} We begin our analysis by determining whether appellee's failure to attach a custody affidavit pursuant to R.C. 3127.23 was fatal, thereby rendering the registration confirmation invalid. We find that it was not.

{¶ 14} "The requirement in R.C. 3109.27 that a parent bringing an action for custody inform the court at the outset of the proceedings of any knowledge he has of custody proceedings pending in other jurisdictions is a mandatory jurisdictional requirement of such an action." *Pasqualone v. Pasqualone,* 63 Ohio St.2d 96 (1980), paragraph one of the syllabus.[4] However, it is well-settled that the requirement of filing the affidavit in the party's initial pleading has been relaxed to allow an amended pleading or a subsequent filing to include the affidavit information. *In re Complaint for Writ of Habeas Corpus for Goeller*, 103 Ohio St.3d 427, 2004-Ohio-5579, ¶ 11; *In re Porter*, 113 Ohio App.3d 580, 584 (3d Dist.1996). The initial failure to comply with R.C. 3109.27 (now R.C. 3127.23) bears upon the juvenile court's authority to exercise jurisdiction,

[4] In 2005, R.C. 3109.27 was renumbered as R.C. 3127.23.

rather than upon its subject-matter jurisdiction. *Goeller* at ¶ 13, citing *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980. In the case of *In re Palmer*, 12 Ohio St.3d 194, 196 (1984), the Supreme Court of Ohio relaxed some of the strict jurisdictional requirements, and since then, several courts have declined to strictly apply the jurisdictional requirement of R.C. 3109.27 (now R.C. 3127.23). *Mendiola v. Mendiola*, 11th Dist. No. 2006-P-0038, 2007-Ohio-466, ¶ 54-57. *See also Dole v. Dole*, 5th Dist. No. 10CA013, 2011-Ohio-1314, ¶ 9, citing *Goeller* at ¶ 9-11 (the requirement that the affidavit must be filed in the first pleading has been relaxed to allow amended pleadings or subsequent filings to include the required affidavit).

{¶ 15} Here, Michael failed to file the custody affidavit at the time he made his initial filing. The trial court, recognizing this, stated appellee could easily correct the problem by filing supplemental documentation. The trial court issued a confirmation order but then declined to proceed further. Appellee subsequently filed the custody affidavit after the probate court issued its ruling denying the adoption petition.

{¶ 16} Additionally, it is apparent that, even outside of the information provided in the subsequent custody affidavit, the statutory requirements have been substantially satisfied and no prejudice has resulted. R.C. 3127.23, which sets forth the information to be provided in the custody affidavit, requires information such as: the child's present address; the places where the child has lived during the last five years; the name and address of each person with whom the child has lived during that period; whether the party has participated in any other proceeding concerning the allocation of parental rights and responsibilities for the child; whether the party knows of any proceedings that could affect the current proceeding; and whether the party knows of any other person who is not a party to the proceeding and who has physical custody of the child. All of that information is present in the record here. Here, the trial court was well aware of where and with whom the children have been living and of the fact that an adoption petition was/had been pending in the Franklin County Probate Court.

{¶ 17} Accordingly, we reject appellant's argument that appellee's failure to file the custody affidavit with the initial filing was fatal.

B. Lifting the Stay

{¶ 18} Next, appellant seems to argue that, because the trial court failed to put on an entry expressly lifting the stay that had been imposed while the adoption matter was pending in the probate court, the stay was never lifted, the trial court never formally declared its intention to exercise jurisdiction, and consequently, the trial court could not and cannot exercise jurisdiction. We disagree.

{¶ 19} Within the language contained in its May 2, 2007 filing titled "Order of Confirmation Request to Register Foreign Order," the trial court found as follows:

> While this Court is cognizant of the fact that the [appellee] has filed an appeal of the initial order of the probate court and that the adoption is not final until the final order has been entered, the Court declines to intervene where to do so may impact the outcome of the ongoing litigation in the probate proceeding. The facts to this point are what they are, to attempt to create new facts while the appeal is pending would not be fair to the minor children or to either party. For these reasons, the Court declines to proceed further in this matter until a final order is issued by the probate court.

(R. 35 at 5.)

{¶ 20} The trial court reiterated this position in its September 8, 2008 "Decision on Defendant's Motion to Suspend Child Support" when it noted within its decision that: there were proceedings pending in the probate court involving the children at issue; the adoption matter should be finalized first; and "this Court refuses to exercise jurisdiction in this case and will take no further action until the final order from the Franklin County Probate Court has been entered." (R. 57 at 2.)

{¶ 21} Both filings by the trial court indicate that the juvenile court will take no further action until a final order is entered by the probate court. From this language, it is apparent that once such an order has been filed, the juvenile court intends to proceed with the matters before it. The probate court issued its final order on July 27, 2010, and it was not until after that date, on August 20, 2010, that the juvenile court issued its interim order setting forth parenting time. We fail to see the merit in appellant's argument that a formal or express lifting of the juvenile court stay is required here, particularly given the fact that no separate, formal order expressly issuing a stay was ever filed here. The language contained in the May 2, 2007 order and in the September 8, 2008 decision of

the juvenile court more than adequately conveys the trial court's intent to proceed with the matter before it, once the probate court has issued a final order. Nothing more is needed.

C. Jurisdiction to Enforce and Modify the Oklahoma Decree

{¶ 22} Appellant also contends that even if the registration of the foreign Oklahoma order was valid, the Franklin County court was without the authority to modify the custody determination via the interim order on August 20, 2010. Instead, appellant argues the Franklin County court only had the authority to enforce the Oklahoma order as originally established because the Oklahoma court had not yet relinquished jurisdiction. Again, we disagree.

{¶ 23} "The procedure for determining when an Ohio court may modify a child custody determination made by a court of another state is set forth in the Uniform Child Custody Jurisdiction and Enforcement Act, codified in Ohio in R.C. Chapter 3127." *Bonds v. Bonds*, 11th Dist. No. 2010-A-0063, 2011-Ohio-5867, ¶ 36. The jurisdiction to make an initial determination in a child custody proceeding and the requirements for modifying a child custody determination made in another state are set forth in R.C. 3127.15 and 3127.17, respectively. Pursuant to these statutes, "an Ohio court can modify an out-of-state custody determination if (1) it has jurisdiction to make an initial child-custody determination under R.C. 3127.15(A)(1) or (2), and (2) one of the two statutory factors specified in R.C. 3127.17 is applicable." *McGhan v. Vettel*, 122 Ohio St.3d 227, 2009-Ohio-2884, ¶ 23. "Because the components of jurisdiction under R.C. 3127.17 are stated in the conjunctive, an Ohio court lacks jurisdiction to modify an out-of-state custody determination if either the initial determination component or the requirements set forth in R.C. 3127.17(A)/(B) are absent." *Doba v. Doba*, 9th Dist. No. 24525, 2009-Ohio-4164, ¶ 9.

{¶ 24} Pursuant to R.C. 3127.15(A)(1), an Ohio court is authorized to make the initial determination if Ohio "is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state." R.C. 3127.01(B)(7) defines "home state" as "the state in which a child lived with a parent or a person acting as

a parent for at least six consecutive months immediately preceding the commencement of a child custody proceeding."

{¶ 25} It is undisputed that appellant has had custody of the children and has been continuously living in Ohio since April 2005, which is clearly more than six months prior to the date on which Michael filed the underlying proceeding on January 18, 2007. Therefore, Ohio is the "home state" for purposes of R.C. 3127.15(A)(1), as determined by the trial court, and consequently, the first part of the test for modifying an out-of-state custody determination has been met.

{¶ 26} As for the application of one of the statutory factors set forth in R.C. 3127.17, we find the factor set forth in R.C. 3127.17(B) has been satisfied. Pursuant to that provision, an Ohio court may *modify* a child custody determination made by a court of another state if either R.C. 3127.15(A)(1) or (2) have been met and if the Ohio court (or a court of another state) determines the child, the child's parents, and any person acting as a parent do not presently reside in the other state. Here, the Franklin County court specifically determined that Rachel and the two children have been residing in Franklin County, Ohio, since their departure from the state of Oklahoma, where the original decree was filed. The trial court also determined that Michael resided in Baton Rouge, Louisiana. Based upon these findings, it is clear the trial court concluded that neither the children nor either parent currently resided in the state of Oklahoma. Therefore, the second part of the test has also been satisfied.

{¶ 27} Appellant seems to advance the theory that the only avenue by which the Franklin County court could obtain jurisdiction in order to modify the Oklahoma decree is through the relinquishment of jurisdiction by the Oklahoma court. However, this theory is incorrect, based upon our analysis as set forth above.

{¶ 28} It is true that, pursuant to R.C. 3127.17(A), an Ohio court can modify a child custody determination made by another state if it meets the requirements of R.C. 3127.15 and if the court of the other state determines it no longer has exclusive, continuing jurisdiction or that an Ohio court would be a more convenient forum. Nevertheless, as evidenced by the language contained in the applicable statutes, that is not the exclusive means by which jurisdiction to modify the foreign decree can be obtained, and it is not necessary for the Oklahoma court to expressly relinquish jurisdiction here in order for the

Franklin County court to modify Michael's parenting time. The statutes clearly provide an alternative avenue (R.C. 3127.17(B)) by which Ohio can obtain jurisdiction and modify the Oklahoma order with respect to parenting time.

{¶ 29} Furthermore, appellant has cited to no authority which stands for the proposition that, without an express relinquishment of jurisdiction by the other court, an Ohio court can only enforce, rather than modify, custody determinations. To the contrary, the applicable statute and current case law expressly provide for modification. *See McGhan*; *Bonds* at ¶ 36-40; and R.C. 3127.17.

{¶ 30} For these reasons, we find the trial court had the authority to enforce and modify the foreign decree, despite any determination that Oklahoma had not relinquished jurisdiction.

D. Compliance with R.C. 3127.01 et seq.

{¶ 31} Appellant submits the trial court failed to comply with R.C. 3127.01 et seq., particularly R.C. 3127.09, 3127.15, 3127.17, and 3127.35. Specifically, appellant cites to R.C. 3127.09 and argues the parties were never given the opportunity to participate in the Franklin County court's communications with the Oklahoma court, nor were they provided with the mandatory opportunity to present facts and arguments prior to the court reaching a decision on jurisdiction. Appellant contends these are omissions which create "an atmosphere of partiality and personal overreaching." Appellant's brief, at 12.

{¶ 32} R.C. 3127.09, entitled "Communications between courts" governs communications between courts in different states regarding proceedings arising under R.C. 3127.01 to 3127.53. The statute provides that the court may give the parties the opportunity to participate in the communication, but it does not require such participation. *See* R.C. 3127.09(B). It further provides that if the parties are not able to participate in the communication, they shall be given the opportunity to present facts and legal arguments before a decision is made. R.C. 3127.09(B). The statute also provides that a record shall be made of this communication, except for matters concerning scheduling, calendars, and court records, and the parties shall be promptly informed of the communication and granted access to said record. R.C. 3127.09(C) and (D).

{¶ 33} As set forth above, R.C. 3127.09 permits an Ohio court to communicate with a foreign court regarding the registration of a foreign decree. Pursuant to R.C.

3127.09(B), the parties *may* be given the opportunity to participate in that communication, but such an opportunity is *not required*. Where the opportunity to participate is not provided, then the Ohio court *must* provide the parties with the opportunity to present facts and legal arguments. Here, assuming for the sake of argument that there was in fact a communication, appellant was provided with the opportunity to present facts and legal arguments via the filing of her March 8, 2007 "Motion to Dismiss the Faulty Registration of the Out-of-State Custody and Support Determination and in the Alternative For Stay of Proceedings." Appellee then had an opportunity to present his facts and legal arguments when he responded via his April 23, 2007 memorandum contra.

{¶ 34} We point out, however, that if the LeFlore County, Oklahoma order of July 24, 2008 is accurate, it would appear likely that no material communication ever took place between the two courts. In the entry, the Oklahoma court stated neither the parties, nor an Ohio judge or Ohio attorney had ever requested the Oklahoma court relinquish jurisdiction to Ohio or requested that the file be transferred to Ohio. Therefore, the fact that there appears to be no record of such a communication is of no consequence.

{¶ 35} Furthermore, such communication was clearly not necessary in order for the Franklin County court to assume jurisdiction in this matter, due to the availability of alternative methods for assuming jurisdiction.

E. Nullification of Prior Confirmation Via the February 7, 2011 Entry

{¶ 36} Finally, appellant asserts the trial court's February 7, 2011 entry, which states the Franklin County court "accepts jurisdiction over the matter, in its entirety" as a result of the Oklahoma court's relinquishment of its jurisdiction pursuant to an agreed entry, serves to imply that, prior to the filing of this entry, the Franklin County court did not have jurisdiction, since jurisdiction was accepted pursuant to the entry without qualification or restriction. By issuing the February 7, 2011 entry, appellant submits the Franklin County court nullified its prior confirmation of the registration of the foreign order, and consequently, it did not have jurisdiction over the matter prior to February 7, 2011, and therefore any prior orders should be held for naught.

{¶ 37} We disagree with appellant's interpretation of the February 7, 2011 entry. The Franklin County entry, which was filed in conjunction with a copy of the agreed entry issued by the Oklahoma court and which, incidentally, was approved by both counsel for appellant and counsel for appellee, does not nullify the trial court's previous orders. Instead, the entry serves to clarify any possible lingering concerns regarding any jurisdiction which was still continuing in Oklahoma. Pursuant to the entry, the trial court clarified that the Oklahoma court did not intend to continue to exercise jurisdiction over any aspect of the case, as there were other nonvisitation issues related to this matter, such as child support orders and various related default judgments for nonpayment of support, which were still unresolved. This is demonstrated by the two-page Franklin County court entry filed January 18, 2011 and signed by all parties, counsel, and the trial judge. ("The parties shall cooperate in filing a joint motion requesting relinquishment * * * in the Oklahoma court * * * stating that Oklahoma relinquishes its jurisdiction of this matter [and] that Ohio assumes jurisdiction for all matters regarding allocation of parental rights [and] responsibilities including child support.) The February 7, 2011 entry was just one of several occasions on which the Franklin County court re-affirmed its confirmation of the registration of the foreign order. The entry cannot be said to nullify the Franklin County court's previous orders.

{¶ 38} For all of the reasons set forth above, we overrule appellant's first assignment of error.

III. Second Assignment of Error—Judicial Misconduct and Interference; Refusal to Supplement the Record

{¶ 39} In his second assignment of error, appellant asserts the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch failed to follow the requirements of R.C. 3127.09 when it communicated with the domestic relations court in Oklahoma, thereby perpetrating a substantial injustice upon appellant. Even assuming that the Franklin County court was simply mistaken in its belief that it had communicated with the Oklahoma court, appellant contends such a mistake has rendered a perverse and grossly unfair impact upon appellant, given the punishment imposed. Appellant further suggests the trial court's refusal to supplement the record with the July 24, 2008 order of the LeFlore County, Oklahoma court, in which the court stated Oklahoma had never been

asked to relinquish jurisdiction to Ohio, constitutes an effort to cover up something of a questionable nature.

{¶ 40} As previously stated, R.C. 3127.09 governs communications between courts in different states regarding proceedings arising under R.C. 3127.01 to 3127.53. The statute provides that the Ohio court may give the parties the opportunity to participate in the communication, but it does not require such participation, so long as the parties are given the opportunity to present facts and legal arguments before a decision is made. If a substantive communication is made, the statute requires a record must be made of the communication. For the reasons stated in our analysis of appellant's first assignment of error, we find no basis for concluding that the Franklin County court failed to comply with R.C. 3127.09.

{¶ 41} As for appellant's contention the trial court was perpetrating a "cover-up" by arbitrarily overruling appellant's motions to supplement the record with the July 24, 2008 order from the LeFlore County, Oklahoma court, we find this argument to be without merit. Appellant's argument is based only on innuendos and is without any support.

{¶ 42} In her first motion to supplement, appellant provided virtually no explanation for the request to supplement the record, other than generally stating it was for purposes of providing the court of appeals with a complete record.[5] It was not an abuse of discretion for the trial court to deny the motion to supplement on that basis.

{¶ 43} In her amended motion to supplement, filed approximately one week later, appellant argued the material sought to be supplemented had been referenced at an oral hearing on August 20, 2010, at which time the trial court issued an interim order and determined it was exercising jurisdiction over parenting time, thereby bringing the issue to the forefront. Appellant further asserted the July 24, 2008 order had been omitted from the record due to accident and a lack of opportunity, despite the fact that the order had been issued more than two years ago. The trial court again denied the motion,

[5] On September 17, 2010, appellant filed a notice of appeal challenging the August 20, 2010 interim order regarding parenting time with appellee. We subsequently dismissed the appeal for lack of a final, appealable order. *See Sumerford v. Sumerford*, 10th Dist. No. 10AP-890 (Nov. 9, 2010) (journal entry of dismissal).

finding there was no evidence to suggest, pursuant to App.R. 9,[6] that the record did not truly disclose what occurred before the trial court at the August 20, 2010 hearing, nor was there evidence to demonstrate the proposed supplementary material was omitted by error, accident or misstatement. Although we ultimately permitted appellant to supplement the record to this court on March 15, 2011, we cannot say that the trial court abused its discretion on that basis at that time.

{¶ 44} Based upon the foregoing, we overrule appellant's second assignment of error.

IV. Conclusion

{¶ 45} We overrule appellant's first and second assignments of error and affirm the judgments of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

Judgments affirmed.

BROWN, P.J., and SADLER, J., concur.

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[6] App.R. 9(E) provides that if there is a discrepancy as to whether the record truly discloses what occurred in the trial court, the trial court shall resolve the discrepancy and order the record to conform to the truth. It further states that if anything material is omitted from the record by error or accident or is misstated, the trial court or the court of appeals may direct that the omission or misstatement be corrected and if necessary, that a supplemental record be certified and transmitted.