

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

DENISE FOX n.k.a. Askren,	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-06-043
	:	
- vs -	:	<u>OPINION</u>
	:	2/23/2015
	:	
WILLIAM FOX,	:	
Defendant-Appellant.	:	

APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. 2010 DRA 01794

Denise Fox, 2102-1 Weil Road, Moscow, Ohio 45153, plaintiff-appellee, pro se

William Fox, 104 Regatta Drive, New Richmond, Ohio 45157, defendant-appellant, pro se

RINGLAND, J.

{¶ 1} Plaintiff-appellant, William D. Fox (Father), appeals a decision of the Clermont County Court of Common Pleas, Domestic Relations Division, denying his motion against defendant-appellee, Denise Ann Fox n.k.a. Denise Ann Askren (Mother), denying his request for attorney fees, and denying his request for findings of fact and conclusions of law.

{¶ 2} The parties were divorced by decree on October 17, 2011. There were five children born issue of the marriage, two of which remain minors. The parental rights and

responsibilities of the parties were set forth in a shared parenting plan issued by the court. Subsequently, on March 6, 2013, the court issued an additional order prohibiting the parties from communicating with the children regarding any pending litigation.

{¶ 3} On August 8, 2013, Father filed a motion for contempt and attorney fees, alleging that Mother was in violation of both the shared parenting plan and the March 6, 2013 order. On October 24, 2013, the magistrate denied Father's motion. Following Father's objections, the trial court incorporated and adopted the decision of the magistrate and issued additional orders regarding the parties' parenting rights and responsibilities.

{¶ 4} Father now appeals that decision, raising three assignments of error for review.

{¶ 5} Assignment of Error No. 1:

{¶ 6} THE TRIAL COURT ERRED TO THE PREJUDICE OF [FATHER] BY IMPOSING A REDUNDANT ORDER THAT DISREGARDS, AND IN FACT ENCOURAGES THE SAME MISBEHAVIORS THAT GAVE RISE TO THE COMPLAINT BY THE [FATHER].

{¶ 7} Within this assignment of error, Father argues that, "the court committed reversible error and abused its discretion [] by imposing an order containing provision [sic] which, instead of preventing the misbehaviors of [Mother], materially enables [Mother] to disregard the Father's parenting time and his right to plan activities with his children during that time."

{¶ 8} Specifically, Father takes issue with item 4 of the trial court's order. That order requires that "[a]ll communications about the children's 4-H Club, work, and youth group activities shall be via email or text." The order goes on to require that Mother provide Father a schedule of the children's 4-H, work and youth group activities as soon as she has notice of the schedule. In the event Father is unable or unwilling to provide transportation to those activities, he forfeits parenting time that falls during that time.

{¶ 9} An abuse of discretion implies that the trial court's attitude is unreasonable,

arbitrary, or unconscionable, and is more than a mistake of law or judgment. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). "When applying the abuse of discretion standard, a reviewing court is not free to merely substitute its judgment for that of the trial court." *Cottrell v. Cottrell*, 12th Dist. Warren No. CA2012-10-105, 2013-Ohio-2397, ¶ 12, quoting *Ware v. Ware*, 12th Dist. Warren No. CA2001-10-089, 2002 WL 336957, *1 (Mar. 4, 2002).

{¶ 10} Having thoroughly reviewed the record, we find no indication that Mother will use the language of the order to purposely undermine Father's parenting time by scheduling numerous extracurricular activities for the children. The court's order pertains only to 4-H Club activities, work schedules and youth group activities. We do not find that the trial court abused its discretion in facilitating the Mother's ability to involve the children in those activities.

{¶ 11} Father's first assignment of error is overruled.

{¶ 12} Assignment of Error No. 2:

{¶ 13} THE COURT COMMITTED REVERSIBLE ERROR WHEN IT IMPOSED AN ORDER CONTAINING OVER RESTRICTIVE MANDATES AND LANGUAGE THAT WILL ENABLE MORE CONTENTION AND INCREASE THE LIKLIHOOD [SIC] OF INADVERTANT BREACHES.

{¶ 14} Within this assignment of error, Father argues that, "the order does not solve the problems that gave rise to [Father's] original complaint, while now improperly imposing and detailing specific modes of interaction between the parties. This limits reasonable and non-contentious communications between the parties regarding the children."

{¶ 15} Specifically, Father argues the court erred in ordering that, (1) "[a]ll communication about the children's 4-H, work, or youth group shall be via email or text," (2) "[n]either parent shall speak in a disparaging or negative manner about the other parent, or allow or encourage others to do so in the presence of the children," and (3) "[a]bsent an

emergency or time sensitive issue, the parents shall not text or email more than once each day." Father believes these orders are susceptible to "frivolity and vindictive behaviors."

{¶ 16} Given the contentious nature of the interactions between the parties, we do not find that the trial court erred in attempting to set forth more specific and limited modes of communication between the parties. We disagree with Father that such limitations will invariably lead to the hypothetical scenarios he sets forth where the parties lie to the court and violate the orders without recourse.

{¶ 17} Father's second assignment of error is overruled.

{¶ 18} Assignment of Error No. 3:

{¶ 19} THE COURT COMMITTED REVERSIBLE ERROR AND ABUSED ITS DISCRETION BY NOT HOLDING [MOTHER] IN CONTEMPT AND IGNORING THE MISBEHAVIORS THAT WERE INDEED PROVEN AND ADMITTED BY [MOTHER] DURING THE HEARING.

{¶ 20} Within this assignment of error, Father argues that the trial court abused its discretion when it failed to hold mother in contempt of court for showing contentious materials to their minor and adult children in order to alienate them from Father.

{¶ 21} This court will not reverse the trial court's ruling on a motion for contempt absent an abuse of discretion. *Cottrell* at ¶ 12. As set forth above, an abuse of discretion implies that the trial court's attitude is unreasonable, arbitrary, or unconscionable, and is more than a mistake of law or judgment. *Blakemore*, 5 Ohio St.3d 217, 219. "When applying the abuse of discretion standard, a reviewing court is not free to merely substitute its judgment for that of the trial court." *Cottrell* at ¶ 12, quoting *Ware*, 2002 WL 336957, *1.

{¶ 22} Here, the shared parenting plan does not prohibit the parties from discussing pending legal proceedings with the children. That plan contains language specifying that the parents shall not use the children to communicate with one another regarding parenting time

or companionship, but does not provide any restrictions regarding the discussion of legal proceedings with the children. On the other hand, the March 6, 2013 order specifically forbade such discussions.

{¶ 23} Mother testified that she only showed materials relating to pending legal proceedings to the children prior to the March 6, 2013 order. While the trial court acknowledged that Mother's actions were inappropriate, there was no court order prohibiting such behavior prior to March 6, 2013, and thus the court did not find her in contempt.

{¶ 24} Father contends that Mother is lying with regard to whether she showed the materials to the children after the March 6, 2013 order. However, in determining credibility, we recognize that the trial court is in the best position to observe the witnesses as they testified, their demeanor, attitude and emotion, their body language and vocal inflections. Therefore, we do not find that the trial court erred in accepting the veracity of Mother's testimony.

{¶ 25} Father's third assignment of error is overruled.

{¶ 26} Judgment affirmed.

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