[Cite as *Rooney v. Rooney*, 2015-Ohio-1852.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DANIEL ROONEY Plaintiff-Appellee -vs- JUDY ROONEY Defendant-Appellant	JUDGES: Hon. W. Scott Gwin, P.J. Hon. William B. Hoffman, J. Hon. John W. Wise, J. Case No. 2014CA00165 O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Stark County Court of Common Pleas, Family Court Division Case No. 2000DR1720
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	May 11, 2015

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
DANIEL ROONEY, PRO SE 1139 Ellwood Road SW Canton, Ohio 44710	DONALD GALLICK The Law Office of Donald Gallick, LLC 190 North Union Street #102 Akron, Ohio 44304

Hoffman, J.

{¶1} Defendant-appellant Judy Rooney appeals the August 7, 2014 Judgment Entry entered by the Stark County Court of Common Pleas, Family Court Division, which limited her parenting time with her minor children and ordered the visitations occur in a therapeutic setting. Plaintiff-appellee is Daniel Rooney.

STATEMENT OF THE FACTS AND CASE

{¶2} The parties were married on December 17, 1993, in Canton, Ohio. Three children were born as issue of the marriage, to wit: Katie (DOB 5/10/94), Allison (DOB 1/17/97), and Lauren (DOB 11/4/98). Father filed a Complaint for Divorce on October 31, 2000. The matter came on for final hearing before a magistrate on July 19, 2001. The trial court issued its Judgment Entry/Divorce Decree on September 27, 2001, which incorporated the parties' agreed shared parenting plan.

{¶3} Over the following years, the parties filed a barrage of motions to show cause. The parties were ordered to mediation a number of times, but each attempt was unsuccessful. In fact, one of the trial court's mediators, who was a high-conflict specialist, resigned from the case and indicated she never wanted to work with the parties again. In June, 2008, Appellant filed a motion for reallocation of parental rights and responsibilities. Appellee filed a motion for change of custody in April, 2009. In a fifty-plus page Judgment Entry filed September 30, 2009, the trial court terminated the parties' shared parenting agreement. The trial court named Appellant the residential and custodial parent of Katie, and named Appellee the residential and custodial parent of Allison and Lauren. The trial court also set forth a weekend companionship schedule, but ordered no midweek visitation. Further, the trial court set forth specific directives

regarding holidays, school vacations, and school activities. Appellant appealed. This Court affirmed the trial court's decision. *Rooney v. Rooney*, 5th Dist. No. 2009CA00256, 2010-Ohio-2439.

{¶4} On June 16, 2014, Appellant filed a motion for reallocation of companionship. On July 8 and 24, 2014, Appellant filed multiple motions to show cause, alleging Appellee denied her companionship with the minor children on various dates. Appellee filed a motion for change of parenting time. The trial court scheduled a hearing on all pending motions and appointed Attorney Holly Davies as guardian ad litem for the children.

{¶5} Prior to the commencement of the hearing, the trial court conducted an in-camera interview with the children. The trial court proceeded with the hearing, allowing the parties to present their respective positions. Attorney Davies advised the trial court of her opinion. On the record, the trial court found Appellee not guilty of contempt, and ordered Appellant's parenting time be limited to contact in a therapeutic setting. The trial court issued a handwritten judgment entry on August 7, 2014.

{¶6} It is from this judgment entry Appellant appeals, raising the following assignments of error:

{¶7} "I. THE FAMILY COURT'S HANDWRITTEN JOURNAL ENTRY IS VOIDABLE BECAUSE IT VIOLATES THE LOCAL RULES OF THE FAMILY COURT AND THE LOCAL RULES OF THE COURT OF APPEALS.

{¶8} "II. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO FIND THE FATHER IN CONTEMPT FOR FAILING TO USE THE 'FAMILY WIZARD' SYSTEM BECAUSE THE ALLEGATIONS WERE UNCONTESTED.

{¶9} "III. THE FAMILY COURT ABUSED ITS DISCRETION WHEN IT SUA SPONTE LIMITED THE MOTHER'S VISITATION WITH HER CHILDREN."

I

{¶10} In her first assignment of error, Appellant maintains the trial court's August 7, 2014 Judgment Entry is voidable as it violates Stark County Court of Common Pleas, Family Court Division, Local Rules as well as Fifth District Court of Appeals Local Rules. Specifically, Appellant asserts the trial court's handwritten judgment entry violates Local R. 15.07 of the Stark County Court of Common Pleas, Family Court Division, as well as this Court's Local App. R. 9(A)(1)(a).

{¶11} Stark County Family Court Loc. R. 15.07 governs matters referred by the trial court to a magistrate. The trial court itself generated the judgment entry of which Appellant complains. Because the matter was not referred to a magistrate, we find Stark County Family Court Loc. R. 15.07 inapplicable.

{¶12} Appellant also argues the handwritten judgment entry violates Loc. App. R. 9(A). Loc. App. R. 9(A) requires the appellant to include in their brief clear copies of the judgment entry appealed from, and further provides that handwritten judgment entries are inappropriate and shall not be considered by this Court except for uniform traffic citations. Although our Loc. App. R. 9(A) states handwritten judgment entries are "inappropriate", we find the judgment entry herein is very clear and legible, and as such, we elect to address this Appeal on the merits.[1]

{¶13} Appellant's first assignment of error is overruled.

[1] We encourage the trial court to issue formal, typewritten entries in all cases. In any case being appealed, if the entry being appealed was handwritten, the trial court should upon request or sua sponte transcribe the entry into typewritten form.

II

{¶14} In her second assignment of error, Appellant contends the trial court abused its discretion in not finding Appellee guilty of contempt for failing to communicate with Appellant via Family Wizard as previously ordered by the court.

{¶15} "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* (1971), 27 Ohio St.2d 55, 271 N.E.2d 815, paragraph two of the syllabus. The authority and proper functioning of the court is the primary interest involved in a contempt proceeding and, as such, great reliance should be placed upon the discretion of the trial judge. *Ryncarz v. Ryncarz* (Feb. 12, 1997), Summit App. No. 17856, unreported at 7, citing *Denovchek v. Bd. of Trumbull Cty. Commrs.* (1988), 36 Ohio St.3d 14, 16, 520 N.E.2d 1362. A trial judge's decision will not be determined to be an abuse of discretion unless it is unreasonable, arbitrary, or unconscionable. *State ex rel. The v. Cos. v. Marshall* (1998), 81 Ohio St.3d 467, 469, 692 N.E.2d 198.

{¶16} A finding of civil contempt can be made only upon clear and convincing evidence. *ConTex, Inc. v. Consolidated Technologies, Inc.* (1988), 40 Ohio App.3d 94, 95, 531 N.E.2d 1353. The refusal to punish for contempt is, in general, "a matter wholly within the discretion of the trial court." *Favorito v. Kleckner* (Feb. 11, 1993), Cuyahoga App. No. 64113, unreported, citing *Lentz v. Lentz* (1924), 19 Ohio App. 329.

{¶17} In one of the multiple motions to show cause filed on July 8, 2014, Appellant alleged Appellee was in contempt for "willfully refus[ing] to communicate with [her] regarding the parties' children via Family Wizard." July 8, 2014 Motion to Show Cause. Attached to the motion is Appellant's signed affidavit of verification. At the

August 5, 2014 hearing, Attorney Gina Nennig-Henry, counsel for Appellant, advised the trial court, "The parties are * * *supposed to communicate through Family Wizard. [Appellee] has not renewed Family Wizard, so [Appellant] is not able to communicate with him." Tr. Aug. 5, 2014 Hearing at 3. Neither party testified regarding this issue.

{¶18} Appellant asserts because her allegation Appellee refused to communicate via Family Wizard was verified by her affidavit attached to the show cause motion and uncontroverted at the hearing, the trial court abused its discretion in not finding Appellee in contempt.

{¶19} Upon review of the entire record in this matter, we find the trial court did not abuse its discretion in not finding Appellee in contempt for failing to communicate via Family Wizard. This Court will not substitute our judgment for that of the trial court and will not impose punishment for the violation of a court order when the court which issued the original order did not find the actions rose to the level of contempt. Furthermore, the mere fact that evidence is uncontroverted does not, *ipso facto,* require the trier of fact to accept such testimony. The affidavit of Appellant attached to her motion for contempt and her counsel's unsworn statement about why Appellant was unable to communicate with Appellee are not a substitute for evidence on the issue. *See GTE North, Inc. v. Carr* (1993), 84 Ohio App.3d 776, 780, 618 N.E.2d 249, 251, at fn. 3.

{¶20} Appellant's second assignment of error is overruled.

III

{¶21} In her final assignment of error, Appellant argues the trial court abused its discretion in sua sponte limiting her visitation with her children. Appellant submits the

hearing was conducted to address the seven show cause motions filed by her attorney, and her visitation was not at issue.

{¶22} "A trial court's decision regarding visitation rights will not be reversed on appeal except upon a finding of an abuse of discretion." *Harrold v. Collier,* 9th Dist. No. 06CA0010, 2006-Ohio-5634, at ¶ 6, citing *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144. "When applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court." *Id.,* quoting *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. We must presume the findings of the trial court are correct because the trial judge is best able to observe the witnesses and use those observations in weighing the credibility of the testimony. *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 81.

{¶23} The trial court scheduled the August 5, 2014 hearing to address Appellant's multiple show cause motions, which all involved Appellee's alleged interference with her visitation; Appellant's motion for reallocation of companionship; and Appellee's motion for change of parenting time. Visitation was the focus of all of these motions; therefore, we find visitation was at issue.

{¶24} Appellant's third assignment of error is overruled.

{¶25} The judgment of the Stark County Court of Common Pleas, Family Court Division, is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Wise, J. concur