

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
HURON COUNTY

D.V.

Court of Appeals No. H-10-028

Appellee

Trial Court No. CU 2009 00065

v.

C.B.

**DECISION AND JUDGMENT**

Appellant

Decided: December 9, 2011

\* \* \* \* \*

Eric R. Weisenburger, for appellee.

Reese M. Wineman, for appellant.

\* \* \* \* \*

PIETRYKOWSKI, J.

{¶1} This is an appeal from a judgment of the Huron County Court of Common Pleas, Juvenile Division, which found defendant-appellant, C.B., in contempt of the court's prior orders and sentenced her to three days in the Huron County Jail. In that

same order, the court granted plaintiff-appellee, D.V., parenting time with the parties' minor child. Appellant's brief seeks to challenge both aspects of the trial court's order. In our decision of February 12, 2011, however, we dismissed for lack of a final appealable order, appellant's appeal from the order allocating parenting time. Accordingly, we will only review appellant's challenge to the trial court's contempt finding, which is stated in her second assignment of error as follows:

{¶2} "The trial court's finding that the defendant/mother was in contempt was against the manifest weight of the evidence and constituted an abuse of discretion based upon the clear indication that the conditions at the plaintiff's residence constituted justifiable grounds to withhold visitation pending the court's ruling on the motion for supervised visitation."

{¶3} In February 2009, A.V. was born to appellant and appellee, an unmarried couple. During the next approximately seven months, the parties lived together and shared the parenting responsibilities for A.V., but in the fall of 2009, they separated and appellee moved in with his father. On October 21, 2009, appellee filed a complaint for custody in the court below. As a result of those proceedings, the lower court held a hearing which resulted in a custody and visitation order dated January 25, 2010. The order stated that the parties had reached an agreement on all issues except child support. It then named appellant the residential parent and legal custodian of A.V., granted appellee visitation with A.V., and set forth a parenting time schedule.

{¶4} On February 16, 2010, appellant filed a motion to establish supervised visitation for appellee's contact with A.V. In support, she attached an ex parte domestic violence civil protection order ("CPO") that had been issued by the Huron County Court of Common Pleas on January 29, 2010, against appellee and naming appellant as the person protected. Appellant further alleged that the CPO was granted as a result of physical harm which appellee inflicted on her when she was holding A.V.

{¶5} Thereafter, on March 24, 2010, appellee filed a motion to show cause seeking to have appellant held in contempt of court for her failure to abide by the visitation and parenting time schedule set forth in the lower court's order of January 25. In that motion, appellee alleged that although the CPO was issued prohibiting contact between the parties, A.V. was not named as a protected person under the order and no order was issued prohibiting contact between him and his son. He further alleged that he had been unable to see A.V. since Christmas Day 2009, and that although his parents and sister had tried to contact appellant to facilitate visitation, appellant had refused to answer her phone or door.

{¶6} The case proceeded to a trial before the lower court magistrate on July 12, 2010. Relevant to the issue on appeal, appellant admitted that she had not complied with the trial court's order of January 25, 2010, in that she did not allow appellee to visit with A.V. from January 21, 2010, until April 12, 2010. The magistrate issued a decision on August 16, 2010, which, in relevant part, found appellant to be in contempt of court for

failing to abide by the court's previous order. The court ordered appellant to serve three days in the county jail but gave her an opportunity to purge the contempt by fully complying with all parenting time/visitation orders of the court and paying a \$5 fine. The lower court subsequently filed its judgment approving the magistrate's decision.

{¶7} In her second assignment of error, appellant contends that the lower court abused its discretion in finding her in contempt of court where "unrebutted evidence" showed drug activity and smoking in appellee's home and therefore justified appellant's noncompliance with the court's prior order.

{¶8} We review a trial court's decision finding a party in contempt under the abuse of discretion standard. *Brown v. Brown*, 6th Dist. No. OT-02-042, 2003-Ohio-5676, ¶ 10. "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶9} Disobedience of a court's order constitutes contempt of court and "[a] court has authority both under R.C. 2705.02(A) and on the basis of its inherent powers to punish the disobedience of its orders with contempt proceedings." *Zakany v. Zakany* (1984), 9 Ohio St.3d 192, syllabus. It is undisputed that appellant violated the prior order of the court by denying appellee visitation with A.V. for almost two months. While A.V. does suffer from asthma, the guardian ad litem who testified at the trial below stated that she discussed with appellee the importance of not smoking around A.V. and he agreed to

smoke outside the home. Moreover, appellant's allegations of drug activity in appellee's home are not undisputed. Appellee denied ever using cocaine or selling narcotics and it was far from clear that appellee's father was involved in drug activity. Regardless, in January 2010, appellant agreed to the visitation order and that order was incorporated into the trial court's order of January 25, 2010. When appellant agreed to the visitation order she knew appellee smoked and, if her trial testimony is to be believed, she believed appellee and his father were involved in drug activity. For her to then deny appellee visitation based on these allegations immediately after entry of the order is suspect.

{¶10} We therefore cannot say that the trial court abused its discretion in finding appellant in contempt of court for violating the court's prior order and the second assignment of error is not well-taken.

{¶11} On consideration whereof, the court finds that appellant was not prejudiced or prevented from having a fair trial and the judgment of the Huron County Court of Common Pleas, Juvenile Division, is affirmed. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.  
See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

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JUDGE

Arlene Singer, J.

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JUDGE

Thomas J. Osowik, P.J.  
CONCUR.

\_\_\_\_\_  
JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <a href="http://www.sconet.state.oh.us/rod/newpdf/?source=6">http://www.sconet.state.oh.us/rod/newpdf/?source=6</a>.</p>
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