[Cite as *Mathews v. Zaciek*, 2012-Ohio-2809.]

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

Renee Mathews	Court of Appeals No. L-11-1146
Appellee	Trial Court No. DR 2004-0530
v.	
Mark R. Zaciek	**DECISION AND JUDGMENT**
Appellant	Decided: June 22, 2012

* * * * *

Mary E. Smith, for appellee.

Mark R. Zaciek, pro se.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the June 15, 2011 judgment of the Lucas County Court of Common Pleas, Domestic Relations Division, which denied the motion of appellant, Mark Zaciek, to find appellee, Renee Mathews, in contempt of court for failing to notify

appellant prior to relocating. Upon consideration of the issue raised on appeal, we hereby dismiss this appeal on the ground that appellant lacks standing to bring this appeal.

{¶ 2} The facts of this case are as follows. The parties were divorced in 2004. Appellant filed a motion to show cause on January 7, 2010, seeking a contempt order against appellee alleging that she had failed to properly notify appellant and the court of her intent to relocate. Following a hearing on September 1, 2010, the magistrate found in a January 5, 2011decision, that appellee moved to Marion, Ohio on August 31 or September 1, 2007. Pursuant to the final divorce decree, she was required to give notice of any intent to relocate 30 days prior to the move and to provide the new address and telephone number within ten days after the move. If a parent failed to comply with this provision, the other parent was permitted to file a motion with the court so that it could intervene if necessary. Appellee testified that she notified appellant of her intent to relocate by a certified letter, but did not introduce any evidence to corroborate her testimony. Appellant denied receiving such a letter. Furthermore, the magistrate found that appellee filed a motion to modify parenting time and for supervised parenting time on September 10, 2007, listing her prior Williston, Ohio address. She formally notified the court of her change of address on January 22, 2008. Appellant testified that he attempted to pick up the daughter at the new address on September 23, 2007.

{¶ 3} The magistrate concluded that there was conflicting evidence on this issue. Because appellant carried the burden to show that appellee violated the order, the magistrate concluded that appellant failed to establish a violation by clear and convincing

evidence. Furthermore, the court found that appellant was aware of the new address at least three weeks after the move when he attempted to pick the child up at the new address. Therefore, the magistrate denied his motion for a contempt order.

{¶ 4} While appellant filed objections to the magistrate's decision, he failed to file a complete transcript of the hearing before the magistrate. Therefore, the court overruled appellant's objections and adopted the magistrate's decision. Appellant sought an appeal from this judgment.

{¶ 5} On appeal, appellant argues in three separate assignments of error that the court erred in failing to find appellee in contempt of court for failing to notify appellant of her intent to relocate.

{¶ 6} We find it necessary in this case to begin by determining whether this action involved a civil or criminal contempt proceeding. Generally speaking, contempt is the disobedience of a court order. *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 554, 740 N.E.2d 265 (2001). Although contempt proceedings are sui generis, neither civil nor criminal, a distinction must be made between civil and criminal contempt proceedings for certain purposes and the distinction is based on the purpose to be served by the sanction. *Id.* Civil contempt is generally viewed as a violation against the party who would have benefited from a court order while a criminal contempt is generally seen as an offense against the dignity or process of the court. *State v. Kilbane*, 61 Ohio St.2d 201, 204-205, 400 N.E.2d 386 (1980). An action that may begin as a civil contempt, can convert into a

criminal contempt as the movant's purposes change from seeking compliance with a court order to vindication of the authority of the court and punishment. *Corn* at 555-556.

{¶ 7} In this case, appellant initiated the contempt proceeding seeking punishment of appellee for failing to abide by the court order which required her to give appellant notice of any intent to relocate. At the time of the filing of the motion, appellee had already relocated and, whether she had given notice or not to appellant, he was aware of her new address at the time of the filing of his motion. Therefore, any finding of contempt would result in only a sanction of punishment against appellee because there was no need for any other remedy. Appellee had already relocated and appellant was aware of her new address. Even on appeal, appellant asserts only that the trial court should have found appellant in contempt and awarded damages to appellant or incarcerated appellee. Therefore, we find that this was a criminal contempt proceeding.

{¶ 8} This distinction is important in this case because the trial court denied appellant's motion for contempt. There is no right of appeal from an acquittal on the merits of a criminal contempt charge unless the moving party can show that he suffered prejudice. *Denovchek v. Bd. of Trumbull Cty. Commrs.*, 36 Ohio St.3d 14, 520 N.E.2d 1362, syllabus (1988). See also *Witzmann v. Adam*, 2d Dist. No. 23352, 2011-Ohio-379, ¶ 45, and *State v. Umpenhour*, 6th Dist. Nos. F-99-012 and F-99-013, 2000 WL 281746, *7. While the *Denovchek* court discussed that there have been exceptions in domestic relation cases, it presumptively believed that these cases involved prejudice. *Id.* at 16, fn. 3. In the case before us, appellant has not shown that he was prejudiced in any way by

the finding of an acquittal on the contempt charge. The right to appeal is limited to cases where there is a need to correct errors that injuriously affect an appellant. *State v. Chavez-Juarez*, 185 Ohio App.3d 189, 923 N.E.2d 670, ¶ 20 (2d Dist.2009). Therefore, we conclude that appellant lacks standing to bring this appeal and hereby dismiss his appeal and assess costs against him.

Appeal dismissed.

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

Peter M. Handwork, J. _____
JUDGE

Mark L. Pietrykowski, J. _____
JUDGE

Thomas J. Osowik, J. _____
CONCUR.
JUDGE