[Cite as *Medas v. Monyak*, 2015-Ohio-1252.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

BROOKE A. MONYAK n.k.a. MEDAS	C.A. No. 13CA010487
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
ERIC A. MONYAK	COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO
Appellee	CASE No. 05DU065862

DECISION AND JOURNAL ENTRY

Dated: March 31, 2015

MOORE, Judge.

{¶1} Mother, Brooke A. Medas, appeals from the judgment of the Lorain County Court of Common Pleas, Domestic Relations Division. This Court dismisses in part and reverses.

I.

{¶2} In 2006, Mother and Eric A. Monyak ("Father") obtained a divorce. As part of the divorce decree, the court approved a shared parenting plan of the parties' minor child, Z.M., which designated Mother as the residential parent for school purposes. In 2012, Father moved the trial court to modify the shared parenting plan to name him as the residential parent of Z.M. for school purposes.

{¶3} In 2013, the trial court appointed a guardian ad litem to represent the best interests of Z.M. Mother executed an authorization for release of protected health information to the guardian and the law firm where the guardian was employed. Also, in 2013, Mother and Father

each moved to terminate the shared parenting plan and to name the moving party as residential parent and legal custodian of Z.M.

{¶4} Thereafter, Mother filed a motion to remove the guardian ad litem. In an affidavit attached to her motion, Mother averred that she had a telephone conversation with the guardian which was upsetting to Mother. Thereafter, Mother sent an email to the guardian stating that the guardian would "no longer be working on this case regarding [her] daughter." The guardian responded by stating that the court had appointed her as the guardian, and only the court could remove her. Thereafter, Mother filed a motion to remove the guardian. Prior to ruling on Mother's motion, on July 19, 2013, the trial court issued an order requiring the parties to provide any documentation requested by the guardian ad litem.

{¶5} At some point during these proceedings, the guardian obtained new employment at a different law firm than the firm where she had been practicing when she was appointed on this case. On August 12, 2013, Mother sent a letter to the law firm for which the guardian previously had been employed, revoking her release of protected health information. On August 20, 2013, Mother sent a letter to the firm where the guardian had become newly employed, in which she expressed many concerns regarding the guardian's performance and investigation, and in which she disputed the guardian's fees.

{¶6} Meanwhile, Father submitted a discovery request to Mother asking for the name, address, and telephone number of each witness whom she expected to testify at trial.[1] Mother responded by attaching a list of medical and counseling professionals and also the names of fourteen medical providers. Father requested Mother to execute medical releases of information

[1] Neither the discovery request nor Mother's response thereto appears in the record. However, the order of the trial court from which Mother appeals contained facts relevant to the discovery request and response, which neither party disputes.

so that he could obtain records from the providers listed, and Mother refused to sign the releases and filed a motion for a protective order. Father filed a motion to compel Mother to sign the releases.

{¶7} At a hearing before a magistrate on August 30, 2013, the magistrate questioned Mother as to her contacts with the previous and current law firms through which the guardian was employed and as to her revocation of the release of medical records. The magistrate determined that the matter should be set for hearing before the trial judge on the issue of whether Mother was in contempt of court for these actions. Thereafter, the guardian filed a motion to withdraw.

{¶8} On September 24, 2013, a hearing was held to address the motion to remove the guardian, the guardian's motion to withdraw, Father's motion to compel discovery, and Mother's motion for a protective order and to address the issue of contempt as raised by the magistrate at the August 30, 2013 hearing.

{¶9} In an entry dated October 4, 2013, the trial court granted the guardian's motion to withdraw and denied Mother's motion to remove the guardian. In regard to Mother's motion for a protective order and Father's motion to compel, the trial court ordered Mother to execute the releases for medical and counseling professionals that she identified as potential witnesses. However, the trial court ordered that all records from these professionals be sent directly to the court to conduct an in camera review. The trial court found Mother in contempt of court based upon Mother's following actions: (1) advising the guardian that the guardian was removed from the case when Mother had no authority to remove the guardian, (2) revoking her medical authorization to the guardian's previous law firm after the court issued its July 18, 2013 order for the parties to provide documentation requested by the guardian, and (3) contacting the guardian's

employers without the court being aware of these actions. The trial court sanctioned Mother to a thirty-day period of incarceration and a $250 fine, with the ability to purge the contempt if Mother paid one-half of the guardian's fees and made a deposit of $1,000 for the replacement guardian with the court. The court further ordered that Mother bear the entire expense of the new guardian. Mother timely appealed from the October 4, 2013 order, and she now raises two assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

> THE TRIAL COURT'S FINDING OF CONTEMPT IS AN ABUSE OF DISCRETION AND SHOU[L]D BE REVERSED BECAUSE IT IS UNREASONABLE, ARBITRARY AND UNCONS[C]IONABLE; FURTHERMORE, IT VIOLATES THE FOURTEENTH AMENDMENT TO THE UNITED STATES CO[NS]TITUTION, AND ARTICLE I, SECTION 10 OF THE CONSTITUTION OF THE STATE OF OHIO[.]

{¶10} In her first assignment of error, Mother argues that the trial court erred in finding her in contempt and in ordering unreasonable purge conditions.

{¶11} Initially, we note that Father has argued that Mother's first assignment of error is moot because she has purged the contempt. In their respective briefs, the parties have each characterized the trial court's contempt finding as a civil contempt finding. This Court has held "[a]n appeal from a civil contempt finding and sentence becomes moot when a party purges herself of the contempt or serves the sentence imposed by the court." (Quotation and citations omitted.) *DiDomenico v. DiDomenico*, 9th Dist. Medina Nos. 07CA0127-M, 07CA0132-M, 2008-Ohio-4941, ¶8.

{¶12} On October 28, 2013, Mother filed a notice of compliance with the trial court indicating that she had deposited $1,000 with the clerk of court and that she had paid $1459.57, representing one-half of the fees billed by the guardian. She further indicated that she could not

pay the replacement guardian's fees because the fees had not yet been incurred. Because Mother has not complied with the order requiring her to pay the entirety of the newly appointed guardian's fees, we conclude that her argument as to the contempt finding is not moot. Therefore, we proceed to review Mother's first assignment of error.

{¶13} "Contempt of court may be defined as disobedience of a court order or conduct that brings the administration of justice into disrespect or impedes a court's ability to perform its functions." *In re A.S.*, 9th Dist. Summit No. 26731, 2013-Ohio-4170, ¶ 8, quoting *Freeman v. Freeman*, 9th Dist. Wayne No. 07CA0036, 2007-Ohio-6400, ¶ 45, quoting *Willis & Linnen Co., L.P.A. v. Linnen*, 9th Dist. Summit No. 22452, 2005-Ohio-4934, ¶ 17. We review a trial court's finding of contempt for an abuse of discretion. *In re A.S.* at ¶ 8, citing *Malson v. Berger*, 9th Dist. Summit No. 22800, 2005-Ohio-6987, ¶ 6. An abuse of discretion "implies that the [trial] court's attitude [was] unreasonable, arbitrary, or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶14} Contempt orders can be divided into direct and indirect contempt. "Direct contempt is disruptive or disrespectful behavior committed in the presence of the court or so near the court's presence as to disrupt the administration of justice." (Quotation and citation omitted.) *Harvey v. Harvey*, 9th Dist. Wayne Nos. 09CA0052, 09CA0054, 2010-Ohio-4170, ¶ 4. "Indirect contempt of court 'is one committed outside the presence of the court but which also tends to obstruct the due and orderly administration of justice.'" *Maynard v. Elliott*, 9th Dist. Lorain No. 02CA008067, 2002-Ohio-5260, ¶ 6, quoting *In re Lands*, 146 Ohio St. 589, 595 (1946). R.C. 2705.02 "outlines those acts that are in indirect contempt of court[.]" *Maynard* at ¶ 6. Relevant here, R.C. 2705.02(A) provides that, "[a] person guilty of * * * [d]isobedience of, or resistance

to, a lawful writ, process, order, rule, judgment or command of a court or officer[]" may be punished for contempt.

{¶15} The Revised Code provides different procedures for the trial court to follow prior to finding an individual in contempt depending upon whether the contempt is direct or indirect. In the case of direct contempt, R.C. 2705.01 provides, "A court, or judge at chambers, may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice." With respect to indirect contempt, R.C. 2705.03 provides that, "*a charge in writing shall be filed with the clerk of the court*, an entry thereof made upon the journal, and an opportunity given to the accused to be heard, by himself or counsel." (Emphasis added.)

{¶16} Here, although the trial court did not note in the October 4, 2013 entry whether it concluded that Mother's actions constituted direct or indirect contempt of court, at the September 24, 2013 hearing, the trial court stated that Mother's "conduct rises to the level of contempt, *and direct contempt*, in stating that she would not want and has removed authorization for this Guardian Ad Litem to receive information, and would not want her to have it because she does not trust her." (Emphasis added.)

{¶17} However, we cannot discern the basis for the trial court's determination that Mother's revocation of the authorization occurred "in the presence of or so near the court or judge as to obstruct the administration of justice." *See* R.C. 2705.01. It is unrefuted that Mother revoked her authorization through a correspondence to the guardian's former law firm. Further, the other actions that the trial court determined to constitute contempt, namely: Mother's contacts with the guardian's employers, and Mother's email to the guardian, did not occur in the presence of the court or so near it as to obstruct the administration of justice. Accordingly, to the

extent that the trial court concluded that these actions constituted direct contempt of court, the trial court's judgment was unreasonable and constituted an abuse of discretion.

{¶18} Instead, the actions noted by the trial occurred outside of the presence of the court. We conclude that, to the extent the behavior of Mother constituted contempt at all, it could only have amounted to indirect contempt of court. Accordingly, the trial court was required to comply with the statutory provisions of R.C. 2705.03, which, in part, requires a written notice of the charges. Here, the issue of contempt was raised orally by the magistrate at the August 30, 2013 hearing. Thereafter, the magistrate issued an order stating, "Based upon testimony of [Mother] during oral motion by [the guardian] to prevent parties from contacting [the guardian's] employer[,] matter set for show cause on 9/10/13 at 1:30 p.m." However, there was no notice of the *charges* of contempt put into writing. *See* R.C. 2705.03.

{¶19} Accordingly, we sustain Mother's first assignment of error to the extent that the trial court committed reversible error in purporting to find Mother in direct contempt. To the extent that the trial court found Mother in indirect contempt, it did so without providing her written notice of the charges against her as required by statute. *See Cleveland v. Campbell*, 8th Dist. Cuyahoga Nos. 43197, 43392, 43459, 1981 WL 10356, *2 (June 11, 1981) (failure to provide written notice of contempt charges amounts to reversible error). Therefore, the trial court's contempt finding must be reversed on this basis, and we need not reach the issue of whether the purge conditions were unreasonable, as this issue is moot.

ASSIGNMENT OF ERROR II

> THE TRIAL COURT ERRED IN FINDING THAT OB/GYN AND RAPE CRISIS CENTER TREATMENT RECORDS SHOULD BE SUBJECT TO IN-CAMERA REVIEW BASED ON THE "MENTAL AND PHYSICAL HEALTH" DETERMINATION OF [MOTHER], SUBJECT TO R.C. 3109.04(F)(1)(E), SINCE THE HARM CREATED IN EXPLOITING THE PRIVACY OF THESE RECORDS IS GREATER THAN THE HARM PREVENTED, UNDER SUCH

> CIRCUMSTANCE AS HERE WHERE THERE ARE ALTERNATIVE MEANS AVAILABLE FOR THE COURT TO DETERMINE "MENTAL AND PHY[SI]CAL HEALTH" THAT ARE LESS INVASIVE TO THE PRIVACY OF [MOTHER].

{¶20} In her second assignment of error, Mother argues that the trial court erred in granting in part Father's motion to compel by determining that certain records pertaining to Mother were discoverable and that it erred in failing to fully grant Mother's motion for a protective order when it protected the records only to the extent of ordering them subject to an in camera inspection for relevancy. We conclude that we lack jurisdiction to consider Mother's arguments.

{¶21} "This Court is obligated to raise sua sponte questions related to our jurisdiction." *In re Estate of Thomas*, 9th Dist. Summit No. 27177, 2014-Ohio-3481, ¶ 4, citing *Whitaker-Merrell Co. v. Geupel Constr. Co., Inc.*, 29 Ohio St.2d 184, 186 (1972). "We only have jurisdiction to hear appeals from final judgments." *Thomas* at ¶ 4, citing Ohio Constitution, Article IV, Section 3(B)(2), and R.C. 2501.02.

{¶22} "As a general rule, orders regarding discovery are interlocutory and not immediately appealable." *Gibson-Myers & Assocs., Inc. v. Pearce*, 9th Dist. Summit No. 19358, 1999 WL 980562, *1 (Oct. 27, 1999). However, certain interlocutory orders may be final if they meet the requirements of R.C. 2505.02(B). R.C. 2505.02(B) provides, in relevant part:

> An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:
>
> * * *
>
> (4) An order that grants or denies a provisional remedy and to which both of the following apply:
>
> (a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

> (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

A "[p]rovisional remedy" is defined as "a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, [or] suppression of evidence * * *." R.C. 2505.02(A)(3).

{¶23} Pursuant to R.C. 2505.02(B)(4), we have held that "[a] trial court's order is final and appealable to the extent it compels production of claimed privileged materials." *Peppeard v. Summit Cty.*, 9th Dist. Summit No. 25057, 2010-Ohio-2862, ¶ 10. *See also Giusti v. Akron Gen. Med. Ctr.*, 178 Ohio App.3d 53, 2008-Ohio-4333, ¶ 6 (9th Dist.). "In *Finley v. First Realty Property Mgt., Ltd.*, 9th Dist. [Summit] No. 23355, 2007-Ohio-2888, ¶ 13, this Court stated that whether a trial court's order denying a motion for a protective order was appealable was dependent upon whether a separate order which was issued simultaneously compelled the disclosure of privileged information." *Peppeard* at ¶ 10.

{¶24} However, not every order purporting to "compel" an action *related to* discovery of purported privileged information is final. *Dispatch Printing Co. v. Recovery Ltd. Partnership*, 10th Dist. Franklin Nos. 05AP-640, 05AP-691, 05AP-731, 2006-Ohio-1347, ¶ 12-13 (order compelling discovery which also put into place safeguards to address concerns regarding privileged information was not a final appealable order). In *Natl. Interstate Corp. v. West*, 9th Dist. Summit No. 23877, 2008-Ohio-1057, ¶ 9, we recognized that cases had "illustrate[d] the need for flexibility in application of R.C. 2505.02(A)(3) with respect to the facts of each case and the stage of discovery at which the parties find themselves. Along this spectrum are orders which relate to the discovery of trade secrets-and, therefore, to a provisional remedy-but which do not meet the requirements of R.C. 2505.02(B)(4)(a) and (b) with respect to the discovery."

{¶25} Here, in her brief, Mother quotes *Randall v. Cantwell Machinery Co.*, 10th Dist. Franklin No. 12AP-786, 2013-Ohio-2744, ¶ 8 for the proposition that the trial court's order is a final appealable order "to the extent that the decision orders appellant to grant an unaltered medical release that could lead to the production of privileged information[.]" However, in that case, the trial court granted a motion to compel an unaltered medical release, without implementing any protective measure, "such as an in camera review, to determine whether certain records were privileged." *Id.* at ¶ 15. Therefore, unlike the present case, *Randall* involved an order compelling unfettered disclosure of purportedly privileged information, and thus met the requirements of R.C. 2505.02(B)(4). *Randall* at ¶ 7.

{¶26} We conclude that the present case is aligned with those cases where the court has entered a provisional remedy, but the order does not meet the requirements of R.C. 2505.02(B)(4)(a) and (b). This is because the trial court has not ordered unfettered disclosure to Father of the records he requested. Instead, it directed that all such records be forwarded to the court for an in camera inspection. Because the in camera inspection has not yet occurred, "there is no way of knowing whether the trial court would deem it necessary to include certain limitations in an order compelling the discovery of privileged materials" or which records, if any, it will order disclosed to Father. *See Peppeard* at ¶ 12. Thus, the order did not "determine[] the action with respect to the provisional remedy" or "prevent[] a judgment in the action in favor of the appealing party with respect to the provisional remedy." *See* R.C. 2505.02(B)(4)(a).

{¶27} Accordingly, we conclude, under the facts and circumstances of this case, an appeal does not lie from the trial court's order compelling Mother to release purportedly privileged documentation to the court for an in camera inspection, as the order fails to meet the requirements of R.C. 2505.02(B)(4)(a).

III.

{¶28} Mother's first assignment of error is sustained. We lack jurisdiction to review Mother's second assignment of error. The judgment of the trial court is reversed to the extent that it found Mother in contempt of court.

Appeal dissmissed in part,
and judgment reversed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed equally to both parties.

CARLA MOORE
FOR THE COURT

CARR, P. J.
WHITMORE, J.
CONCUR.

APPEARANCES:

SAM R. BRADLEY, Attorney at Law, for Appellant.

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