

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

MATTHEW WEBER

C.A. No. 15CA0003-M

Appellant

v.

TRACIE WEBER

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE No. 10 DR 0280

Appellee

DECISION AND JOURNAL ENTRY

Dated: September 30, 2015

CARR, Judge.

{¶1} Appellant, Matthew Weber, appeals the judgment of the Medina County Court of Common Pleas, Domestic Relations Division. This Court reverses and remands.

I.

{¶2} Matthew Weber (“Husband”) and Tracie Weber (“Wife”) were married and residing in North Carolina when Wife decided to take their two children and move to Ohio. While the Webers were granted a divorce in a North Carolina court on March 5, 2010, custody issues were not settled in the decree of divorce. In May 2010, Husband filed a notice of filing foreign decree in the Medina County Court of Common Pleas, Domestic Relations Division, along with a motion to allocate parental rights and responsibilities. Several months later, Husband filed a motion for emergency change of temporary custody.

{¶3} After a hearing, the trial court issued a journal entry on September 13, 2011, granting custody to Wife but establishing numerous requirements to ensure that Husband was

involved in his children's lives and had input in their care. Less than two years later, Husband filed a motion to show cause seeking to find Wife in contempt. The trial court issued a journal entry on April 8, 2014 indicating that the parties had reached an agreement whereby Wife admitted to a finding that she was in contempt of court and, as a result, was sentenced to four days in the Medina County Jail. The agreed entry provided that in order to purge the contempt, Wife, for a period of four months, was required to do the following:

- (a) Take both children to a medical specialist and fully inform [Husband] of the results of those appointments and document them to [Husband] if documentation is available.
- (b) Strictly comply with the Court's Order of September 13, 2011, in regard to weekly emails to be sent each Sunday to [Husband] fully informing him of the children's activities, appointments and other important matters for the upcoming week and a report of what transpired during the previous week.
- (c) Strictly comply with the telephone parenting time provisions of the Order of September 13, 2011, as modified by the parties, as follows: the phone calls shall be placed by [Husband] to the children on [Wife's] cell phone each Wednesday and Sunday at 8:00 p.m. and [Wife] shall assure that the children are available for those phone calls. In the event that something extraordinary prevents the children from answering these phone calls, [Wife] shall immediately relate that problem to [Husband] either by phone call or email.

{¶4} On September 30, 2014, the trial court issued a journal entry indicating that a purge hearing had been held on September 26, 2014. The trial court stated that Wife had appeared with counsel and that Husband did not appear but counsel had appeared on his behalf. The trial court further stated that "[Wife] did not entirely satisfy the purge terms and conditions and the matter shall be continued for a period of 7 days." The new hearing was scheduled for October 10, 2014.

{¶5} The transcript from the purge hearing indicates that Wife appeared with counsel while Husband did not appear, but again was represented by counsel. Wife moved to dismiss on the basis that Husband did not appear. Counsel for Husband explained that his client, who still

resided in North Carolina, could not get leave from work. Husband's attorney further maintained that it was Wife's burden to demonstrate that she had purged the contempt and that he was prepared to proceed with the hearing. After allowing the parties to file briefs in support of their respective positions, the trial court issued a journal entry on December 17, 2014, stating that it was compelled to purge the contempt because Husband had not made himself available to present evidence on the issue.

{¶6} On appeal, Husband raises one assignment of error.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED BY PLACING THE BURDEN OF PROOF AND BURDEN OF GOING FORWARD UPON A CONTEMPT MOVANT TO SHOW THE CONTEMNOR HAD NOT PURGED HER CONTEMPT.

{¶7} In his sole assignment of error, Husband argues that the trial court erred by concluding that he had the burden of proof to demonstrate that Wife failed to purge the contempt. This Court agrees.

{¶8} The trial court erred in concluding that it was Husband's burden to prove that Wife failed to purge her contempt. The trial court's April 8, 2014 journal entry found Wife in contempt and set forth specific conditions that had to be met in order for Wife to purge the contempt. After a party is found in contempt, the issue at the purge hearing is whether the contemnor has satisfied the conditions of the trial court's order, and the burden of proof is on the contemnor to show that he or she complied. *Millcreek Twp. Bd. of Trustee v. Davisson*, 3d Dist. Union No. 14-08-18, 2008-Ohio-5315, ¶ 21. "[O]nce the court found that the [party] was in contempt and set a purge condition for the contempt, the [contemnor] had the burden to show that he complied with the purge condition to prevent the imposition of the suspended sentence."

In re A.N., 8th Dist. Cuyahoga No. 99744, 2013-Ohio-3816, ¶ 9. Here, in its December 17, 2014 judgment entry, the trial court stated that “[Husband’s] willful failure to appear renders any argument regarding the burden of proof moot.” The trial court continued that, “As a result of [Husband’s failure to appear], this Court had no evidence before it to support his counsel’s argument that [Wife] failed to purge her contempt. This Court must therefore find that [Wife] has purged her contempt.” Because it was Wife’s burden to demonstrate that she purged her contempt, the trial court erred by placing the burden of proof on Husband. This matter must be remanded to the trial court for a hearing on whether Wife has met her burden of demonstrating that she satisfied the purge conditions set forth in the contempt order.

{¶9} The assignment of error is sustained.

III.

{¶10} Husband’s assignment of error is sustained. The judgment of the Medina County Court of Common Pleas, Domestic Relations Division is reversed and remanded for further proceedings consistent with this decision.

Judgment reversed,
and cause remanded.

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 Medina, 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 to Appellee.

DONNA J. CARR
FOR THE COURT

MOORE, J.
SCHAFFER, J.
CONCUR.

APPEARANCES:

STEVE C. BAILEY, Attorney at Law, for Appellant.

TRACIE WEBER, pro so, Appellee.