

SANDRA KURT

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SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
SUMMIT COUNTY, OHIO

MELISSA M. SCHMITT)
4887 Concord Road)
Stow, OH 44224,)

Plaintiff,)

vs.)

SHAINE WARD)
P.O. Box 670801)
Northfield, OH 44067,)

Defendant.)

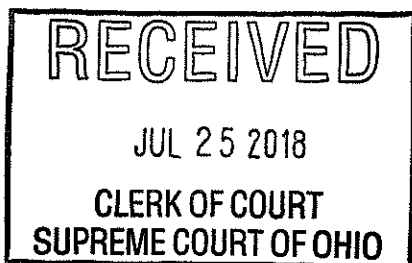
CASE NO. 2007-07-2217

JUDGE GIULITTO

JUDGMENT

This cause came to be heard upon the motions filed by the parties between April 17, 2015 and June 21, 2018. This Court gave notice to the parties on May 3, 2018 that all pending matters would be heard on June 21, 2018, at 9:00 for the entire day and June 22, 2018 at 1:00 p.m. for the afternoon. Among the pending motions were the consolidated motions filed by Plaintiff on April 26, 2017, and by Defendant on June 12, 2017. Included in Plaintiff's consolidated motions were her requests for this Court to terminate the shared parenting plan, to grant her sole custody, and to declare that Defendant is a vexatious litigator. Plaintiff filed additional contempt motions on January 31, 2018 and June 14, 2018. She filed a motion to terminate Defendant's involvement in any Due Process Complaint on March 19, 2018.

On June 21, 2018, Plaintiff appeared with counsel for hearing on all pending motions. Defendant did not appear. Attorney Michael Wartko, appeared as appointed



counsel for Defendant as to defense of his contempt, only.

Attorney Wartko noted that he had confirmed that Defendant was aware of the two days of hearing which were ordered by the court. After this Court had heard evidence as to Shaine Ward's eligibility for appointed counsel, Mr. Wartko was excused.

I. INDIGENCY AND APPOINTED COUNSEL

The first issue to be resolved was Defendant's eligibility for appointed counsel. This Court finds that Shaine Ward filed an affidavit of indigency. Plaintiff presented Exhibits 1 - 12, which together with Plaintiff's testimony, demonstrate that:

1. Shaine Ward has had an interest in various real estate holdings in Portage and Cuyahoga Counties,
2. Shaine Ward has transferred the real estate between himself and various LLCs and LLPs for which he is the agent and representative.
3. PMHA has paid significant funds as Section 8 rent for the Ranch Road property to Parker Jax Legacy LLP.
4. Shaine Ward receives income, often in cash, for rent for the Ranch Road property in addition to the Section 8 rent.
5. Shaine Ward takes multiple vacations yearly, including cruises and ski trips and pays for the minor child participate in sports expenses which involve expense, including skiing which involves significant expense.
6. Shaine Ward has access to a vehicle and has housing with his parents. His real estate holdings and lifestyle clearly demonstrate that is not at the poverty level necessary to qualify for appointed counsel.

This Court finds that Shaine Ward is not indigent and that he is not entitled to appointed counsel. This Court finds that Michael Wartko was duly appointed and that he has acted in good faith, pursuant to this Court's appointment. He is entitled to compensation for his legal services on Shaine Ward's behalf.

II. SHAINÉ WARD'S MOTIONS

This Court finds that Shaine Ward did not appear at the hearing on June 21, 2018 either at 9:00 a.m. or at 1:00 p.m., or at the hearings scheduled for March 27 and 28, 2018. This Court concludes that he has failed to prosecute his motions. All of his motions pending as of June 21, 2018, should be dismissed.

III. MELISSA SCHMITT'S MOTION TO TERMINATE SHARED PARENTING AND FOR SOLE CUSTODY

Regarding the allocation of parental rights and responsibilities, this Court accepted into evidence the report of the Guardian ad litem Vincent Maffei and the report of Dr. Robin Tener. This Court has carefully considered the report and recommendations of the Guardian ad litem and the report of Dr. Tener.

Melissa Schmitt testified as to her wishes regarding the minor child's care. She testified that would like to be named the sole residential parent and legal custodian of the child. She expressed regret that Shaine Ward refuses to cooperate with her and she gave concrete examples of his failure to act in the minor child's best interest and his numerous actions demonstrating contempt of this Court's previous orders regarding the minor child and his care.

Shaine Ward failed to prosecute his motions. The Guardian ad litem and Dr. Tener have extensively interviewed the child, and have made their reports. Mother has testified that she was opposed to the stress which would be imposed on the child by further interview. This Court finds that it would be imposing more trauma on the minor child to conduct an *in camera* interview. Therefore, this Court finds that it is not necessary to interview the child *in camera*. This Court's previous order of December 12, 2017 is revised to provide that the request is denied. Civ. R. 54(B).

This Court finds that the child has an appropriate relationship with his Mother, her fiancé, and his brother, as well as his school, his friends, and his maternal family.

This Court finds that the child is well adjusted to his maternal home, his school, and his community.

This Court finds that Melissa Schmitt has appropriate mental and physical health to be the residential parent and legal custodian.

This Court finds that Melissa Schmitt is the parent more likely to honor and facilitate the parenting time schedule ordered by this Court.

This Court finds that Shaine Ward has failed to pay child support as ordered by this Court.

There has been no evidence of child abuse.

This Court finds that Shaine Ward has interfered with Melissa Schmitt's parenting time with the minor.

There is no evidence that Melissa Schmitt would relocate outside of Ohio.

This Court finds that Shaine Ward has repeatedly interfered with the minor child's IEP/and or Services Plan and other educational matters. In 2016, Defendant insisted on proceeding with a Due Process Complaint against the Stow-Monroe Falls City School District that he filed on behalf of the minor child, but then failed to comply with the resulting settlement signed in May, 2017. Instead, he chose an alternate provider, approved by Defendant, to provide reading intervention services and the District agreed to amend the settlement agreement to fund such hours of intervention services to be scheduled by Defendant. Shaine Ward, during his parenting time, would awaken the minor child from his sleep in the early morning hours in order to work on this program, while ignoring the minor child's actual assigned school work. The minor child's teachers noted that he was falling asleep in class after spending the night with Defendant.

This Court finds that Shaine Ward has disobeyed this Court's previous orders concerning the allocation of parental rights and responsibilities. He has interfered with the child's parenting time with his Mother. Shaine Ward has obtained medical care for the minor child for non-emergency matters. He has interfered with counseling obtained by Mother, pursuant to this Court's order and has obtained counseling for the minor child, in direct contravention of this Court's orders and he has refused to inform Mother of the name and contact information of therapist.

This Court finds that it is not in the child's best interest to have a passport at this time. This Court will reconsider the need for a passport in the future.

This Court finds that Shaine Ward has violated numerous orders concerning medical care, educational decisions, and activity decisions.

This Court finds that Shaine Ward has no ability to cooperate with Melissa Schmitt to make decisions jointly regarding the minor child.

This Court finds that Shaine Ward does not encourage the sharing of love, affection, and contact between the child and Melissa Schmitt.

This Court finds that it previously imposed a Civil Protection Order against Shaine Ward due to his treatment of Melissa Schmitt.

This Court has considered the geographic proximity of the parents.

This Court has considered the recommendations of the Guardian ad litem in this matter:

This Court finds that there is no reason to modify the current child support obligations between the parties, including their responsibilities for uninsured medical expenses.

IV. CONTEMPT ORDER DECEMBER 1, 2018

This Court finds that Melissa Schmitt filed her notice of Shaine Ward's noncompliance with this Court's purge orders dated December 1, 2017. Shaine Ward has filed no response. This Court finds that Shaine Ward has not paid any child support since that the order filed December 1, 2017. Accordingly, this Court's sentence should be imposed.

V. CONTEMPT MOTIONS FILED BY MELISSA SCHMITT

This Court finds that Shaine Ward has acted in willful contempt of this Court's lawful order dated April 17, 2015 by his interference with the child's parenting time with his Mother.

This Court finds that Shaine Ward has acted in willful contempt of this Court's lawful order dated April 17, 2015 by his failure to pay the minor child's medical expenses.

This Court finds that Shaine Ward has acted in willful contempt of this Court's lawful order dated April 17, 2015 by taking the child for non-emergency medical care and his failure to give notice to Melissa Schmitt.

This Court finds that Shaine Ward has acted in willful contempt of this Court's lawful order dated April 17, 2015 by his failure to take the child to tutoring or to pay his share of the cost of tutoring.

This Court finds that Shaine Ward has acted in willful contempt of this Court's lawful order dated April 17, 2015 by his continuing failure to satisfy the note underlying the purchase money mortgage for the Ranch Road property.

This Court finds that Shaine Ward has acted in willful contempt of this Court's lawful order dated April 17, 2015 by his continuing failure to sell the Ranch Road property and apply its proceeds to the purchase money loan.

This Court finds that Shaine Ward has acted in willful contempt of this Court's lawful order dated April 17, 2015 by his continuing failure to pay Melissa Schmitt the sum of \$2,428.69.

VI. MELISSA SCHMITT'S MOTION TO TERMINATE SHAINÉ WARD'S INVOLVEMENT IN ANY DUE PROCESS COMPLAINT.

This Court finds that Shaine Ward was granted leave to complete a Due Process Complaint filed on behalf of the minor child, which he had commenced prior to November 23, 2016. This Court finds that Shaine Ward abused this privilege by failing to comply with the terms of the settlement reached in a reasonable manner.

This Court finds that Shaine Ward did not ensure that the minor child completed actual school assignments, but, instead, awoke the minor child early in the morning to work on a program of his choice. The teachers noted that the child's homework was not complete and that he was falling asleep on the mornings after spending the night with Father.

Based upon the foregoing, and because Plaintiff had previously been granted the sole right to make educational decisions regarding the minor child both in the November 23, 2016 Order and the January 10, 2017 Order, this Court concludes that Shaine Ward has absolutely no legal authority to file or pursue any pending Due Process Complaints on behalf of the minor child, nor take any other or other actions related to the education of the minor child of the parties.

VII. MELISSA SCHMITT'S MOTION TO HAVE SHAINÉ WARD DECLARED TO BE A VEXATIOUS LITIGATOR

This Court takes judicial notice of this Court's docket, which contains more than 1,200 entries and approximately 100 pages. This Court has considered Plaintiff's June 20, 2017 Response to Defendant's Consolidated Motions, which sets forth the many duplicative motion, motions which already had been dismissed, and motions which had been resolved on appeal. This Court takes judicial notice of this court's docket, which reflects that Shaine Ward has filed 16 appeals, one of which was premature and one of which resulted in a remand to this Court, which was resolved on April 17, 2015.

The court heard testimony from Melissa Schmitt in relation to her motion to declare defendant a vexatious litigator, filed on April 26, 2017. With respect to that motion, the court take judicial notice of the docket in this case which consists of approximately 100 pages and which has 1100 entries.

This Court also considered Plaintiff's exhibit which listed Shaine Ward's filings in the civil division of Summit County Court of Common Pleas and his appeals in this particular matter to the Summit County Court of Appeals. Plaintiff has presented evidence of Shaine Ward's litigation in the General Civil Division against her friends and relatives. He has filed 6 complaints, based on their mere observation of parenting time exchanges. These actions were stayed, pending resolution of the divorce in this matter, which occurred on April 17, 2015 and Shaine Ward's appeal of which was denied on September 7 2016.

Shaine Ward has brought the following cases in the Court of Appeals:

Case number 25647 and Case number 25671, which were dismissed being premature. This Court finds no issues with these appeals.

Case number 26 372, which resulted in the Court of Appeals remanding this matter or a correct division of property and a clearer allocation of parental rights and responsibilities. This Court finds no difficulties with this appeal

Since then, Shaine Ward has filed 12 appeals in this case, resulting in Court of Appeals Cases numbered: 27503, 27636, 27669, 27805, 28081, 28219, 28324, 28523, 28694, 28700, 28877, and 28910. Some of these appeals have been dismissed for lack of jurisdiction due to their untimely filing. Most, however, have resulted in full affirmation of this Court's actions

Plaintiff Melissa Schmitt testified regarding the ongoing difficulties caused by Shaine Ward's numerous filings. Notably, her friends and families have been harassed by baseless complaints filed in the general division. The child's school and his school district of residence have been repeatedly subjected to litigation filed by Defendant. Further, professionals

working with the minor child are fearful that court actions will be filed against them by Defendant. Importantly, this Court finds that there has not been one day, since the filing of the this Domestic Relations case, where there has not been pending litigation in this Court or another trial court, or a pending appeal.

This Court finds that Melissa Schmitt has been forced to expend significant money to defend the actions filed by Shaine Ward. This court finds that Melissa Schmitt, her friends, and family have suffered as a result of his baseless filings, often duplicating previous filings in this Court and on appeal.

This Court finds that Shaine Ward has failed to appear at hearings scheduled by this Court, including June 21, 2018, of which he was made aware both by the court and by the counsel appointed for him as to the contempt motions. This Court finds that Shaine Ward failed to appear on March 27 and March 28, 2018, although notices of these hearings were sent to him. This Court finds that Melissa Schmitt appeared at all hearings.

This Court finds that Melissa Schmitt has attempted to cooperate with Shaine Ward regarding parenting issues and the division of property, but that Shaine Ward is in contempt of court. This Court finds that Shaine Ward has filed baseless appeals and baseless motions, rather than attempting to cooperate or comply with this court's orders. He has not been successful in his appeals since 2012.

The Ohio Revised Code Section 2323.52 (A) defines "vexatious conduct" as conduct of a party in a civil action that satisfies any of the following:

(a) the conduct obviously serves merely to harass or maliciously injure another party to the civil action.

(b) the conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

(c) the conduct is imposed only for delay.

Further, a vexatious litigator is defined as any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the Court of Claims or any Court of Appeals, Court of Common Pleas, Municipal Court, or County Court, whether the person or another person instituted a civil action or actions, and other vexatious conduct was against the same party or against different parties in the civil action or actions. R.C. 2323.52(A)(3).

This Court finds that Shaine Ward's conduct as illustrated by the testimony and evidence meets the definition of vexatious conduct. Accordingly defendant is hereby declared to be a vexatious litigator pursuant to R.C. 2323.52(D)(1).

ACCORDINGLY, it is ordered that:

1. Because Shaine Ward is not eligible for appointed counsel, this Court's previous order appointing counsel is terminated. Attorney Michael Wartko is entitled to compensation for his services to date and shall submit his fee application.
2. All of Shaine Ward's motions pending on June 21, 2018, are dismissed for failure to prosecute. This Court's order for an *in camera* interview is amended and this Court expressly denies the motion for an *in camera* interview.
3. Melissa Schmitt's motion to terminate the shared parenting plan is well taken and is granted, effective June 21, 2018.
4. Melissa Schmitt is designated the sole residential parent and legal custodian of the minor child, effective June 21, 2018.
5. Effective June 21, 2018, and as indicated in previous Court Orders and as reiterated in the present Order, Melissa Schmitt is the sole person to make medical decisions regarding the minor child. Shaine Ward is not to take the child for medical treatment, absent dire emergency. If a dire emergency occurs, Defendant is ordered immediately to notify Melissa Schmitt so she can make all medical decisions after the emergency treatment. This includes all aspects of medical treatment, including but not limited to: optical, dental, orthodontic, mental health, including counseling, educational-diagnostic, and all other aspects of medical treatment. Shaine Ward is not to obtain a physical or any other examination of any kind for the minor child. Melissa Schmitt is to inform Shaine Ward of all appointments. He may attend the appointments, give his input, and ask any questions.
6. Effective June 21, 2018, and as indicated in previous Court Orders and as reiterated in the present Order, Melissa Schmitt is the sole person to make any and all educational decisions regarding the minor child, including, but not limited to, those involving his IEP and or Services Plan, accommodation, modification or any other educational matter concerning the minor child. Shaine Ward is not to obtain

any examination of the minor child. He is not to take the minor child for any type of treatment. He is not to make any educational decisions regarding the minor child. Melissa Schmitt shall inform Shaine Ward of all meetings and appointments. He may attend the meetings and appointments, give his input, and ask any questions, if he so chooses.

7. Melissa Schmitt, pursuant to this Order and this Court's previous orders, is the parent with exclusive decision-making authority regarding the minor child and school related issues, and, therefore, has the sole legal authority to make educational decisions on behalf of the minor child, including, but not limited to, the sole authority to bring a legal action to challenge any special education and/or related services issues, including those relating to counseling, as provided in accordance with the Individuals with Disabilities Education Improvement Act of 2004, relevant federal regulations, Ohio Revised Code Chapter 3323 and Ohio Administrative Code Sections 3301-51-01 through 3301-51-10. As such, this Court declares that Shaine Ward has no authority to act as the "parent" of the minor child for purposes of a legal action to challenge the special education and/or related services provide to the minor child under state or federal law. Therefore, if Mr. Ward proceeds with any Due Process Complaint commenced after November 23, 2016, including the present Due Process Complaint filed against Stow-Monroe Falls City Schools, or if Mr. Ward files another Due Process Complaint in the future, it will be in direct contravention to this Court's order and Mr. Ward shall immediately be called to show cause as to why this Court should not hold him in Contempt.
8. Effective June 21, 2018, Melissa Schmitt is the sole person to make decisions as to activities and sports for the minor child. Shaine Ward may engage in activities with the minor child during his parenting time, but he is not authorized to register the minor child for any sport or other activity which occurs during Mother's parenting time. He may attend sports and activities for which Melissa Schmitt registers the minor child.
9. Effective June 21, 2018, Shaine Ward shall have parenting time on alternate weekends, based upon the current alternation, from after school on Friday until Monday morning at school or at 8:00 a.m. if there is no school. Shaine Ward shall provide all transportation for his parenting time. He shall have holidays and days of special meaning pursuant to the Summit County Standard Order of Parenting Time, as amended 3/31/01.

10. Commencing January 1, 2019, Melissa Schmitt and Shaine Ward shall equally divide the summer break and winter break from school. Melissa Schmitt is to make up the parenting time schedule for summer break and winter break. Shaine Ward shall give input for his preferred time for summer break by December 15 of the preceding year. Melissa Schmitt shall give the summer parenting time schedule to him by March 15. Shaine Ward shall give input for his preferred time for winter break by September 15. Melissa Schmitt shall give the winter parenting time schedule to him by December 1.
11. Each parent shall give the other notice of vacation information, 60 days in advance. This information shall include flight details, hotel or lodging details, phone contacts, and itinerary. Each parent shall update their information promptly and prior to departure.
12. Pending further order of this Court, Parker Jax Ward shall not have a passport. This Court will reconsider the issue upon motion of either parent.
13. All of Melissa Schmitt's motions not specifically addressed herein have been voluntarily dismissed by her, without prejudice.
14. Shaine Ward is sentenced to 30 days in the Summit County Jail pursuant to this Court's order dated December 1, 2018. Shaine Ward is ordered to appear at the Summit County Jail 885 East Buchtel Avenue, Akron, Ohio, 44305 on August 1, 2018 at 9:00 a.m. to begin his sentence. The Sheriff /Summit County Jail shall contact the Court if Defendant fails to appear as ordered. If Defendant fails to appear as ordered, the Court shall issue a capias for his arrest, may find him in further contempt of court, and may sentence him to additional jail time. Defendant shall serve his time in either the Summit County Jail or the Summit County Minimum Security Misdemeanant Facility as determined by the Summit County Sheriff.
15. Shaine Ward is in contempt of this Court's order dated April 17, 2015 on the issues raised by Melissa Schmitt on January 31, 2018 and June 14, 2018. This Court is holding its sentencing order in abeyance.
16. Melissa Schmitt is granted a judgment against Shaine Ward in the amount of \$2,428.69 plus statutory interest from April 17, 2015.
17. The court finds that Shaine Ward's conduct as illustrated by the testimony and

evidence meets the definition of vexatious conduct. Accordingly defendant is hereby declared to be a vexatious litigator pursuant to R.C. 2323.52 (D)(1).

18. Until further order of this Court, Shaine Ward is hereby prohibited from doing any of the following without first obtaining leave of court to proceed:

(A) instituting legal proceedings in the Court of Claims, or in the Court of Common Pleas, Municipal Court, or County Court,

(B) continuing any legal proceedings that the vexatious litigator instituted in any of the courts in R.C. 2323.52 (1) (A) of this section prior to the entry of this order

(C) making any application, other than an application for leave to proceed under division (F)(1) R.C. 2323.52, in any legal proceedings instituted by the vexatious litigator or another person in any of the courts specified above.

The clerk of court shall send a certified copy of this order to the Supreme Court of Ohio for publication pursuant to R.C. 2323.52 (H).

To the clerk:

Pursuant to civil rule 58(B), the clerk is directed to serve upon Plaintiff and Defendant notice of the filing of this judgment entry and of the date of entry upon the Journal.

Court costs are divided equally between the parties.

IT IS SO ORDERED.



JUDGE GIULITTO

CC:
Plaintiff
Defendant
Leslie S. Graske, counsel for Plaintiff
Summit County Sheriff
Summit County Jail
Oriana House

I certify this to be a true copy of the original
Sandra Kurt, Clerk of Courts.



Deputy Clerk