

IN THE SUPREME COURT OF OHIO

M.D.,)	ON APPEAL FROM THE CUYAHOGA COUNTY
)	COURT OF APPEALS, EIGHTH APPELLATE
APPELLANT,)	DISTRICT
)	
v.)	COURT OF APPEALS
)	CASE No. CA-22-112009
M.A.D.,)	
)	
APPELLEE.)	
)	

APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION

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**EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT
GENERAL INTEREST**

This appeal is of public or great general interest as it requests from this Court, the upholding of a litigant's rights to due process in civil contempt proceedings. Ohio law makes clear that due process must be observed in civil contempt proceedings. In doing so, the accused must be afforded notice and an opportunity to present his/her claims and defenses to the alleged contempt.

When a trial court "grants" a motion for contempt and simultaneously schedules a hearing for a later date, there can be no finding that the alleged contemnor has been given an opportunity to defend the allegations of contempt. The granting of the motion, prior to a hearing on the issue, clearly prevents the alleged contemnor from obtaining judgment in his/or her favor. Any subsequent hearing would serve only as an affront to satisfying the due process protections outlined in Ohio Revised Code Section 2703.02.

The Appellate Court in this matter, has refused to acknowledge a trial court's granting of a contempt motion, without a hearing, and in violations of the alleged contemnor's due process rights as a final, appealable order pursuant to Ohio Revised Code Section 2505.02. This Court should accept jurisdiction over the within appeal as necessary for the protection of Ohio's litigants and their rights to due process of law in contempt proceedings.

STATEMENT OF THE CASE AND FACTS

The Appellant filed her Complaint for Divorce with the Cuyahoga County Court of Common Pleas, Domestic Relations Division on May 31, 2017. On November 28, 2017, the trial court issued a Judgment Entry joining the parties' two (2) minor children as party defendants and appointing Megan J. Corsi, as the guardian *ad litem* and counsel for the minor children.

On June 20, 2018, the trial court issued an Interim Judgment Entry providing the Appellee, M.A.D., with supervised parenting time on June 17, 2018, from 10:00 am to 2:00 pm. Appellee, M.A.D., was granted additional supervised parenting time with the minor children under the July 20, 2018 Judgment Entry. Specifically, he was granted supervised parenting time every Saturday from noon to 6:00 pm. Commencing July 18, 2018.

The Appellee, M.A.D.'s parenting time was modified again on February 28, 2019, modifying the visitation supervisor to Common Ground Family Services, LLC and permitting the Appellee, M.A.D., to exercise parenting time offsite.

The trial court issued a "Nunc Pro Tunc" Judgment Entry on August 30, 2022, setting forth that the Appellee, M.A.D., shall have parenting time every Saturday from noon to 6:00 pm, commencing August 27, 2022. The August 30, 2022 Judgment Entry further provided that Dr. Afsarifard (the Appellee, M.A.D.'s expert witnesses retained to conduct a forensic custody evaluation) shall attend the parenting time either in person or via electronic means pending further order of the court.

Appellant filed her Motion to Modify Interim Parenting Orders on August 20, 2022, Motion for Civil Rule 75(B)(2) Hearing on September 2, 2022, and Motion for In-Camera Interview of the minor children on September 7, 2022.

Appellee, M.A.D., filed his “Emergency” Motion to Show Cause and “Emergency” Motion for Expedited Hearing on his Motion to Show Cause on September 20, 2022. He then filed his Second Motion to Show Cause on September 28, 2022 and Motion to Consolidate.

The trial court issued a Judgment Entry on October 13, 2022 granting Appellee, M.A.D.’s Motion to Sow Cause. The Entry provided in pertinent part that:

Defendant [M.A.D.’s] Emergency Motion to Show Cause (#453752);
Defendant’s Emergency Motion for Expedited Hearing on Defendant [M.D.’s]
Second Emergency Motion to Show Cause; and Defendant [M.D.’s] Motion to
Consolidate Defendant’s Motions for hearing on October 12, 2022 (#453945).
The court finds that defendant’s motions well-taken and will grant same.

October 3, 2022 Judgment Entry at p. 3.

The trial court’s **granting** of the Appellee, M.A.D.’s Motion to Show Cause (#453752) was done without a hearing, in violation of Ohio law and Appellant’s right to due process of law. As such, the Appellant filed her Notice of Appeal to the October 3, 2022 Judgment Entry pursuant to Ohio Revised Code Section 2505.02.

On October 13, 2022 the Appellate Court *sua sponte* dismissed the Appellant’s appeal, setting forth that the trial court’s October 3, 2022 Judgment Entry was a “scheduling order.” The Appellate Court, however, did not acknowledge that the trial court expressly granted the Appellee, M.A.D.’s Motion to Show Cause, preventing a judgment in the Appellee’s favor and depriving the Appellee of her right to due process.

Appellee filed her Motion for Reconsideration on October 14, 2022. The Appellate Court denied the Motion for Reconsideration on October 31, 2022.

ARGUMENT IN SUPPORT OF JURISDICTION

Appellant's Proposition of Law No. 1: A trial court's order granting a motion for contempt, without a hearing, is a final appealable order pursuant to Ohio Revised Code Section 2505.02.

Pursuant to Section 3(B)(2), Article IV of the Ohio Constitution, appellate courts can only review "judgments or final orders of the courts of record inferior to the court of appeals within the district."¹ If a trial court's order is not final, an appellate court has no jurisdiction to review the matter and the matter must be dismissed.² For a judgment to be final and appealable, it must satisfy the requirements of Ohio Revised Code Section 2505.02 and, if applicable, Civ. R. 54(B).

Civ. R. 54 is not applicable in this matter as Ohio's "courts have held that a Civ. R. 54(B) certification is not required to make a contempt order final and appealable."³

Ohio Revised Code Section 2505.02(B) sets forth seven (7) categories of final orders and provides that:

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:

- (1) An order that affects a substantial right in an action that in effect determined the action and prevents a judgment;
- (2) ***An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;***
- (3) An order that vacates or sets aside a judgment or grants a new trial;
- (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.

¹ *Hassinger v. Hassinger*, 5th Dist. Ashland No. 16-COA-009, 2017-Ohio-2962, ¶10.

² *Id.*

³ *Barton v. Barton*, 2nd Dist. Greene No. 2016-CA-12, 2017-Ohio-980, ¶59.

- 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.
- (5) An order that determines that an action may or may not be maintained as a class action;
- (6) An order determining the constitutionality of any changes to the Revised Code...
- (7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of section 163.09 of the Revised Code.

R.C. 2505.02(B). (Emphasis added).

Motions for contempt are special proceedings within the definition of Ohio Revised Code Section 2505.02.⁴ The Ohio Supreme Court has acknowledged that contempt proceedings are “special proceedings.”⁵ Contempt proceedings are “sui generis in the law.”⁶ They bear some resemblance to suits in equity, to criminal proceedings and to ordinary civil actions; but they are none of these.”⁷

The trial court’s October 3, 2022 Judgment Entry further affects a “substantial right” of the Appellant, rendering the trial court’s entry final and appealable under Ohio revised Code Section 2505.02(B).

Ohio Revised Code Section 2505.02 defines “substantial right” means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.⁸

⁴ See, *Cundiff v. Cundiff*, 4th Dist. Pickaway No. 00CA8, 2000 WL 121219, *1 (Motions to modify custody, child support, or for contempt are classified as special proceedings and judgments on such motions are final and appealable when made.).

⁵ *League of Women Voters of Ohio v. Ohio Redistricting Commission*, 2022-Ohio-789, ¶207

⁶ *Id.*

⁷ *Id.*; citing *Cincinnati v. Cincinnati Dist. Council 51, Am. Fedn. of State, Cty., and Mun. Emps., AFL-CIO*, 35 Ohio St.2d 197, 201-202, 299 N.E.2d 686 (1973).

⁸ R.C. 2505.02(A)(2).

Contempt of court proceedings are governed by Ohio Revised Code Chapter 2705. Guidance for hearings and proper notice are contained in Section 2705.03. Section 2705.03 sets forth:

In cases under section 2705.02 of the Revised Code, 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. This section does not prevent the court from issuing process to bring the accused into court, or from holding him in custody, pending such proceedings.

R.C. 2705.03.

Ohio's appellate courts have held that due process must be observed in civil contempt proceedings.⁹ Since deprivation of liberty or property is implicated in a contempt charge, one accused of an indirect civil contempt must be afforded due process before a court can order punishment.¹⁰

Due process and the statutory provision of Revised Code Section 2705.03 require that an individual accused of indirect contempt be given adequate notice, time to prepare any defense, and an opportunity to be heard.¹¹ More specifically, due process considerations require that the alleged contemnor have the right to notice of the charges against him/her, a reasonable

⁹ *Machnics v. Sloe*, 11th Dist. Geauga No. 2007-G-2784, 2008-Ohio-1133, ¶41; *quoting State ex rel. Miller v. Wallar*, 10th Dist. Franklin No. 04AP-574, 2004-Ohio-6612, ¶7; *see also Courtney v. Courtney*, 3rd Dist. Hancock No. 5-83-21, 16 Ohio App.3d 329, 332; *Young v. Young*, 5th Dist. Stark No. 2019CA00035, 2020-Ohio-754, ¶23; *Smith v. Smith*, 4th Dist. Hocking No. 18CA11, 2019-Ohio-899, ¶58.

¹⁰ *In re J.M.*, 12th Dist. Warren No. CA2008-01-004, ¶48; *citing Poptic v. Poptic*, Butler App. No. CA2005-06-145, 2006-Ohio-2713.

¹¹ *State ex rel. Miller*, 2004-Ohio-6612 at ¶7; *see also Gulbrandsen v. Summit Acres, Inc.*, 4th Dist. Washington Nos. 14CA26, 14CA27, 2016-Ohio-1550, ¶43.

opportunity to defend against or explain such charges, representation by counsel, and the opportunity to testify and to call other witnesses, either by way of defense or explanation.¹²

This Court should find that the granting of a motion to show cause by a trial court, before a hearing on the motion, renders any subsequent hearing on the issue of contempt meaningless. Where a finding of contempt precedes a hearing on the motion for contempt, the alleged contemnor is not provided “a reasonable opportunity to defend.”

The Appellant in this matter was not given an opportunity to be heard, or to defend, the Appellee, M.A.D.’s Motion to Show Cause (#453752) prior to the trial court granting his Motion. Rather, the trial court found the Appellee, M.A.D.’s Motion “well taken and will grant the same.” Without conducting a hearing in direct violation of the Appellant’s due process rights. The Appellate Court’s *sua sponte* dismissal of the Appellee’s underlying appeal was done without regard for Ohio law and the clear definition of a final, appealable order under Ohio Revised Code Section 2505.02. This Court should accept jurisdiction over the Appellant appeal and establish the proposition that a trial court’s granting of a motion for contempt, without a hearing, is a final, appealable order pursuant to Ohio Revised Code Section 2505.02.

CONCLUSION

The Appellant, M.D., respectfully requests that this Court accept jurisdiction over the within appeal, as this appeal is one of public or great general interest. This Court must establish that a trial court’s granting of a contempt motion, without conducting a hearing and without allowing the alleged contemnor to defend against the alleged contempt, constitutes a final appealable order pursuant to Ohio Revised Code Section 2505.02.

¹² *In re J.M.*, 2008-Ohio-6763, ¶48.

A trial court's scheduling of a hearing, after finding a contempt motion "to be well taken and granted" effectively deprives the alleged contemnor of a reasonable opportunity to defend the allegations of contempt by preventing the alleged contemnor from obtaining a judgment in his/her favor. This Court should find the alleged contemnor is therefore entitled to an immediate appeal under Ohio Revised Code Section 2505.02 in order to prevent miscarriages of justice and the disregard of the due process by Ohio's trial courts.

Respectfully Submitted,

/s/ Nicole A. Cruz

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CERTIFICATE OF SERVICE

A copy of the foregoing has been served upon Attorneys for Appellee, Mr. Brian Murray, Esq., located at 3912 Prospect Avenue, East, Cleveland, Ohio 44115, *via* email to BAM@zukerman-law.com; and Megan J. Corsi, Attorney for Children, located at 7100 E. Pleasant Valley Road, Suite 120, Independence, Ohio 44131 via email to megancorsi@aol.com or about this 15TH day of December 2022.

/s/ Nicole A. Cruz
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ATTORNEYS FOR APPELLANT, M.D.

APPENDIX A
October 31, 2022 Journal Entry
M.D. v. M.D., Case No. CA-22-112009

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Nailah K. Byrd, Clerk of Courts

M.A.D.

Appellant

COA NO.
112009

LOWER COURT NO.
DR-17-367298

COMMON PLEAS COURT

-vs-

M.D.

Appellee

MOTION NO. 558844

Date 10/13/22

Journal Entry

Sua sponte, the appeal is dismissed for lack of a final appealable order. The order being appealed is the trial court's scheduling order for the upcoming hearings and does not determine the action or prevent a judgment. R.C. 2505.02(B). Appeal dismissed.

Judge Anita Laster Mays, Concur



Sean C. Gallagher
Administrative Judge

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APPENDIX B

October 13, 2022 Journal Entry
M.D. v. M.D., Case No. CA-22-112009

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Nailah K. Byrd, Clerk of Courts

M.A.D.

Appellant

COA NO.
112009

LOWER COURT NO.
DR-17-367298

COMMON PLEAS COURT

-vs-

M.D.

Appellee

MOTION NO. 558890

Date 10/31/22

Journal Entry

Motion by Appellant for reconsideration is denied. Appellant argues that the scheduling order also included a finding the appellant in contempt, which constitutes a final appealable order. A review of the order that appellant cites to does show that the trial court listed several motions including: defendant's emergency motion to show cause; defendant's emergency motion for an expedited hearing on defendant's motion to show cause; defendant's second emergency motion to show cause; and defendant's motion to consolidate motions for hearing on October 12, 2022. After listing these motions, the trial court states, "The court finds defendant's motions well-taken and will grant the same." However, in the following paragraph, the court sets the motions for a hearing. Therefore, there was no intention for the court to rule on the contempt motions. In fact, the court later issued a nunc pro tunc judgment entry that corrected the order by removing the sentence stating that the motions are well taken, to "the court finds the defendant's motion to consolidate well taken and will grant the same." Additionally, even if the trial court did grant the motion to contempt, it did not include a penalty for the contempt. A finding of contempt without imposition of a sanction or penalty is not a final appealable order. See, e.g., Cleveland Civ. Serv. Emp. Assn. v. Cleveland, 8th Dist. No. 93922, 2010-Ohio-4352, par. 58, 60.



Sean C. Gallagher
Administrative Judge