[Cite as *In re M.E.H.*, 2010-Ohio-2237.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

In the Matter of:	:	
	:	
[M.E.H., a minor child.]	:	Case No: 09CA43
	:	
	:	
	:	**DECISION AND**
	:	**JUDGMENT ENTRY**
	:	
	:	File-stamped date: 5-14-10

APPEARANCES:

Michael L. Hurst, pro se, Marietta, Ohio, for Appellant/Father/Michael L. Hurst.

Michael D. Buell, BUELL & SIPE CO., L.P.A., Marietta, Ohio, for Appellee/Mother/Anna C. Story.

Kline, J.:

{¶1} Michael L. Hurst (hereinafter "Hurst") appeals the judgment of the Juvenile Division of the Washington County Court of Common Pleas. In the order below, the trial court (1) found that Hurst was not in contempt of court and (2) clarified Hurst's visitation rights as to M.E.H. (hereinafter the "Child"). On appeal, Hurst contends that the trial court erred in modifying Hurst's visitation rights. For two reasons, we disagree. First, we interpret the order at issue as a mere clarification of an earlier order regarding supervised visitation. And second, we must presume the regularity of the proceedings below because Hurst did not provide a transcript of the relevant hearing. Next, Hurst contends that the trial court committed various errors related to fees and court costs. We disagree. Hurst does not have standing to appeal most of these issues. And where

Hurst does have standing, we must presume the regularity of the proceedings below. Accordingly, we overrule Hurst's assignments of error and affirm the judgment of the trial court.

I.

{¶2} This matter is before this court for a second time. See *In re M.E.H.*, Washington App. No. 08CA4, 2008-Ohio-3563.

{¶3} Hurst and Anna C. Story (hereinafter "Story") are the Child's biological parents, and Story is the Child's residential parent and legal custodian. Because of Hurst's various legal issues, Story filed an Emergency Motion for Supervised Visitation of the Child. Story's motion claims that "unsupervised visitation would be inappropriate and potentially dangerous under the present circumstances."

{¶4} The trial court granted Story's motion in an April 8, 2009 order, which, in relevant part, states the following: "The Court believes it is in the best interests of the child to issue the following Order and that the same is necessary to protect the child until current investigations are completed. It is therefore ORDERED that the current visitation accorded Mr. Hurst is hereby TERMINATED. All future visitations shall be supervised through the Family Connect Supervised Visitation Center, Marietta, Ohio[,] on a schedule as arranged by the parties with the Center. Both parties shall immediate[ly] cooperate to establish visitation no less than two hours each week subject to the availability of the Center and supervision."

{¶5} On May 15, 2009, Story filed a contempt motion based on incidents related to the Child's May 10, 2009 soccer game. Apparently, Hurst attended the soccer game with his mother. Before the game, and without asking, Hurst and his mother allegedly

removed the Child from Story's car and then escorted the Child to the soccer field. After the game, Hurst apparently insisted on escorting the child back to Story's car. When Story objected, Hurst allegedly threatened Story and Story's father. Story claimed that these actions violated the April 8, 2009 order.

{¶6} Because of the contempt motion, Hurst applied for court-appointed counsel. To that end, he filed a completed Financial Disclosure Form/Affidavit of Indigency Form. The form states that, "[b]y submitting this Financial Disclosure Form/Affidavit of Indigency Form, you will be assessed a non-refundable $25.00 application fee unless waived or reduced by the court."

{¶7} A court-appointed attorney represented Hurst at the September 3, 2009 contempt hearing. Although we do not have a transcript from that hearing, the trial court found that Hurst was not in contempt of the April 8, 2009 order. In its September 11, 2009 order, the trial court stated the following: "Based on the evidence presented, the Court finds that the mother failed to prove by clear and convincing evidence that the father is in indirect civil contempt of a court order with respect to visitation due to the vagueness of the order.

{¶8} "Accordingly, it is ORDERED AND ADJUDGED that the mother's motion filed May 15, 2009, is DISMISSED. The mother's request for attorney fees is denied.

{¶9} "The Court finding that the present visitation order entered on April 8, 2009, is subject to different interpretations, hereby modifies said order as follows:

{¶10} "IT IS ORDERED that Michael Hurst shall have no contact with his daughter, direct or indirect, outside the Family Connect Supervised Visitation Center, located in Marietta, Ohio. This includes, but is not limited to, all school activities and sporting

events. All future contact and visitation with his daughter shall occur at the Visitation Center and shall be supervised by said Visitation Center on a schedule as determined by said Center. Said visitation shall be no less than two hours each week and in accordance with the Center's rules.

{¶11} "Court costs are waived."

{¶12} Hurst appeals and asserts the following two assignments of error: I. "TRIAL COURT ABUSED ITS DISCRETION BY MODIFYING THE ORDER WITHOUT MOTION, HEARING, NOTICE, OR STATUTORY PROCEDURE." And, II. "TRIAL COURT ACTED PARTIAL AND FAILED TO COMPLY WITH STATUTORY REGULATIONS WHEN MAKING A DECISION TO WAIVE THE COURT COSTS AND WITNESS FEES, AND NOT ORDERING THE COURT APPOINTED COUNSEL FEE ALL TO BE PAID BY THE PLAINTIFF WHEN THE DEFENDANT WAS THE PREVAILING PARTY." [1]

II.

{¶13} In his first assignment of error, Hurst contends the trial court erred in modifying the April 8, 2009 order. First, Hurst argues that the trial court did not follow proper statutory procedure. And second, Hurst claims that his due process rights were violated.

{¶14} "[W]hen a parent seeks to modify a previous visitation arrangement, it is that party who bears the burden of proof as to whether the prior arrangement was not in the best interests of the [child]." *Bodine v. Bodine* (1988), 38 Ohio App.3d 173, 175. "We

[1] Hurst raises just two assignments of error. However, for an unknown reason, Hurst refers to his first assignment of error as "ASSIGNMENT OF ERROR NO. I and II" and his second assignment of error as "ASSIGNMENT OF ERROR NO.3."

will not reverse a trial court's decision on a motion for modification of visitation rights absent an abuse of discretion." *Knapp v. Knapp*, Lawrence App. No. 05CA2, 2005-Ohio-7105, at ¶18. An abuse of discretion connotes more than a mere error of judgment; it implies that the court's attitude is arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶15} We cannot find an abuse of discretion under Hurst's first assignment of error. First, as it relates to visitation, we believe the September 11, 2009 order merely clarifies the April 8, 2009 order. "A trial court has the right to construe and clarify its own judgment, and such construction does not amount to a modification thereof." *Hoffman v. Township of Green* (Oct. 31, 1990), Summit App. No. 14567, citing *Hofer v. Hofer* (1940), 35 Ohio Law Abs. 486, 488. The trial court found that Story "failed to prove by clear and convincing evidence that the father is in indirect civil contempt of a court order with respect to visitation *due to the vagueness of the order*." Decision and Entry on Mother's Motion for Contempt (emphasis added). As such, the trial court based its contempt decision on the vague language of the April 8, 2009 order as opposed to Hurst's actual conduct. And because the April 8, 2009 order "is subject to different interpretations," the trial court felt the need to clarify Hurst's visitation rights. Id. Thus, even though the trial court used the word "modified," we interpret the September 11, 2009 order as a mere clarification – not a modification – of supervised visitation under the April 8, 2009 order. Here, Hurst has not alleged any irregularities associated with the April 8, 2009 order. Furthermore, after reviewing the record, we can find no such irregularities. Therefore, we reject Hurst's various arguments under his first assignment of error.

{¶16} Additionally, Hurst did not provide a transcript of the September 3, 2009 hearing. In relevant part, App.R. 9(B) provides: "At the time of filing the notice of appeal the appellant, in writing, shall order from the reporter a complete transcript or a transcript of the parts of the proceedings not already on file as the appellant considers necessary for inclusion in the record and file a copy of the order with the clerk." Without a transcript from the September 3, 2009 hearing, we must presume the regularity of the proceedings below. In other words, we have "no choice but to presume the validity of the lower court's proceedings, and affirm." *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. See, also, *Murray v. Murray*, Lorain App. No. 06CA008982, 2007-Ohio-3301, at ¶4-6. For this additional reason, we cannot find that the September 11, 2009 order constitutes an abuse of discretion.

{¶17} Accordingly, we overrule Hurst's first assignment of error.

III.

{¶18} In his second assignment of error, Hurst makes various arguments related to fees and court costs. First, Hurst contends that the trial court should have waived the $25.00 application fee for the Financial Disclosure Form/Affidavit of Indigency Form.[2] Second, Hurst claims that his witnesses did not receive their witness fees. And finally, Hurst contends that the trial court should have ordered Story to pay court costs.

{¶19} "The assessment of court costs is within the discretion of the trial court." *Joseph v. Suttle* (Feb. 10, 1992), Meigs App. No. 446. See, also, *Ryan v. Ryan*,

[2] In his brief, Hurst mentions a "$20.00 Court appointed counsel fee." Brief of Appellant at 7. However, we have found no such fee in the record. Therefore, we believe that Hurst is actually referring to the $25.00 application fee.

Belmont App. No. 07-BE-48, 2008-Ohio-6358, at ¶36. As we noted above, an abuse of discretion implies that the court's attitude is unreasonable, arbitrary, or unconscionable.

{¶20} As to the Financial Disclosure Form/Affidavit of Indigency Form, Hurst has cited no authority in support of his argument that the trial court should have waived the $25.00 application fee. And because we have found nothing to suggest that waiving the fee is mandatory, we believe it is a matter within the trial court's discretion. Here, as we noted above, Hurst has not provided a transcript of the contempt hearing. And without reviewing that transcript, we cannot find an abuse of discretion related to the application fee. Instead, we must presume the validity of the proceedings below. *Knapp*, 61 Ohio St.2d at 199.

{¶21} Finally, Hurst lacks standing to appeal the other issues raised under his second assignment of error. "The doctrine of standing holds that only those parties who * * * have been prejudiced by the decision of the lower court possess the right to appeal." *In re Estate of Jones*, Adams App. No. 09CA879, 2009-Ohio-4457, at ¶22, citing *Willoughby Hills v. C.C. Bar's Sahara*, 64 Ohio St.3d 24, 26, 1992-Ohio-111. See, also, *B & B Rentals v. Fisher*, Athens App. Nos. 07CA23 & 07CA24, 2008-Ohio-2062, at ¶3. Here, Hurst has not been "injuriously affect[ed]" by any failure to pay witness fees. Id. These fees are not for Hurst's benefit; other people are supposed to collect them. See R.C. 2335.06. Furthermore, Hurst has not been injuriously affected by the trial court's decision on court costs, either. Because the trial court waived court costs, Hurst did not have to pay them. On appeal, he argues that court costs should have been taxed to Story. But this argument is irrelevant to Hurst's obligations under the

September 11, 2009 order. Regardless of whether Story pays court costs, the end result is the same for Hurst.

{¶22} Accordingly, we overrule Hurst's second assignment of error. Having overruled both of his assignments of error, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED. Appellant shall pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

McFarland, P.J. and Harsha, J.: Concur in Judgment and Opinion.

For the Court

BY:_____
Roger L. Kline, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.