

[Cite as *Stephens v. Stephens*, 2004-Ohio-4640.]

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

SARAH E. STEPHENS, NKA SARAH BAKER

Plaintiff-Appellant

-vs-

LEE E. STEPHENS

Defendant-Appellee

JUDGES:

: Hon: W. Scott Gwin, P.J.
: Hon: Sheila G. Farmer, J.
: Hon: John F. Boggins, J.
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: Case No. 04-00A-027
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: OPINION

CHARACTER OF PROCEEDING:

Civil appeal from the Ashland County Court
of Common Pleas, Domestic Relations
Division, Case No. 96-DIV-09895

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

September 2, 2004

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

GEORGE R. KEYSER
44 Park Avenue W., Ste 202
Mansfield, OH 44902

THOMAS L. MASON
155 W. Main Street
Box 345
Ashland, OH 44805

Gwin, P.J.

{¶1} Plaintiff Sarah Stephens nka Sarah Baker appeals a judgment of the Court of Common Pleas, Domestic Relations Division, of Ashland County, Ohio, which found her in contempt of the court's order for denying or interfering with the parenting time of defendant Lee E. Stephens, and for improperly claiming the parties' three minor children as dependents for federal income tax purposes for the years 2000, 2001, and 2002. Appellant assigns two errors to the trial court:

{¶2} "I. THE TRIAL COURT'S FINDING THAT PLAINTIFF/APPELLANT IS IN CONTEMPT OF COURT FOR DENYING AND INTERFERING WITH DEFENDANT/APPELLEE'S PARENTING TIME IN VIOLATION OF THE PRIOR ORDERS OF THE COMMON PLEAS COURT OF ASHLAND COUNTY, OHIO IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND CONTRARY TO LAW.

{¶3} "II. THE TRIAL COURT'S FINDING THAT THE PLAINTIFF/APPELLANT IS IN CONTEMPT OF COURT FOR IMPROPERLY CLAIMING THE MINOR CHILD [SIC] AS DEPENDENTS FOR FEDERAL INCOME TAX PURPOSES FOR THE YEARS 2000, 2001 AND 2002 IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND CONTRARY TO LAW."

{¶4} The magistrate's amended decision sets forth the findings of fact: the parties were divorced on August 20, 1996, and appellant was designated the residential parent of the parties' three minor children. At the time of the divorce, the children were

six years old, three years old, and one year old. Appellee was granted companionship rights pursuant to Ashland Loc. DR Rule 20.

{¶5} The magistrate found appellant has intentionally interfered with the parenting time rights of appellee, and has engaged in conduct aimed at alienating the children from their father.

{¶6} Appellant admitted she improperly claimed the parties' minor children as dependents on her 2000, 2001, and 2002 tax returns, in violation of the court's decree of divorce. Appellee has incurred a tax deficiency of approximately \$2,841 as a result of claiming the children as dependents on his own federal tax return without supplying IRS Form 8332. The court found although the divorce decree requires the parties to cooperate with one another to facilitate either party's proper claiming of the dependency exemption, the decree of divorce does not supercede the federal law requirement that appellee file IRS Form 8332 with his tax return when claiming the children as dependents for tax purposes. The magistrate found unless the parties cooperate on the issue, the result is that neither party is in a position to rightfully claim any of the children as dependents for tax purposes.

{¶7} The divorce decree provided appellee shall have the right to claim all three children as dependents on his income tax return in any calendar year, provided that as of January 31, of the following year, he is current in his child-support obligation under the prior order of the court. The magistrate found appellee was current in his child support for the 2000, 2001, and 2002, and was entitled to claim all three children.

{¶8} The magistrate found the evidence was inconclusive as to the amount of any specific damages which may have been sustained by appellee as a result of

appellant's claiming the children for tax purposes. However, the magistrate found the court could compute the amount appellant wrongfully gained by claiming the children for tax purposes.

{¶9} The magistrate found the children have not engaged in parenting time with their father for approximately four years. There was no significant evidence to support any conclusion that visitation between appellee and the children would subject the children to any risk of harm or danger, or that the parenting order is not in their best interests. The magistrate found because of the significant separation between the appellee and the children, parenting time should be gradually phased in, but with frequent, shorter parenting time periods prior to full implementation of Loc. DR R. 20 parenting time.

{¶10} The magistrate found the history of the case indicated repeated problems with parenting time and appellant's alleged interference with appellee's parenting time rights, although in 1997 the magistrate had found appellee had failed to establish by clear and convincing evidence that appellant had denied him parenting time. Subsequent to that finding in 1997, parenting time remained a disputed issue, with additional litigation in 1998. The parties resolved the 1998 litigation with a stipulated judgment entry establishing the present terms for parenting time. In the 1997 action, the magistrate ordered appellee not to permit his present wife to accompany him during the pickup or drop off of the minor children for companionship. However, the 1998 stipulated order did authorize appellee's present wife to participate in the transfer of the children. The stipulated order also directed the parties to utilize a receipt system to document attempts at parenting time by appellee, and compliance with the exchanges

by appellant. The parties failed to document any of these attempts as ordered, although appellee did provide corroborating testimony of his attempts to exercise parenting time and the associated denials by appellant.

{¶11} The trial court adopted the magistrate's report recommendations over appellant's objections.

I

{¶12} In her first assignment of error, appellant urges the trial court's finding she denied or interfered with appellee's parenting time is against the manifest weight of the evidence and contrary to law.

{¶13} At the hearing, appellee and his present wife testified regarding appellant's behavior. Appellee also presented the testimony of Sergeant Timothy Kitts of the Ashland County Sheriff's Department, who had answered 8 or 10 calls that appellant was denying appellee visitation. Sergeant Kitts testified appellant told him she was not going to turn the children over for visitation, and cited several different reasons. Sergeant Kitts testified he informed her if she did not turn the children over, she might be charged with contempt of court. Other officers from the Ashland County Sheriff's Department had also answered calls on other occasions, and sometimes, manpower shortages had prevented them from answering appellee's calls. Eventually, the sheriff's department informed appellee the matter presented too much of a strain for their department, particularly without a court order that the sheriff's department was to go and make sure the children were turned over.

{¶14} When presented with an allegation the trial court's order is against the manifest weight of the evidence, we must review the record before us and determine

whether there is relevant, competent and credible evidence upon which the fact finder could base its judgment. If the judgment is supported by competent and credible evidence going to all the essential elements of the case, we may not reverse as being against the manifest weight of the evidence, *C.E. Morris Company v. Foley Construction Company* (1978), 54 Ohio St. 2d 279.

{¶15} We have reviewed the record, and we find there was sufficient competent and credible evidence presented to the trial court that it could find by clear and convincing evidence appellant violated the parenting time order. Her testimony she did not intend to violate the court order is not a defense, see *Pugh v. Pugh* (1984), 15 Ohio St. 3d 136.

{¶16} The first assignment of error is overruled.

II

{¶17} In her second assignment of error, appellant argues the trial court's decision she was in contempt of court for claiming the minor children as dependents on her federal income tax is against the manifest weight of the evidence and contrary to law.

{¶18} Appellant testified she called the IRS and was advised she could claim the children as dependents for federal tax purposes if the children live with her and she provided most of their support. Appellant also testified she was unaware appellee was up to date in his child support. Appellant argues the court's order was not clear and definite, and she did not have a clear understanding of the order she violated. Consequently, any violation was simply a mistake.

{¶19} We have reviewed the record, and we find the decision of the trial court is supported by sufficient, competent and credible evidence tending to show appellant violated the court's order. We further find the order is not vague and ambiguous, and, as stated supra, intent is not an element of contempt.

{¶20} Finally, appellant argues appellee did not submit child support records or any other documentation to prove he was up to date in child support for the year 2000 by January 31, 2001, as provided in the divorce decree.

{¶21} Appellee testified he was behind in his child support before 1998, but before the end of 1999, he had caught up, and was current for the following years. Appellee's present wife also testified appellee had been behind in his child support until approximately September 1999, at which time the Child Support Bureau "came after him" for arrearages. She testified appellant paid the arrearages in full, and the case was dismissed. Appellee's wife testified the payments were withheld from his paycheck.

{¶22} Appellant testified she did not know whether appellee was caught up on his child support, because she does not communicate with the Child Support Bureau. Appellant admitted she received money every week, although she stated she did not want it.

{¶23} We find the trial court could find, on this record, appellee was current in his child support, and for this reason, this finding is not against the manifest weight of the evidence.

{¶24} The second assignment of error is overruled.

{¶25} For the foregoing reasons, the judgment of the Court of Common Pleas, Domestic Relations Division, of Ashland County, Ohio, is affirmed.

By Gwin, P.J.,
Farmer, J., and
Boggins, J., concur

JUDGES

WSG:clw 0817IN THE COURT OF APPEALS FOR ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

SARAH E. STEPHENS, :
NKA SARAH BAKER :
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Plaintiff-Appellant :
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