



Kelley v. Kelley

2022-Ohio-4306 (2022) | Cited 0 times | Ohio Court of Appeals | December 2, 2022

IN THE COURT OF APPEALS OF OHIO SIXTH APPELLATE DISTRICT WOOD COUNTY

KRISTIN J. KELLEY

APPELLEE

V.

GREGORY A. KELLEY

APPELLANT COURT OF APPEALS NO. {87}WD-21-078

TRIAL COURT NO. 2016 DR 0216

DECISION AND JUDGMENT

Decided: December 2, 2022

***** ¶ 1 This is an appeal from judgments of the Wood County Court of Common Pleas, Domestic Relations Division, which denied, after an evidentiary hearing, the reciprocal show-cause motions of defendant-appellant father, Gregory A. Kelley, and of plaintiff-appellee mother, Kristin J. Kelley, 1 to find the other party in contempt of the

1 Appellee did not appeal the denial of her show-cause motion. -cause hearing. For the reasons set forth below,

this court affirms the judgments of the trial court.

I. Background

¶ 2 After nearly 18 months of litigation, the parties were granted a divorce on May



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Since then the parties have continuously litigated various matters relating to the custody of their two minor children. This court has twice affirmed the prior custody decisions of the trial court, including the subject January 9 order. Kelley v. Kelley, 6th Dist. No. WD-19-073, 2020-Ohio-1535 and Kelley v. Kelley, 6th Dist. No. WD-20-010, 2020-Ohio-6778.

{¶ 3} On July 8, 2020, appellant filed a motion to show cause alleging three order: (1) when appellee denied appellant three days, from June 30 to July 3, out of three weeks of vacation, with the younger child; (2) when appellee denied appellant parenting time for the younger child on July 5, and (3) the children are not punished when they refuse to have parenting time with appellant. Appellant supplemented his allegations that he has to be with appellant. In addition to seeking a court order of contempt by appellee, appellant sought make-up parenting time and an award of attorney fees and costs.

{¶ 4} On July 28, 2020, and subsequently amended on September 10, appellee: filed her own motion 2 and July 4, appellant used the court-ordered communication platform, Our Family children while at ap refused further parenting time with him, as verified by a subsequent police report and -cause motion, appellee argued the reason she picked up the younger child experiencing an emotional trauma, crying uncontrollably, and demanding to leave appellant and return to appellee. The trial court had authorized the younger child to express parenting time wishes per its August 22, 2019 order. Appellee younger child being angry towards, scared of, and feel unsafe with, appellant. In addition appellee sought an award of attorney fees and costs.



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{¶ 5} On October 1, 2020, the magistrat

parenting time under the January 9, 2020 custody order limiting his contact to during
to determine when it is appropriate to introduce appellant in the sessions with the children, toward
ities; (7) continued

use of Our Family Wizard for factual communications between the parties and refrain from
and school records.

{¶ 6} The magistrate held a consolidated hearing on all pending motions on June
29, 2021. At the start of the hearing, appellant made an oral motion to continue the hearing
to take its course a little bit an
through them

Court. But we are already over time and so the Court will deny the request for a
co

{¶ 7} The magistrate then heard testimony from five witnesses and admitted 11
exhibits into evidence. On August 16, the magistrate issued a decision with 47 findings of
fact and five conclusions of law. The magistrate decided: (1) to deny appellant 2020 show- -cause
motion, 2

eight recommendations, (5) to order the parties equally divide court costs, (6) to order each

{¶ 8}

four reasons: (1) failure to find appellee in contempt, (2) failure to award attorney fees, (3)
suspending his parenting time, and (4) alternatively failing to continue the hearing date

{¶ 9} On October 15, 2021, the trial court filed its judgment entry approving and



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considering whether shared

the January 9, 2020 parenting time order; to allow time for the children to engage in

relationship repair counseling with Ms. Palicki; for Ms 2

Appellant does not appeal the denial of his proposed shared parenting plan. introduce appellant to the counseling sessions with the children; and for the parties to

equally divide court costs and pay their own attorney fees.

{¶ 10}

assignments of error:

1. The trial court erred in failing to find the Plaintiff/Appellee in

contempt of court.

2. The trial court erred in not imposing reasonable purge conditions,

including an award of attorney fees.

3. parenting time.

4. The trial court erred in not continuing the hearing for reunification

counseling.

II. Contempt of Court

{¶ 11} our assignments of error together as they arise

{¶ 12} Appellant argues for his first and second assignments of error the trial court

ary

9, 2020 custody order for the alleged violations and for failing to sanction appellee.



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{¶ 13} Appellant argues for his third assignment of error the trial court failed to

re

suspending his parenting time as part of the contempt proceedings: the prior, positive interactions and interrelationships of the children with appellant pursuant to R.C.

pursuant

when the children refuse parenting time with appellant pursuant to R.C. 3109.051(D)(10).

{¶ 14} Appellant argues for his fourth assignment of error, the trial court abused its

discretion when it denied an oral motion to continue of the contempt hearing to allow time

A. Standards of Review

{¶ 15} conduct which brings the administration of justice into disrespect, or which tends to

Windham Bank

v. Tomaszczyk, 27 Ohio St.2d 55, 271 N.E.2d 815 (1971), paragraph one of the syllabus;

R.C. 2705.02(A). The burden is on the moving party in a civil-contempt proceeding to provide clear and convincing evidence that the alleged contemnor is in contempt of court.

State ex rel. Doner v. Zehringer, 134 Ohio St.3d 326, 2012-Ohio-5637, 982 N.E.2d 664, ¶

3, citing Pugh v. Pugh, 15 Ohio St.3d 136, 139, 472 N.E.2d 1085 (1984). Appellate review

-contempt proceeding is for an abuse of discretion.

State ex rel. Cincinnati Enquirer v. Hunter, 138 Ohio St.3d 51, 2013-Ohio-5614, 3 N.E.3d

179, ¶ 21. A

Blakemore v.

Blakemore, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983), quoting State v. Adams, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980). Because abuse of discretion review is highly



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we will not lightly substitute our interpretation for that of the issuing court. Hunter at ¶ 29.

{¶ 16}

objecti Brancatto v.

Boersma, 6th Dist. Lucas No. L-12-1271, 2013-Ohio-3052, ¶ 9.

{¶ 17} We acknowledge that while the trial court must consider the relevant 16

factors under R.C. 3109.051(D) for suspend

shall determine in its sound discretion the parenting time that is in the best interests of the

children. Kelley, 6th Dist. Wood No. WD-20-010, 2020-Ohio-6778, at ¶ 7, citing Braatz v.

Braatz, 85 Ohio St.3d 40, 706 N.E.2d 1218 (1999), paragraph two of the syllabus. In fact,

Id. at ¶ 8,

citing R.C. 3109.051(D)(16). We may look to the entire record to determine if all of the

necessary factors were considered. Id.

{¶ 18} Finally, we review the grant or denial of a continuance for an abuse of

discretion. In re Edward M., 6th Dist. Lucas Nos. L-04-1282, L-04-1304, 2005-Ohio-

3354, ¶ 21, citing State v. Unger, 67 Ohio St.2d 65, 67, 423 N.E.2d 1078 (1981). B. Analysis

{¶ 19}

to be closely intertwined. The trial court conducted the required contempt hearing on June

that the accused makes or offers and shall determine whether the accused is guilty of the

contains the transcript, with admitted

exhibits, of the show-cause hearing, as well as the pleadings specifically reviewed by the

Prior to reaching its decisions, Civ.R. 53(D)(4)(d), the trial court



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conducted the necessary independent review and stated in its October 15, 2021 journalized entr

pertinent pleadings, memoranda, authorities, and information filed or provided to the C

{¶ 20} As a result of its independent review, the trial court decided it is in the

recommendations to suspend Order should be suspended and any contact between Father and the minor

children should occur in relationship repair counseling with Stacy Palicki.

b. The minor children should continue seeing Stacy Palicki and Stacy

Palicki shall make the determination when it is appropriate to introduce

shes into

consideration.

* * *

d. The parties shall follow all recommendations of the counselors and

* * *

f. At this time, Father should refrain from attending any extra-

curricular activities of the minor children since it is being recommended that

contact between Father and the minor children only occur in a therapeutic

setting.

{¶ 21} As discussed below, we do not find that appellant met his burden by

providing clear and convincing evidence that appellee is in contempt of court, nor do we



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find the trial court abused its discretion when it reached its determinations. Consequently, we do not find any trial court error for failing to impose contempt sanctions on appellee.

R.C. 2705.05(A); Liming v. Damos, 133 Ohio St.3d 509, 2012-Ohio-4783, 979 N.E.2d 297,

¶ 30 (purge conditions, if any, only arise from a finding of contempt). {¶ 22} court adopted, addresses both

the contempt claim and applicable parenting time factors:

Although the current Order of the Court provided that the Father have

specified parenting time with the minor children, * * * [there is a] history *

* * involving the relationship between father and the minor children. * * *

present, that the parties would both be capable of honoring and facilitating
le

situations with their father. Father clearly loves his children and wants to
repair this relationship, but his actions up to this point have backfired.

should assist in repairing the relationship. * * * The children are both

teenagers and they are able to articulate their wishes and concerns. While

these wishes do not dictate the outcome of the case, they should be taken into

consideration while making a decision. * * * The children are engaged in

counseling to allow them to stay healthy and to work toward a healthy refusal to visit is younger
child] left Father, it was clearly initiated by him. The last time [the

older child] got in the car to spend time with Father, he ultimately left the car

and stopped all parenting time after Father repeatedly honked the horn in an

effort to get [the younger child] to come outside. Clearly Mother did not



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precipitate that refusal. In fact, Mother testified that she encouraged [the children] to see their father and that it was at her urging that [the children] started seeing their father again in the spring of 2020 after a lapse of approximately 9 months.

{¶ 23} disobedience is misplaced. The Wood County standard local parenting plan and companionship schedule recognizes that when a child strongly opposes being with the other parent, the first

consultation with a mental health professional for assistance. Appellee testified at the hearing

mental health counselor, who met with the child following each upsetting incident with appellant. The record shows the trial court has repeatedly ordered to explicitly have the consideration, even substantial

has again articulated that deference to the children and Miss Palicki rather than seek to punish the children for opposing parenting time with appellant.

{¶ 24}

family counseling process to occur in a therapeutic setting with the goal of reunification and rest

counselors for high-

-

with them on *** coping skills needed to *** reunify with their father [the children] are ready and *** once father identifies with some of the behaviors that

have traumatized the [children] and gained insight into his thinking errors, she then wanted



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{¶ 25} The guardian ad litem testified

suspended to allow the children to develop the necessary coping skills in response to special weight to a particular factor, none of the three factors argued by appellant on appeal

See Harrold v. Collier, 107

Ohio St.3d 44, 2005-Ohio-5334, 836 N.E.2d 1165, ¶ 43 (acknowledging the special weight required by R.C. 3109.051(D)(15)).

{¶ 26}

the evidentiary hearing, the trial court had not yet received evidence of the prepared the specific recommendations. Appellant requires us to assume facts not in evidence, and we decline to do so. Even if we did accept that assumption, our review of the entire record does not indicate the trial court abused its discretion when it refused to delay any further the contempt matter that appellant initiated and vigorously litigated.

{¶ 27} We reviewed the record and do not find that appellant met his burden by providing clear and convincing evidence that appellee is in contempt of court, particularly where there is no evidence that appellee caused the lost parenting time. We do not find the trial court abused its discretion when it did not: delay the June 29, 2021 contempt hearing, until the ch

counselor determined reunification was appropriate. {¶ 28} - taken.

IV. Conclusion

{¶ 29} On consideration whereof, the judgments of the Wood County Court of



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Common Pleas, Domestic Relations Division, are affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J. [[Applied Signature]] JUDGE

Christine E. Mayle, J. [[Applied Signature 2]] JUDGE

Myron C. Duhart, P.J. [[Applied Signature 3]] CONCUR JUDGE

This decision is subject to further editing by the Supreme Court of Reporter of Decisions. Parties interested in viewing the final reported

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