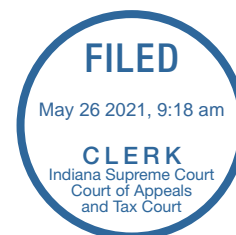


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Paternity of
A.C.R., L.R.R., and A.A.R.

Nicole Reveliotis,
Appellant-Petitioner,

v.

Adam Ruiz,
Appellee-Respondent

May 26, 2021

Court of Appeals Case No.
20A-JP-1851

Appeal from the Lake Superior
Court

The Honorable Aimee M. Talian,
Magistrate

Trial Court Cause Nos.
45D06-1203-JP-742
45D06-1609-JP-1074

Crone, Judge.

Case Summary

- [1] In this paternity proceeding involving Nicole Reveliotis (Mother)¹ and Adam Ruiz (Father), each party sought to hold the other in contempt of court. The trial court held an in-person hearing, during which Father presented his case; the hearing was continued because of the COVID-19 pandemic, and the court heard Mother’s presentation remotely via Zoom over her objection. The court then issued an order finding both Father and Mother in contempt. Only Mother now appeals, arguing that the trial court erred in finding her in contempt and in conducting the hearing via Zoom. We affirm.

Facts and Procedural History

- [2] Mother and Father are the parents of three minor children: A.C.R., L.R.R., and A.A.R., all of whom have special needs. A paternity action was filed in September 2016, and paternity was established in December of that year. In January 2018, after a final hearing, the trial court issued an order awarding Mother physical custody of the children, with a phased-in parenting time schedule for Father. In April 2018, Father filed a petition for rule to show cause, alleging that Mother had interfered with his parenting time in violation of the order. In January 2019, Mother filed a petition for rule to show cause and modification of Father’s parenting time, alleging that Father had violated

¹ Mother’s surname is spelled “Revelioltis” in her appellate brief, but we have adopted the spelling used throughout the record, including in the trial court’s order and Mother’s signature block on various documents.

the order in various respects. In February 2020, Father filed a request for injunctive relief against Mother based on her alleged interference with his parenting time.

[3] On February 24, 2020, the trial court held a hearing at which both parties appeared in person and by counsel. At the outset, the trial court stated that the hearing was on Father's request for injunctive relief, Tr. Vol. 2 at 4, but the court acknowledged that most of the evidence would "overlap" with that for Father's show-cause petition, which was scheduled to be heard in May. *Id.* at 6, 43. Father's counsel questioned Father regarding Mother's alleged interference with his parenting time, and Mother's counsel cross-examined him. After redirect, recross, and further redirect examination, Father's counsel rested. Mother's counsel asked if Mother could testify, and the trial court replied, "No, no, we're finished. I have other hearings." *Id.* at 54. The trial court and the parties verbally agreed to continue the hearing to March 13.

[4] On March 12, on its own motion, the trial court vacated the March 13 hearing "due to the public health and safety concerns surrounding the COVID-19" and because the court would be closed on that date; the court set a pretrial hearing for April 9 and a final hearing for May 11. Appellant's App. Vol. 2 at 83. On March 24, the trial court issued an order for continuance due to COVID-19. *See id.* at 11 (CCS). On April 29, the trial court set a virtual final hearing for May 11. On May 4, after a video conference with the parties' counsel, the trial court vacated the May 11 hearing and set a final hearing for August 18, to be held in the courtroom; the court noted its anticipation of "an objection to a

virtual hearing being filed” by Mother’s counsel, who had requested a continuance due to Mother’s lack of childcare and COVID-19. *Id.* at 84. On May 6, Mother’s counsel filed an objection “to this case concluding and/or finishing as a virtual or telephonic hearing,” stating that because Father had presented his case in person, “it would provide a disparity for Mother to have to present her witnesses, exhibits and her own testimony in a virtual or telephonic fashion”; that the children were in her “sole care due to the COVID-19 virus” and L.R.R.’s “significant pre-existing medical conditions, thereby limiting [her] ability to participate, follow the proceedings, much less testify in the proceedings”; and that Mother’s counsel had “great concern about the opportunity to present proposed exhibits to the Court including audio messages and videos.” *Id.* at 86-87. On May 8, the trial court issued an order acknowledging Mother’s objection and confirming the August 18 hearing. On August 17, Mother filed a motion to continue the hearing, which was denied.

[5] On August 18, the trial court conducted the scheduled hearing via Zoom, apparently because Mother did not have childcare and was unable to appear in person. Mother and Father appeared from their respective homes and were represented by counsel, who also appeared remotely. Mother’s counsel orally renewed the motion to continue, stating that L.R.R. was “ill[,]” that “Father had the benefit of presenting his case in chief in person and being a live witness[,]” and that “we try so hard to not bring children into the proceedings, and now everybody [is] sitting in the family room, kitchen area, and unfortunately will be privy to these proceedings.” Tr. Vol. 2 at 62-63. Father’s

counsel noted that “this case has been reset and reset since February” and had been

set for an in-person hearing today, so that being said, Mom, should have theoretically had someone, a caretaker, to be with the children while we were supposed to be in court today. So why the children would be sitting around the table, listening to these proceedings, is beyond me. I believe that the current circumstances require us to be flexible and to utilize technology, as the Court has been in these Zoom hearings. And, Your Honor, frankly, my client hasn’t had parenting time in months. It’s important that these matters be heard and that there be some finalization to this, to this issue.

Id. at 63.

[6] The trial court replied,

Well, as far as the kids listening, all Mom has to do is get some headphones or earbuds and that solves that problem and the kids won’t hear anything, which is what you should do if they’re sitting right there. This -- It’s not just that this has been pending since February, these have been pending for over two years. We were set in February, didn’t finish. We were set in May and Mom filed a motion to continue, alleging just about the same thing, that she didn’t have childcare. Because COVID was, you know, sort of fresh and new in May, I granted your continuance, but you’ve had, you know, two and a half, three months to make sure that we’re ready for today. The other problem is I don’t have a full day until probably January, just like everybody else’s office is backed up, so is the Court. So, you know, it’s not fair to Dad to have this pending if he’s not getting his parenting time for another, you know, potentially, five or six months. And to address the issue of fairness, with regard to Dad being in person versus Mom being on video, you are, I guess, giving me too

much credit on my memory. I'm gonna have to go back and listen to the February hearing. I don't have any independent recollection of that hearing. I've heard 1,000 hearings since then, so I don't necessarily see that Dad's at any advantage by having had the opportunity to be in the courtroom on -- or on February 24th, when we had the first part of this hearing versus now, because I don't -- I'm gonna have to go listen to the tape before I rule on this case anyway, because it has been so long. And [Father's counsel] is right. You had the opportunity. We could have come in today and done it in person, if you wanted to. That being said, I don't necessarily want anybody in the courtroom that has been exposed to someone who is ill. And, [Mother], I understand it's a kid -- is a big deal, and you got to -- I understand that, but we have to get this case done. This needs to be done. So under Administrative Rule 14, the Court will include in its order for today some specific findings regarding your objection and the reason that I'm overruling it and find it necessary to move forward with a virtual hearing today so that we can get this addressed.

Id. at 64-65.

[7] Mother then presented her case: she called the children's therapist, Jillian Hus, and L.R.R.'s therapy assistant as witnesses, testified on her own behalf, and offered several exhibits into evidence. Father cross-examined Mother's witnesses and testified in rebuttal, and the trial court took the matter under advisement. On August 24, the court issued a virtual hearing order that summarizes the foregoing procedural history and reads in relevant part as follows:

[At the August 18 hearing,] Mother argued that she was not being afforded the same advantage as Father because he was able

to testify in person, and because Mother again did not have child care, the children would hear the proceedings from Mother's computer. The Court finds that good cause exists [to proceed with this matter virtually] because Father is entitled to have his matter heard and it has been delayed once at Mother's request, also due to lack of child care. This matter is set for a full day and the Court cannot accommodate another full day setting until January 2021 due to the COVID backlog. Mother can utilize headphones during the hearing to avoid having the children being exposed to court proceedings. Finally, this judicial officer has no independent recollection of Father's testimony from February 2020 due to the amount of time that has passed and it will be necessary to review the audio from said hearing prior to issuing a ruling.

Appellant's App. Vol. 2 at 91.²

[8] On September 16, 2020, the trial court issued a final order in which it found both parties in contempt and denied Father's request for injunctive relief. With respect to Mother, the court found in relevant part as follows:

7. [W]hen Father sought to exercise parenting time consistent with the phased-in schedule ordered by the Court, Mother indicates that she did [not] follow that schedule due in part, to the recommendation of the children's therapist that unsupervised parenting time with Father would be detrimental to the progress made by the children. In addition, Mother indicates that the children did not want to go with Father.

8. The Court questions the opinion of the therapist that unsupervised parenting time with Father would be detrimental to

² The trial court's orders lack apostrophes, which we have inserted where appropriate.

the children because the children's therapist, Jill Hus has never reached out to Father. Ms. Hus has discussed the children's therapy with Mother on numerous occasions. As a result, Ms. Hus did not have the benefit of Father's perspective when arriving at her opinion.

9. Both Mother and Father routinely pick and choose which provisions of the court order they believe should be followed and/or enforced, disregarding the remainder.

....

19. Rather than nurturing the relationship between Father and his children, Mother has been opposed to Father exercising parenting time since the onset of this case and has done nothing to assist the children in building a better relationship with their Father. When Father was allowed to exercise parenting time, it was pursuant to Mother's schedule, could not begin until after church services or was interrupted by activities scheduled by Mother for the children.

....

3. In order for Mother to purge herself of contempt, she must follow Father's parenting time order as written and provide Father with notice of all appointments and sessions scheduled for the children within 24 hours of receiving the appointment.

Appealed Order at 1-3. Mother now appeals.

Discussion and Decision

Section 1 – The trial court did not abuse its discretion in finding Mother in contempt.

- [9] Mother first contends that the trial court erred in finding her in contempt. A person who willfully disobeys a lawful court order is guilty of indirect contempt. Ind. Code § 34-47-3-1. We review a contempt finding for an abuse of discretion and will reverse only “if there is no evidence or inferences drawn therefrom that support it.” *In re Paternity of B. Y.*, 159 N.E.3d 575, 577 (Ind. 2020) (citation omitted).
- [10] Mother asserts that “assuming, *arguendo*, that she did deny Father some or all of his Court ordered parenting time, ... she did so for the purpose of protecting the children” based on Hus’s recommendation and that the trial court erred in finding that Hus did not reach out to Father. Appellant’s Br. at 17.³ Mother’s argument fails for three reasons. One, if she believed that the trial court erred in awarding Father unsupervised parenting time, regardless of whether that belief was based on Hus’s recommendation, we note that “[e]ven an erroneous order must still be obeyed.” *D.G. v. W.M.*, 118 N.E.3d 26, 31 (Ind. Ct. App. 2019), *trans. denied*. “A party’s remedy for an erroneous order is appeal [or, more

³ Although Mother states that she “does not concede that she denied Father’s parenting time in any way[,]” Appellant’s Br. at 17 n.3, she acknowledges that the parties’ disputes regarding whether she “actually violated [the trial court’s] order and denied Father’s parenting time ... were factual in nature and resolved by the trier of fact after listening to the testimony and assessing the credibility of witnesses, and thus not appropriate for appellate review.” *Id.* at 15 n.1. We agree with this acknowledgement and therefore do not address whether Mother actually violated the trial court’s order and denied Father’s parenting time.

relevant to Mother's situation, a petition for parenting time modification]; disobedience of the order is contempt." *Lasater v. Lasater*, 809 N.E.2d 380, 388 (Ind. Ct. App. 2004). Two, Hus herself testified that she did not reach out to Father. *See* Tr. Vol. 2 at 79 ("I did not reach out to him, no. I believe he and I first met in October or November of 2019, after I had started seeing the kids[,] i.e., over a year and a half after Father filed his show-cause petition for Mother's interference with his parenting time). And three, the trial court's finding regarding Hus is mere surplusage, so even if erroneous, it would not justify reversal of the contempt finding. *See City of Gary v. Conat*, 810 N.E.2d 1112, 1115 (Ind. Ct. App. 2004) ("Special findings, even if erroneous, do not warrant reversal if they amount to mere surplusage and add nothing to the trial court's decision."). Consequently, we find no abuse of discretion.

Section 2 – The trial court did not abuse its discretion in conducting the hearing via Zoom.

[11] Mother also contends that the trial court erred in finding that good cause existed for conducting the August 18, 2020 hearing via Zoom pursuant to Administrative Rule 14, which governs when and how a trial court may conduct proceedings remotely. The rule reads in relevant part as follows:

(A) Authority. A trial court may, in its discretion, use telephone or audiovisual telecommunication pursuant to the provisions of this rule as follows:

(1) A trial court may use telephone or audiovisual telecommunication to conduct:

- (a) Pre-trial conferences;
- (b) Proceedings where only the attorneys are present;
- (c) Proceedings during a declared emergency under Ind. Administrative Rule 17;^[4] and,
- (d) Proceedings where a party or witness is unavailable due to quarantine.

(2) A trial court may use audiovisual telecommunication to conduct [various criminal, post-conviction, juvenile, and civil hearings, not including those regarding contempt or injunctive relief].

(B) Other Proceedings. In addition, in any conference, hearing or proceeding not specifically enumerated in Section (A) of this rule, with the exception of criminal proceedings involving the right of confrontation or the right to be present, a trial court may use telephone or audiovisual communications subject to:

- (1) the written consent of all the parties, entered on the Chronological Case Summary; or
- (2) upon a trial court's finding of good cause, upon its own

⁴ Administrative Rule 17 reads in pertinent part,

Under the authority vested in the Indiana Supreme Court to provide by rule for the procedure employed in all courts of this state and the Court's inherent authority to supervise the administration of all courts of this state, the Court has the power upon petition from any trial court as set forth herein, or sua sponte, in the event of natural disaster, civil disobedience, wide spread disease outbreak, or other exigent circumstances requiring the closure of courts or inhibiting the ability of litigants and courts to comply with statutory deadlines and rules of procedure applicable in courts of this state, to enter such order or orders as may be appropriate to ensure the orderly and fair administration of justice.

motion or upon the motion of a party. The following factors shall be considered in determining “good cause”:

- (a) Whether, after due diligence, the party has been unable to procure the physical presence of the witness;
- (b) Whether effective cross-examination of the witness is possible, considering the availability of documents and exhibits to counsel and the witness;
- (c) The complexity of the proceedings and the importance of the offered testimony in relation to the convenience to the party and the proposed witness;
- (d) The importance of presenting the testimony of the witness in open court, where the fact finder may observe the demeanor of the witness and impress upon the witness the duty to testify truthfully;
- (e) Whether undue surprise or unfair prejudice would result; and
- (f) Any other factors a trial court may determine to be relevant in an individual case.

Ind. Administrative Rule 14.

[12] Since March 16, 2020, the Indiana Supreme Court has issued a series of orders affecting trial court operations in response to the public health emergency relating to COVID-19. In re Administrative Rule 17 Emergency Relief for Indiana Trial Courts Relating to the 2019 Novel Coronavirus (COVID-19), 141 N.E.3d 388 (Ind. 2020). On May 13, 2020, the court issued an emergency order that modifies Administrative Rule 14 to allow trial courts to use

“audiovisual communication to conduct proceedings whenever possible to ensure all matters proceed expeditiously and fairly under the circumstances.” Emergency Order Permitting Expanded Remote Proceedings, 144 N.E.3d 197, 197 (Ind. 2020). The order further provides that “[a]ny party not in agreement to the manner of the remote proceeding must object at the outset of the proceeding, on the record, and the court must make findings of good cause to conduct the remote proceeding.” *Id.* at 198.⁵ The court extended that order on November 10, 2020, and again on May 7, 2021. *In re Administrative Rule 17 Emergency Relief for Indiana Trial Courts Relating to the 2019 Novel Coronavirus (COVID-19)*, 2021 WL 1827130, at *1 (Ind. May 7, 2021).⁶

[13] We typically review a trial court’s finding of good cause for an abuse of discretion. *See, e.g., Campbell v. State*, 161 N.E.3d 371, 376 (Ind. Ct. App. 2020) (review of “trial court’s determination that the State has shown good cause” for belated habitual offender filing); *State v. L.B.F.*, 132 N.E.3d 480, 484 (Ind. Ct. App. 2019) (review of “trial court’s finding of good cause” for granting belated motion to certify interlocutory order for appeal), *trans. denied*. “An abuse of

⁵ The order also states that “[a]ll proceedings must be consistent with a party’s Constitutional rights.” 144 N.E.3d at 198. Mother has not even acknowledged the order in her appellate brief, much less alleged any violation of her constitutional rights.

⁶ The May 7, 2021 order encourages courts to “make it a priority to resume holding hearings live and in-person when conditions safely permit,” but acknowledges that “public health conditions will likely require trial courts to retain expanded authority for remote hearings beyond July 1, and until the formal process to amend Administrative Rule 14 is complete”; thus, the May 13, 2020 emergency order “shall remain in effect **until further order of the Court.**” 2021 WL 1827130, at *1.

discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances." *Campbell*, 161 N.E.3d at 376.

[14] Mother complains that the trial court's virtual hearing order "seem[s] to rely heavily upon the fact that both parties' petitions had been pending for a significant period of time" but "does not contain an analysis of the mandatory factors to be considered when determining whether 'good cause' exists." Appellant's Br. at 24. Administrative Rule 14 requires a court to *consider* several enumerated factors (and any other factors it deems relevant) in determining whether good cause exists to conduct a proceeding remotely, but it does not require the court to enter findings with respect to each factor. Mother ignores the fact that it was her inability or unwillingness to obtain childcare that prompted the trial court to conduct the hearing remotely instead of in person as originally scheduled. She mentions several technical difficulties that arose during the Zoom hearing, but none of them prevented her from fully and fairly presenting her case, which was not nearly as "complex" as she suggests. *Id.* Mother also asserts that Father had an unfair advantage because he was able to "present his case in chief live and in person[,]" *id.* at 22, but this assertion is undercut by the trial court's candid admission that it had no independent recollection of Father's presentation and would have to listen to the audio recording.

[15] In light of the foregoing, as well as the lengthy pendency of this contempt proceeding involving Mother's interference with Father's parenting time and the significant additional delay that would have resulted from a continuance for

an in-person hearing, we cannot conclude that the trial court abused its discretion in finding that good cause existed for conducting the August 18, 2020 hearing via Zoom. In doing so, the trial court ensured that this matter proceeded “expeditiously and fairly under the circumstances,” as contemplated by our supreme court. Therefore, we affirm.

[16] Affirmed.

Riley, J., and Mathias, J., concur.