

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Paternity of C.R.

Korey B. Ricciardi,

Appellant,

v.

Christina Feiock,

Appellee.

March 8, 2023

Court of Appeals Case No.
22A-JP-2255

Appeal from the Johnson Circuit
Court

The Honorable Andrew S.
Roesener, Judge

Honorable Michael T. Bohn,
Magistrate

Trial Court Cause No.
41C01-2101-JP-20

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

[1] Korey B. Ricciardi (“Father”) appeals the trial court’s order finding him in contempt. We reverse.

Facts and Procedural History

[2] Father and Christina Feiock (“Mother”) are the parents of C.R., who was born in October 2006. Father obtained sole legal and physical custody of C.R. in May of 2015. On January 22, 2019, the court issued an order providing that Mother “shall have unsupervised parenting time in accordance with the Indiana Parenting Time Guidelines.” Appellant’s Appendix Volume II at 43.

[3] On February 17, 2021, Mother filed a motion for modification of custody and petition for contempt alleging that Father “failed to comply with this Court’s current order,” “failed to allow [her] to exercise any of her mid-week parenting time with the minor child,” and “expressed to [her] that due to the child being a teenager she was no longer allowed to exercise her mid-week parenting time.” *Id.* at 50. She alleged Father “has not allowed any midweek parenting time since January 2020” and requested make up parenting time and an award of attorney fees. *Id.*

[4] In July 2022, the court held a hearing. Mother indicated she was supposed to have parenting time pursuant to the Indiana Parenting Time Guidelines. She testified Father had “been withholding mid-weeks since 2019,” C.R. “turned 13 in October,” and “[s]uddenly, December of that year, 2019, [Father] suddenly withheld mid-weeks stating that [C.R.] was now a teenager and he did not have to honor mid-weeks per the Guidelines.” Transcript Volume II at 6. She asked

the court to find Father in contempt for not allowing her to exercise midweek parenting time and for an award of \$1,500 in attorney fees as a result of Father not following the court order.

[5] Father's counsel elicited the following testimony from Father:

Q. When it comes to the contempt, it was your belief, correct, that the Guidelines are set different, uh, parenting time with their children at different ages, correct?

A. Correct.

Q. And you interpreted that section about the mid-week was no longer effective?

A. Right. So they had a section for 3 and up. And in that section it says that the non-custodial parent gets alternating weekends, the holidays that are put forth in the parenting time guidelines, and the mid-week or one day per week in the middle of the week. And then later on it says when you have a teenager it says you still get the weekends, uh, you still get the holiday schedule, but then it omits the mid-weeks. So – it told me at that point that what's given her as a right and this is a court ordered before 13 and before he becomes a teenager (indiscernible) that he gets these mid-weeks, but after that time because it's put in there as a provision and not a commentary and it omits the mid-weeks that that's not something that's actually granted anymore, um, when you get to that point.

Q. And you then willfully decided that you were just not gonna (indiscernible).

A. No I did not. At first, I had . . . consulted with my attorney. Tried to see if that was the case and when I was told I was (indiscernible) I reached out and said that that was per the guidelines, this is where we're at. But then I also asked her specifically, um, she obviously didn't agree and I asked her why. And I wanted to know what part of this am I missing. And I couldn't get an answer. And

she couldn't tell me what I was doing wrong at that point in time and I don't (indiscernible), uh, but since then she hasn't told me a difference either and then we – when we came to court, it just – there isn't one. That particular section should just be ignored. And I didn't understand.

Id. at 40-41. On cross-examination, when asked “you would agree that if she was entitled to that, that you withheld a lot of parenting time, if in fact, the Court finds that there’s nothing that says she doesn’t get a midweek,” Father testified: “If the Court finds that, then I would have misinterpreted at that point. I would not say that I, um, disobeyed or intentionally disobeyed a court order, but I would definitely say that I did misinterpret that.” *Id.* at 46.

[6] On August 31, 2022, the court issued an order denying Mother’s motion to modify custody. The order also stated Father was in contempt for denying “Mother her mid-week parenting time with the child since 2019,” “[b]ased on the evidence presented at trial, the Court is unable to determine the precise number of weeks Mother missed of her mid-week parenting time,” “[a]ccordingly, determining make-up time is difficult,” “Mother shall be entitled to an additional mid-week visit with the child until such time as he is emancipated,” “[a]ny mid-week time Mother receives in excess of the time she was denied shall serve as an additional sanction for Father’s contempt,” “[g]iven the Contempt finding, Mother’s motion for attorney fees is GRANTED,” and Father shall pay \$1,500 to Mother’s attorney. Appellant’s Appendix Volume II at 38-39.

Discussion

- [7] Before addressing Father’s arguments, we note that Mother did not file an appellee’s brief. When an appellee fails to submit a brief, we do not undertake the burden of developing arguments and apply a less stringent standard of review; that is, we may reverse if the appellant establishes prima facie error. *Zoller v. Zoller*, 858 N.E.2d 124, 126 (Ind. Ct. App. 2006). Prima facie is defined as “at first sight, on first appearance, or on the face of it.” *Graziani v. D & R Const.*, 39 N.E.3d 688, 690 (Ind. Ct. App. 2015). This rule was established so that we might be relieved of the burden of controverting the arguments advanced in favor of reversal where that burden properly rests with the appellee. *Wright v. Wright*, 782 N.E.2d 363, 366 (Ind. Ct. App. 2002).
- [8] Father argues the trial court ordered that Mother have parenting time in accordance with the Indiana Parenting Time Guidelines, the applicable section of the Guidelines, Section II.E., does not provide for midweek parenting time, he should not have been found in contempt for not allowing Mother to exercise midweek parenting time, and the court’s finding of contempt, order granting Mother makeup or additional visitation, and order that he pay \$1,500 must be reversed.
- [9] We review the trial court’s finding of contempt for an abuse of discretion. *J.M. v. D.A.*, 935 N.E.2d 1235, 1243 (Ind. Ct. App. 2010), *reh’g denied*. A person who is guilty of willful disobedience of any lawfully entered court order of which the offender had notice is guilty of an indirect contempt. Ind. Code § 34-47-3-1; *Henderson v. Henderson*, 919 N.E.2d 1207, 1210 (Ind. Ct. App. 2010).

The order must be clear and certain such that there is no question regarding what a party may or may not do and no question regarding when the order is being violated. *Gordon v. Gordon*, 733 N.E.2d 468, 472 (Ind. Ct. App. 2000). A party may not be held in contempt for failing to comply with an ambiguous or indefinite order. *Rendon v. Rendon*, 692 N.E.2d 889, 896 (Ind. Ct. App. 1998).

[10] The record reveals that the court’s January 22, 2019 order provided that Mother “shall have unsupervised parenting time in accordance with the Indiana Parenting Time Guidelines.” Appellant’s Appendix Volume II at 43. C.R. was born in October 2006, and thus was thirteen years old in December 2019. Section II.E. of the Indiana Parenting Time Guidelines, which is titled “Parenting Time for the Adolescent and Teenager,” provides:

1. Regular Parenting Time. Regular parenting time by the noncustodial parent on alternating weekends, during holidays, and for an extended time during the summer months as set forth in the Parenting Time Guidelines (Section II.D.) shall apply to the adolescent and teenager.

Section II.E., which is applicable to the adolescent and teenager, expressly refers to regular parenting time by a noncustodial parent on alternating weekends, during holidays, and for an extended time during the summer months. The section does not identify midweek parenting time as a part of regular parenting time for the adolescent and teenager.¹ In light of C.R.’s age

¹ In contrast, Section II.D., titled “Parenting Time - Child 3 Years of Age and Older,” provides:

and Section II, we cannot say Father’s conclusion that Mother was not entitled to midweek parenting time was unreasonable or that he willfully disobeyed the court’s order. Under the circumstances, we conclude that Father has demonstrated prima facie error.

[11] Accordingly, we reverse the trial court’s finding of contempt and any associated sanctions including those related to make-up visits and that Father pay \$1,500 to Mother’s attorney.

[12] Reversed.

Bailey, J., and Weissmann, J., concur.

1. Regular Parenting Time

- (a) On alternating weekends from Friday at 6:00 P.M. until Sunday at 6:00 P.M. (the times may change to fit the parents’ schedules);
- (b) One (1) evening per week, preferably in mid-week, for a period of up to four hours but the child shall be returned no later than 9:00 P.M; and,
- (c) On all scheduled holidays.

* * * * *

2. Extended Parenting Time (Child 3 through 4 Years Old)

* * * * *

3. Extended Parenting Time (Child 5 and older)

One-half of the Summer Vacation. The summer vacation begins the day after school lets out for the summer and ends the day before school resumes for the new school year. . . .