

## 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

Jessica McGraw,  
*Appellant-Respondent,*

v.

Todd Truitt,  
*Appellee-Petitioner.*

August 17, 2022

Court of Appeals Case No.  
21A-DC-1665

Appeal from the Marion Superior  
Court

The Honorable Ryan K. Gardner,  
Judge

The Honorable Gael Deppert,  
Magistrate

Trial Court Cause No.  
49D10-2001-DC-4831

**Brown, Judge.**

[1] Jessica McGraw (“Mother”) appeals the trial court’s July 6, 2021 order finding her in contempt. We reverse and remand.

### *Facts and Procedural History*

[2] On February 10, 2021, Mother and Todd Truitt (“Father”) filed a Mediated Decree of Dissolution of Marriage which provided that they would share joint legal custody of their child, V., and included a section on parenting time.

[3] On April 12, 2021, Father filed a Verified Petition for Rule to Show Cause alleging that Mother denied him parenting time. On April 16, 2021, Mother filed a Petition to Modify and/or Amend Parenting Time.<sup>1</sup> On May 5, 2021, the court held a hearing, and six days later it entered an Entry on Petition for Contempt finding Mother in contempt for refusing to accommodate Father’s parenting time and stating that Father should be allowed to make up thirty hours of missed parenting time. It stated:

Father can resume age-appropriate ten-hour segments with [V.], consistent with the IPTG. If the parties cannot agree upon a parenting time schedule, that also includes the thirty hours of make-up parenting time, within one week of this order, a parenting time coordinator shall assist the parties in adopting a schedule. Counsel for the parties shall help the parties agree upon a parenting time coordinator, if necessary. Fees for the parenting time coordinator shall be shared equally by the parties.

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<sup>1</sup> The record does not contain a copy of Mother’s petition.

Appellant's Appendix Volume II at 17. The court took Father's request for attorney fees under advisement.<sup>2</sup>

[4] On May 17, 2021, Father filed a Verified Emergency Petition for Rule to Show Cause and Request for Appointment of Parenting Coordinator alleging that Mother continued to deny him his parenting time in violation of the parties' decree and the court's entry on contempt. Father also requested attorney fees. On June 29 and July 6, 2021, the court held a hearing. At the beginning of the June 29th hearing, Magistrate Gael Deppert stated that she was not the judicial officer who issued the entry on contempt on May 11th. Mother and Father testified.

[5] On July 6, 2021, the court entered an order finding Mother in contempt. Specifically, the order states:

Court finds that [Mother] has willfully and intentionally disobeyed ENTRY ON PETITION FOR CONTEMPT issued 5/11/21 by the Honorable David Shaheed, and which order is incorporated by reference herein. The Court finds [Mother] in contempt for her willful and intentional disobedience to the Court's order that [Father] resume age-appropriate ten (10) hour segments of parenting time with their child [V.], consistent with the Indiana Parenting Time Guidelines (IPTG), for a total of thirty (30) hours of parenting time [Father] missed based upon the Court's finding that [Mother] refused to accommodate [Father's] parenting time. Court finds that [Mother] continues to

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<sup>2</sup> At the June 29, 2021 hearing, Magistrate Gael Deppert indicated that Judge David Shaheed presided over the May 5th hearing. The May 11, 2021 Entry on Petition for Contempt appears to be signed by Judge Shaheed.

refuse to accommodate [Father's] parenting time pursuant to mediated Decree of Dissolution issued on or about 2/11/21, and pursuant to ENTRY ON PETITION FOR CONTEMPT issued 5/11/21.

The Court finds that, in addition to the thirty (30) hours of parenting time [Father] missed because [Mother] refused to accommodate age-appropriate ten (10) hour segments of parenting time for [Father] with child [V.], [Mother] has not provided to [Father] the parenting time [Father] would otherwise be due for May 2021 and June 2021. The Court finds that a total of 49.5 hours of parenting time are due to [Father] for May 2021, and a total of 33.3 hours of parenting time are due to [Father] for June 2021.

Court re-iterates, as it stated in its ENTRY ON PETITION FOR CONTEMPT issued 5/11/21, that [Father] can resume age-appropriate ten-hour segments of parenting time with the child [V.], consistent with the IPTG, Section II.

The Court ORDERS that these 112.80 hours of parenting time due to [Father] are to be made up by [Mother] to [Father] within sixty (60) days of this order.

*Id.* at 13-14. The court granted Father's request for attorney fees and awarded him \$4,747 and an "additional one (1) hour of [his attorney's] time for the two hours of hearing on 7/6/21." *Id.* at 14. The court ordered the parties to meet or at least schedule an appointment to meet with a parenting coordinator to adopt a parenting time schedule within fourteen days. On August 3, 2021, Mother filed a notice of appeal of the July 6, 2021 order.

## *Discussion*

[6] Mother argues that the trial court abused its discretion when it found her in contempt of the parenting time order set forth in the mediated decree of dissolution and that nothing in the record would support a finding of a denial of parenting time. She contends that “the trial court on both contempt proceedings treated the Mediation Order as though there was no mention of ‘as the parties may mutually agree.’” Appellant’s Brief at 23. She asserts that “Father always went along with [her] requests.” *Id.* at 24. Mother also asserts that the trial court abused its discretion when it found her in contempt of the court’s May 11, 2021 entry, which she asserts “required only that the parties attempt to agree on a schedule and if they cannot, a parenting time coordinator to [sic] shall assist the parties in adopting a schedule.” *Id.* at 26. She also argues that the trial court abused its discretion when it awarded attorney fees when that issue was taken under advisement by another judge.

[7] We note that Father did not file an appellee’s brief. When an appellee fails to submit a brief, we may in our discretion reverse the trial court’s decision if the appellant makes a *prima facie* showing of reversible error. *Wright v. Wright*, 782 N.E.2d 363, 366 (Ind. Ct. App. 2002). *Prima facie* error is “an error at first sight, on first appearance, or on the face of it.” *Zoller v. Zoller*, 858 N.E.2d 124, 126 (Ind. Ct. App. 2006). 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*, 782 N.E.2d at 366.

[8] “Contempt of court generally involves disobedience of a court or court order that ‘undermines the court’s authority, justice, and dignity.’” *Reynolds v. Reynolds*, 64 N.E.3d 829, 832 (Ind. 2016) (quoting *In re A.S.*, 9 N.E.3d 129, 131 (Ind. 2014) (citing *State v. Heltzel*, 552 N.E.2d 31, 34 (Ind. 1990))). There are two kinds of contempt: direct contempt and indirect contempt. *Id.* Indirect contempt, which is at issue in this case, involves those acts “committed outside the presence of the court ‘which nevertheless tend to interrupt, obstruct, embarrass or prevent the due administration of justice.’” *Id.* (citing *In re A.S.*, 9 N.E.3d at 132 (quoting 6 IND. LAW ENCYC. Contempt § 2 (1958))).

[9] In order to be punished for contempt of a court’s order, there must be an order commanding the accused to do or refrain from doing something. *Burrell v. Lewis*, 743 N.E.2d 1207, 1213 (Ind. Ct. App. 2001). “To hold a party in contempt for a violation of a court order, the trial court must find that the party acted with ‘willful disobedience.’” *Id.* (quoting *Piercey v. Piercey*, 727 N.E.2d 26, 31 (Ind. Ct. App. 2000)). A party may not be held in contempt for failing to comply with an ambiguous or indefinite order. *Id.* Otherwise, a party could be held in contempt for obeying in good faith an ambiguous order. *Id.* Rather, in order for a party to be found in contempt for failing to comply with a visitation order, the order must specifically set forth the time, place, and circumstances of the visitation. *Id.*

[10] In the May 11, 2021 Entry on Petition for Contempt, the court ordered that, “[i]f the parties cannot agree upon a parenting time schedule, that also includes the thirty hours of make-up parenting time, within one week of this order, a

parenting time coordinator shall assist the parties in adopting a schedule.” Appellant’s Appendix Volume II at 17. Father filed a petition for rule to show cause on May 17, 2021, which was before the expiration of the one-week period identified in the court’s order for the parties to agree upon a parenting time schedule and before utilizing the assistance of a parenting time coordinator mentioned in the court’s order. Under these circumstances, we conclude that Mother has presented a case of *prima facie* error.

[11] Finally, we observe that the trial court awarded attorney fees to Father in the amount of \$4,747 for fees he incurred in this litigation. It is unclear whether the award of attorney fees was, at least in part, based on the trial court’s finding that Mother was in contempt. We remand to the trial court for a determination of appropriate attorney fees without considering any finding of contempt. *See Stanke v. Swickard*, 43 N.E.3d 245, 250 (Ind. Ct. App. 2015) (“As we reverse the trial court’s findings of contempt entered against Stanke, we remand to the trial court with instruction to make a determination of appropriate attorney fees without considering any finding of contempt.”).

[12] For the foregoing reasons, we reverse with instruction to vacate the finding of contempt entered against Mother in the July 6, 2021 order and remand for a determination of appropriate attorney fees.

[13] Reversed and remanded.

Mathias, J., and Molter, J., concur.