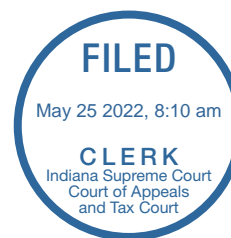


MEMORANDUM DECISION

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

Kasie N. Mumford,
A/K/A Kasie N. Hedden
Appellant-Petitioner,

v.

William A. Hedden,
Appellee-Respondent.

May 25, 2022

Court of Appeals Case No.
21A-DC-2101

Appeal from the Delaware Circuit
Court

The Honorable Kimberly Dowling,
Judge

The Honorable Dennis D. Carroll,
Senior Judge

Trial Court Cause No.
18C02-1808-DC-316

Altice, Judge.

Case Summary

[1] The trial court found Kasie N. Mumford (Mother) in contempt for her willful noncompliance with the court's order to provide William A. Hedden (Father) with parenting time. The court had issued the order for parenting time only two days prior to the compliance hearing and with an express warning that any noncompliance would likely result in sanctions, including jail time. For Mother's contempt, the trial court ordered her to pay \$1600 toward Father's attorney fees and to be incarcerated for six days.

[2] Mother presents the following restated issues on appeal:

1. Did Mother have justifiable cause for violating the trial court's order?
2. Did the trial court abuse its discretion with respect to its award of attorney fees to Father?
3. Was the jail sanction improper for not providing Mother with the opportunity to purge her contempt?

[3] We affirm.

Facts & Procedural History

[4] Mother and Father were married for about five years and have one child together, K.H. (Child), born in February 2015. Mother has an older daughter (Sibling) who is not Father's child. Their marriage was dissolved by summary

disposition in October 2018, and Mother was awarded custody of Child with Father to exercise parenting time as agreed upon by the parties.

[5] On May 2, 2019, Mother sought protective orders against Father for herself, Child, and Sibling. The petitions alleged that on April 25, 2019, Sibling disclosed that Father had been touching her inappropriately and that this had happened on several occasions. Sibling allegedly made this disclosure after Child indicated that “Dad was hurting her privates when wrestling.” *Appellee’s Appendix* at 40. Mother indicated that there was an ongoing criminal investigation regarding these allegations.

[6] On May 22, 2019, Mother and Father entered into an agreement regarding the petitions for protective orders relating to Child and Sibling. The agreed entry, which was adopted by the trial court, provided in part:

3. Respondent acknowledges that there is an active criminal investigation by the Muncie Police Department, Smart-Team, into the allegations contained in the Petitions.

4. As such, Respondent expressly consents to and/or agrees the issuance of an ex parte order of protection and/or that he will not have any communication with the Minor Children, either directly or indirectly, by any means, until such time as the investigation is concluded and this Court has conducted a hearing on the allegations contained in the Petitions.

Respondent will petition the Court for a hearing date when the investigation is completed if it does not result in the filing of criminal charges.

Id. at 44.

[7] After the completed investigation did not yield criminal charges, Father filed a request, in October 2019, for a hearing regarding the protective orders. The matter was scheduled for a hearing on January 10, 2020, and the trial court appointed a Guardian Ad Litem (GAL).¹ Thereafter, the hearing was cancelled, and the protective order proceedings stalled for over a year until Mother filed a petition to extend the ex parte protective orders in April 2021. The trial court then granted a temporary extension of the orders and set a hearing for July 7, 2021.

[8] In the meantime, in the instant dissolution cause, the GAL filed her detailed report with the trial court on May 4, 2021. Father then filed, on June 25, 2021, a petition to modify custody and parenting time. Father indicated that he had not been able to exercise any meaningful relationship with Child for more than two years and that circumstances had changed since the dissolution of marriage. Specifically, Father alleged that he had procured full-time employment, established a safe residence, commenced parenting classes, reintegrated in the community as a law-abiding citizen, and successfully completed phases one and two of the Hamilton County Drug Court. Accordingly, Father sought joint legal custody of Child and parenting time consistent with the Indiana Parenting Time Guidelines (Guidelines).

¹ The GAL, Danyel Struble, was appointed to serve in the causes related to the protective orders and the dissolution cause.

[9] On July 7, 2021, the trial court conducted a consolidated evidentiary hearing on Father's petition to modify custody and parenting time and Mother's petitions to extend the protective orders. Mother, Father, and the GAL testified at the hearing. At the conclusion of the hearing, the trial court dismissed the protective orders expressly finding that Mother failed to prove her case. The trial court also ordered parenting time for Father as follows:

Phase-in Parenting Time Schedule. On July 17, 2021, and for the next thirty (30) days thereafter, Father shall exercise parenting-time each alternating Saturday and Sunday from 1:00 p.m. until 5:00 p.m. at paternal grandmother's home with Ingrid Morey supervising. Beginning August 20, 2021, Father shall exercise the same weekend schedule, but his parenting-time will now occur at his home in Fishers.

In addition, starting on July 13, 2021, Father shall exercise a mid-week visit each Tuesday of every week from 4:00 p.m. to 7:00 p.m. After exercising this *phase-in* schedule for ninety (90) days, Father's parenting-time will revert to the [Guidelines], including overnights.

Appellant's Appendix at 17. Additionally, the order required Father and Child to engage in reunification therapy, as practical, and directed Father to, within seven days of the order, contact The Briarwood Clinic for a referral and arrange therapy. Mother did not appeal these orders.

[10] On July 13, Mother did not bring Child to the home of Child's paternal grandmother (Grandmother) for the mid-week parenting time as ordered. Instead, Mother sent a text to Grandmother at 4:18 p.m. indicating that Child

was unable to come because the family dog had just died. Grandmother responded by providing Father's phone number and indicating that Mother was in contempt for not following the parenting-time order. Mother responded, "Thank you I will text him. Coming from someone who lied in court to cover a child molester I'm not really concerned but thank you. I can't help that my Child is grieving her pet." *Appellee's Appendix* at 10.

[11] On Saturday July 17, Mother failed to bring Child for the scheduled parenting time and did not respond to Father's communications. The next day, less than two hours before the scheduled Sunday visit, Mother sent the following text to Father:

Look my cousin was found dead very unexpectedly yesterday and we all left for my uncles urgently I left my phone at the house I apologize but parenting time was not on my mind. My family is or will be in town today. This week is too much emotion for [Child] can you please just switch me weekends? She still doesn't even go to sleep without crying about the dog and now she of course wants to spend the weekend with all of my grandparents and cousins that don't live here.

Id. at 13. Father responded that he was sorry but that he could not take the next weekend off work. Father sent subsequent text messages to Mother asking if she would be bringing Child for parenting time, but she failed to respond.

[12] On July 19, 2021, Father filed an emergency petition for contempt and rule to show cause. Father requested that Mother be found in contempt and assessed attorney fees for her willful failure to facilitate parenting time. Father indicated

that he believed, unless sanctioned, Mother would “continue to opine pre-textual reasons why she cannot facilitate his parenting time.” *Id.* at 7. That same day, the trial court ordered the parties to participate in mediation.

[13] Three days later, Father filed a second petition for contempt, alleging that Mother had failed to deliver Child for mid-week parenting time on July 20 and had ceased all communication with Father. In the petition, Father further alleged, “The GAL has reviewed the allegations herein, and shares the concern that Mother’s failure to implement parenting-time per the Order further alienates Father’s relationship with [Child].” *Id.* at 16. The trial court scheduled a contempt hearing for August 25, 2021.

[14] After continued noncompliance by Mother, Father filed a third petition for contempt on August 20, 2021. Father alleged that Mother had ceased all communication with him and had not facilitated any of the court-ordered parenting time. The trial court set this to be heard along with the previous petition and denied a request by Mother for a continuance of the hearing.

[15] On August 23, Mother filed a petition for contempt in which she alleged that Father had failed to engage in reunification therapy. This too was added to the upcoming hearing agenda.

[16] At the contempt hearing on August 25, a senior judge, Dennis Carroll, heard the matter in place of the presiding judge, who was away for the week. Judge Carroll, after conferring with the parties’ attorneys and due to the lateness of the hour, decided to hold the pending contempt petitions in abeyance. Judge

Carroll then ordered the parties to complete specific tasks on August 26. Father was directed to contact reunification therapists and schedule an appointment to begin reunification therapy on the first available date. Regarding parenting time, the court ordered Mother to deliver Child to Grandmother's home at 4:00 on Thursday, August 26, and leave Child there for Grandmother to supervise a visit with Father until 7:00 p.m. Judge Carroll ordered parenting time to continue thereafter in accordance with the phase-in arrangement contemplated by the July order.

[17] Judge Carroll set a hearing for August 27 to ensure that the parties complied with his orders. He warned at the conclusion of the August 25 hearing:

You're going to come back on Friday at 1:30. I hope everybody understands they have to comply with court orders. But my job is to enforce those and to hope for the best and prepare for the worst. So if either one of you fails to show up Friday at 1:30 or if either one of you shows up on Friday at 1:30 and has not complied with the very clear, specific order that I have issued, then you need to be prepared for the consequences. Bring your toothbrush. I think everybody knows what that means. There will be consequences on Friday afternoon if I come to the conclusion that you have not complied with the orders that I've issued with respect to tomorrow. That's not very much. Those two (2) things are just a small piece of the Judge's total picture of what she believes must happen in this case. But it's a start.

Transcript at 7. Judge Carroll made clear that this was not the time to discuss the propriety of Father's reunification with Child, as that had already been decided in the July order at the conclusion of an evidentiary hearing addressing custody modification. Judge Carroll then continued:

I'm only concerned about complying with step number one (1), which I am ordering. And I will enforce my order. You can be sure of that. I will enforce my order. So tomorrow afternoon, 4:00 to 7:00. Tomorrow, get an appointment. Come back on Friday at 1:30. Fail to show up and there will be a bench warrant for your arrest. Show up and not comply with the Court's order, expect the same. It's not my intention to be harsh or unkind. But I have an obligation to enforce the courts' orders.

Id. at 9.

[18] The following day, Mother did not comply with the court-ordered parenting time. She sent the following text message to Father about an hour before the scheduled visit:

Please have patience with [Child] she is a complete mess over having to see you and just keeps asking to please only go to [Grandmother's] when you're not at her house. She says she doesn't remember your name.... She just keeps crying and begging me not to take her. Just don't overwhelm her all at once she is shy and apprehensive naturally anyway.

Appellant's Appendix at 28. Thereafter, Mother did not bring Child or respond to Father's text message sent at 4:20 p.m. asking where they were. Mother, instead, contacted the Indiana Department of Child Services and made allegations of sexual misconduct by Father, which were purportedly disclosed to her by Child that day.²

² At the time, Father had not seen Child for well over two years.

[19] On the morning of August 27, Father filed a notice of Mother's noncompliance and request for sanctions and attorney fees. He claimed that Mother continued to flout the court's orders and offer pretextual excuses to not effectuate parenting time in "a continued pattern of alienation." *Id.* at 23. Father requested that the trial court sanction Mother with attorney fees and at least seven days of incarceration for her willful misconduct.

[20] At the hearing later that day, Father testified regarding Mother's noncompliance with the recent order, as well as the July order, which had resulted in him having no parenting time with Child. Additionally, regarding the allegations of sexual misconduct, Father testified that five different independent factfinding bodies had investigated and all of them reached the same conclusion that there was no credible evidence to support the allegations.

[21] Mother acknowledged that she did not comply with the recent court order. She testified that Child, who was six years old, had a "total meltdown" when informed about the pending visit and refused to see Father. *Transcript* at 31. Mother testified that Child then made a statement that caused Mother to contact "the DCS hotline" and then the Delaware County Sheriff to open a new investigation. *Id.* at 32. Mother claimed that she decided to defy the court's order to keep Child safe and that she understood at the time that her own freedom was in jeopardy. When asked if she would comply with the order going forward, Mother testified, "I was advised that if I comply with that order that I am giving my child to an alleged I suppose perpetrator and that I could be

charged with the same charges for knowing that it happened and still allowing her to be around him.” *Id.* at 34.

[22] The GAL also testified at the hearing. She indicated that she had been appointed to investigate the original allegations against Father and to assess the overall family dynamics. The GAL did not make a recommendation regarding sanctions but testified that the phase-in parenting time previously ordered should be followed moving forward. She had no objection to Father immediately exercising parenting time pursuant to the order, noting that in her multiple interviews with Child she had never observed the behaviors described by Mother. The GAL explained, “When [Child’s] with me, she draws him pictures, writes him letters, asks when she can see him, tells me that she misses him and loves him.” *Id.* at 41.

[23] At the conclusion of the hearing, Judge Carroll determined, based on the evidence, that Mother had no reasonable basis for refusing to comply with the order issued two days prior. In addition to sanctioning Mother with paying \$1600 of Father’s attorney fees, the court ordered her immediate incarceration in the Delaware County Jail and placed Child in the temporary custody of Grandmother during Mother’s incarceration. Judge Carroll explained that his goal was to get supervised parenting time started and that the best chance for this was in Grandmother’s home. Regarding the period of incarceration, Judge Carroll indicated that he did not want it to last very long but that it should be “long enough so that we can get visitation started.” *Id.* at 50. In a

supplemental order issued on August 30, 2021, Judge Carroll ordered Mother's incarceration to continue until 8:00 a.m. on Wednesday, September 1, 2021.

[24] Mother now appeals. Additional information will be provided below as needed.

Standard of Review

[25] The determination of whether an individual is in contempt of a court order is a matter left to the trial court's discretion. *Akiwumi v. Akiwumi*, 23 N.E.3d 734, 741 (Ind. Ct. App. 2014). Thus, we will reverse a finding of civil contempt only upon an abuse of discretion, which occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it. *Id.* When reviewing a contempt order, we neither reweigh the evidence nor judge the credibility of the witnesses. *Id.*

[26] Similarly, we review the imposition of contempt sanctions for an abuse of discretion. *Hunter v. State*, 102 N.E.3d 326, 328 (Ind. Ct. App. 2018). We will reverse an award of monetary sanctions to compensate the other party for injuries, such as attorney fees, incurred as a result of the contempt "only when there is no evidence to support the award." *Witt v. Jay Petroleum, Inc.*, 964 N.E.2d 198, 204 (Ind. 2012). Further, with respect to a sanction of imprisonment in a civil contempt proceeding, we will reverse where the contempt order does not coerce compliance and does not offer an opportunity for the recalcitrant party to purge herself of contempt. *See Flash v. Holtsclaw*, 789 N.E.2d 955, 959 (Ind. Ct. App. 2003), *trans. denied*.

Discussion & Decision

[27] On appeal, Mother argues that the trial court abused its discretion in various ways. Initially, she claims that she had justifiable cause for refusing to comply with the trial court's order because of Child's behavior and statements immediately prior to the scheduled visit and the subsequent advice from DCS. Alternatively, Mother contends that the sanctions imposed were improper because she was not given an opportunity to purge her contempt in order to end her imprisonment and Father did not incur additional attorney fees due to her contempt. We will address each of these in turn.

1. Finding of Contempt

[28] Relying on her own testimony, Mother argues that she had a justifiable reason for failing to comply with the order. The trial court, however, was not required to find Mother's self-serving testimony to be credible. Indeed, Mother offered no independent evidence of her communications with authorities or to support the new abuse allegations, which arose at the eleventh hour and even though Father had not seen Child in over two years. As the trial court observed, during that time period, several investigating agencies and the regularly presiding trial judge, after a factfinding hearing, had determined that the evidence did not support Mother's claims that Father had sexually abused Child. Moreover, the GAL testified at the contempt hearing that she had never observed Child react in the ways described by Mother, that Child had expressed affection for and a desire to see Father, and that her recommendation was that the phase-in parenting time order be implemented without delay.

[29] The evidence amply supports the trial court's finding that Mother willfully violated the simple, straightforward order issued only two days prior. We reject Mother's invitation to reweigh the evidence and to judge her credibility. The trial court did not abuse its discretion by finding Mother in indirect contempt of court. *See Akiwumi*, 23 N.E.3d at 737 (observing that the willful disobedience of any lawfully entered court order of which the offender had notice is indirect contempt).

2. Attorney Fees

[30] Mother argues that the trial court abused its discretion in awarding attorney fees because the August 27 compliance hearing had been scheduled before her noncompliance with the August 25 order. Accordingly, she asserts that there was no need for Father's counsel to prepare and file the notice of noncompliance and that counsel would have had to prepare for the hearing regardless of her contempt.

[31] We initially observed that Mother did not make this argument below. Therefore, it is waived. *See id.* at 741 (finding challenge to the evidence regarding attorney fees waived where argument was not presented to the trial court). Waiver notwithstanding, we find no merit in Mother's argument. At the August 27 hearing, Father testified that based on Mother's failure to bring Child for parenting time on August 26, he contacted his attorney that evening and authorized the preparation of the verified notice of noncompliance, which was filed the next morning along with exhibits. At the hearing and with Mother's express acquiescence, the trial court took judicial notice of the verified

allegations and exhibits contained in the filing subject to cross-examination. Additionally, as a result of Mother's contempt, Father testified that he had incurred attorney fees in the amount of \$1625 (specifically, 6.5 hours at an hourly rate of \$250) for the preparing of the verified notice and representation at the hearing. On cross-examination, Mother did not question Father regarding the amount or propriety of these fees. On this record, Mother has failed to establish that the trial court abused its discretion by awarding Father \$1600 in attorney fees as a sanction for her contempt.

3. Incarceration

[32] Finally, Mother argues that the trial court abused its discretion when it sanctioned her with a jail sentence. More specifically, she claims that the sanction was punitive and did not provide her with an opportunity to purge herself of contempt.

[33] “The principal purpose of a civil-contempt proceeding is not to punish the contemnor but rather to coerce action for the benefit of an aggrieved party.” *Bessolo v. Rosario*, 966 N.E.2d 725, 732 (Ind. Ct. App. 2012), *trans. denied*; *see also In re Paternity of M.P.M.W.*, 908 N.E.2d 1205, 1209 (Ind. Ct. App. 2009) (“In a civil contempt action, imprisonment is for the purpose of coercing compliance with the order.”). While imprisonment necessarily has both punitive and deterrent effects, imprisonment as a sanction for contempt will be viewed as remedial rather than punitive when the court conditions release upon the contemnor's willingness to comply with the court's order from which the contempt finding was based. *See Bessolo*, 966 N.E.2d at 732.

[34] In the instant case, Mother demonstrated an ongoing willingness to defy court orders for phase-in parenting time, which was first ordered on July 7, 2021. After more than six weeks of Mother's obstructionist behavior, on August 25, the trial court gave her another opportunity to comply when it entered a specific order for her to bring Child to Grandmother's home the next day for supervised parenting time from 4:00 to 7:00 p.m. The court expressly warned that noncompliance could result in jail time. Mother did not heed the warning, and her testimony at the compliance hearing on August 27 reveals that she still had no intent to follow the parenting time orders. Accordingly, the trial court sent her to jail on the afternoon of Friday, August 27 and did not release her until the next Wednesday morning. This allowed Father to finally begin his parenting time with Child as granted nearly two months prior.

[35] It is evident that the primary purpose of the incarceration order here was not to punish Mother. Rather, the trial court incarcerated Mother for a short time to facilitate Father's parenting time and to coerce Mother to comply with the ongoing court-ordered parenting time upon her release. *See Williamson v. Creamer*, 722 N.E.2d 863, 867 (Ind. Ct. App. 2000) (holding that thirty-two-day sentence for contempt "served the coercive purpose of maintaining [mother's] compliance with the court's visitation order in the future for the benefit of [father]").

[36] Still, Mother argues that the trial court was required to give her the keys to her jail cell by allowing her to purge her contempt once incarcerated. Indeed, it has long been held, "If the judgment seeks to coerce the defendant into doing an

affirmative act by confinement in jail, it must provide that the imprisonment cease as soon as the act is done, so that it gives the defendant the key of his prison in his own pocket.” *State ex rel. McMinn v. Gentry*, 100 N.E.2d 676, 678 (Ind. 1951). Here, though, we are not presented with the typical contempt case in which a court seeks to coerce the completion of a single, definitive act, such as the payment of money. Mother was obligated not only to begin but also to continue facilitating the phase-in parenting time ordered by the trial court, both of which she had consistently refused to do. In any event, we need not determine whether the trial court abused its discretion by imposing the brief period of incarceration without a purge condition because the issue is moot, as it is impossible for us to grant any effective relief to Mother. *See Bell v. State*, 1 N.E.3d 190, 192 (Ind. Ct. App. 2013) (finding issue moot where contempt sentence had been served and defendant had already been released).

[37] Judgment affirmed.

Vaidik J. and Crone, J., concur.