

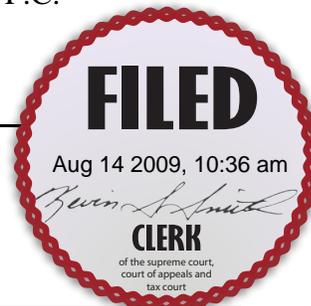
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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE MARRIAGE OF:)

L.A.K.-C.,)
n/k/a K.C.,)

Appellant-Respondent,)

vs.)

K.K.,)

Appellee-Petitioner.)

No. 29A02-0811-CV-984

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Daniel J. Pflieger, Judge
The Honorable William P. Greenaway, Magistrate
Cause No. 29D02-0707-DR-825

August 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Respondent L.A.K-C. (“Mother”) appeals the trial court’s determination that K.K. (“Father”) was not in contempt of the parties’ previous custody order. Mother also appeals the trial court’s order that she pay \$4000 of the attorney’s fees incurred by Father in relation to the instant matter. We affirm.

FACTS AND PROCEDURAL HISTORY

Mother and Father were married on December 21, 1984, and four children were born during the course of this marriage, with the custody of the youngest two children, I.K. and A.K., being at issue in the instant matter. Mother and Father’s marriage was dissolved on March 22, 1999. At the time of the dissolution of their marriage, Mother and Father agreed to share joint legal and physical custody of the children.

In 2001, Mother, who had remarried, relocated with her husband to Hawaii. On December 31, 2001, the trial court awarded primary physical custody of I.K. and A.K. to Father and ordered that the parties retain joint legal custody of the children. The trial court scheduled a review hearing of the custody arrangement for July 3, 2002.

On July 5, 2002, the trial court modified its prior custody order and awarded Father sole legal and physical custody of I.K. and A.K. “due to the complete inability [of Mother and Father] to meaningfully communicate.” Appellant’s App. p. 37. In granting Father sole legal and physical custody of the children, the trial court issued the following statement:

Although there will no longer be joint legal custody of [I.K. and A.K.], the parties are admonished that input from their father and their mother is important to the upbringing of these children. For this reason, the Court encourages communication between the parties on all matters concerning the children and this Court’s order of sole custody shall not be used as a tool to exclude the other party from participation in the child’s life.

Appellant's App. p. 38. The trial court's order also clarified Mother's and Father's financial responsibilities with respect to the children's travel arrangements for visitation with Mother in Hawaii.

On June 25, 2007, Mother filed a "Combined Verified Petition for Modification of Legal Custody and Parenting Time; Motion for Rule to Show Cause; For Attorney's Fees and Request for Hearing." Appellant's App. p. 40. In this combined petition and motion, Mother claimed that Father had violated the previous custody order by failing to inform Mother of decisions regarding the children and effectively preventing Mother from communicating with the children. In making these claims, Mother requested increased parenting time with the children in Hawaii, that Father be ordered to aid in the cost of the children's travel expenses, and that Father be ordered to reimburse Mother for her attorney's fees incurred in relation to the combined petition and motion.

In response, Father argued that Mother's request for additional parenting time with the children in Hawaii was difficult to justify because Mother had failed to exercise all of the parenting time awarded to her in the July 2002 custody order, that Mother was made aware of decisions relating to the children, and that he had not prevented Mother from communicating with the children. Father also requested that the trial court order Mother to pay the reasonable attorney's fees and litigation expenses incurred by Father in responding to "Mother's baseless allegations and requests." Appellee's App. p. 3.

The trial court conducted a hearing on August 7, 2008, at which it heard evidence relating, *inter alia*, to Mother's and Father's claims relating to child visitation, Father's

compliance with the July 2002 custody order, and each party's request for attorney's fees.

The next day, the trial court issued an order which stated the following:

1. The Court will deny the request for modification of legal custody.
2. The Court declines to find Petitioner/Father in contempt in any respect.
3. Parenting time between [I.K.] and Respondent shall be as they mutually agree.
4. The Court now orders that the minor child, [A.K.], undergo an immediate psychological assessment to determine if she is in need of any mental health or other care. Petitioner/Father shall select an appropriate mental health professional to assess [A.K.]. The parties are now specifically ordered that they shall fully cooperate with the assessment and ensure that [A.K.] receive any and all care recommended. The parties are admonished in the strongest possible manner that they shall set aside their obvious animosities in this matter and provide the unified help and assistance that their daughter needs. Any lack of cooperation, or interference will be addressed swiftly and definitively by the Court.

* * *

6. At the time, the Court will find that mandating [A.K.] to fly to Hawaii to be with her mother for parenting time may significantly affect her mental health and well being. The Court will therefore, on its own motion, stay parenting time outside the state of Indiana between Mother and daughter until further order. If Mother is in the state of Indiana, she shall be permitted to have parenting time on a daily basis of no more than four (4) hours, with no overnights.

* * *

8. Respondent/Mother is ordered to pay Petitioner/Father's attorney fees in the amount of \$4,000.00 within 60 days or the same shall be reduced to judgment.

Appellant's App. pp. 11-12. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Contempt

Mother contends that the trial court abused its discretion in determining that Father was not in contempt of the July 2002 custody order. Specifically, Mother argues that the trial court abused its discretion because the evidence presented during the August 7, 2008 hearing

demonstrated that Father willfully disobeyed the July 2002 custody order by using sole custody to eliminate Mother's ability to give input or to obtain knowledge of important educational or medical decisions relating to the children. Father, on the other hand, argues that the trial court did not abuse its discretion because the evidence demonstrated that Father never intentionally failed to respond to a direct communication attempt by Mother and that Father reasonably believed that all important and requested information had been provided to Mother.

The determination of whether a party is in contempt of court is a matter entrusted to the trial court's sound discretion, and we reverse that determination only for an abuse of that discretion. *MacIntosh v. MacIntosh*, 749 N.E.2d 626, 629 (Ind. Ct. App. 2001), *trans. denied*; *Piercey v. Piercey*, 727 N.E.2d 26, 31 (Ind. Ct. App. 2000). A court abuses its discretion when its decision is against the logic and effect of the facts and circumstances before the court or is contrary to law. *MacIntosh*, 749 N.E.2d at 629. When reviewing a contempt order, we neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* Rather, we consider only the evidence and reasonable inferences drawn therefrom that support the judgment of the trial court. *Id.* We will only reverse the trial court's judgment if there is no evidence to support it. *Piercey*, 727 N.E.2d at 32.

Here, ample evidence supports the trial court's determination that Father did not willfully disobey the July 2002 custody order by excluding Mother from the children's lives. The parties' testimony supports a conclusion that while there may be a complete lack of direct communication between Father and Mother, Father did not impede continued

participation by Mother in the children's lives. Father testified that he provided each of the children with a cellular phone so that they could communicate more easily with Mother, that he encouraged the children to communicate with Mother on a regular basis, and that he instructed the children to inform Mother about all important decisions affecting their lives. Father also testified that he specifically encouraged the children to communicate any medical or educational issues with Mother. Father indicated a willingness to communicate with Mother regarding important medical and educational decisions concerning the children. Father also indicated a willingness to communicate with Mother about other important decisions affecting children's lives and to grant Mother access to the children's medical and education records. Father further testified that Mother had the authority to request the children's education records from the school.

This evidence supports the trial court's conclusion that Father did not actively try to exclude Mother from the children's lives, but rather encouraged the children to engage Mother in their lives. Further, we observe that while it is not ideal for ex-spouses to communicate only through their children, the record here indicates that since at least 2002, neither Mother nor Father has attempted to improve their communication with the other, and both parents have indicated that they are satisfied communicating only through the children. In light of this evidence and Mother's and Father's apparent contentment to communicate only through their children, we conclude that the trial court did not abuse its discretion in determining that Father did not willfully disobey the July 2002 custody order.

II. Attorney's Fees

Mother also contends that the trial court abused its discretion in ordering her to pay \$4000 of the attorney's fees incurred by Father in relation to the instant matter. Specifically, Mother claims that the trial court abused its discretion in ordering her to pay a portion of Father's attorney's fees because Father's income is greater than hers, that she was required to travel from Hawaii to address this matter and to participate in parenting time, and that Father's allegedly admitted misconduct "made" her incur legal fees of her own. Appellant's Br. pp. 9, 10. Father, alternatively, argues that the trial court did not abuse its discretion because, contrary to Mother's claim, Mother's financial situation is superior to Father's.

The decision whether to award attorney fees was well within the trial court's discretion and the trial court enjoys broad discretion in making such awards. *Piercey*, 727 N.E.2d at 31. We will reverse the trial court's decision to award attorney fees only if the decision is clearly against the logic and effect of the facts and circumstances. *Haley v. Haley*, 771 N.E.2d 743, 753 (Ind. Ct. App. 2002). In determining whether an award of attorney's fees is appropriate, the trial court may consider factors such as the spouses' resources, their economic condition, their ability to engage in gainful employment and earn an adequate income, and other factors which bear on the reasonableness of the award. *Id.*; *Piercey*, 727 N.E.2d at 31. However, the trial court need not give specific reasons for its determination to award attorney's fees in dissolution or custody modification cases. *Piercey*, 727 N.E.2d at 31.

Mother relies upon *Haley* in support of her claim that the trial court abused its discretion in ordering that she pay \$4000 of Father's attorney's fees. In *Haley*, this court

concluded that the trial court had abused its discretion in ordering Mother to pay Father's attorney's fees because Father was in a much better financial position than Mother and had resources upon which he could rely that Mother did not. 771 N.E.2d at 754. In reaching this conclusion, this court stated the following:

As our policy states, permitting the awarding of attorney fees serves to insure equal access to the courts despite the relative financial conditions of the parties. There can be no assurance of equal access to the courts when a party, who is in the financial position of Mother, is required to pay the attorney fees of another who is in a superior financial state.

Id. (citations omitted).

Here, unlike in *Haley*, the record indicates that Mother is in a financially superior position to Father. Father testified that he works as a machinist making between \$52,000 and \$55,000 per year, and that his pay has been steady, but has not increased since about 2000. Father also testified that while his income has remained steady, his expenses have increased substantially. Father explained that health insurance premiums for the children have increased substantially and that he has recently become the sole legal guardian for another minor child. The record indicates that Father is raising three children as a single parent and does not have any additional spousal income to help cover family living expenses. In addition, Father testified that he owns a \$96,000 home in Carmel, on which he has a mortgage debt of approximately \$75,000. Father also indicated that he has approximately \$20,000 in personal debt.

Mother, on the other hand, acknowledged that she earns approximately \$50,000 per year and that her husband earns approximately \$60,000 per year. Mother testified that she

and her husband live in a house in Hawaii with their two minor children and her husband's parents, who also help pay for the family's living expenses. Mother further testified that she, husband, and husband's parents are in the process of buying a new \$2.7 million home. Mother admitted that she does not pay Father any child support for the children, and unlike Father, did not present any evidence relating to personal debt or rising insurance obligations.

We conclude that this evidence indicates that Mother is in a superior financial position to Father and that Mother has resources upon which she can rely, *i.e.* her husband and her live-in in-laws, which Father does not have. Therefore, the trial court did not abuse its discretion in ordering Mother to pay \$4000 of the attorney's fees incurred by Father in relation to the instant matter.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.