

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

FJS,		: NO. 08 – 20,285
	Plaintiff	:
		: CIVIL ACTION - LAW
vs.		:
		:
WKG,		:
	Defendant	: Contempt

OPINION AND ORDER

Before the court is Plaintiff (hereinafter Grandfather)'s Petition for Contempt, filed July 18, 2012. A hearing on the petition was held October 10, 2012, after which the court expressed its inclination to transfer primary custody of the child, KG, born December 18, 2003, to Grandfather.¹ A conference was scheduled for November 1, 2012, to obtain the parties' input in establishing periods of partial custody for Father. At the conference, which was held on the record, Father's testimony established that he made no meaningful attempt to rectify the situation. After speaking with the child, however, the court has decided on a more measured response. Father will be incarcerated for two periods of time, the child will spend that time with Grandfather, and a suspended sentence of incarceration will follow. As this may appear to be rather drastic, the court offers the following history.

The court's involvement began in March 2008 when Grandfather filed a petition for primary custody soon after the death of his daughter, K's Mother, who had had primary custody of K since her separation from Father. After a conference on April 1, 2008, by Order of that date primary custody was placed with Father and Grandfather was provided with partial custody of one weekend each month, the first of which was to be the weekend of April 13, 2008. A psychological evaluation was also ordered at Grandfather's request and the matter was scheduled for further proceedings. On April 23, 2008, the first of what would turn out to be many, many contempt petitions was filed, alleging that Father had failed to bring K to the

¹ Custody of K is currently governed by Orders dated September 1, 2010, and September 22, 2011.

designated exchange point for the April 13 visit. A hearing was held on June 9, 2008, and it was found that Father had failed to provide Grandfather with his visits on both April 13 and May 11. By Order of that date, make-up time was directed and Father was fined \$1000 and ordered to pay Grandfather's travel expense by June 30, although the fine was suspended on the condition that Father thereafter comply with the April 1 order. Father was also directed to follow-up with the psychological evaluation process as the evaluation was directed to be completed by September 11, 2008, and he had not cooperated to that point.

Grandfather again petitioned for a finding of contempt based on Father's alleged failure to cooperate with the psychological evaluation process, on September 5, 2008. After a conference on September 18, 2008, by Order of that date the previous appointment was vacated and Father was ordered to reimburse Grandfather for his costs with respect to that appointment. Father was again directed to cooperate with the new arrangements. A trial was scheduled for January 26, 2009. The order also indicated that Grandfather's one-weekend-per-month visits were to continue.

A third contempt petition was filed by Grandfather on October 27, 2008, alleging that Father had refused Grandfather his visit on September 13, 2008, as well as his visit on October 11, 2008. After a hearing on November 13, 2008, Father was found in contempt for having failed to provide Grandfather with his visits in September, October and November. The previously suspended \$1000 fine was made absolute, to be paid by January 9, 2009, Father was ordered to reimburse Grandfather for travel expenses and to pay counsel fees, and make-up time was directed. Father was also ordered to contact the evaluator to schedule appointments for himself and K as he had not at that time yet done so.

A fourth contempt petition was filed by Grandfather on November 24, 2008, alleging that Father had failed to reimburse him for the evaluation expenses as ordered on September 18. After a hearing on January 22, 2009, a payment plan was established but Father was warned that failure to pay as directed would result in further sanctions.

Based on the parties' agreement, an Order was entered January 22, 2009, establishing primary legal and physical custody of K with Father and providing Grandfather with partial

physical custody one weekend per month, two weeks for vacation and time on specified holidays. The trial, scheduled for January 26, was canceled.

Grandfather's fifth contempt petition was filed April 29, 2009, alleging that Father had refused to provide the April visit and had failed to make any payments pursuant to the payment plan established in the January 22, 2009, Order. A hearing was scheduled for July 9, 2009, but Father failed to appear. After a bench warrant was issued and Father was arrested on that warrant, the contempt hearing was rescheduled for August 4, 2009. At that time, based on the parties' agreement, Grandfather was given make-up time and the contempt hearing was rescheduled to August 10, 2009. After that hearing and by Order of that date, Father was found in contempt. His compliance with court orders was found "deplorable" and he was sentenced to thirty days incarceration, although the sentence was suspended upon the condition that he "faithfully comply with all future orders". Make-up time was again ordered and Father was directed to pay additional costs of \$375.

June 28, 2010, brought Grandfather's sixth contempt petition, in which he alleged that Father had refused to provide the April and May visits as well as the Memorial Day visit, and failed to pay anything beyond one \$300 payment. After a hearing on September 1, 2010, and by order of that date, Father was once again found in contempt. Although the court considered imposing the previous thirty day jail sentence, based on Grandfather's request it did not do so. Make-up time was provided and a further payment plan was established.

Grandfather's seventh contempt petition was filed March 22, 2011, based on allegations that Father had failed to provide the February and March visits. After a hearing on May 5, 2011, and by Order of that date, Father was found in contempt and the court further found that "Father has willfully failed to comply with the Court Order on numerous occasions and has been given ample opportunity by the Court in the past by suspending sentences of incarceration upon a finding of contempt." The court expressed its belief that "the threat of incarceration means nothing to Father", and consequently ordered his incarceration for a period of 72 hours. Three weeks of make-up time was also ordered.

On July 28, 2011, Grandfather filed his eighth contempt petition, alleging that Father had refused to provide the second week of make-up time as previously ordered. After a hearing

on September 22, 2011, and by Order of that date, Father was found to be “again in contempt of the existing Order.” Suspecting that “there may be grandparent alienation of the child perpetrated by the father,” the court “seriously consider[ed] the drastic step of removal of the child from the father’s care and placement with the grandfather”. To aid in the decision, a psychological evaluation was ordered, and the psychologist was requested to make specific findings regarding possible manipulation by the Father of the child’s feelings for his grandfather, as well as the impact such a transfer would have on the child. Father was ordered to pay \$1500 within 60 days and Grandfather’s partial custody was increased to two weekends per month.

A follow-up hearing was held after the evaluation was completed, on March 26, 2012. In the Order of that date, after noting the evaluation supported a finding that K has a good relationship with both his Father and Grandfather, the court expressed its feeling that the only remedy for dealing with Father’s lack of cooperation was a transfer of custody, but gave Father a chance to avoid such, explaining as follows:

Regrettably, the Court's intention to send a strong message to Mr. G by its Order of September 22, 2011 was largely ignored. It was determined at this hearing that Mr. G has not paid the \$1500 that was ordered to be paid within 60 days, and that he has again been difficult with visits which were increased to twice a month. For example, it is understood by the Court that Mr. Snell did not get his visitation at Thanksgiving, nor at Christmas, and he has not been able to exercise either of his periods of partial custody during the months of March. Again, this appears to be as a result of the continued resistance of Mr. G. Mr. G now opines that it's going to be difficult for him to comply with the Order because he was sentenced on a DUI on December 15, 2011 and has lost his license. It should be noted that the custody Order provides for an exchange of custody to take place at the Sheets Service Center in Elysburg, Pennsylvania.

The Court has also considered the fact that there was apparently a sanction imposed by Judge McCoy during this period of time in which she sentenced Mr. G to a weekend period of incarceration for failure to abide by the Order. The Court notes that this did not improve Mr. G's compliance with the Order, as the \$1500 continues to be unpaid, and there have been missed visits since the time of that particular sanction.

Unfortunately, as a result of all of this, the Court has become extremely frustrated with the level of cooperation by Mr. G. And while this Court does so with a great deal of reluctance, it is the feeling of the Undersigned that the only remedy is a transfer of custody to the grandparents. It is the feeling of the Court that the grandparents will be far more cooperative in allowing Mr.

G to see his son, than Mr. G has been in affording the grandparents their just partial custody.

The Court recognizes that this may be a severe adjustment for K, and in order to avoid the distress that this may cause on this young man, the Court is making this final effort to assure compliance. The Court will maintain the present custody situation until the end of school. If there is any violation of the provisions of this Order as hereinafter enumerated, it is the intention of the Court to award primary custody of K to his grandparents. Those provisions are as follows:

1. The Parties will provide a make-up time during the spring vacation, which extends from April 5, 2012 to April 12, 2012. This visitation shall take place from April 5th at 10 a.m. at the Sheetz Market in Elysburg, to Sunday, April 9, 2012 at 4 p.m. at that same market.

2. The Parties shall thereafter engage in the same visitation period for the balance of April, May, and the first half of June, those visits being the second and fourth weekend of each month at the times previously provided.

3. In addition to the above, the full sum of \$1500, as previously ordered, will be paid prior to the end of school.

Not surprisingly, the instant contempt petition, Grandfather's ninth, alleges that Father never paid the \$1500, and refused Grandfather his visit on the weekend of July 13. At the hearing on October 10, it was also evidenced that Father failed to provide Grandfather with any visits after July 13. It is clear to the court that Father shows no respect for the court's directive, and apparently is willing to subject his son to the distress which will be caused by his own incarceration. The court acknowledges that distress, but feels it must seek to enforce compliance, as such will be in K's best interest in the long run.

Accordingly, the court enters the following:

ORDER

And now, this 1st day of November 2012, for the foregoing reasons, Defendant is hereby found in CONTEMPT of this Court's Order of March 26, 2012. The sentence of the court is that Defendant undergo incarceration in the Lycoming County Prison for a period of 48 hours commencing 9:00 a.m. Friday, November 2, 2012, a second period of incarceration in the Lycoming County Prison for a period of nine days commencing 9:00 a.m. Saturday, November 17, 2012, through 9:00 a.m. Monday, November 26, 2012, and a third period of incarceration in

the Lycoming County Prison for a period of ten days commencing 9:00 a.m. Saturday, December 22, 2012, through 9:00 a.m. Tuesday, January 1, 2013. This third period shall be suspended on the condition that Defendant faithfully complies with all court orders regarding custody of his son from this point on.

Grandfather's regular schedule of partial custody for the remainder of 2012 shall be superseded by the following periods:

(1) From the time of the hearing this date through Sunday, November 4, 2012, at 5:00 p.m., at which time the parties shall meet in Elysburg.

(2) From 4:00 p.m. Friday, November 16, 2012, at which time the parties shall meet at the law office of defense counsel, CL, Esquire, through Monday, November 26, 2012, at 5:00 p.m., at which time the parties shall meet in Elysburg.

(3) From 10:00 a.m. Saturday, December 15, 2012, through 5:00 p.m. Sunday, December 16, 2012, both of which times the parties shall meet in Elysburg.

(4) From 5:00 p.m. Thursday, December 27, 2012, through 5:00 p.m. Sunday, December 30, 2012, both of which times the parties shall meet in Elysburg. If, however, Father becomes incarcerated as a result of the imposition of the suspended sentence over the Christmas holiday,² Grandfather's partial custody shall run from 4:00 p.m. Friday, December 21, 2012, at which time the parties shall meet at the law office of defense counsel, CL, Esquire, through Tuesday, January 1, 2013, at 5:00 p.m., at which time the parties shall meet in Elysburg.

Effective January 1, 2013, the prior custody orders shall govern.

BY THE COURT,

cc: CD, Esq.
CL, Esq.
GW, Esq.
Hon. Dudley Anderson

Dudley N. Anderson, Judge

² Plaintiff's counsel may file a contempt petition and ask for expedited consideration should she believe Father to have failed to follow the court order as of that point.