

[Cite as *Beadle v. Beadle*, 2004-Ohio-1400.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

Brenda Beadle, nka Walters,	:	
	:	
Plaintiff-Appellant,	:	
	:	Case No. 03CA2911
v.	:	
	:	<u>DECISION AND</u>
James Beadle,	:	<u>JUDGMENT ENTRY</u>
	:	
Defendant-Appellee.	:	File-Stamped Date: 3-15-04

APPEARANCES:

Christine M. Scott, Portsmouth, Ohio, for Appellant.

George L. Davis, III, Portsmouth, Ohio, for Appellee.

Kline, P.J.:

{¶1} Brenda Beadle, nka Walters (“Mother”) appeals the judgment entry of the Scioto County Court of Common Pleas, Domestic Division, overruling her objections and affirming the magistrate’s decision finding her in contempt of court, ordering her to purge her contempt by paying reasonable attorney fees in the amount of \$500 to James Beadle (“Father”), and modifying the parties’ visitation rights. Mother argues that the trial court lacked jurisdiction to modify its previous

transportation order because neither party specifically raised the issue in their various motions or in their testimony. Because we find that Father filed a motion requesting the trial court to modify the parties' visitation order, and that the transportation provision is an integral part of the visitation order, we overrule Mother's first assignment of error. Additionally, Mother argues that the trial court erred as a matter of law and abused its discretion by awarding attorney fees to Father when he presented no evidence regarding the amount or reasonableness of his attorney fees relative to his contempt motion. Because we find that the attorney's fees awarded were nominal in amount, we conclude that no evidence of the fees actually incurred or the reasonableness of the charges is necessary. Accordingly, we overrule both of Mother's assignments of error and affirm the judgment of the trial court.

{¶2} The parties were married on November 11, 1991. They have one child born as issue of the marriage, James Earl Beadle ("Jeb")¹. In October 1994, the parties executed a separation agreement designating Mother as the residential parent and granting Father reasonable visitation in accordance with Local Rule XX. On December 20, 1994, the trial court issued an agreed judgment of divorce, incorporating the parties' separation agreement.

¹ The record does not clearly reflect Jeb's birth date. The trial court found that it was February 12, 1993. However, we note that the record contains several birth dates including February 12, 1993, July 13, 1993, and February 13, 1994.

{¶3} Since their divorce, the parties have returned to court on numerous occasions regarding visitation and child support issues. On March 29, 2001, the parties entered into an agreed order modifying the visitation to accommodate the child's sports activities. Pursuant to that agreement, Father was to exercise visitation on alternating weekends from 4:00 p.m. Friday through 7:00 p.m. on Sunday. If Jeb had a "ball game" on Saturday, Father was to pick him up one hour after completion of the "ball game[.]" The agreement also granted Father an additional four days of visitation at the end of the summer to compensate for the lost visitation. Father, however, became dissatisfied with this arrangement when Jeb began participating in additional sports further impinging upon his visitation.

{¶4} In January 2002, Father filed a motion to modify child support. Two months later, he filed a motion for contempt and a motion to modify visitation. Mother then filed a motion for make up visitation and for an order to show cause. The trial court issued a stay and, by agreement of the parties, referred the case to mediation. When mediation proved unsuccessful, the matter came for hearing before the magistrate. At the time of the hearing, Father lived in Canal Winchester, Ohio, and Mother lived with the child in Scioto County, Ohio.

{¶5} The magistrate issued a decision, including findings of fact, conclusions of law, and magistrate's recommendation, the relevant portions of

which we summarize below. The magistrate found that Father had proven his motion for contempt by clear and convincing evidence, and therefore found Mother to be in contempt of the court's orders by denying Father visitation. Moreover, although the magistrate found that neither party submitted evidence of their respective expenditures for attorney fees, the magistrate ordered Mother to purge her contempt by paying Father's reasonable attorney fees in the amount of \$500 and allowing Father one additional day of parenting time within ninety days of the order.

{¶6} Further, the magistrate found that it was in Jeb's best interest to modify the prior agreement regarding visitation. Accordingly, the magistrate granted Father visitation pursuant to Local Rule XX with the condition that Father transport the child from his home in Canal Winchester, Ohio, to any extra-curricular activities scheduled during his visitation time including, but not limited to, all sporting events in which the child is a participant, and any school-related functions. In doing so, the magistrate found that it was in Jeb's best interest to strike a better balance between Jeb's right and Father's right to have a relationship with one another, and the child's right and need to participate in extra-curricular activities.

{¶7} Additionally, the magistrate ordered the parties to bear equal responsibility for Jeb's transportation for visitation, with the exception that Father bear full responsibility for transportation to extra-curricular activities during his visitation time as discussed above. To address Mother's concerns that Father would not abide by the order regarding extra-curricular transportation, the magistrate ordered Father to timely transport the child to all extra-curricular activities during his visitation time and warned that any failure to do so may subject Father to a citation for contempt. Further, the magistrate indicated that the court would specifically consider any failure to abide by that order as a factor in any future modification of visitation.

{¶8} Mother filed a timely objection to the magistrate's decision. After reviewing the pleadings, decision, objection, and transcript of the proceedings, the trial court overruled Mother's objection and confirmed the magistrate's decision.

{¶9} Mother appealed, raising two assignments of error: "APPELLANT'S ASSIGNMENT OF ERROR #1 THE TRIAL COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION BY RULING UPON THE MATTER OF THE TRANSPORTATION OF THE PARTIES' MINOR CHILD BETWEEN THE PARTIES DURING PARENTING TIME WHEN THIS ISSUE WAS NOT PLACED BEFORE THE COURT BY EITHER PARTY IN THEIR

VARIOUS MOTION (sic), NOR WAS TESTIMONY PRESENTED BY EITHER PARTY TO EFFECT A CHANGE. APPELLANT’S ASSIGNMENT OF ERROR #2 THE TRIAL COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION BY AWARDING ATTORNEY’S FEES TO THE DEFENDANT WHEN NO EVIDENCE WAS SUBMITTED BY THE DEFENDANT REGARDING HIS RESPECTIVE EXPENDITURE OF ATTORNEY FEES IN PURSUIT OF HIS CONTEMPT MOTION FILED AGAINST THE PLAINTIFF.”

{¶10} Under her first assignment of error, Mother argues that the trial court abused its discretion by modifying the manner in which the parties transported their child for purposes of visitation. She contends that the issue of transportation was not properly before the court as neither party requested such a modification and the parties did not present any evidence to support a change. We disagree.

{¶11} R.C. 3109.051 governs the modification of visitation rights. Pursuant to this statute, when considering whether to modify the parties’ visitation rights, a court must determine if a change is in the best interest of the child. *Braatz v. Braatz*, 85 Ohio St.3d 40, 45, 1999-Ohio-203. This determination is entrusted to the sound discretion of the court making the decision, and will not be overturned absent an abuse of that discretion. *Id.* An abuse of discretion, connotes more than a mere error of law or judgment; instead, it implies that the court’s attitude was

unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶12} Here, Mother does not challenge the substance of the trial court’s decision. Rather, she simply argues that the trial court did not have the authority to modify the transportation schedule of the parties’ child as neither her nor Father raised this issue below.

{¶13} Our review of the trial court’s judgment reveals that the issue of transportation was an integral part of the visitation order in this case. Jeb’s increased participation in sports since the trial court’s last order substantially interfered with Father’s visitation. Every weekend Jeb had a “ballgame[,]” father lost approximately twenty hours of visitation time. Although Father was given an additional four days of visitation in the summer to compensate for the loss, the magistrate concluded that it would be in the best interest of the child to modify the previous order to allow Jeb and Father to spend more time together. Specifically, the court ordered that Father would bear full responsibility for providing all transportation of the child to and from any scheduled extra-curricular activities that may occur during his visitation time.

{¶14} Given the circumstances in this case, we conclude that the trial court did not abuse its discretion in modifying the transportation responsibilities of the

parties. The modification is not only reasonable, but also is necessary to facilitate Father's visitation with his son. Appellant's first assignment of error is not well-taken.

{¶15} In her second assignment of error, Mother maintains that the trial court abused its discretion when it awarded Father attorney fees. She argues that because (1) the trial court found that neither party submitted evidence of their respective expenditures with respect to attorney fees, (2) there was no determination that the other party had an ability to pay attorney fees, and (3) there was no determination that either party would be prevented from fully litigating his or her rights, the court was precluded from awarding attorney fees to Father.

{¶16} R.C. 3109.051(K) provides in relevant part:

{¶17} "If any person is found in contempt of court for failing to comply with or interfering with any order or decree granting parenting time rights issued pursuant to this section or section 3109.12 of the Revised Code or companionship or visitation rights issued pursuant to this section, section 3109.11 or 3109.12 of the Revised Code, or any other provision of the Revised Code, the court that makes the finding, in addition to any other penalty or remedy imposed, *shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as*

determined by the court, that arose in relation to the act of contempt, and may award reasonable compensatory parenting time or visitation to the person whose right of parenting time or visitation was affected by the failure or interference if such compensatory parenting time or visitation is in the best interest of the child.

***” (Emphasis added.)

{¶18} As the preceding passage shows, “under R.C. 3109.051(K), reasonable attorney fees are automatically assessed to the prevailing party in a contempt action arising from the failure to comply with a visitation order.” *Karales v. Karales* (Aug. 21, 2001), Franklin App. No. 00AP-1428, 2001 WL 950158, at 3. “This statute is phrased in the imperative and clearly preempts the judicial discretion that once controlled this area. It now *requires* that costs and reasonable attorney fees for the injured party be assessed against the contemnor, irrespective of any other sanction that might be imposed.” *In re Skinner* (Mar. 23, 1994), Adams App. No. 93CA547, 1994 WL 93149, at 9.

{¶19} Although it is preferable for a party requesting attorney fees to provide evidence to justify the awarded amount, the trial court in the instant matter was very familiar with this case. As this court indicated earlier, Mother and Father have returned to court numerous times since their divorce to resolve disputes involving visitation and child support. Moreover, the trial court ordered Mother to

pay only \$500. Accordingly, “[b]ecause the attorney fees here were nominal in amount, no evidence of the amount of attorney fees actually incurred, or the reasonableness of that charge, is necessary.” *Woloch v. Foster* (1994), 98 Ohio App.3d 806, 813.

{¶20} Finally, we note that in her appellate brief, Mother refers to R.C. 3105.18(H) when arguing that the trial court abused its discretion in awarding Father attorney fees. This particular provision, which governs attorney fees in divorce proceedings, however, is not applicable. Because R.C. 3109.051(K) relates specifically to the question of when to award attorney fees in contempt proceedings involving a visitation order, it controls over the more general provisions of R.C. 3105.18(H). *McAuliffe v. W. States Import Co., Inc.*, 72 Ohio St.3d 534, 540, fn. 5, 1995-Ohio-201. See, also, R.C. 1.51. Appellant’s second assignment of error has no merit.

{¶21} Pursuant to the foregoing analysis, Mother’s two assignments of error are without merit. The judgment of the trial court, therefore, is affirmed.

JUDGMENT AFFIRMED.

Harsha, J. and Abele, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Roger L. Kline, Presiding Judge