

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RZ,	: NO. 99-20,160
Plaintiff	:
	:
vs.	: CIVIL ACTION - Law
	: Custody
RWI, SR.,	:
Defendant	:

OPINION AND ORDER

Before the Court is RZ's (grandmother) Petition for an adjudication of contempt against RWI, SR. (father). This Petition arises out of the Court Order dated April 3, 2001 defining grandmother's visitation to be exercised during the summer months. The Order provided for two (2) non-consecutive weeks of visitation to be exercised by grandmother at her election with her grandson, RWI, JR., (R), age 7. At the time of the issuance of the Order, grandmother was a resident of Florida and father was a resident of Pennsylvania. Shortly after the issuance of the Order father relocated to Spokane, Washington and grandmother continued to reside in Florida. Grandmother, pursuant to the Order, and after some modification, elected the weeks of July 9 and August 7, 2001 to exercise her visitation. It should be noted that grandmother is 84 years old and is beginning to suffer some of the physical frailties that come with advancing age. Accordingly, it was understood that grandmother would exercise the visitation in Florida.

In order to accomplish the visitation grandmother sent her son-in-law to Spokane, Washington to accompany R to Florida for the July 9th visitation. He arrived in Spokane as planned and arrangements were made with father to meet at the airport so the transfer of custody could take place. Father arrived at the airport with Riche at the designated time. R was fully packed for the trip. Upon greeting father and R, Mrs. Z's son-in-law made a request that father leave the airport so that

he and R could have some time together to put R at ease regarding the flight. Father refused this request and insisted on remaining at the airport until R was airborne. When the flight was called R became upset and agitated. Father received permission from the gate attendant to accompany R on to the airplane and by all accounts attempted to settle the child down. Apparently the scene inside the airplane grew worse with R's resistance bordering on hysteria. Finally, a flight attendant informed the group that the flight would not take place under these circumstances and that R would have to deboard the airplane. The instruction of the flight attendant was followed and it was decided by all concerned the parties would make an attempt to catch a later flight to Jacksonville, Florida.

Although there were efforts to assuage R's misgivings about leaving his father, at the time of the next flight, which was approximately two (2) hours later, the scene reoccurred. Regrettably, the visitation with grandmother was never accomplished and her son-in-law returned to the East Coast without R.

Grandmother returned to this Court on July 26, 2001 and secured a revised Order that date granting her physical custody from August 7 through August 14 and further requiring father to turn R over to grandmother's representative two (2) hours in advance of the scheduled flight.

On August 6, 2001, father filed an ex parte emergency petition asking this Court to suspend the partial custody based on alleged psychological trauma to the child. This Court summarily dismissed the request indicating that it was the Court's belief the Order of July 26, 2001 adequately addressed the concerns raised by the emergency petition. In the interim, grandmother again sent her son-in-law, BK, to Spokane to pick up the child. Testimony from Mr. K indicated that he contacted father's wife, KI, on August 6, 2001 at approximately 4:30 p.m. and spoke to her concerning the travel arrangement. At this point, Mr. K was in Salt Lake City awaiting a flight to Spokane and advised Mrs. I as to when he would be arriving. Mr. K arrived in Spokane on the morning of August 7, 2001 to return with R and was greeted by Mrs. I with a restraining Order from the Washington Court, dated August 6, 2001, which suspended visitation. This Order was apparently obtained on the same application that was submitted to the Pennsylvania Court. As a result, Mr. K returned to

Jacksonville, Florida without R.¹

The question this Court has been asked to decide is whether the actions of July 9, 2001 and the actions of August 7, 2001 constitute civil contempt. As to the actions of July 9, 2001, this Court does not believe that the actions of the father violated the Court Order. Father complied with the Court Order insofar as he arrived at the airport with the child to effectuate the exchange. He accompanied the child onto the airplane and by all accounts, attempted to calm the child down. Father did not make the decision to remove the child from the airplane but, rather, simply complied with the direction of the intervening authority, the airline itself. Actually, father went beyond the Order and remained for an additional two (2) hours to attempt to accommodate grandmother by securing another flight.

Petitioner has argued that father's remaining at the airport enabled him to orchestrate the child's reaction and thus frustrate the efforts for visitation. In support of this, grandmother has reminded the Court that this type of behavior has occurred by the child on previous occasions when he is in the father's company. The Court is aware that, on previous occasions, the child threw similar hysterical temper tantrums when the exchange was to take place. Once the exchange had taken place and the child was out of father's company, he immediately calmed down and in fact, appeared to enjoy the visitations very much. Although this Court is aware of those instances, the fact of the matter in this case is that the airline made the final decision as to the child's removal from the airplane. As such, the Court finds that father did not willfully violate the Court Order and accordingly, the Petition for Contempt on this particular incident is denied.

With respect to the events of August 7, 2001, the Court does find a contempt. Both parties have argued the effect of the intervening Washington Order. Grandmother's counsel has argued that any action taken by a Court without jurisdiction is a nullity, citing Dubruil v Izaguirre, 454 Pa. 504, 685 A.2d 1391 (1996) and Mischenko v Gowton, 307 Pa. 426, 453 A.2d 658, (1982). Since the Washington Court later declined jurisdiction, counsel argues this renders the Order ineffective.

¹Some weeks later, upon review of the situation with this Court, the Washington Court declined jurisdiction and vacated the Order.

Father's counsel argues that in granting the emergency provision the Washington Court acted under the Uniform Child Custody Jurisdiction Act, specifically Washington's counterpart to Pennsylvania's 23 Pa.C.S. Section 5344 (a)(3)(ii) and therefore had a colorable claim and reasonable basis for the exercise of emergency jurisdiction. Counsel further opines that Dr. I acted reasonably in relying upon the Order. The Court's analysis of this matter, however, is much more simplistic. Under the Order of April 3, 2001, the parties were to exercise the week-long periods of visitation as could be "mutually agreed upon". It occurs to the undersigned the date of August 7, 2001 was established as the period of weekly visitation. If there was to be any change in that particular date, then that change must be the subject of a communication by the party seeking to institute such change.

In this instance, a call was placed by Mr. K at 4:30 p.m. on the eve of the anticipated transfer of custody. There was no mention of the application to the Court of the State of Washington by Dr. and/or Mrs. KI to Mr. K. No cautionary advice was imparted to Mr. K to call back to see if there was any change in plans. When Mr. K hung up the phone from that conversation, he assumed all was in place for the transfer as anticipated by all of the parties.

This Court finds the action of father contemptuous in that his representative did not alert Mr. K in any fashion of the impending decision by the State of Washington. Nor after the Order was obtained was there an attempt by Dr. KI or any of his representatives to contact Ms. Z to save the expense and time of the flight to Spokane. As a result, Mr. K caught a plane from Salt Lake City to Spokane, Washington only to be ambushed by the emergency Order. The net effect of this action was to have R's grandmother finance two (2) round trips from the East Coast to the State of Washington for visitations which never took place and while the first round trip may have been excusable, the second was not. Even if the letter of the Order regarding communication and mutual agreement was not violated, certainly the spirit of that Order indeed was. Accordingly, this Court will grant the adjudication of contempt and ORDER as follows:

ORDER

AND NOW, this 19th day of October, 2001, after a hearing, the Court finds for the reasons stated above that Respondent, RWI, SR., is in contempt of Court for the actions arising out of the events of August 7, 2001. The sanction of the Court is that Respondent will reimburse Petitioner for all costs incurred as a result of the frustrated attempt to exercise visitation. This shall include travel expenses for Mr. K and any overnight stays incurred by him while traveling, all unreimbursed expenses for R's travel and all reasonable incidental expenses attendant thereto. In addition, the Court awards Ms. Z a make-up week of visitation which shall extend over the Thanksgiving Day vacation. This visitation shall extend from the earliest time that R can be transported from Spokane to Jacksonville, Florida without interfering with school until such time as R can be returned to Spokane again without missing school. Father shall designate and arrange for a suitable person to accompany R from Spokane to Jacksonville and bear the expense of the accompanying person. Grandmother will continue to pay for R's round trip expenses. In addition, father shall reimburse grandmother the sum of \$500.00 for legal expenses attendant to this action.

By the Court,

Dudley N. Anderson, Judge

cc: Steven S. Hurvitz, Esq.
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Hon. Dudley N. Anderson