

Circuit Court for Montgomery County
Case No. 157927FL

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 422

September Term, 2021

KATELYN MCMORROW

v.

JEANETTE KING, ET AL.

Fader, C.J.,
Zic,
Salmon, James. P.,
Senior Judge, Specially Assigned,
JJ.

Opinion by Salmon, J.

Filed: December 2, 2021

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

Katelyn McMorrow (“Mother”) appeals from an order entered by the Circuit Court for Montgomery County finding her in constructive civil contempt of a child custody and access order governing access between her daughter and her daughter’s paternal grandparents, Jeannette and Vernon King, III (“Grandparents”). Because the constructive civil contempt order fails to comply with Maryland law, we shall reverse it.

FACTS AND PROCEEDINGS

Mother and Troy King (“Father”), who died in 2013, are the biological parents of a 10-year-old daughter, K. (“K”). By agreement, Grandparents cared for K in their home from her birth until she was 7.5 years old. She then transitioned to Mother’s home.

On December 12, 2019, following a contested custody trial, the circuit court issued a memorandum opinion and a “Custody and Access Order” (“Custody Order”), finding that the Grandparents were K’s *de facto* parents¹; that Mother and Grandparents all were fit parents; and that it was in K’s best interests for Mother to be her primary physical and sole legal custodian and for Grandparents to have “significant access” with her.

The Custody Order created a regular access schedule and a vacation/holiday access schedule. Under the regular access schedule, Grandparents cared for K every other weekend, beginning at 5 p.m. on Friday and ending at 5 p.m. on Sunday, extended

¹ A “*de facto* parent” is a third-party who has assumed a parental role with respect to a non-biological, non-adopted child with the consent of the biological or adoptive parent(s) and shared a household with the child over a significant period. *Conover v. Conover*, 450 Md. 51, 74 (2016).

through Monday if K was not in school that day. Under the vacation/holiday access schedule, K would be in Grandparents' care for three weeks each summer, two of which could be consecutive at the Grandparents' option; during half of K's winter break; on Father's Day, the anniversary of Father's death, and Father's birthday; and on other holidays on an alternating basis with Mother. The order directed that Mother and Grandparents were entitled to "access [K]'s educational, legal, and medical records" and were obligated to "keep the others reasonably informed of all matters related to [K]'s medical care, including emergency matters[.]"

Eight days after the Custody Order was entered, Grandparents moved to alter or amend the order to make certain clarifications to the access schedule, which Mother did not oppose. On February 5, 2020, the circuit court signed an order amending the Custody Order, but that order was not entered on the docket for more than four months, until June 22, 2020 ("Amended Custody Order"). The Amended Custody Order changed the start time of grandparents' alternating weekend access period, making it commence "upon [K's] release from school (or 5:00 PM if school is not in session)[.]" It also added a provision stating that the "summer vacation and holiday access schedules shall supersede the regular every other weekend schedule of access[.]"

On June 29, 2020, a week after the Amended Custody Order was entered by the court, Grandparents filed a verified "Emergency Petition for Contempt and to Enforce [the Amended Custody Order]." They alleged that Mother had unilaterally denied them regular weekend access with K from Friday, June 19, 2020 at 5 p.m. until Monday, June

22, 2020 at 5 p.m., which overlapped with their Father’s Day access; and for one week of summer vacation scheduled to begin immediately thereafter. Grandparents further alleged that Mother was planning to get married during the 2020 Fourth of July holiday, which was their access period under the holiday schedule, but had not made arrangements to reschedule their access to allow for K to attend the wedding.

Grandparents alleged that Mother also had violated the access to medical records and “keep . . . reasonably informed” provisions of the Custody Order because she had refused to provide them with the name of K’s pediatrician and dentist or to provide her health insurance information to them. They asked the circuit court to find Mother in contempt of the Amended Custody Order; order her to comply with that order; “use all reasonable means available to coerce her compliance”; order “make up access times to account for all hours missed”; and order that Mother could purge her contempt “by affording to [Grandparents] all hours missed” and by “promptly providing [K]’s medical provider and health insurance information[.]”²

While the motion for contempt remained pending, the circuit court granted Grandparents’ unopposed second motion to revise the Custody Order and entered a Second Amended Custody Order. That order, entered on August 7, 2020, clarified that Grandparents’ alternating weekend access was “year-round” and that their summer access

² Grandparents requested that the case be set in on an emergency basis, but the circuit court determined that the matter did not qualify for emergency assignment. They also requested attorneys’ fees, but later withdrew that request at the contempt hearing.

periods were “in addition to” their weekend access, not in place of it. To the extent that the regular access schedule conflicted with the summer or holiday access schedules, the Second Amended Custody Order stated that the summer or holiday schedules took priority. The order specified that, going forward, Grandparents were to provide Mother with the dates for their 3 weeks of summer access no later than May 15.

Mother, who represented herself in the circuit court, answered the petition for contempt and a petition to show cause why she should not be held in contempt. She admitted withholding access during the periods in question but alleged that she had offered to make up all the “lost time” and that, by agreement, that time had been made up.

On April 26, 2021, the circuit court held a remote hearing on the contempt petition at which Grandparents appeared with counsel and Mother appeared pro se.³ Grandparents testified in their case and Mother testified in hers. In addition to the denials of access plead in Grandparents’ petition for contempt, they also testified that Mother denied them 2 hours of access with K on May 22, 2020, 6 hours of access with K on November 9, 2020, and did not allow them access during the 2020 Fourth of July holiday. Except for the May 22, 2020 access, which we will discuss later, the specifics of the

³ The hearing also addressed a motion to modify visitation that Mother filed, prior to the contempt petition, in which she asked the court to switch the alternating weekends going forward to accommodate her and her new husband’s work schedules. That motion was resolved by consent at the outset of the hearing and the court did not hear evidence on it.

denials of access are not relevant to our resolution of the issues on appeal. Suffice it to say that Grandparents testified and adduced other evidence that Mother denied them access on those dates and Mother did not dispute that evidence, though she did offer explanations for her decisions. From November 9, 2020 through the April 2021 hearing, Mother followed the access provisions of the Custody Order, as amended. She had allowed Grandparents to make up the missed time, except for the 2 hours on May 22, 2020 and the 6 hours on November 9, 2020.

Grandparents testified that Mother refused to provide them with the name of K’s current physician or dentist, or a copy of her health insurance card, despite repeated requests for that information. Mother testified that she had provided Grandparents “updates on when [K] has had medical care,” though she had not provided them with a copy of K’s health insurance card because she did not believe it was required by the terms of the Custody Order, as amended.

At the end of the hearing, the trial judge found that Mother willfully violated the Custody Order, as amended, by denying Grandparents access to K on four occasions: 1) May 22, 2020; 2) November 9, 2020; 3) the 2020 Fourth of July holiday; and 4) a week of summer vacation in 2020.⁴ The court found that all the missed time had been made up except for 2 hours on May 22, 2020 and 6 hours on November 9, 2020. The court

⁴ The court mistakenly referred to a vacation period “that followed” the Fourth of July holiday in 2020, but the evidence showed that the vacation period at issue was in June 2020.

accepted Mother’s proposal, made during closing argument, to make up the missed time by giving Grandparents access to K during the 2021 Fourth of July holiday. It reasoned that Mother already had purged her contempt of the access provisions by granting Grandparents make up time, “coupled with the prospective time that is going to be awarded” in July 2021.

The court found that Mother had not violated the “keep . . . reasonably informed” provision of the Custody Order, but that she had violated the “access to medical . . . records” provision by not sharing with Grandparents the names of K’s treatment providers. It determined that neither provision required Mother to provide K’s health insurance information to Grandparents. The court ordered that Mother could purge her contempt of the access to medical records provision by “providing . . . the names, addresses, telephone numbers, and e-mail addresses of all current medical providers for [K] within 48 hours of the execution of [the] order” and by providing that information in the future by email or text within 15 days of any change in medical providers.

On May 3, 2021, the court entered an order encompassing these rulings (and others not relevant to the issues on appeal). The order granted Grandparents’ petition for contempt; ordered and adjudged Mother in constructive civil contempt of the Custody Order, as amended; ordered that she could purge her contempt of the access provisions by “1) not interfer[ing] with the ordered access between [Grandparents] and [K] and 2) provid[ing] [K] to [Grandparents] for ‘Fourth of July’ Holiday access . . . in the calendar year 2021, from July 2, 2021 from 11:00 a.m. until July 5, 2021 at 5:00 p.m.”; and

ordered that she could purge her contempt of the access to medical records provision by providing the identifying information for K’s medical providers within 48 hours and by “promptly” providing notice of any “additional medical providers” for K going forward.

This timely appeal followed. We shall supplement these facts as necessary to our discussion of the issues.

STANDARD OF REVIEW

“Generally, this Court will not disturb a contempt order absent an abuse of discretion or a clearly erroneous finding of fact upon which the contempt was imposed.” *Kowalczyk v. Bresler*, 231 Md. App. 203, 209 (2016). A discretionary decision premised upon legal error is an abuse of discretion because a “court’s discretion is always tempered by the requirement that the court correctly apply the law applicable to the case.” *Arrington v. State*, 411 Md. 524, 552 (2009).

DISCUSSION

Mother contends that the circuit court erred in two primary ways: 1) by finding her in constructive civil contempt for past, completed conduct and 2) by imposing an unlawful “forever purge.” She also argues that the court clearly erred by finding that she violated the Custody Order on May 22, 2020 and erred by finding her in contempt of the “keep . . . reasonably informed” provision of the Custody Order, which she asserts is too vague and unspecific to support such a finding.

Grandparents respond that Mother had not “fully complied” with the Custody Order, as amended, prior to the contempt hearing because she had not made up all the

missed time and still was withholding the required medical information. Consequently, the court could lawfully find her in constructive civil contempt of the Custody Order. Grandparents argue that the court properly found Mother in contempt of the “access to medical . . . records” provision of the Custody Order, not the “keep . . . reasonably informed” provision. In their view, the contempt order was “appropriately fashioned to coerce [Mother]’s compliance” and was not punitive, given that the court declined to impose a sanction. Further, they maintain that the court imposed proper purge provisions when it ordered her to “simply follow the [Custody Order], which will itself expire upon [K]’s emancipation by reason of age” and to provide make-up access with K to Grandparents in July 2021, both of which were within her control and ability to perform.

For the following reasons, we hold that the civil contempt order fails to satisfy the minimum requirements under Maryland law. We are guided by this Court’s recent decision in *Breona C. v. Rodney D.*, ___ Md. App. ___, No. 0299, Sept. Term 2021 (filed November 17, 2021). In that case, a father filed a petition for civil contempt after the mother of his child withheld court-ordered access. *Id.* at *1-2. By the time of the contempt hearing, the mother was in full compliance with the custody order. *Id.* at *2. Nevertheless, the court found her in constructive civil contempt for her past violation of the custody order and ordered that she could purge her contempt by complying with the custody order going forward. *Id.* We reversed, holding that the contempt order was legally deficient because it failed to impose a sanction, lacked a valid purge provision,

and punished past, completed conduct. *Id.* at *5-6. Because the same defects are present here, we shall likewise reverse.

In *Breona C.*, we explained that constructive contempt, unlike direct contempt, is “contempt that occurs outside of ‘the presence of the judge presiding in court or so near to the judge as to interrupt the court’s proceedings.’” *Id.* at *3 (quoting Md. Rule 15-202). Civil contempt proceedings, in contrast to criminal contempt, enforce the rights of private parties and compel obedience to agreements and orders entered for their benefit. *Id.* (citing *Cnty. Comm’rs for Carroll Cnty. v. Forty West Builders, Inc.*, 178 Md. App. 328, 393 (2008)). “[T]he purpose of civil contempt is to coerce present or future compliance with a court order, whereas imposing a sanction for past misconduct is the function of criminal contempt.” *Id.* at *3-4 (quoting *Dodson v. Dodson*, 380 Md. 438, 448 (2004)). To achieve that purpose, the court must impose a sanction *and* make avoidance of that sanction available to the contemnor by the taking of “some definite, specified action of which the contemnor is reasonably capable.” *Id.* at *4 (citing *Bryant v. Howard Cnty. Dep’t of Social Servs. ex rel. Costley*, 387 Md. 30, 46 (2005)).

We summarized:

[A]n order holding a person in constructive civil contempt is not valid unless it: (1) imposes a sanction; (2) includes a purge provision that gives the contemnor the opportunity to avoid the sanction by taking a definite, specific action of which the contemnor is reasonably capable; and (3) is designed to coerce the contemnor’s future compliance with a valid legal requirement rather than to punish the contemnor for past, completed conduct.

Id. at *4-5. Significantly, the sanction imposed “must be distinct from the purge provision and the valid legal requirement the court seeks to enforce.” *Id.* at *5.

Returning to the instant case, we begin with the circuit court’s finding that Mother was in contempt of the access provisions of the Custody Order, as amended. As a threshold matter, we agree with Mother that the trial court clearly erred by finding that she dropped K off 2 hours late on Friday, May 22, 2020. That finding was premised on Grandparents’ allegation that the Amended Custody Order, signed on February 5, 2020, but entered on June 22, 2020, granted them weekend access to K beginning on Friday upon her release from school. Because the Amended Custody Order had not yet been entered on the docket by the circuit court, however, the access provisions of the Custody Order governed Mother’s conduct on May 22, 2020. *See* Md. Rule 2-601(d) (“regardless of the date a judgment was signed, the date of the judgment is the date that the clerk enters the judgment on the electronic case management system docket in accordance with section (b) of this Rule.”); *see also Hobby v. Burson*, 222 Md. App. 1, 15 (2015) (“a judgment is only effective after it has been signed and entered into the record for a particular case” (emphasis in original)). The Custody Order required Mother to drop K off to Grandparents for weekend access at 5 p.m. and the undisputed evidence showed that she did. Consequently, Mother should not have been found in contempt of the Custody Order for her conduct on that date.

There is no dispute that Mother otherwise violated the access provisions of the Custody Order, as amended, by unilaterally denying Grandparents access to K in June

and July 2020 and by picking K up early on November 9, 2020. The order of civil contempt did not satisfy Maryland law, however.

First, the order did not impose any sanction against Mother. Like in *Breona C.*, *supra*, “the only obligation the court imposed . . . was the purported purge provision[.]” *Id.* at *5. Grandparents do not argue otherwise, instead contending that the lack of a sanction inures to Mother’s benefit, making it harmless error. To the contrary, when the sanction and the purge provision are one and the same, “there is no ability to purge the contempt and the order cannot be sustained.” *Id.*

Second, the order did not include a valid purge provision. The court ordered that Mother could purge her contempt by not “interfer[ing] with the ordered access between [Grandparents] and [K]” and by providing make-up access to Grandparents in July 2021. The first aspect of the purge provision is an unlawful “forever purge” that deprives Mother of the ability to avoid a sanction by performing a specific obligation. The second aspect of the purge is likewise unlawful because it does not permit Mother to take steps to purge the contempt for more than two months.

Third, the contempt order improperly punished Mother for past, completed conduct and did not serve to coerce future compliance. *See Dodson*, 380 Md. at 448. (“imposing a sanction for past misconduct is the function of criminal contempt”). All the testimony and evidence adduced at the contempt hearing concerned past instances in which Mother denied Grandparents’ access to K. The circuit court could not, of course, coerce, by way of a contempt order, Mother into giving Grandparents access for the 6

hours they lost on November 9, 2020 or the missed 2020 Fourth of July holiday celebration.

Grandparents were not without any remedy. In addition to criminal contempt, they did ask the court to order make-up time and they could have, but did not, ask for modification of the Custody Order, as amended, to “ensure future compliance with the order,” under Md. Code (2019), Family Law (“Fam. Law”) Article, § 9-105.⁵ *See Alexander v. Alexander*, 252 Md. App. 1, 16 (2021). Because constructive civil contempt was not an appropriate remedy for Mother’s past-noncompliance with the Custody Order, as amended, and the court’s order did not otherwise comply with Maryland law, we reverse it.

⁵ Fam. Law § 9-105 provides:

In any custody or visitation proceeding, if the court determines that a party to a custody or visitation order has unjustifiably denied or interfered with visitation granted by a custody or visitation order, the court may, in addition to any other remedy available to the court and in a manner consistent with the best interests of the child, take any or all of the following actions:

- (1) order that the visitation be rescheduled;
- (2) modify the custody or visitation order to require additional terms or conditions designed to ensure future compliance with the order; or
- (3) assess costs or counsel fees against the party who has unjustifiably denied or interfered with visitation rights.

The court also found Mother in constructive civil contempt for violation of the access to medical records provision⁶ of the Custody Order. We perceive no error in the circuit court’s determination that Mother was obligated to provide Grandparents with the names of K’s medical providers to satisfy that clause of the Custody Order or with its finding that she had failed to do so. Because Mother was not in compliance with this provision of the Custody Order, constructive civil contempt could have been an appropriate vehicle to coerce her compliance with the order. Nevertheless, because the order did not impose a sanction for Mother’s failure to provide Grandparents with the information to which they were entitled, except to direct her to comply with the purge provision, and because the purge provision, in addition to ordering Mother to provide the Grandparents with the names of the providers within 48 hours, also directed her to provide that information promptly in the future indefinitely, the order is deficient for the same reasons discussed above and must be reversed.

**ORDER OF THE CIRCUIT COURT FOR
MONTGOMERY COUNTY FINDING
APPELLANT IN CONSTRUCTIVE CIVIL
CONTEMPT REVERSED. COSTS TO BE
PAID BY THE APPELLEES.**

⁶ The record does not support Mother’s argument that the circuit court found her in violation of the “keep . . . reasonably informed” provision of the Custody Order. We therefore shall not address Mother’s contention that the provision is “too vague and unspecific” to support a finding of contempt.