Circuit Court for Montgomery County
Case No. 137515FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1315

September Term, 2019

ANDREW PECKERAR

V.

CATHLEEN PEARL

Friedman,
Beachley,
Wells,

JJ.

Opinion by Friedman, J.

Filed: April 14, 2020

Andrew Peckerar and Cathleen Pearl are former spouses who are the parents of three minor children. Their divorce has been acrimonious. They have had poor communication between themselves and, as a result, had difficulties abiding by their 2017 Child Custody Order. On the occasion giving rise to this appeal, Peckerar interfered with Pearl's visitation and access to their children in violation of the Custody Order, prompting Pearl to file a Motion for Contempt. A family law magistrate recommended finding Peckerar in contempt. At a review hearing on the contempt motion, the Circuit Court for Montgomery County modified the Custody Order under § 9-105 of the Family Law ("FL") article of the Maryland Code. On appeal, Peckerar claims that the court erred in modifying the custody order in this manner. We disagree.

BACKGROUND

In 2017, following Pearl and Peckerar's separation, the Circuit Court for Montgomery County held a four-day evidentiary hearing and issued a "Custody and *Pendente Lite* Child Support Order."[1] The Custody Order granted Peckerar and Pearl joint legal and shared residential custody of their children. Peckerar and Pearl were then granted an absolute divorce in 2018. The divorce decree, however, did not amend or modify the Custody Order with respect to the custody provisions—only the child support obligations were amended.

[1] As noted in the Custody Order, "the child support obligation … is *pendente lite* only, and will be recalculated and reconsidered at the final merits trial." The custody order, however, was final.

In 2018, Pearl filed a Motion for Contempt alleging that Peckerar was interfering with and denying her access to the children in violation of the Custody Order. A hearing on Pearl's access-related contempt motion was held before a family law magistrate who recommended that Peckerar be held in contempt for his "deliberate and repeated efforts to interfere with [Pearl's] relationship with the children and with [Pearl's] access time." The family law magistrate also ordered reunification therapy and additional make-up time for Pearl and the children.

Peckerar filed exceptions to the magistrate's findings and recommendations and a hearing was held before Judge Cynthia Callahan. Judge Callahan determined that all of the magistrate's recommendations were supported by facts and adopted the recommendations relating to reunification therapy and make-up time. Judge Callahan held the contempt finding in abeyance, giving Peckerar three months to demonstrate his ability to comply with the magistrate's recommendations. At the contempt review hearing three months later, Judge Callahan determined that there was no "benefit" to holding Peckerar in contempt.[2]

At the same review hearing, Judge Callahan inquired about the reunification therapy and make-up time. At this point, Pearl noted that she and Peckerar were having trouble with the summer access schedule in the Custody Order, which states that:

> Each party shall be entitled to two (2) non-consecutive weeks of summer vacation, the weekend to begin on Saturday at 9:00 am to the following Saturday at 9:00 am. [Pearl] will designate her desired weeks of vacation by May 1st in even-numbered years, and [Peckerar] will designate his weeks of vacation by

[2] The fact that Peckerar was not held in contempt does not change our holding. A contempt holding is not required to modify custody under FL § 9-105.

> May 15th in even-numbered years. In odd-numbered years, [Peckerar] will designate his weeks of vacation by May 1st, and [Pearl] will designate her desired weeks of vacation by May 15th in odd-numbered years.

Pearl claimed that she and Peckerar were not communicating and that Peckerar was manipulating the schedule to maximize his time with the children at the expense of Pearl's scheduled days. Finding that there was "no other way" to structure summer access because of Peckerar and Pearl's inability to "communicate particularly well," the only "practical way to deal" with summer access was to modify the schedule. Judge Callahan then issued a new Summer Access Order, beginning in 2020, where Pearl and Peckerar would follow a week on, week off schedule.[3]

DISCUSSION

This case turns on the application of FL § 9-105, which 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] Because the review hearing was held in July 2019, Judge Callahan divided up the remaining weeks of the summer between Peckerar and Pearl.

> (3) assess costs or counsel fees against the party who has unjustifiably denied or interfered with visitation rights.

FL § 9-105 was enacted in 1994 to clarify the court's power to take remedial actions when a party to a custody or visitation order has unjustifiably denied or interfered with visitation rights. Floor Report of H.B. 886, Senate Judicial Proceedings Committee (1994) (describing some judges as "reluctant" to exercise the power to remedy violations by modifying a custody order). With the adoption of FL § 9-105, there are three prerequisites to a remedial modification of a custody award: (1) there must be a custody or visitation proceeding; (2) the court must determine that a party to a custody order has "unjustifiably denied" or "interfered" with visitation granted by a custody order; and (3) any change must be made in the best interests of the child. FL § 9-105. If all three prerequisites are met, a judge can: reschedule visitation, modify a custody order (or require additional conditions) to ensure future compliance with the order, or assess costs or counsel fees against the party who was unjustifiably denying or interfering with visitation rights.[4]

Here, we hold that all three prerequisites were met and, because they were, the circuit court was permitted to modify the Custody Order—specifically the summer access schedule—to ensure future compliance.

[4] We note, however, that the circuit court is not obligated to announce or specially invoke its power under FL § 9-105. *See Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007) (noting that trial judges "are presumed to know the law and apply it properly" and are not required to spell out every step of their thought process).

As to the first prerequisite, we think it is abundantly clear that this was a "custody or visitation proceeding," despite that it initially arose in the context of the review of a finding of contempt. We don't think that the drafters of FL § 9-105 intended a restrictive or technical interpretation. Rather, we think that this provision should be given the same broad definition provided in a nearby (although not directly applicable) section of the Family Law article, namely FL § 9.5-101(e)(2). That section, which provides definitions for the Uniform Child Custody and Jurisdiction Act ("UCCJEA"), provides a broad, commonsense definition of a "child custody proceeding" to include any proceeding for "divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue [of child custody] may appear." FL § 9.5-101(e)(2);[5] *see also Cabrera v. Mercado*, 230 Md. App. 37, 83 (2016) (stating that under FL § 9.5-101(e) a proceeding where custody is an issue is a "custody proceeding"). Moreover, although his brief contested the point, at oral argument, Peckerar conceded that this was a "custody or visitation proceeding." We think there is no doubt that, as a matter of law, this contempt review proceeding satisfies the first prerequisite, that this was a "custody or visitation proceeding."

The second prerequisite to application of FL § 9-105 is that the circuit court is required to make a finding that one party "has unjustifiably denied or interfered with

[5] We understand that FL § 9-105 was drafted by a very different process from that which was used for FL §9.5-101, which is a uniform law prepared and recommended by the National Conference of Commissioners on Uniform State Laws. Nonetheless, we believe that the General Assembly that adopted both provisions intended for us to apply them both in a consistent and harmonious manner.

visitation granted by a custody or visitation order." FL § 9-105. Peckerar argues that there was "neither evidence nor facts" to support any finding of interference sufficient to warrant modification of the Custody Order. The family law magistrate and Judge Callahan both found that Peckerar had, in fact, "unjustifiably … den[ied] and otherwise interfer[ed]" with Pearl's visitation and access to the children. The Magistrate identified "multiple occasions" of interference and determined that Peckerar's continuous interference was "a deliberate and contumacious violation of the court's Custody [Order]." Moreover, with respect to the summer access schedule, Judge Callahan found that both parties "fashioned schedules that were designed to maximize their own parenting time" by choosing vacation dates during the other's scheduled time. As such, there was a finding of unjustifiable interference, well-supported in the record, to satisfy the second prerequisite of FL § 9-105.

The third prerequisite under FL § 9-105 is that any change must be made, not merely to punish, but "in the best interest of the children." Peckerar argues that the circuit court failed to make any findings regarding the best interests of the children. While we don't require judges to say any "magic words" to invoke their powers under FL § 9-105, in this case, Judge Callahan specifically said that setting a fixed summer schedule was in the "children's best interest," as it would ensure that the children spend time with both parents during the summer without one parent "overtak[ing]" the other's time. We see no error in this finding, nor frankly, does Peckerar really suggest one.

Thus, we hold that all three prerequisites to the application of FL § 9-105 were satisfied in this case.

Once the prerequisites are satisfied, the judge may select any of the three remedies identified in the statute: (1) rescheduling; (2) modification of the order; and (3) fees and costs. If the judge selects to modify the order, the statute imposes one additional limitation: any modification must be "designed to ensure future compliance with the order." FL § 9-105(2). Here, the original summer schedule was needlessly complicated and required extensive interaction between Peckerar and Pearl as they bid on which weeks they wanted. It had proven completely unmanageable. Judge Callahan, therefore, revised that summer schedule to make it simpler and require less interaction. She did this because, in her view, it was the only "practical way" for parties who "can't figure out another way to deal with [their summer vacations]." We think that it is abundantly clear that this modification was designed to and will have the effect of ensuring greater compliance. As such, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.