

M.R.,	:	IN THE COURT OF COMMON PLEAS
Plaintiff	:	DAUPHIN COUNTY, PENNSYLVANIA
	:	
v.	:	NO. 2012 CV 2121 CU
	:	
F.B.,	:	
Defendant	:	CIVIL ACTION – CUSTODY

**July 20, 2018**

**OPINION**

M.R. (Father) has filed an appeal from an Order I issued March 28, 2018 in this custody action denying his request that I find F.B. (Mother) in contempt of the parties’ agreed custody order and denying his request for special emergency relief seeking that Mother be prohibited from obtaining passports for the parties’ children and traveling abroad with them. This opinion is issued in support of the Order pursuant to Pa.R.A.P. 1925(a).

Procedural Background

Father and Mother were married in Egypt in 2005 and are the parents of two children (born 1/06 and 12/09). Following incidents of abuse in February 2012, Mother sought and was granted a final protection from abuse order on March 9, 2012 (as amended April 25, 2012) following a hearing before the Hon. Andrew Dowling. The PFA order included provisions granting Mother primary physical custody of their children and Father partial physical custody on weekends. The PFA order also evicted Father from the parties’ marital home.<sup>1</sup>

A few days after the final PFA order was entered, Father commenced this custody action. A custody hearing was held before the Hon. Richard A. Lewis in October 2012, with the delay caused by continuances requested by Father due to his lengthy trip to Egypt. Prior to the hearing, Mother filed a petition for special relief, concerned that Father would take their children to Egypt

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<sup>1</sup> F.B. v. M.R., No. 2012 CV 1004 AB. Father filed an appeal from the PFA order (as amended) and later filed appeals from three other orders generated under this docket including a finding that Father was in contempt of the PFA order (discussed below). In March 2014, well after the PFA had expired, the Superior Court vacated all four orders on procedural grounds. F.B. v. M.R., Nos. 882 MDA 2012, 1616 MDA 2012, 1617 MDA 2013, 428 MDA 2013 (Pa. Super. March 25, 2014). The Superior Court held that the trial court lacked jurisdiction to issue any orders under this docket because the initial final hearing before Judge Dowling in March 2012 had been held one day beyond the ten-day limit rendering the original final PFA order invalid.

and not return. Following a conference call, Judge Lewis issued an order prohibiting Father from removing the children from Dauphin County and securing or attempting to secure passports for the children. In July 2012, Father returned early from his trip and after exercising weekend custody failed to return one of the children to Mother. As a result, Mother filed both a contempt petition in the PFA action and a request for special relief in the custody action. Father in turn filed his own request for special relief alleging abuse by Mother against the children. On July 20, 2012, Judge Lewis denied both parents' special relief requests and directed that the parties follow the custody provisions in the PFA order pending the final custody hearing. Judge Lewis found Father in contempt of the PFA custody provision following a hearing in the PFA action.<sup>2</sup> While the custody hearing was pending, Father filed two petitions for emergency relief alleging abuse by mother against the children. During this period of time, both parties were frequently calling the police and Children & Youth Services to investigate. In addition, Father instituted two PFA actions seeking protection for the children from Mother, both of which were denied by Judge Dowling on May 9, 2012.<sup>3</sup>

At the final custody hearing, the parties reached an agreement entered October 11, 2012, whereby Mother would have primary physical custody and Father would relinquish his custody rights, pending an evaluation by Dr. Kasey Shienvold to determine if he was a risk to the children. Under the agreed terms, Mother and the children were to participate in the evaluation. Dr. Shienvold issued his "5329 Psychological Risk Evaluation" November 11, 2012 finding that Father was "not a significant risk to the welfare and safety of the children." (See N.T. 5/14/13 at 39-40) He wrote his evaluation without interviewing or meeting with Mother and the children, due to their unavailability.

In December 2012, Father filed a petition seeking to reinstate his custody rights. He also sought to hold Mother in contempt due to her failure to make herself and the children available for Dr. Shienvold's custody evaluation. Following a hearing, Judge Lewis issued an order May 15, 2013 granting Father supervised visitation at the Harrisburg YWCA for periods of time deemed appropriate by YWCA personnel. Judge Lewis denied Father's request that Mother be held in

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<sup>2</sup> That order of contempt was later vacated on procedural grounds. See FN 1.

<sup>3</sup> M.R. v. F.B., No. 2012 CV 2096 AB, *appeal denied* No. 914 MDA 2012 (Pa. Super. April 14, 2014) and M.R. v. F.B., No. 2012 CV 2709 AB, *order vacated* No. 898 MDA 2012 (Pa. Super. April 14, 2014).

contempt finding that Mother and the children were not evaluated by Dr. Shienvold due to circumstances beyond their control.<sup>4</sup> A few months later, Father filed another petition to modify custody claiming the YWCA would not provide supervised visitation and that he was thus unable to exercise custody. Following several hearings, Judge Lewis issued another custody order November 1, 2013, allowing Father immediate supervised visitation at any appropriate facility with supervision costs split by the parties. He further directed that the parties pursue and complete a full custody evaluation and that upon its completion, the court would hold a new hearing to address all outstanding custody issues.<sup>5</sup>

In May 2014, Father filed a petition to modify custody seeking non-supervised visitation/custody. Following a hearing, Judge Lewis issued an order September 2, 2014 modifying custody to permit Father supervised visits with the children two times per month. In addition, the parties were directed to find a psychiatrist approved by the court to evaluate their older child.

On October 5, 2015, Father filed another petition to modify custody seeking that the court consider a change in custody, cease supervised visitation, direct that Mother inform him where she moved and require that Mother remove the children from an allegedly radical Islamic school in which she enrolled them. Father also sought that Mother be held in contempt and her attorney sanctioned for failing to have the older child undergo a psychiatric evaluation with the doctor Judge Lewis had approved and also for failing to file necessary consents in order to allow a new facility Father had contacted, Alternative Behavior Consultants (ABC), to provide supervised visitation.

Following a custody conciliation at which the parties did not reach an agreement, the matter was assigned to me. I initially directed that the parties undergo a complete custody evaluation by Deborah Salem, DCAC, LPC. A few days prior to the pre-trial conference, on May 3, 2016, Father filed a petition for emergency relief in which he raised many of the same issues he raised in his

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<sup>4</sup> Father's appeal from this order was denied by the Superior Court and Judge Lewis' order affirmed. No. 1069 MDA 2013 (Pa. Super. Oct. 27, 2014). Father's request for an allowance of appeal to the Supreme Court was denied. No. 18 MDA 2014 (Pa. April 9, 2014)

<sup>5</sup> Father filed an appeal from this order to the Superior Court which denied the appeal and affirmed Judge Lewis' order. No. 2146 MDA 2013 (Pa. Super. July 14, 2014). Father's request for an allowance of appeal to the Supreme Court was denied. No. 565 MDA 2014 (Pa. Sept. 17, 2014)

October 5, 2015 petition including seeking an end to supervised visitation, seeking increased custody and that he be informed of Mother's new residence. Because the parties were unable to reach an agreement at the pre-trial conference, I directed that a custody hearing be held July 8, later rescheduled to September 22, 2016, upon the parties' request, in order for Ms. Salem to complete her report.

After reviewing Ms. Salem's Custody Evaluation Report and discussing it in chambers with the parties and their attorneys, Mother and Father reached an agreed order September 22, 2016, based upon the Evaluation. (See N.T. 3/23/18 at 74) Under the agreed order, Mother was granted primary physical and sole legal custody of the children. Father was granted two supervised visits per month at the YWCA and a right to access all of the children's medical, dental, religious and school records. Mother was directed to "report all major decisions concerning the parties' children to Father." Both parents were directed, under standard requisite relocation language, that they not relocate their residence "if such relocation will significantly impair the ability of a non-relocating parent to exercise his or her custodial rights." The parties were also ordered to follow the recommendations included the Custody Evaluation Report.<sup>6</sup> Father did not file an appeal or further challenge the provisions in this agreed custody order.

In August of 2017, this court was apprised that Father had been found guilty of wire fraud and theft charges following a jury trial in federal court before Chief Judge Christopher C. Conner. Father was found to have stolen approximately \$122,000 in Social Security benefits and insurance payouts due to his two teen-aged daughters from an earlier marriage following the death of their

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<sup>6</sup> The recommendations included (1) Mother maintain primary physical custody and that she also be granted sole legal custody with the requirement she report all major decisions related to legal custody to Father; (2) Father attend at least three individual therapy sessions in an effort to work toward reunification with the children; (3) that upon evidence of success with Father's individual therapy, creation of a comprehensive Therapeutic Reunification plan by his practitioners; (4) Father's supervised visits be changed to therapeutic supervised visits; and (5) coordination between all service providers and practitioners with the central contact being the person providing reunification therapy and with any changes to the custody schedule to be determined amongst the practitioners following review of all reports. (Custody Evaluation Report, pp. 25-26)

mother Lori R.<sup>7</sup> Sentencing was deferred and later scheduled for March 28, 2018. United States v. M.R., Crim. No. 1:16-CR-00214-CCC (M.D. Pa.).

On February 22, 2018, Father filed an emergency petition for special relief and a contempt petition. He raised identical claims in both filings including that Mother violated the September 2016 agreed custody order by failing to permit him supervised visitation twice a month, failing to obtain court permission to relocate upon moving to a new residence, failing to provide him with the children's records and applying for passports for the children without notifying him. He expressed concern Mother would take the children to Egypt, which he considered dangerous. Father additionally accused Mother of being under investigation by the Department of Homeland Security for fraudulently obtaining legal resident status (Green Card) in the U.S. and that he believed she may be deported and take the children with her. He sought that Mother be prohibited from obtaining passports, be held in contempt, and that physical custody be equally split and/or that he see his children regularly. I held a hearing March 23, 2018 addressing the issues raised in Father's petitions.

At the hearing, Father testified that Mother has violated every provision in the September 2016 custody order including that he have supervised visitation twice per month, that Mother apprise him of all major decisions, that Mother provide him medical, dental, religious and school records, and not relocate without court approval. (N.T. 6-7) Father agreed at the hearing he was no longer pursuing modification to the physical custody provisions but only contempt against Mother.<sup>8</sup> (N.T. 64-65, 66)

Father testified that he had not been able to visit the children since January 20, 2017 because Mother canceled visits at the supervised visitation facility, ABC. (N.T. 7) Father produced an email from ABC in April 2017 outlining scheduling difficulties including Mother not returning

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<sup>7</sup> Father was found guilty of one count each of wire fraud, theft of government property (> \$1,000), converting payments due to others under the Social Security survivor's disability insurance program and making false statements on an application for Social Security benefits. (N.T. 20-21; Mother's Exbt. 9)

<sup>8</sup> Indeed, as I noted at the hearing, Father's requests for changes in custody were most likely impossible given his likely and imminent imprisonment. (N.T. 18) Father admitted at the hearing he had been advised he was likely facing one to two years' incarceration, with a possible enhancement. (N.T. 23-24) As noted below, Father began to serve a 27-month federal prison term May 23, 2018, rendering his request to a change in physical custody impossible.

calls and that one of the scheduling impediments they faced was that Mother was only able to attend on Fridays due to her work schedule. (Father's Exbt. A) ABC indicated in the email it had closed the parties' case since there had been no supervised services for 90 days and therefore both parties would have to re-apply for visitation to resume. (Id.) On rebuttal, Father denied he ever canceled any of the scheduled visits with ABC despite their records showing he cancelled on five occasions. (N.T. 49)

Regarding the children's passport applications, Father testified and provided an undated letter from the U.S. Department of State advising him that it had received the applications and that "it appears the person applying [Mother] ... has presented sufficient evidence to establish sole authority under U.S. law to apply for the children's passports." (N.T. 9; Father's Exbt. B) Father expressed concern that upon obtaining the passports, Mother would take the children to Egypt and not return. (N.T. 63) He also testified that he considers Egypt dangerous and that travel to Egypt would not be in their best interests, especially since the children do not know any relatives there. (N.T. 10-11, 58) Father noted that the State Department issued a travel advisory for Egypt in December 2016, which he claimed was renewed in January 2018 and presented a copy of the advisory to the court. (Father's Exbt. C)

Father testified he is especially concerned Mother will take the children to Egypt because he believes she will be deported. According to Father, Mother had not been able to obtain a Green Card for a few years after arriving in the U.S. because he would not apply on her behalf. According to Father, he refused to do so because "I cannot lie to the government and tell them that we are married."<sup>9</sup> (N.T. 11) According to Father, Mother thus filed a "Bad Faith PFA" against him in order to obtain a Green Card and he believes that she did in fact obtain the Green Card under false pretenses (i.e. that she was abused). (N.T. 11) Father produced a copy of a letter from the Department of Homeland Security (DHS) to U.S. Sen. Toomey stating that it had referred to DHS Immigrations and Customs Enforcement (ICE) Father's allegations that Mother had committed "immigration fraud." (N.T. 13; Father's Exbt. E) According to unnamed government sources to

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<sup>9</sup> Father's testimony that the parties were not married is utterly false. He in fact later changed his testimony just a short while later stating that they were married when Mother entered the U.S. in 2005. (N.T. 14) Father's lie about being married is discussed later in this opinion. (See FN 12 and related text)

which Father claims to have spoken, “they believe most likely she’s going to be deported,” though he provided no evidence in support of that. (N.T. 12-15)

Father additionally produced the 2012 evaluation by Dr. Shienvold claiming that it “clear(s) me of any abuse” and of any reason not to be around his children. (N.T. 12) He again complained that the evaluation was done without Mother and the children having been interviewed because Mother “played games and never showed up.” (N.T. 12)

Father admitted that he had been convicted of numerous *crimen falsi* crimes in federal court. (N.T. 17-18; Mother’s Exbt. 9) Father explained, however, that his defense attorney was going to be filing a motion for a new trial in federal court based in part upon the ground that he was contesting a Will concerning the estate of his ex-wife Lori R. and that were he to prevail, he would be provided relief from his federal convictions.<sup>10</sup> (N.T. 26)

Mother testified, through an offer of proof (discussed below), that regarding supervised visitation, the parties began twice monthly supervised visits with ABC at its Carlisle location in late June 2016, prior to the entry of their September 2016 agreed custody order. (N.T. 31) After the order was entered, the visits continued through January 20, 2017. Thereafter they ceased, as reflected in Mother’s testimony and in documents generated by ABC, including ABC’s attendance record, as follows:

ABC Visit and Activity Summary

9/23/16	Visit Attended
10/6/16	Father Canceled (work issues)
10/20/16	Father Canceled (no money)
10/29/16	Visit Attended
11/11/16	Visit Attended
11/27/16	Visit Attended
12/9/16	Visit Attended
12/23/16	Father cancelled (no money)
1/6/17	Father cancelled (no money)
1/20/17	Visit Attended

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<sup>10</sup> The federal docket reveals that Father’s attorney never filed a new (second) motion for a new trial in his federal action and he was ultimately sentenced to prison (discussed below). The resolution of his “Will contest” is discussed in the next footnote.

2/x/17	ABC attempted to schedule a February visit but Fridays were not available to Mother. Mother declined its offer to schedule on a day other than Friday.
2/17/17	Father Canceled (work issues)
3/3/17	ABC not available. ABC offered new days to Mother not including Fridays which she declined. ABC asked Mother to consider another day but she did not return calls to ABC.
4/26/17	ABC letter to parents addressing money and flexibility concerns and need for parties to re-register because ABC closed the case after 90 days of no activity.
5/24/17	Mother completed re-registration and updated releases.
7/6/17	Email from ABC outlining the parents' attendance to date and noting Father had not re-registered as of this date.

(N.T. 32-34; Mother Exbts. 4, 5; Father's Exbt. A) Mother further testified that on a number of occasions, she and the children traveled to the ABC facility in Carlisle and were waiting for Father when they learned he had canceled his visit. (N.T. 35)

Concerning relocation, Mother testified that in 2015 she moved from a previous residence in the Harrisburg area to another residence in Dauphin County. (N.T. 35) Upon moving, the children were enrolled in and have been attending public schools in the Lower Dauphin School District where Mother lives. (N.T. 35; Mother's Exbts. 6, 7) There has been no residential change since 2015.

Mother refuted Father's allegation that she is subject to removal proceedings, testifying that her immigration attorney has investigated and found no such evidence. (N.T. 42) Mother agreed she had applied for passports for the children which she asserted was within her rights as the children's sole legal custodian. (N.T. 43) Mother intends to travel with the children in the near future including possibly to Egypt, Canada or on a cruise. (N.T. 43) Mother has not visited Egypt since she left in 2005 and her children have never visited family and relatives there. (N.T. 43-44) Mother testified she has no intention of moving to Egypt and considers the U.S. her home, though she understands she might be required to post bond were she to travel abroad with the children. (N.T. 44) Mother disagreed Egypt was unusually dangerous including Port Said, the area where she is originally from. She provided the most recent advisory in which the State Department lists Egypt at a Level 2 Travel Advisory out of 4 levels, under which travelers are warned to "exercise increased caution." (N.T. 44-45; Mother's Exbt. 1)

Mother's position at the hearing was that as the children's sole legal custodian, she had authority to file applications for passports for the children. (N.T. 79) It was also her position that she did not have to tell Father about the passport applications - under the custody provision stating she "must report all major decisions concerning the parties' children to Father" - because it did not involve a "major decision." (N.T. 79)

Mother testified that she has done nothing to prohibit Father from obtaining records pertaining to the children's medical care, religion and education. (N.T. 80) She claims that Father has access to all such records particularly their medical and educational records inasmuch as the children have received medical care from the same practitioners for many years and have attended the same school district since 2015. (N.T. 80-81)

Following the hearing, I issued my Order March 28, 2018 in which I found Mother was not in contempt of the September 2016 custody order. I denied Father's request that Mother be prohibited from obtaining passports for children or traveling to Egypt, stating "Mother has sole legal custody, therefore, she may apply for passports. Obviously, she should not take the children to a place which is deemed dangerous to travel so she should check the travel advisories, prior to said visit."

At the conclusion of the hearing, I incorporated into the record the docket entries of all relevant prior proceedings involving the parties including six PFA actions, two support actions, an updated Children & Youth report and the federal criminal proceeding. (N.T. 73-74, 83-84) In addition, I included the docket entries from Father's Orphans' Court Will contest action in which he was seeking to probate a Will he presented concerning his ex-wife's estate.<sup>11</sup> (N.T. 83) Notably,

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<sup>11</sup> In Re: Estate of Lori R., No. 2214-0060 (Dauph. Co. OC). In that action, filed following his ex-wife Lori R.'s death on May 14, 2014, Father presented her purported Will for probate and to be named Executor of her estate. The Will presented by Father provided that if Lori R. died before their children turned 18, then Father would be appointed as trustee and guardian of the children as to any property passing to them, including life insurance proceeds. The Will further gave Father complete authority to make all decisions for disbursement of any property passing to the children. It was upon this language that Father claimed he had a right to take property passing to his children following Lori R.'s death and which further entitled him to relief from his federal crimes for theft of the children's Social Security survivor benefits and life insurance proceeds.

Father and Lori R.'s oldest daughter challenged the Will presented by Father claiming it was a fraud. A hearing was held before the Hon. John McNally April 19, 2018 at which Jim Abraham, Esq., the attorney

the same day I issued my order, Father was sentenced by Judge Conner to 27 months' federal imprisonment followed by two years' probation and \$122,257 restitution. His sentence was directed to commence April 25, 2018, later deferred to May 23, 2018.

### Legal Discussion

Father filed a timely appeal from my March 28, 2018 Order. He raises the following issues in his statement of errors: (1) the court erred by failing to address or find Mother in contempt of the September 2016 agreed custody order for relocating with the children without informing Father or following proper procedure; (2) the court erred by failing to find Mother in contempt of the custody order for "employing tactics and gimmicks" that prevented Father from exercising his supervised visits since September 2016; (3) the court erred by failing to find Mother in contempt of the custody order for not providing access to Father for all of the children's medical, dental, religious and school records; (4) the court erred by failing to find Mother in contempt of the custody provision that Mother report all major decisions concerning the parties' children by applying for passports for the children without advising Father; (5) the court erred by allowing Mother the option of taking the children to Egypt which is dangerous to the children and not in their best interests; (6) the court erred by ignoring Father's testimony that Mother is under investigation by the USCIS for fraud; (7) the court erred by overruling Father's objection(s) and allowing Mother's attorney to testify on her behalf during the hearing; and (8) the court is biased and prejudiced against Father and his children and biased in favor of Mother.

Before addressing Father's claims, I note that he presented himself as a witness with little to no credibility. In addition to having been recently convicted of four *crimen falsi* crimes in federal court, Father, in just a few pages of testimony, tossed off a number of clear misrepresentations

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who wrote the final draft of Lori R.'s Will, testified. The attorney testified that the Will presented by Father had been substantively altered from the final draft he had provided to Lori R. Notably, the final draft directed that Lori R.'s parents be appointed the children's trustees and guardians, not Father. The attorney's draft also did not include any language giving the trustees/guardians complete authority and discretion to disburse property that passed to the children under the Will.

Following a hearing, Judge McNally entered an Order with Opinion on April 24, 2018 finding the Will presented by Father to be a fraud and refusing to offer it for probate, stating "[Father] had the motive, means and opportunity to alter the [Will] .... The Court finds that the ... Will ... presented by [Father] has been significantly altered such that it shall not be accepted by the Register of Wills." (Opn. p. 5, April 24, 2018) (McNally, J.)

and/or outright lies of the current record and prior proceedings. For instance, as noted above, Father initially lied at the hearing before me when, in the course of discussing Mother's immigration / Green Card status, claimed that he had refused to apply for a Green Card for Mother shortly after her arrival in the U.S. because he and Mother were not married when he never raised that issue in prior support hearings.<sup>12</sup> (N.T. 11)

In addition, Father repeatedly asserts in his petitions and testimony in the current proceeding that the February 2012 PFA order Mother obtained against Father - which included the original custody provisions granting Mother primary physical custody – is a “Bad Faith PFA.” (N.T. 8) He argued it was bad faith because on appeal the Superior Court vacated the PFA order, ignoring the fact that the initial PFA order and related orders entered in that action were vacated *solely* upon procedural grounds. (See FN 1) There has never been a finding by any court that the PFA was filed in bad faith or is a “Bad Faith PFA,” despite Father's misrepresentations to the contrary.

Father also described Mother, at the hearing before me, as having “played games and never showed up [with the children]” for Dr. Shienvold's 2012 evaluation. (N.T. 12) This issue was directly litigated before Judge Lewis in 2013 after Father asserted Mother was in contempt of court for failing to make herself and the children available for the evaluation. Judge Lewis explicitly held, following a hearing, that Mother's unavailability for the evaluation was “due to circumstances beyond her control” and thus dismissed this contempt claim. (Mem. Opn., p. 11, July 12, 2013) (Lewis, J.) This holding was affirmed on appeal. (See FN 4) With this credibility background in mind, I turn to the issues raised by Father.

Father's first claim is that this court erred by failing to address or find Mother in contempt for relocating with the children without informing him and following proper relocation procedure,

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<sup>12</sup> The fact of their marriage in Cairo, Egypt on March 1, 2005 was not disputed by Father in 2013 litigation before me addressing Father's appeal from an order of child and spousal support. F.B. v. M.R., 125 Dauph. Co. Rptr. 277, No. 441 DR 2012 (Dauph. C.P. Oct. 8, 2013) (Turgeon, J.), *affirmed* No. 2006 MDA 2013 (Pa. Super. March 17, 2015) (mem.). That they were married was a predicate to Father's claim in the support proceeding that he and Mother *had been divorced* from their 2005 marriage under an Egyptian divorce decree Father obtained from Egypt in 2006. Father produced a translated copy of that divorce decree in the support proceeding. I ultimately held the decree to be either a fraud or alternatively, not valid and enforceable in Pennsylvania. 125 Dauph. Co. Rptr. at 287-290.

required under the law. See 23 Pa.C.S.A. § 5337; Pa.R.C.P. 1915.17. Under the Child Custody Act, contempt occurs where a party “willfully fails to comply with any custody order.” 23 Pa.C.S.A. § 5323(g)(1). In order to sustain a finding of civil contempt, the complaining party must prove by a preponderance of the evidence “(1) that the contemnor had notice of the specific order or decree which he is alleged to have disobeyed; (2) that the act constituting the contemnor’s violation was volitional; and (3) that the contemnor acted with wrongful intent.” J.M. v. K.W., 164 A.3d 1260, 1264 (Pa. Super. 2017) (citation omitted).

I initially note that my March 23, 2018 Order is silent on Father’s claim that Mother violated the custody order’s relocation language because Father offered no evidence in support of this allegation. In any event, there was clearly no contempt on Mother’s part. The parties’ September 2016 agreed custody order stated that “[n]o parent shall relocate their residence if such relocation will significantly impair the ability of the non-relocating parent to exercise his or her custodial rights unless” the parent follows the relocation procedures required under the law including obtaining court approval. Notably, Father initially raised the issue of Mother’s “relocation” in his custody modification petition filed October 5, 2015, wherein he sought that Mother be required to inform him where she had moved with the children. He raised the same issue again in an emergency petition filed May 3, 2016. Both petitions raising the residential move by Mother (and the children) were assigned to me and ultimately resulted in the entry of the September 2016 order. Father did not file an appeal from that order or contest in any way the resolution of the issues he had raised, including Mother’s 2015 change in residence. As such, he has waived raising this issue in his current petitions (filed February 22, 2018).

Even if not waived, Father’s claim that Mother violated the custody order’s relocation provision was unsupported. Under the order and relocation law, Mother only owed an obligation to apprise Father of her move and seek court approval therefor if her move qualified as a “relocation.” As defined under the Child Custody Act and reflected in the custody order, relocation only occurs where there is a change in residence of the children that will “significantly impair the ability of the non-relocating party to exercise custodial rights.” See 23 Pa.C.S.A. § 5322(a). Father presented *no* evidence that his custodial rights - then consisting of two supervised visits per month at the ABC facility in Carlisle - were impaired in any way, much less significantly so. Indeed, the

fact that Father agreed to the custody terms whereby all his visitation occurs offsite at a regional facility *chosen by Father* renders his assertion of custodial impairment entirely meritless.

Father's second claim on appeal is that this court erred by failing to find Mother in contempt for "employing tactics and gimmicks" that prevented Father from exercising his supervised visits since September 2016. The evidence presented to this court revealed Mother did not violate the supervised visitation provision in the agreed custody order. I explained my decision in the Order (March 28, 2018):

As for the supervised visits, at the hearing, evidence was presented that Mother and Father both registered with ABC for the supervised visits prior to the September 2016 Pre-Trial Conference, resulting in said Agreed Custody Order. Father began supervised visits in 2016 and had visits on June 30, July 20, August 3, August 22, August 26 and September 9, 2016.

Father had a supervised visit with his children on September 23, 2016. He canceled the scheduled visit on October 6 due to work and cancelled the next visit on October 20 due to nonpayment. Father subsequently had additional visits at ABC with his children on October 29, November 11, November 27 and December 9, 2016. Father cancelled the visit on December 23 due to not having funds to pay for his visit.

In 2017, Father had a visit on January 20, 2017. The visit scheduled for February 17, Father cancelled due to "work issues." The parties attempted to schedule a visit on March 3, however, ABC staff was unavailable. ABC attempted to offer other days but it became problematic since Mother, due to her employment, was unavailable to drive the children to Carlisle from Harrisburg on Fridays.

ABC attempted to schedule a visit on March 23, a date Mother was not available and Mother believed she would be contacted by ABC to schedule another date. No additional date was offered to her. In April 2017, ABC contacted the parties that since there had been no visits for 90 days they needed to re-apply for services. In May 2017, Mother submitted her on-line application but Father never did. Accordingly no additional supervised visits for Father with his children have been scheduled. Therefore, I find Mother is not in contempt of the Court Order.

The record revealed not only was Mother *not* in violation of the supervised visitation schedule, but that it was Father who was the primary cause of his failure to have visitation. Mother canceled no visits and Father canceled five, including times where he left Mother and the children waiting for him at the ABC facility in Carlisle.

Father's third claim is that this court erred by failing to find Mother in contempt for "not providing access" to Father for all of the children's medical, dental, religious and school records. He further argues in his statement of errors that he is unable to access records covered by this provision because "he has no knowledge or information regarding where to go to obtain such records since [he] does not know where the children are residing." I initially note that there is no requirement in the language of the agreed custody order that Mother *provide* Father any records, only that he "shall be entitled to access" such records. It is Father's obligation to seek any records he wanted and as I noted on the record, he can do so by showing the agreed custody order to the relevant records' custodians. (N.T. 81) There was no evidence Mother interfered with his right to access any records and no evidence that Father has insufficient knowledge to track down the records he wants to review. Father knows the school district in which his children are educated as well as the health care providers who regularly treat his children. His claim to the contrary at the hearing and in his statement of errors is simply not credible.

In his fourth error on appeal, Father suggests that this court erred by failing to find Mother in contempt of the agreed custody provision that she "must report all major decisions concerning the ... children to Father." Specifically, he claims Mother should be held in contempt for failing to report to him that she had applied for passports for the children. Mother did not tell Father that she was seeking to obtain passports for the children because she did not consider it a major decision. The term "major decisions" is not defined in the agreed custody order. Mother argues the term should be limited to decisions only concerning "legal custody" such as health, education and religion. Both parties' positions are arguable, however, to the extent obtaining a passport is a "major decision," Mother was not in contempt because contempt requires that she "willfully fail" to comply with a custody order including that her failure be done with "wrongful intent." 23 Pa.C.S.A. § 5323(g)(1) and J.M. v. K.W., *supra*. Given the lack of clarification in the support order as to what is or is not a "major decision," I find that Mother's belief that passport application was not a major decision to have been reasonable and as such, she did not willfully fail to comply with the order.

Father argues in his fifth claim of error that the court erred by allowing Mother the option of taking the children to Egypt which he believes is dangerous to the children and not in their best interests. Mother is the children's sole legal custodian and thus has sole authority to decide whether

to take the children overseas, including to Egypt. I found no evidence presented at the hearing that the potential area of travel, Port Said, was currently unsafe. I nevertheless indicated that should Mother plan such a trip, she should limit her travel with the children to areas that are not subject to any State Department travel advisories above a Level 2 warning. (N.T. 76) As I noted in the Order, “[o]bviously, she should not take the children to a place which is deemed dangerous to travel so she should check the travel advisories, prior to said visit.” In addition, I stated on the record a number of times that if Mother decided to travel to Egypt with the children that I would require she post a \$50,000 performance bond and that her trip would be limited to two to three weeks. (N.T. 61, 64, 75)

Father next argues in his sixth claim that this court erred by ignoring his testimony that Mother is under investigation by the USCIS for fraud. Father, who clearly has a vendetta against Mother and seeks her deportation, notified federal authorities to what appears are baseless allegations that Mother fraudulently obtained a Green Card. Beyond his own, entirely non-credible claims that Father believes Mother will be deported, Father offered no evidence other than the letter referring his allegations to ICE. In any event, even if there may be an investigation into Mother’s immigration status, that issue is not remotely relevant to any of the specific claims raised by Father in his appeal. As such, this court properly ignored any and all evidence offered by Father on this issue.

In his seventh claim, Father argues that this court erred by overruling Father’s objection and allowing Mother’s attorney to testify on her behalf during the hearing. Concerning Mother’s testimony, I had directed that Mother’s attorney make an offer of proof summarizing the content of what would be Mother’s direct testimony. (N.T. 31-37, 42-47) After the offer, Mother agreed that would be her testimony, following which Father was given the opportunity to cross examine her. (N.T. 47-56) During the course of the examination, I twice explained the nature of the offer of proof to Father, who did not object on the record to this procedure either time. (N.T. 37, 47) Father claims he raised an objection but I am unable to find any on the record to the offer of proof procedure. Even if raised, however, Father provided no argument as to how he was prejudiced by this procedure.

Father's eighth and final complaint is that this court is prejudiced against him and his children and biased in favor of Mother wherein it has treated her repeated violations of court orders "with impunity," forcing Father to file a motion to recuse, which the court wrongly denied without a hearing. Father seeks that not only the current order be reviewed, but every order I ever issued in this action, in light of this alleged bias. The record does not show Father filed a motion seeking my recusal from this case. This was possibly an oversight by Father who has previously unsuccessfully sought the recusal of Judge Dowling in the PFA action and of Judge Lewis earlier in this custody action. In any event, his claim lacks any merit and is additionally not properly addressed on direct appeal.

Accordingly, I issued a my Order March 28, 2018 in this custody action.

July 20, 2018

Date

Jeannine Turgeon, Judge

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