NOT FOR OFFICIAL PUBLICATION

ORIGINAL

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

AMANDA J. ROBINSON,

Petitioner/Appellant,

vs.

STEVEN C. ROBINSON,

Respondent/Appellee.

Case No. 119,021

APPEAL FROM THE DISTRICT COURT OF
GARFIELD COUNTY, OKLAHOMA

HONORABLE DENNIS W. HLADIK, TRIAL JUDGE

AFFIRMED

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Oklahoma City, Oklahoma

For Petitioner/Appellant

John Hodgden
Enid, Oklahoma

For Respondent/Appellee

OPINION BY GREGORY C. BLACKWELL, JUDGE:

Amanda Buckminster (formerly Robinson) and Steven Robinson are the divorced parents of two minor children. In the trial court, Mr. Robinson filed a motion to enforce visitation, clarify visitation orders, modify child support, and a request for other relief. In response, Ms. Buckminster filed an application for contempt for alleged violations of visitation orders and sought to dismiss Mr. Robinson's motion. After a combined hearing on all motions, the trial court sided with Mr. Robinson on all issues. Ms. Buckminster appeals. Because the trial

court's findings are not contrary to the clear weight of the evidence or otherwise an abuse of discretion, we affirm.

BACKGROUND

The parties were married in 2006 and had two children, born in 2011 and 2013, respectively. Ms. Buckminster filed for divorce, and an agreed decree of dissolution was issued on September 22, 2017. The decree grants Ms. Buckminster sole custody and affords regular visitation to Mr. Robinson. As will be seen in more detail below, however, the visitation schedule was far from definite, leaving numerous details to be determined per the parties' agreement. Generally, however, the schedule allowed Mr. Robinson visitation every other weekend and two nights per week. Although the children were of school age, there was no separate visitation schedule listed for the summer. And, although the schedule referenced holidays, neither the days before and after holidays, nor the pickup and drop off times for holidays, were specified.

As could be predicted, the visitation schedule soon became a point of contention for both parties. The record reflects regular controversy between the parties as to holidays, summer vacation, and transition periods between weekend and weekday visits. Scheduling problems were exacerbated by Mr. Robinson's employment. As a flight instructor with the United States Air Force Reserve and a pilot for Southwest Airlines, Mr. Robinson is away from home often enough to frustrate visitation as contemplated by the schedule included in the decree. In prior years, Ms. Buckminster and Mr. Robinson attempted to set their own visitation schedule based on personal preferences and convenience. Mr. Robinson

expressed frustrations at what he saw as an unnecessary number of transition periods, particularly when Mr. Robinson had the children on a weekend immediately before his weeknight visitations, which were generally exercised on Mondays and Tuesdays. Mr. Robinson further protested the decree's inexactness as to holiday visitation.

We also note that, prior to this round of litigation, Mr. Robinson had moved to Dallas for his work with Southwest Airlines, though he maintained a home where the children lived in order to facilitate visitation. Mr. Robinson filed a motion to modify the visitation schedule, to which Ms. Buckminster objected on the grounds that Mr. Robinson was required to satisfy the test set forth in *Gibbons v. Gibbons*, 1968 OK 77, 442 P.2d 482. The trial court agreed and denied the motion. In a companion appeal, Case No. 117,759, this Court vacated the trial court's order and held that, for purposes of a motion to modify visitation based on a noncustodial parent's good-faith relocation, the standard set forth in *Gibbons* need not be satisfied. *Robinson v. Robinson*, 2020 OK CIV APP 68, ¶ 27, 480 P.3d 924.

While the motion to modify the visitation schedule was on appeal, Mr. Robinson filed the instant motion for enforcement of visitation, clarification of visitation orders, modification of child support, and request for related relief with the district court. Specifically, Mr. Robinson sought an order clarifying, modifying, and/or enforcing his rights to visitation, a commensurate modification of the child support order, and an order preventing Ms. Buckminster from contacting

his superior officers and from withholding the children's passports. Ms. Buckminster responded, objecting to Mr. Robinson's motion on the grounds that Mr. Robinson improperly conflated "evening" and "overnight" visitation, that the motion was not filed on the correct form, the motion was not set for hearing in the time period required by the statute, and that Mr. Robinson was acting in bad faith throughout. Ms. Buckminster also filed an application for an indirect contempt citation against Mr. Robinson and a motion seeking a directed verdict on Mr. Robinson's motions.

A combined hearing on all pending motions was held over two days in July 2020. Both parties testified. The district court issued a written order finding for Mr. Robinson on all issues. The court entered a revised visitation schedule that allowed Mr. Robinson alternating weekends (Friday through Wednesday), significantly clarified the procedures used for drop off and pickup, allowed for a separate summer visitation, and made various other changes. The court also recalculated Mr. Robinson's child support payments based on the new visitation schedule, which allowed Mr. Robinson a child-support credit because he would now have the children more than 160 overnights per year. Ms. Buckminster timely appealed.

STANDARD OF REVIEW

Domestic relations cases are of equitable cognizance and are thus governed by equitable standards of review. *Marshall v. Marshall*, 1961 OK 86, 364 P.2d 891, 895; *Casey v. Casey*, 1993 OK CIV APP 129, ¶ 4, 860 P.2d 807, 809. A trial court's determination will not be disturbed unless it is contrary to law,

against the clear weight of the evidence, or an abuse of discretion. *James v. Hopmann*, 1995 OK CIV APP 105, ¶ 3, 907 P.2d 1098, 1099.

ANALYSIS

Motion to Enforce Visitation

Ms. Buckminster first urges that the district court erred in failing to deny Mr. Robinson's motions because they did not comply with the strictures of 43 O.S. § 111.3(B). That statute provides:

> When a noncustodial parent has been granted visitation rights and those rights are denied or otherwise interfered with by the custodial parent ... the noncustodial parent may file with the court clerk a motion for enforcement of visitation rights. The motion shall be filed on a form provided by the court clerk. Upon filing of the motion, the court shall immediately set a hearing on the motion, which shall be not more than twenty-one (21) days after the filing of the motion.

43 O.S.Supp.2014, § 111.3(B).

It was undisputed that the father's motion was not filed on any clerk-provided form and that the court did not set a hearing within twenty-one days of the filing of the motion. In her first proposition of error, Ms. Buckminster argues that she was thereby entitled to prevail below. We disagree for two reasons.

First, what Ms. Buckminster characterizes as a motion to enforce, in reality, sought far more than enforcement of the existing provisions of the decree related to visitation. If anything, the motion sought to and was successful in completely replacing the provisions of the decree related to visitation. Although the motion was not titled as a motion to modify, that is exactly what it sought. The motion also sought a recalculation of child support, orders related to proper conduct, and an order requiring the release of passports. Nor does the motion

cite any specific time and place where visitation was improperly withheld as one would expect from a motion to enforce visitation or a citation for contempt on that issue. Simply put, the motion was not one made solely under § 111.3; Mr. Robinson, therefore, was not required to comply with § 111.3 to have his motion heard.

Second, even if it were conceded that the trial court erred in failing to require Mr. Robinson to plead his motion on a clerk-provided form, to schedule a hearing within twenty-one days, and to resolve at least the request to enforce (nebulous though it was) within forty-five days (as also required by § 111.3), any such error must be considered harmless. Judgments must not be set aside for error in pleading or procedure unless the error probably resulted in a miscarriage of justice or violates a constitutional or statutory right. 20 O.S.2011, § 3001.1. Though Ms. Buckminster argues here that her statutory rights were violated, we agree with the trial court that § 111.3 exists to protect the rights of the party who is seeking enforcement of visitation, in this case, Mr. Robinson. The clear purpose and effect of § 111.3 is to afford a noncustodial parent a quick and relatively easy method to enforce their visitation rights. Ms. Buckminster lacks the necessary standing to challenge § 111.3 in this context. By hearing the motion to enforce along with Mr. Robinson's other issues, the district court did not prejudice Ms. Buckminster's constitutional or statutory rights.[1]

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[1] We note that Ms. Buckminster also challenges the trial court's order as to Mr. Robinson's motion to enforce visitation as based on insufficient evidence. While we again disagree—as the answer necessarily depends on the trial court's opinion of who was most believable at trial, a question we will not revisit on appeal—we find the question of whether the

Motion for Clarification of Visitation Orders

Ms. Buckminster next contends that the district court erred by granting Mr. Robinson's motion to "clarify" visitation orders pertaining to summer visitation. As previously noted, the request was not so much to clarify the original decree—there's no question that separate summer visitation was not contemplated in that document—but to modify the decree to include distinct summer visitation. Ms. Buckminster attacks the court's order by casting aspersions on Mr. Robinson's primary argument on the issue, namely, that separate summer visitation must be included because 43 O.S.2011 § 111.1A(B)(4) required it. However, the relevant question is not what is required in the statutory standard visitation schedule (which neither party has ever sought) but rather, given the evidence presented at trial, was a modification of the decree to include specific provisions for summer visitation appropriate. The answer to that question is, undeniably, yes.

As acknowledged in the companion opinion, our statutes do not require a showing of a substantial change in circumstances to modify visitation, as is required to change custody. *Robinson v. Robinson*, 2020 OK CIV APP 68, ¶ 8, 480 P.3d 924. Rather, "[i]f there are minor children of the marriage, the court ... [m]ay modify or change any order whenever circumstances render the change proper either before or after final judgment in the action ...." 43 O.S.2011, § 112(A)(3).

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trial court entered a nominal order enforcing visitation as it previously existed to be irrelevant because the trial court entirely rewrote the decree as it pertained to visitation. Further, because the trial court ordered each party to pay its own costs and attorney fees, and Mr. Robinson did not challenge this portion of the ruling in a counter-appeal, the question is truly academic.

There was more than ample evidence presented at trial that supported the trial court's finding that the system of visitation envisioned by the decree was unworkable. A change was thus proper and justified. There were obvious gaps in the visitation schedule. The decree's visitation schedule did not account for days leading up to and after holidays, for a separate summer schedule, or for transitions when Mr. Robinson had visitation with the children on the immediately preceding weekend. The vagueness of the visitation schedule in the decree could be attributed to a sincere attempt at one time for the parties to work together for the good of their children and a now false hope that they would be able to fill in the gaps by agreement.[2] Unfortunately, relations between the parties have deteriorated since the visitation schedule was issued, and it has become clear that goodwill between the parties was not enough to overcome the gaps in the schedule. Under these circumstances, we can find no fault with the trial court's decision to modify the visitation schedule.[3]

Indirect Contempt

Ms. Buckminster urges that the trial court abused its discretion by failing to rule that Mr. Robinson was in indirect contempt for failing to return the children to her care at the end of several visitation periods listed in Ms. Buckminster's application. Ms. Buckminster filed an application for an indirect contempt

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[2] Ms. Buckminster testified that the parties had previously agreed to alternate, two-week visitation periods over summer break vacation. Even so, Ms. Buckminster objected to reducing alternating weekly summer visitation to writing.

[3] Ms. Buckminster does not argue that the modification made was not in the best interest of the children, only that the court was without power to order a modification when only a "clarification" was requested. Nevertheless, we note that the record supports the trial court's modification as serving the best interest of the children.

citation against Mr. Robinson listing fourteen separate instances where she claimed that Mr. Robinson failed to deliver the children at the end of the visitation period. Of primary concern was the return of the children on Sunday evenings when Mr. Robinson had Monday visitation. The situation was exacerbated by homeschooling necessitated by the Covid-19 pandemic, as the parties could not agree who should have the children on days they would have been in school. Although Ms. Buckminster offered her own testimony and text messages indicating that Mr. Robinson was not following the terms of the decree, Mr. Robinson testified that he was acting under a good faith belief that he and Ms. Buckminster had made additional agreements as to visitation outside the scope of the written decree, and he was following those. The district court found that Ms. Buckminster "had failed to meet her burden of proof" and denied the application.

Indirect contempt is the willful disobedience of any process or order lawfully issued or made by the court. 21 O.S.2011, § 565; *Lay v. Ellis*, 2018 OK 83, ¶ 20, 432 P.3d 1035; *Henry v. Schmidt*, 2004 OK 34, ¶ 12, 91 P.3d 651. "The proof of disobedience must be clear and convincing." *Davis v. Davis*, 1987 OK CIV APP 41, ¶ 2, 739 P.2d 1029.

The decision as to whether Mr. Robinson was willfully violating the parties' agreement turns entirely on whose story was to be believed at trial. The trial court clearly believed Mr. Robinson's version of events and discounted Ms. Buckminster's. The credibility of witnesses and the effect and weight to be given to their testimony are questions of fact to be determined by the trier of fact, whether court or jury, and are not questions of law for the appellate court on appeal.

Hagen v. Independent School Dist. No. I-004, 2007 OK 19, ¶8, 157 P.3d 738, 740. We have no basis for overturning the trial court's denial of the request for an order holding Mr. Robinson in contempt.

Parenting Time Adjustment Credit

Ms. Buckminster next urges that the district court erred by awarding Mr. Robinson a parenting-time adjustment credit against his child support obligation because, under the new visitation schedule, Mr. Robinson would have the children for over 160 nights per year. Ms. Buckminster argues that Mr. Robinson waived his right to a parenting time adjustment credit during his testimony at the July 2020 hearing. Specifically, Ms. Buckminster argues that the following colloquy between Mr. Robinson and his own counsel waived the request for any child-support credit related to parenting time:

> Q: Okay. Now this request as far as visitation, you understand what shared parenting is.
>
> A: Yes, sir. The greater than 120 days [of] overnights or whatever per year.
>
> Q: Your request to the Court is that for a break on child support or for visitation with your children.
>
> A: That's just for stability and visitation with the children.
>
> Q: Are you asking the Court [to] cut my child support because I'm getting more visitation, is that what this is about?"
>
> A: No, sir, not at all.

We cannot agree that this exchange constitutes a waiver. "Waiver is the intentional relinquishment of a known right or conduct which warrants an inference of such intent ...." *Prudential Fire Ins. Co. v. Trave-Taylor Co.*, 1944 OK 272, ¶ 8, 152 P.2d 273. We do not read this exchange as Mr. Robinson making

any effort to relinquish his right to a parenting-time adjustment credit, but rather, as a simple effort to communicate to the court that his primary concern was for the well-being of the children. The district court thus did not err by granting Mr. Robinson a parenting-time adjustment credit to which he is entitled by statute.

Request for Related Relief

Ms. Buckminster lastly argues that the trial court abused its discretion by granting Mr. Robinson's request for related relief. Specifically, Mr. Robinson asked the district court to enter an order prohibiting Ms. Buckminster from again contacting his civilian employers and superior officers regarding her visitation disputes with Mr. Robinson. Mr. Robinson also asked the district court to grant him access to the children's passports so he might take the children on vacation internationally, as Ms. Buckminster had done in the past. Ms. Buckminster argues that the district court's order granting the requested relief amounts to the court "micromanaging" and infringing on her rights as the custodial parent.

In support of Ms. Buckminster's claim that the order prohibiting her from contacting Mr. Robinson's employers was micromanaging, she points to the Supreme Court's decision in *Mahmoodjanloo v. Mahmoodjanloo.* There, the Court wrote that they had "embraced the view expressed by other courts that limiting judicial intervention in post-divorce parental decision making is an overriding goal, because to 'micromanage' everyday parenting decisions by trial courts does not serve the interests of the parties, the judiciary or the public." 2007 OK 32, ¶ 5, 160 P.3d 951. *Mahmoodjanloo* was a case where a custodial parent sought

in good faith to relocate with the children to another state against the objections of the noncustodial parent. *Id.* ¶ 1. In the instant case, Ms. Buckminster seeks to maintain the right to contact Mr. Robinson's employers in regard to private visitation disputes between the parties, should they arise in the future.

We think an order prohibiting the parties from contacting each other's employers, as was entered here, is more akin to a judicial order of proper conduct. These routine trial court orders may prohibit parties from making derogatory remarks about the opposing party to other people and generally seek to assist the parents in eliminating those behaviors that will not serve the parties, or their children, well in their post-divorce lives. See *In Re Guardianship of Berry*, 2014 OK 56, ¶¶ 15-16, 335 P.3d 779. ("The trial judge also determined that it was necessary to order that 'The parties will abide by the Judicial Order of Proper Conduct and shall not discuss the Guardianship, financial matters or make derogatory remarks about the parties to the Wards.'"). Here, we think it was within the power of the district court, and consistent with the evidence, to apply a prohibition that neither party contact the other's employer to report a visitation dispute.

Likewise, the district court had discretion to order that Ms. Buckminster provide Mr. Robinson with children's passports on an as-needed basis. The order in question requires notice of any intent to travel outside the country be provided forty-five days before the travel to allow the other parent to object. The trial court's decision was again reasonable, consistent with the evidence, and does

not consist of the type of micromanaging of family decision making as referenced in *Mahmoodjanloo*.

For the reasons set forth above, the trial court's order is AFFIRMED in all respects.

AFFIRMED.

WISEMAN, P.J., and RAPP, J., concur.

March 23, 2022