

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

JAMIE OWENS,	:	APPEAL NO. C-190036
Plaintiff-Appellant,	:	TRIAL NO. DR14-00386
vs.	:	<i>JUDGMENT ENTRY.</i>
ERIC OWENS,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Jamie Owens appeals the trial court’s entry upholding the magistrate’s decision and granting third-party Sandra Sargee’s motion for contempt. In two assignments of error, Owens argues that the finding of contempt was against the manifest weight of the evidence and that the trial court failed to consider the best-interest factors under R.C. 3109.051(D).

We review a trial court’s decision to hold a party in contempt for an abuse of discretion. *Wolf v. Wolf*, 1st Dist. Hamilton No. C-090587, 2010-Ohio-2762, ¶ 4. “A prima facie case of civil contempt is made when the moving party proves both the existence of a court order and the nonmoving party’s noncompliance with the terms of that order.” *Id.* If a prima facie case of civil contempt is made, then the burden shifts to the nonmoving party to establish a defense for its noncompliance. *Id.*

This appeal concerns two visitation orders—a November 2017 agreed entry on visitation and a May 2018 agreement regarding contempt and visitation. The November 2017 agreed entry permitted Sargee visitation with the children once every three weeks. Under the May 2018 agreement, Owens and Sargee designated specific makeup visitations to compensate for missed visitations under the November 2017 agreed entry. Sargee testified that, at the time of filing, Owens had refused five routinely-scheduled visits and one makeup visit. Sargee also testified that she had not received any routinely-scheduled visits after the time of filing, except for one visit that occurred with defendant-appellee Eric Owens. Therefore, Sargee proved the existence of two court orders entitling her to visitation, as well as Owens’s noncompliance with the orders.

Owens does not dispute her noncompliance with the visitation orders. In fact, Owens admitted that Sargee did not receive the makeup visits as specified in the May 2018 agreement. Instead, Owens attempts to assert a defense of inability to comply.

After a review of the record, we find that there is ample evidence to support the trial court’s finding that Owens did not meet her burden of proof. Owens presented no evidence to show that she was prevented from complying with the visitation orders. She presented no evidence to show that she had encouraged the children to cooperate with the visitation process or that she had attempted to take the children to the designated pickup/dropoff location. Instead, Owens simply refused to compel the children to go on the visitations because they “didn’t want to go.”

Owens testified that her daughter was at work on some of the visitation dates. However, Owens and Sargee voluntarily entered into visitation orders that allowed for significant flexibility. For example, the November 2017 agreed entry required the

children to visit with Sargee once every three weeks for three to four hours. The entry allowed Owens to choose the date, time, and place of the visitations, and required her to communicate such to Sargee no later than Sunday of the week prior to visitation, with the week of visitation beginning on Monday. In addition, Owens and Sargee collectively chose and agreed upon the dates specified in the May 2018 agreement for makeup visits. Under these circumstances, there is ample evidence to support the trial court's finding that Owens did not establish a proper defense for her noncompliance with the visitations orders. Therefore, we cannot say that the trial court abused its discretion in finding Owens in contempt.

Owens's remaining argument is misplaced. A best-interest analysis is necessary only where visitation is being determined, modified, or terminated. Because this cause stems from a contempt motion, whether visitation served the best interest of the child was not properly before the trial court.

Having found no abuse of discretion in the trial court's finding that Owens failed to establish a proper defense for her noncompliance, we overrule both assignments of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., CROUSE and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on December 11, 2019

per order of the court _____.

Presiding Judge