

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs November 15, 2013

**DENISE L. HEILIG v. ROY HEILIG**

**Direct Appeal from the Circuit Court for Shelby County  
No. CT00623907 Donna Fields, Judge**

---

**No. W2013-01232-COA-R3-CV - Filed February 28, 2014**

---

**PARTIAL SEPARATE CONCURRENCE AND PARTIAL DISSENT**

---

I concur in most of the majority opinion, with the exception of its decision to deem waived Mother's stated issue of whether the trial court erred in holding her in contempt when the order she was accused of violating had no deadline.

I concur separately in the majority opinion's holding on subject matter jurisdiction in order to make a clarification. In discussing the issue of subject matter jurisdiction, the majority states, "Even assuming arguendo that a dispute over a passport would be considered a "child custody proceeding" subject to the UCCJEA, this does not mean that the trial court lacked subject matter jurisdiction. . . ." To the extent that this sentence can be read to imply that there is some question about whether the dispute in this case is a "child custody proceeding" under the UCCJEA, it seems prudent to point out that it surely *is* a "child custody proceeding." The dispute that is the subject of this appeal arose out of the parties' 2012 consent order, which was the result of mediation required under their parenting plan. The 2012 consent order resolved the parties' disputes about their parenting plan. This consent order provided, *inter alia*, that Mother was required to "cooperate" with Father in the execution of documents necessary for father to obtain passports for the parties' children. Courts in our sister states have routinely analyzed similar parenting disputes involving children's passports under the UCCJEA. *See, e.g., Mulatu v. Girsha*, No. CA2011-07-051, 2011 WL 6017968 (Ohio Ct. App. 12 Dist., Dec. 5, 2011)(father refused to turn over children's passports to mother so mother filed contempt petition against father; trial court had subject matter jurisdiction under UCCJEA); *Kenda v. Pleskovic*, 2012 D.C. Super. LEXIS 1, 2012 WL 507015 (D.C. Super. Ct. Jan. 17, 2012)(aff'd 39 A.3d 1249 (D.C. 2012)); *Poluhovich v. Pellarano*, 373 N.J. Super. 319, 368, 861 A.2d 205, 243 (App. Div. 2004)(issues involving children's passports triggered UCCJEA). Thus, the dispute that is the subject of this appeal would be considered a child custody proceeding under the UCCJEA.

I also concur with the majority's decision to decline to address the second issue presented by Mother on appeal, because addressing the issue requires considerable reference to the appellate record and Mother provided this Court with no citations to the record in support of her argument. As noted by the majority, it "is not the role of the courts . . . to research or construct a litigant's case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived." *Sneed v. Bd. of Prof. Resp. of Sup. Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010).

Now as to the issue on which I must dissent. In her appellate brief, Mother argues that Father's contempt petition was "premature" because he had not yet provided Mother documentation regarding the passport, and then states the following issue: ". . .([I]f [the trial judge] was going to entertain the Criminal and Civil contempt of court charges regarding the passport, how could a ruling be made when the Compromise Mediated Settlement Agreement has no execution date that [Mother] was bound by?"

In response, Father does not dispute Mother's assertion that the order she is charged with violating does not contain a deadline. Instead, Father simply argues that enough time had gone by for the trial court to properly hold Mother in contempt.

In her reply brief, in response to Father's argument, Mother states, "In the Agreement in question, there is no time frame in which [Mother] was to provide the documentation, therefore the charges filed were premature. . . ."

The majority also declines to address this issue and deems it "waived" because Mother did not argue the issue further in the body of her initial appellate brief. As with the second issue, the majority notes that it is not the role of the appellate court "to research or construct a litigant's case or arguments for. . . her. . . ." *Id.*

This principle is important; all litigants, including *pro se* litigants, must give us the information necessary to address the issue on appeal without searching the record and constructing an argument for the litigant. It is equally important, however, for the appellate court to apply this principle judiciously, and not decline to address issues where doing so does *not* require us to "research or construct" the litigant's argument.

Such is the case with the third issue presented by Mother in this appeal. As discussed below, we have the information necessary to address this issue without searching the record or constructing an argument for Mother, so it is inappropriate to deem this issue waived.

The order that is the subject of the contempt charge is the 2012 consent order, which is discussed at length by the majority in the context of analyzing subject matter jurisdiction. No other part of the record is needed to analyze this issue. It seems a stretch to fault Mother for failing to give us a record page cite to the 2012 consent order when we discuss it elsewhere in the opinion.

The majority emphasizes that, after listing the issue in her Statement of the Issues in her appellate brief, Mother failed to re-state or argue the issue in the body of her initial brief. But, as noted above, Mother in fact re-stated and argued the issue in her reply brief.

Most important, the issue Mother raises is straightforward and commonsense, and needs no further explanation. We need not “research or construct” an argument for Mother in order to address this issue.

What’s more, Mother’s argument has merit. The 2012 consent order in fact does not state a deadline for Mother to comply with the order’s directive. As quoted in the majority opinion, the 2012 consent order says only: “Mother will cooperate with execution of any documents necessary” for Father to obtain passports for the parties’ children. Nothing more.

In *Konvalinka v. Chattanooga-Hamilton County Hosp. Auth.*, our Supreme Court said:

A person may not be held in civil contempt for violating an order unless the order expressly and precisely spells out the details of compliance in a way that will enable reasonable persons to know exactly what actions are required or forbidden. The order must, therefore, be clear, specific, and unambiguous. Vague or ambiguous orders that are susceptible to more than one reasonable interpretation cannot support a finding of civil contempt. Orders ... must ... leave no reasonable basis for doubt regarding their meaning.

... Ambiguities in an order alleged to have been violated should be interpreted in favor of the person facing the contempt charge. Determining whether an order is sufficiently free from ambiguity to be enforced in a contempt proceeding is a legal inquiry that is subject to de novo review.

*Konvalinka v. Chattanooga-Hamilton County Hosp. Auth.*, 249 S.W.3d 346, 355-56 (Tenn.2008). Thus, the order that is the subject of the contempt petition is required to be “clear, specific, and unambiguous” and we are required to interpret the order in favor of the alleged contemnor. Our *de novo* “review [of] the clarity and specificity of the underlying trial court order” is a “threshold inquiry on appeal” even if the issue is not specifically raised on

appeal. *Lowery v. McVey*, No. M2012-00555-COA-R3-CV, 2013 WL 512471, at \*7-8 (Tenn. Ct. App. Feb. 11, 2013).

As quoted above, the 2012 consent order has no deadline and cannot be fairly characterized as “clear, specific and unambiguous.” The typical path with such an order would have been for Father to get an order from the trial court specifying that Mother was required to execute the documents by a certain date or risk being held in contempt of court. Here, however, Mother hurriedly executed the passport documents shortly before the trial court’s contempt hearing. Apparently exasperated with Mother, the trial court went ahead and held her in contempt of court, in spite of the fact that she belatedly executed the documents. While the trial court’s frustration with Mother is understandable, it erred in holding Mother in contempt of an unspecific, unclear order that merely directs Mother to “cooperate” with Father.

In sum, I concur with the majority’s holding on subject matter jurisdiction and concur separately for purposes of clarification. I concur with the majority’s decision to decline to address the issue of whether Father provided Mother with the requisite documents on the children’s passports. I must respectfully dissent, however, from the majority’s decision to decline to address the issue of whether the trial court erred in holding Mother in contempt of the 2012 consent order where the order had no deadline for her execution of the passport documents. I would address the merits of this issue, hold that the 2012 consent order lacked the clarity or specificity for the trial court to hold Mother in contempt of it, and reverse the trial court’s contempt order on that basis.

---

HOLLY M. KIRBY, JUDGE