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NOT TO BE PUBLISHED

# Commonwealth of Kentucky

# Court of Appeals

NO. 2025-CA-1457-MR

DANIELLE HILL — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT,
FAMILY COURT DIVISION
HONORABLE TIFFANY YAHR, JUDGE
ACTION NO. 21-CI-03268

DIANE TYE — APPELLEE

OPINION
AFFIRMING IN PART, REVERSING IN PART,
AND REMANDING

** ** ** ** **

BEFORE: THOMPSON, CHIEF JUDGE; EASTON AND ECKERLE, JUDGES.

THOMPSON, CHIEF JUDGE: Danielle Hill, *pro se*, appeals from an order which denied her increased visitation with her child, J.N.D.T. (hereinafter referred to as "Child"),[1] and which denied her motion for contempt. Appellant argues that the trial court erred in not granting her more visitation and in not holding Diane Tye in

[1] We will not identify the child in this case by name in order to protect the child's privacy.

contempt. We conclude that the trial court did not err in its judgment regarding visitation, but that the court made an erroneous finding regarding the contempt issue; therefore, we affirm in part, reverse in part, and remand.

## FACTS AND PROCEDURAL HISTORY

Child is the biological child of Appellant, and Appellee is Appellant's mother. When Child was born, all parties were living in North Carolina. Shortly after Child was born, Appellant began leaving Child with Appellee for long periods of time. Eventually, in 2019, a North Carolina court awarded Appellee permanent, sole custody of Child. This was due to Appellant being homeless and her neglecting her parental duties. Appellant was permitted supervised visitation.

In early 2020, Appellant was incarcerated for five months. Around that same time Appellee and Child moved to Fayette County, Kentucky. Appellant remained in North Carolina after her release. The North Carolina custody order was later registered with the Fayette Circuit Court. After moving to Kentucky, Child was diagnosed with autism and Appellee sought out services to help Child.

On March 14, 2022, Appellant filed a motion seeking to modify her visitation. She sought increased time with Child and eventually wanted equal timesharing with Appellee. A friend of the court (FOC) was appointed to conduct a timesharing and custody evaluation, and in November of 2022, the FOC released a comprehensive report. The FOC interviewed Appellant, Appellee, Child's

therapist, and Child's caseworker. The report detailed the circumstances surrounding Appellee becoming Child's caregiver and Appellee's efforts to get services for Child. Ultimately, the FOC recommended that there be no change in custody or visitation and that Appellant undergo mental health, parenting, and substance abuse assessments. In April of 2023, the court entered an order which maintained the current visitation schedule, but allowed Appellant a weekly phone call with Child. The court also ordered Appellant to follow all the recommendations of the FOC.

In October of 2023, Appellant filed another motion to increase her visitation. She sought to have Child on his birthday, holidays, and during the summer. Another FOC was appointed in order to provide an updated evaluation. In March of 2024, the FOC issued a new report. This one updated the court on Child's autism services and the relationship between all the parties. The report also indicated that Appellant had not fully complied with the assessment recommendations of the previous FOC and that Appellant had trouble respecting Appellee's decision-making authority. The FOC concluded that the visitation arrangement should not change.

We should also note that throughout 2022 and 2023, the trial court entered orders which allowed Appellant access to Child's medical and educational records. The court also ordered that Appellant be allowed to talk directly to

Child's medical service providers. The court further ordered that Appellant was to be kept informed of Child's medical appointments and any changes to Child's medical and educational needs. Finally, the court ordered that the parties should treat each other respectfully. Both parties filed numerous contempt motions against the other; however, pertinent to this appeal are contempt motions from Appellant alleging Appellee was interfering with her ability to speak to Child's medical providers and that Appellee was calling her names like "dumb" and "stupid."

On January 27, 2025, a final hearing was held regarding visitation and contempt. Appellant, Appellee, and Appellant's long-term romantic partner all testified. Appellant and Appellee testified about their lives, their interactions with each other, and their interactions with Child. On September 25, 2025, the court entered an order which held that increased visitation for Appellant would not be in Child's best interests. The court also held that Appellee did not violate court orders regarding Appellant's access to medical records and that, while Appellee did violate a court order regarding being respectful toward Appellant, the court would not hold her in contempt. This appeal followed.

## ANALYSIS

We will first address Appellant's argument regarding contempt. The court ruled on two contempt issues, Appellee being disrespectful toward Appellant

and Appellee blocking access to Child's medical information. The court held that Appellee had been disrespectful toward Appellant in calling her names, but believed holding Appellee in contempt would not benefit Appellant at this time. The court did warn Appellee to comply with prior orders going forward. As for the medical issue, the court held that a June 8, 2022, order allowed Appellant to access Child's medical records and required Appellee to keep Appellant apprised of medical information, such as treatments and appointments. The court held that the order did not authorize Appellant to speak directly with Child's medical providers.

> Contempt is
>
> > the willful disobedience toward, or open disrespect for, the rules or orders of a court. A court's authority to sanction contempt, to insist upon respect for its processes and compliance with its rulings and judgments, has long been thought necessary to, and therefore implicit in, the judicial function—the case-deciding, law-interpreting role of courts in our tri-partite form of government. The power of courts to punish for contempts, the United States Supreme Court has said, is a necessary and integral part of the independence of the judiciary, and is absolutely essential to the performance of the duties imposed on them by law.

*Cabinet for Health and Family v. J.M.G.*, 475 S.W.3d 600, 610-11 (Ky. 2015) (internal quotation marks and citations omitted).

> A court has broad discretion when exercising its contempt power. A court's discretion in this regard necessarily encompasses the discretion to determine

> when to apply its contempt powers and when to refrain from imposing sanctions and fines. Absent an abuse of the court's discretion we will not disturb its decision on appeal. And, an abuse of discretion implies action that was arbitrary, unfair, unreasonable, or not supported by sound legal principles.

*Cary v. Pulaski Cnty. Fiscal Court*, 420 S.W.3d 500, 520 (Ky. App. 2013) (citations omitted).

Here, in regards to the harsh words Appellee said to Appellant, we find no error. The trial court was correct when it said Appellee violated an order requiring the parties to be respectful to one another. This is a high conflict case and from a review of the record, it is clear that frustrations abound. The court declined to punish Appellee because any monetary punishment would ultimately take away from Child and his care. Since the trial court urged Appellee to remain respectful going forward, it was not an abuse of discretion not to hold Appellee in contempt.

As for the medical information issue, we must reverse and remand. Appellant argued that Appellee was thwarting her ability to talk to Child's medical providers. The court held that a June 8, 2022, order did not give Appellant that right, only the right to access records and be informed of relevant medical information. The trial court is partially correct. That order did not give Appellant the ability to talk directly to medical providers; however, an order entered March 3, 2023, states that Appellant can communicate directly with Child's medical

providers. Since the court made an erroneous finding regarding Appellant's ability to contact medical personnel directly, we must reverse and remand for the trial court to consider this issue again.

We now turn to the primary issue on appeal. Did the court err in declining to modify Appellant's visitation with Child?

> Trial courts retain broad discretion in modifying visitation awards. Due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. Under the established standard of review, we will only reverse a trial court's determinations as to visitation if they constitute a manifest abuse of discretion, or were clearly erroneous in light of the facts and circumstances of the case. The test is not whether we as an appellate court would have decided the matter differently, but whether the trial court's rulings were clearly erroneous or constituted an abuse of discretion. The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.

*Moore v. Moore*, 626 S.W.3d 535, 539 (Ky. 2021) (internal quotation marks and citations omitted).

Kentucky Revised Statutes (KRS) 403.320(3) states in relevant part that "[t]he court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child[.]" KRS

403.270(4)[2] sets forth factors to consider regarding a child's best interests. The relevant KRS 403.270(4) factors are:

> (a) The wishes of the child's parent or parents, and any de facto custodian, as to his or her custody;
>
> (b) The wishes of the child as to his or her custodian, with due consideration given to the influence a parent or de facto custodian may have over the child's wishes;
>
> (c) The interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may significantly affect the child's best interests;
>
> (d) The motivation of the adults participating in the custody proceeding;
>
> (e) The child's adjustment and continuing proximity to his or her home, school, and community;
>
> (f) The mental and physical health of all individuals involved[.]

The court held that it would not be in Child's best interests to modify visitation, and we believe the trial court did not abuse its discretion in this matter. The final hearing in this case lasted over three hours. The court's order thoroughly set forth the history of the case and the testimony heard during the hearing. The court indicated that it considered the testimony of the witnesses, the FOC reports,

[2] This statute has recently been amended and the new version became effective on July 15, 2026. The trial court in this case utilized the old version of the statute; however, we will cite the current version as the best interests factors are substantially similar in both versions.

and the KRS 403.270 best interests of Child. In the end, the trial court found the report of the FOC and Appellee's testimony more persuasive. Appellee has been Child's primary caregiver since 2019 and is able to tend to Child's social and medical needs related to his autism. In addition, the court found that unsupervised visitation in North Carolina would pose a risk to Child due to his additional needs. Further, the court found fault with Appellant for not following through with the FOC recommendations as required and for not being willing to accept Appellee's decision-making authority as the sole custodian. Although the court acknowledged that Appellant's desire to have more contact with Child is a positive, but the facts of the case indicate that increased visitation would not be in Child's best interests.

## CONCLUSION

Based on the foregoing, we affirm the court's judgment in not increasing Appellant's visitation with Child. We also affirm the court declining to hold Appellee in contempt for being disrespectful toward Appellant; however, we reverse and remand for the court to reconsider the contempt issue regarding Appellee's interference with Appellant speaking to Child's medical providers due to an erroneous finding.

ALL CONCUR.

BRIEF FOR APPELLANT:

Danielle Hill, *pro se*
Richmond, Kentucky

NO BRIEF FOR APPELLEE.