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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

99-630092-DM

JEAN M. ROSS,

Plaintiff,

V

MICHAEL T. ROSS,

Defendant.

NO. 99-630092 DM

At a session of said court, held in

County of Oakland, State of Michigan

December 7, 2004

PRESENT: HON. MICHAEL WARREN

OPINION AND ORDER

OPINION

The matter before this Court involves a criminal contempt proceeding against Dr. Michael Ross, the Defendant. The Plaintiff, Dr. Jean M. Ross, filed a verified motion alleging various violations of this Court's parenting time orders set forth in the Judgment of Divorce between the parties and subsequent orders of the Court. The independent prosecutor[1] alleges that the Defendant has violated this Court's orders by (1) discussing divorce and custody issues with the children, including encouraging the children to live with him, (2) violating the

[1] Although this Court referred the matter to the Oakland County Prosecutor's Office, the prosecutor graciously declined to prosecute. This Court, therefore, appointed the Plaintiff's

parenting time ordered by the Court by not returning the children at appropriate times and exercising unauthorized parenting time, and (3) alleging abuse of one of the children by the Plaintiff in the presence of that child and a police officer. The Court conducted a criminal contempt trial and issues this Opinion and Order in light of the same.

FINDINGS OF FACT

At the trial, the Court heard testimony from the Plaintiff, the Defendant, a police officer, and Vanessa Ross, the daughter of the Plaintiff and Defendant.[2] The Court also admitted into evidence over a half dozen exhibits. The Court makes the following general findings regarding the credibility, veracity, weight, and demeanor of the witnesses:

- Dr. Michael Ross is a father who genuinely loves his children, but provided evasive testimony regarding substantial and material issues in the instant case. He incredibly attempted to avoid assuming responsibility for much of his actions and omissions. Accordingly, the Court views with substantial skepticism that he has made full disclosure of the facts in this case.

- Vanessa Ross is a lovely and very bright young lady who has unfortunately been caught up in a tumultuous divorce and its aftermath. Vanessa clearly feels constrained by her mother's stricter home environment, and desires to gain more parenting time with her father. Unfortunately, her obvious intention at trial was to protect her father; and her testimony was incredible on a number

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counsel to prosecute the matter. This Court has previously ruled that the appointment of the Plaintiff's counsel is appropriate. Several other issues were addressed in other motions in limine.

[2] The Court placed under oath, but took no testimony from Dr. Fenton, Vanessa Ross' psychiatrist, finding that it was in the best interests of Ms. Ross to bar his testimony.

of material issues. For example, she originally testified that she had no choice but to write about child custody matters by her teacher, but within a few minutes she testified that she was only required to write a persuasive speech and she deliberately chose of her own free will to write about custody. She also testified, in direct contradiction to the Defendant, that she had no phone contact with the Defendant over the course of the week preceding the trial. Similarly, in direct conflict with the testimony of the Defendant, she testified that she did not ask her father to help edit the speech regarding child custody matters. She also testified that the costs of her parents' divorce and details regarding post-judgment issues were not in a draft of the speech when in fact those details were explicitly set forth in the draft. Her testimony was intended to present her father in the best light possible to the Court. The Court, therefore, gives little or no weight to much of her testimony.

- Dr. Jean Ross is a committed mother who loves her children. Her frustration with Vanessa and the Defendant was palpable, with too many touches of stridency and arrogance. Nevertheless, her testimony, overall, was much more credible and consistent than the testimony of the Defendant and Vanessa. Accordingly, the Court affords her testimony substantial weight.

- Officer Justin Novak was very credible and testified consistently. Although his testimony is limited in scope, it is afforded substantial weight on the issues for which it is relevant.

In light of the foregoing findings, the testimony and exhibits entered into evidence, all reasonable inferences from the evidence presented, and all

determinations of weight, credibility, demeanor, and evaluations of veracity, this Court finds beyond a reasonable doubt that the Defendant has encouraged his children to seek additional parenting time with him. The Defendant has provided Vanessa with literature about father's rights in child custody cases and has armed her with the mindset and information to undermine this Court's parenting time orders. The Defendant has also exposed all three of his children to various aspects of the divorce and post-judgment proceedings. The Defendant's actions have at least in part resulted in the children rebelling against the Plaintiff and causing significant emotional trauma and stress on the children and the Plaintiff. In fact, the Defendant has worked with Vanessa to attempt to create a de facto change in custody and parenting time by radically revising the parenting time schedule of Vanessa.[3] During her summer parenting time with her father, Vanessa crafted a parenting time schedule that she desired to implement. The Defendant aided and abetted Vanessa in attempting to implement this de facto change as follows:

- Sometime between July 19 and July 29, 2004, the Defendant gave Vanessa his lawyer's business card, with the understanding that Vanessa would be crafting a parenting time schedule of her own and would be forwarding the same to the lawyer.

- On July 26, 2004, the Defendant failed to return Vanessa to the Defendant's home as required by the orders of the Court. The Defendant refused to return Vanessa to the Plaintiff's home despite numerous phone calls and voicemails from the Plaintiff each day Vanessa was absent urging the Defendant to return

[3] Vanessa dislikes living with the Plaintiff and believes that she has been subjected to excessive discipline.

Vanessa promptly and threatening to call the police. In response to the Plaintiff's requests, the Defendant told the Plaintiff to review an email written by Vanessa, requesting that the Plaintiff follow Vanessa's wishes about parenting time. During this time period, the Defendant essentially exercised parenting time over Vanessa until July 28, 2004 at approximately 8:00 p.m.

- On July 27, 2004, Vanessa sent an email she drafted to the Defendant's lawyer detailing a proposed parenting time schedule. Although the letter was drafted by Vanessa, it was the result of the Defendant's mindset and constant encouragement. In fact, the email contained and reflected time parameters centered around the Defendant's work schedule—a schedule which Defendant indisputably provided to Vanessa, the Court finds with the understanding that it would be used in proposing and attempting to implement a new parenting time schedule.

- On July 29, 2004 at 9:00 a.m. the Defendant picked up Vanessa at the Plaintiff's home, in violation of the prior parenting time orders of the Court. The Defendant picked up Vanessa without the Plaintiff's knowledge or consent and did so because Vanessa asked him to follow the parenting time schedule she created and forwarded to her mother and to her father's lawyer.

- The Defendant did not return Vanessa to the Plaintiff's home on August 17, 2004 at the designated time required by previous orders of the Court. The Plaintiff called the Defendant and

requested that Vanessa be returned promptly, and the Defendant refused to do so. The Plaintiff then called the police and Officer Novak proceeded to the Defendant's home and retrieved Vanessa. The Defendant would not have returned Vanessa at the designated time without police intervention. The Defendant told Officer Novak that Vanessa was the victim of abuse by the Plaintiff in Vanessa's presence.

The attempt to de facto change the parenting time schedule was only halted in its tracks by police intervention in returning Vanessa, and by the filing of the instant Motion. The end result of this de facto attempt to change the parenting time is that the parties' two sons have suffered intense emotional anguish and distress; the parties and all of their children have been plunged into a severe emotional crisis which continues to this day. The enduring nature of the distress and trauma demonstrates beyond a reasonable doubt that the prior custodial environment has been so substantially degraded that it cannot be remediated.

CONCLUSIONS OF LAW

I

The judiciary's "'primary functions . . . are to declare what the law is and to determine the rights of parties conformably thereto.'" *Johnson v Kramer Bros Freight Lines, Inc*, 357 Mich 254, 258; 98 NW2d 586 (1959), quoting 16 CJS, Constitutional Law § 144, p 687. Accordingly, from "time immemorial" the judicial power has included the authority to ensure the orderly administration of justice and to enforce orders and judgments of the court in the face of contempt. *Nichols v Judge of Superior Court of Grand Rapids*, 130 Mich 187, 195 (1902). Indeed, the power of the courts to find parties and litigants in contempt of court

"is as ancient as the courts, and antedates *Magna Charta.*" *Id.* at 196. This is so because Michigan law has long held that the contempt power is inherent in the power judicial. See, e.g., *Langdon v Judges of Wayne Circuit Courts,* 76 Mich 358, 367; 43 NW 310 (1889) ("Courts of record in this state have inherent power to hear and determine all contempts of court which the superior courts of England had at the common law"); *In Re Chadwick,* 109 Mich 601; 671 NW 1071 (1896) quoting *Ex Parte Robinson,* 86 US 510; 22 L Ed 205; 19 Wall 505 (1873) ("'The power to punish for contempts is inherent in all courts'"); *In re Dingley,* 182 Mich 44, 50; 148 NW 218 (1914) ("The right of the court to punish as for a criminal contempt an offender is no longer an open question in this state. . . . The courts possess the power independent of the statute"); *People v Doe,* 226 Mich 19; 196 NW 757 (1924) (Fellows, J.) ("The power to punish for contempt is inherent in the court. It is a part of the judicial power. It is as firmly vested in the constitutional courts by the Constitution as is the exercise of any other judicial power. That the exercise of the judicial power and all of it cannot be taken away from constitutional courts by the Legislature is settled" [opinion of four justices, affirming by evenly split decision the trial court's exercise of the contempt power]); *In re White,* 340 Mich 140, 146; 65 NW2d 296 (1954), *rev'd on other grounds,* 349 US 133; 75 S Ct 623; 99 L Ed 942 (1955), quoting *Doe, supra* at 19; *In Re Scott,* 342 Mich 618; 71 NW2d 71 (1955); *In Re Huff,* 352 Mich 415; 91 NW2d 613 (1958) ("There is inherent power in the courts, to the full extent that it existed in the courts of England at the common law, independent of, as well as by reason of statute" [citations omitted]); *Cross Co v United Auto, Aircraft and Agr Implement Workers of America, Local 155,* 377 Mich 208 n 2; 139 NW2d 694 (1966) ("Michigan courts have inherent power to punish for contempt"); *In re Grand Jury Proceedings, No. 93, 164,* 384 Mich 24, 35; 179 NW2d 283 (1970), quoting *In re Huff, supra* at 415, 416; *In re Contempt of Dougherty,* 429 Mich 81, 92 n 14; 43 NW2d 392 (1987) ("Michigan courts have, as an inherent power, the power at common law to punish all contempts of court"); *In re Contempt of Robertson,* 209 Mich 436; 531

NW2d 763 (1986) ("Courts have inherent independent authority, as well as statutory authority, to punish a person for contempt"); *In Re Contempt of Auto Club Ins Ass'n,* 243 Mich App 708-709; 624 NW2d 443 (2000), quoting *Huff, supra* at 415; *In re Contempt of United Stationers Supply Co,* 239 Mich App 496, 499; 608 NW2d 105 (2000) ("Michigan courts of record have the inherent common-law right to punish all contempts of court" [citations omitted]); *In re Contempt of Steingold,* 244 Mich App 153, 157; 624 NW2d 504 (2000) ("Michigan courts of record have the inherent common-law right to punish all contempts of court"). In so finding, Michigan law is in accord with federal and other state jurisprudence. See, e.g., *Ex parte Robinson, supra* at 510 ("The power to punish for contempts is inherent in all courts"). Thus, "[t]his contempt power inheres in the judicial power vested in this Court, the Court of Appeals, and the circuit and probate courts by Const 1963, art 6, §1." *Doughtery, supra* at 92 n 14. "Such power, being inherent and a part of the judicial power of constitutional courts, cannot be limited or taken away by act of the legislature nor is it dependent on legislative provision for its validity or procedures to effectuate it." *Huff, supra* at 415-416. See also *Appeal of Murchison,* 340 Mich 151, 155-156; 65 NW2d 301 (1954) (finding in response to the petitioner's claim that a statute prohibited the trial court from trying the contempt case that "[t]he trial judge answered * * * [the claim] by holding that the state statute barring him from trying the contempt cases violated the Michigan Constitution on the ground that it would deprive a judge of inherent power to punish contempt. This interpretation of the Michigan Constitution in binding here"); *Grand Jury Proceedings, No 93, 164, supra* at 36, quoting *Murchison,* 349 US at 135.

A party who through act, omission, or statement, "impede[s] or disturb[s] the administration of justice," is considered in contempt of court. *Ex Parte Gilliland,* 284 Mich 604, 611; 280 NW 63 (1938), *cert den* 306 US 643; 59 S Ct 583; 83 L Ed 1042 (1939), *rehearing den* 306 US 669; 59 S Ct 641; 83 L Ed 1063 (1939). See

also *Pontiac v Grimaldi,* 153 Mich App 212, 215; 395 NW2d 47 (1986) ("Contempt of court is a willful act, omission, or statement tending to impair the authority or impede the functioning of a court"); *In re Contempt of Robertson,* 209 Mich App 433, 436; 531 NW2d 763 (1995) ("Contempt of court is a wilful act, omission, or statement that tends to impair the authority or impede the functioning of a court"); *In re Contempt of Auto Club Ins Ass'n,* 243 Mich App 697, 708; 624 NW2d 443 (2000), quoting *In re Contempt of Robertson, supra* at 436. Michigan jurisprudence has long held the contempt power "extends not only to contempt committed in the presence of the court, but also to constructive contempt arising from refusal of defendant to comply with an order of the court." *In re Huff,* 352 Mich 402, 415; 91 NW2d 613 (1958). See also *Carroll v City Commission,* 266 Mich 123, 124-125; 253 NW 240 (1934) ("There is no question but the court has inherent power to punish for contempt, whether such contempt is committed in the presence of the court, in which case the presiding judge may act summarily, or whether the contempt is constructive, arising from the refusal of the party to comply with an order of the court").

Indeed, "[a] party must obey an order entered by a court with proper jurisdiction, even if the order is clearly incorrect, or the party must face the risk of being held in contempt and possibly being ordered to comply with the order at a later date." *Kirby v Michigan High School Athletic Ass'n,* 459 Mich 23, 40; 585 NW2d 290 (1999). See also *Schoensee v Bennett,* 228 Mich App 305, 317; 577 NW2d 915 (1998). Stated another way, "an order entered by a court with proper jurisdiction must be obeyed even if the order is clearly incorrect." *Matter of Hague,* 412 Mich 532, 545; 315 NW2d 524 (1982). See also *Rose v Aaron,* 345 Mich 613, 615; 76 NW2d 829 (1956) ("Although the temporary restraining order was improperly granted, it should have been obeyed until dissolved and the court had the power to punish disobedience thereof as for contempt. Accordingly, defendant is not entitled to reversal of the order from which he appeals

[citations omitted]); *State Bar of Michigan v Cramer,* 399 Mich 116, 125-126; 249 NW2d 1 (1976); *City of Troy v Holcomb,* 362 Mich 163, 169-170; 106 NW2d 762 (1978); *Lester v Spreen,* 84 Mich App 689, 696; 270 NW2d 493 (1978) ("While acknowledging that the order was improperly entered, it must still be obeyed until vacated by appropriate judicial action"). In fact, even if a higher court has previously "held the ordinance upon which [an] injunction was based to be void, nevertheless, an order entered by the court of proper jurisdiction must be obeyed even if it is clearly incorrect." *Ann Arbor v Danish News Co,* 139 Mich App 218, 229; 361 NW2d 772 (1984). Simply put, "Unless a court lacks jurisdiction, its orders must be obeyed, and a party's reasons for defying an order are 'irrelevant' to the issue of whether sanctions for disobedience are properly imposed." *Liberty Property Ltd v City of Southfield,* unpublished Opinion of the Michigan Court of Appeals, 2002 WL 1340890, decided June 18, 2002, quoting *Matter of Hague, supra* at 544. "The reasons for this principle were set forth by the United States Supreme Court in *Walker v City of Birmingham,* 388 US 307, 320-321; 87 S Ct 1824; 18 L Ed 1210 (1967), upholding convictions for criminal contempt of civil rights marchers who were in violation of an injunction: '(I)n the fair administration of justice no man can be judge in his own case, however exalted his station, however righteous his motives * * *. [R]espect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom'." *Cramer, supra* at 125-126. In short, the rule of law requires that the determination of the validity of a court's order "is one to be made by the courts, not by the parties." *Lester, supra* at 696. The Michigan Court of Appeals, recently explained these principles of law when affirming the trial court's finding of criminal contempt against a defendant who wore a shirt in defiance of the trial court's order, even though the Court of Appeals found that the trial court's order barring the shirt was in error:

> Therefore, despite our conclusion that the statement on appellant's shirt did not constitute an imminent threat to the administration of justice and was constitutionally protected speech, appellant's willful violation of the trial court's order, regardless of its legal correctness, warranted the trial court's finding of criminal contempt. Civil disobedience is not the appropriate course of action when a person disagrees with a court order. We are a society of laws and the legal remedy available to appellant was to seek leave to appeal the trial court's order precluding him from wearing his shirt. Appellant elected not to pursue his legal remedy, and instead elected to willfully disobey a valid albeit erroneous court order. A person may not disregard a court order simply on the basis of his subjective view that the order is wrong or will be declared invalid on appeal. Allowing such behavior would encourage noncompliance with valid court orders on the basis of misguided subjective views that the orders are wrong. There exists no place in our justice system for self-help. [*In re Contempt of Dudzinski*, 257 Mich App 96, 111-112; 667 NW2d 68 (2003) (footnotes omitted)].

Accordingly, the proper recourse for a party in light of an order the party believes is erroneous is to file an appeal or to move to change the order, not to disregard the order of the court. *Cramer, supra* at 125, quoting Kuhns, *Limiting The Criminal Contempt Power: New Roles For The Prosecutor And The Grand Jury*, 73 Mich L Rev 484, 504 (1975), citing *Howat v Kansas,* 258 US 181, 189-190; 42 S Ct 277; 66 L Ed 550 (1922); *Worden v Searls,* 121 US 14; 7 S Ct 814; 30 L Ed 853 (1887).

Moreover, attempts to circumvent orders through indirect subterfuge also constitute contempt. See, e.g., *Glover v Malloska,* 242 Mich 34, 36; 217 NW 896 (1928) ("In substance and legal effect [the business practice in question] is the same scheme the continuance of which was forbidden. At best it is a mere subterfuge. It is contempt to employ a subterfuge to evade the decree of the court"); *Craig v Kelley,* 311 Mich 167, 178; 18 NW 2d 413 (1945) ("The temporary restraining order enjoined Louise Lathrup Kelley, her agents, employees and

servants, from taking any action or permitting any action or proceeding to be taken whatsoever toward the erection of any residential building costing less than $7,500. Louise Lathrup Kelley and her husband, Charles D. Kelley, deliberately proceeded to cause the erection of residential buildings to cost not to exceed $6,000. This was done by subterfuge, which is as much a contempt of court as though done by more direct action"); *ARA Chuckwagon of Detroit v Lobert,* 69 Mich App 151, 159; 244 NW2d 393 (1976) ("Case law has also stressed that nonsignatories to a restrictive agreement who act and conspire with a signatory to cause its violation are equally liable to restraint orders and to contempt proceedings").

Criminal contempt is appropriate to punish a contemnor for violating the orders of the court that cannot be remedied. *Sword v Sword,* 399 Mich 367, 380-381; 249 NW2d 88 (1976), *rev'd on other grounds, Mead v Batchlor,* 435 Mich 480; 460 NW2d 493 (1990), quoting *Knight, supra; Jaikins v Jaikins,* 12 Mich App 115, 120, 121; 162 NW2d 325 (1968) ("Essentially, the difference between civil and criminal contempt is that the former seeks to change respondent's conduct by threatening him with a penalty if he does not change it, while the latter seeks to punish him for past misdoings which affront the dignity of the court. Criminal contempt being for past misconduct, there is no way for one so convicted to purge himself of the contempt"; "[w]here the contemnor's conduct of noncompliance with the court order has altered the status quo so that it cannot be restored or the relief intended becomes impossible, there is criminal contempt; however, where the contemnor's conduct of noncompliance with the court order is such that the status quo can be restored and it is still possible to grant the relief originally sought, there is civil contempt"); *People v Goodman,* 17 Mich App 175, 177-178; 169 NW2d 120 (1969) ("When it appears the defendants conditionally carry the 'keys of their prison in their own pocket' then the action is essentially civil. If, in other words, the intent of the sentence can be said to be a coercive influence on the

future behavior of the defendant in order to secure compliance with a judicial decree, then the sentencing is a part of a civil proceeding. However, where the future behavior of the defendants can be said to have no influence over the use of the keys, such use already having been decreed and controlled by the court, then the sentence is one of punishment for behavior already committed in violation of the decree, and the contempt action, being unconditional as to result, is criminal" [footnote omitted]); *Fraternal Order of Police Lodge 98 v Kalamazoo County,* 82 Mich App 312, 317-318; 266 NW2d 805 (1978), quoting *Jaikins, supra* at 120; *In re Contempt of Rochlin,* 186 Mich App 639; 465 NW2d 388 (1990) ("the purpose of imprisoning a civil contemnor is coercion, while the purpose of imprisoning a criminal contemnor is punishment"). Generally, in Michigan "there are three sanctions which may be available to a court to remedy or redress contemptuous behavior: (1) criminal punishment to vindicate the court's authority; (2) coercion, to force compliance with the order; and (3) compensatory relief to the complainant." *In Re Contempt of Doughtery,* 429 Mich 99; 413 NW2d 292 (1987). See also *In Re Contempt of United Stationers Supply Co,* 239 Mich App 499; 608 NW2d 105 (2000) (same); *In re contempt of Rochlin,* 186 Mich App 639, 647; 465 NW2d 388 (1990) (same); *In Re Contempt of Auto Club Ins Ass'n,* 243 Mich App 708; 624 NW2d 443 (2000) ("The power to hold a party, attorney, or other person in contempt is the ultimate sanction the trial court has within its arsenal, allowing it to punish past transgressions, compel future adherence to the rules of engagement, i.e., the court rules and court orders, or compensate the complainant" [footnote and citation omitted]).

II

In the instant case, as described *supra,* the Court finds beyond a reasonable doubt that the Defendant violated the material terms of the (1) parenting time orders of the Court by seeking and acting to create a de facto change in custody

and parenting time with Vanessa, and (2) the Judgment of Divorce by discussing allegations of abuse to Officer Novak in Vanessa's presence.[4] If the Defendant desired to change the custodial environment or parenting time regarding his children, he should have filed the appropriate motion. Instead, as detailed extensively *supra,* he attempted to create a de facto change. The Defendant's efforts were only halted because Officer Novak intervened and returned Vanessa to the Plaintiff, and because the Plaintiff filed the instant Motion.

As a result of the Defendant's blatant violations of this Court's orders, the parties' two sons have suffered intense emotional anguish and distress, and the parties as well as their children have been plunged into a severe emotional crisis. This damage so altered the custodial environment of the Plaintiff that the status quo cannot be returned, and make-up parenting time alone cannot remedy the situation.[5] Moreover, the independent prosecutor has sought to punish the Defendant for violating this Court's orders, and under the circumstances, the Defendant's violations of the Court's orders have impaired the effective administration of justice and are an affront to the dignity of the Court. In addition, the Defendant has been afforded all of the procedural protections attendant to a criminal misdemeanor trial. Accordingly, the Defendant is appropriately found in criminal contempt of court.

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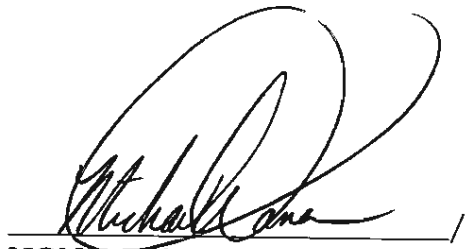
[4] Although the Defendant has argued that some of the behavior attributable to him should be attributed to Vanessa, at best this is mere subterfuge that still constitutes contempt. See, e.g., *Glover, supra* at 36; *Craig, supra* at 178.

[5] This is not a garden variety parenting time dispute where one parent returns a child a few hours late or attempts to extend a vacation for an extra day or two. To the contrary, this was an effort to impose a de facto change in custody and parenting time that caused serious and long-lasting

ORDER

In light of the foregoing Opinion, the Court FINDS the Defendant GUILTY of one count of CRIMINAL CONTEMPT. The parties shall appear on December 23, 2004 at 8:30 a.m. for sentencing.

It is further ordered that neither party shall disclose or cause to be disclosed the content of any portion of this Opinion and Order to any of the parties' three children.



HON. MICHAEL WARREN
CIRCUIT COURT JUDGE

negative affects on the children. In any event, the Defendant did not argue that criminal contempt could not apply to this matter.