STATE OF INDIANA
COURT OF APPEALS

LEAH MURRAY Appellant(s), v. CALEB MURRAY Appellee(s).	Cause No. 20A-DN-01728

CERTIFICATION

STATE OF INDIANA)
) SS:
Court of Appeals)

I, Gregory R. Pachmayr, Clerk of the Supreme Court, Court of Appeals and Tax Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the Opinion of said Court in the above entitled case.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of THE CLERK of said Court, at the City of Indianapolis, this on this the 2nd day of July, 2021.

Gregory R. Pachmayr,
Clerk of the Supreme Court

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

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IN THE
COURT OF APPEALS OF INDIANA

Leah Murray,

Appellant-Petitioner,

v.

Caleb Murray,

Appellee-Respondent.

May 7, 2021

Court of Appeals Case No. 20A-DN-1728

Appeal from the Marion Superior Court

The Honorable James B. Osborn, Judge

The Honorable Marshelle Broadwell, Magistrate

Trial Court Cause No. 49D14-1810-DN-39697

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Petitioner, Leah Murray (Mother), appeals the trial court's Order holding her in contempt and granting make-up parenting time in favor of Appellee-Respondent, Caleb Murray (Father).

[2] We affirm.

ISSUES

[3] Mother presents this court with two issues, which we restate as:

(1) Whether Mother's due process rights were violated when her withholding of parenting time on dates not specifically enumerated in Father's show-cause motion were addressed at trial; and

(2) Whether the trial court abused its discretion when it ordered that Father would have the 2021 birthday and 100 hours of make-up parenting time with the parties' minor son, O.M. (Child).

FACTS AND PROCEDURAL HISTORY

[4] On December 14, 2016, Mother and Father wed. On October 3, 2018, Mother, who was pregnant at the time, filed for dissolution. On March 20, 2019, Child was born to the parties. After Child's birth, Father had no significant contact with him. On July 19, 2019, the trial court entered a decree of dissolution which incorporated the parties' Settlement Agreement, according to which Mother would have primary physical custody. Father was to exercise parenting time according to the Indiana Parenting Time Guidelines (IPTG) except that

> [f]or the first three weeks, Father's parenting time shall be exercised at [Mother's] residence, and [Mother] shall not be present during this time. Father's stepmother or mother may be present during this parenting time. For the second three weeks, Father's parenting time may be exercised at his home or at mother's or stepmother's home, and either his mother or stepmother shall be present. Thereafter, the parties shall follow age appropriate IPTG.

(Appellant's App. Vol. II, pp. 12-13). The parties were to communicate on the Our Family Wizard application to facilitate parenting time.

[5] The parties' subsequent exercise of parenting time was problematic. Father's employment demanded many hours and, at times, precluded him from exercising parenting time. Even so, Father did not schedule the full number of hours of parenting time when he was available. At first, the parties could not successfully schedule parenting time through Our Family Wizard. Father would arrive at Mother's home for parenting time at the hour he believed it was scheduled, only to be told by Mother that he was an hour late. Mother would then refuse to allow Father to spend the remainder of the time scheduled with Child. In addition, Mother and Father disagreed about the interpretation of the Settlement Agreement's phased-in parenting time schedule. Mother thought that Father would only graduate to unrestricted, age-appropriate parenting time after successfully exercising six-weeks-worth of parenting time, while Father believed the restrictions elapsed after the passage of six calendar weeks, regardless of the amount of parenting time he exercised. Mother also believed

that Father was required to have one of the paternal grandmothers with him when he arrived to transport Child. As a result, after Father had completed what Mother believed was three-weeks-worth of parenting time in her home, when Father arrived to pick up Child to transport him for a visit without a paternal grandmother, Mother would refuse to allow Father to take Child. Mother would offer to drive with Father so that he would be able to exercise parenting time, but Father refused. Later, when Child's age allowed for ten hours of parenting time, Mother would insist that Child, an infant, must attend church with her on Sunday morning. Sunday was the only day Father could spend ten continuous hours with Child, and he refused to accommodate Mother. As a result, no Sunday parenting time was scheduled. Because of these issues, Father only exercised a fraction of his allotted parenting time.

[6] On January 14, 2020, Father filed a verified motion for rule to show cause (Show Cause Motion) seeking to have Mother held in contempt for withholding parenting time. The Show Cause Motion alleged in relevant part that

> 4. Since the entry of the Settlement Agreement, Mother has continuously and systematically interfered with Father's parenting time.
>
> 5. The "first three weeks" to which the Settlement Agreement refers would have elapsed on August 9, 2019. The "second three weeks" would have been completed by August 30, 2019.
>
> 6. Mother is still not allowing Father to exercise his parenting time with [C]hild, despite that nearly 26 weeks (that is, 20 additional weeks after the "first three weeks" and "second three

> weeks" referred to in the Settlement Agreement) have elapsed since the entry of the Settlement Agreement.
>
> * * * *
>
> 8. Mother has unilaterally, without authority from the [c]ourt or anyone else, and in blatant violation of the Settlement Agreement, withheld Father's parenting time on at least the following occasions: December 8, 2019; December 14, 2019; December 15, 2019; December 20, 2019; December 22, 2019; December 25, 2019; December 28, 2019; January 1, 2020; and January 5, 2020.

(Appellant's App. Vol. II, p. 54). Father sought make-up time with Child for "each and every parenting time visit he has been prevented from exercising." (Appellant's App. Vol. II, p. 55). The trial court initially set the Show Cause Motion for a hearing on March 3, 2020, but the hearing was continued.

[7] On March 30, 2020, Father filed a motion for an attorneys-only conference so that the parties could receive guidance on the exercise of parenting time until the Show Cause Motion could be heard. In his motion for the attorneys-only conference, Father averred that "Mother has withheld and interfered with Father's parenting time for more than four months. Father has not been permitted any parenting time with [C]hild since November of 2019." (Appellant's App. Vol. II, p. 59). Father also averred that Mother had deprived him of celebrating Child's first birthday on March 20, 2020. On April 14, 2020, the trial court held the requested attorneys-only telephonic conference, after which it issued an order directing the parties to exercise three sessions of phase-

in parenting time at Father's home while Father's mother or step-mother was present and that, after those three sessions were successfully completed, Father was to exercise unrestricted parenting time in accordance with the IPTG. Father completed the three sessions as required.

[8] On June 9, 2020, the trial court convened the first of two hearings on Father's Show Cause Motion. At the beginning of the hearing, Mother objected to Father introducing evidence of her withholding parenting time on any dates except the nine dates in December 2019 and January 2020 that he had specifically listed in the Show Cause Motion because, Mother argued, she had no prior notice that any other dates would be at issue at the hearing. Father countered that he had alleged a continuous pattern by Mother of withholding parenting time. Father also represented to the trial court, and Mother did not dispute, that his counsel had provided Father's trial exhibits to Mother's counsel on June 3, 2020, which included a calendar showing the thirty-eight specific dates between July 19, 2019, and June 6, 2020, that Father alleged Mother had withheld parenting time. The trial court overruled Mother's objection, finding that Mother had adequate notice of Father's allegations and an opportunity to prepare. Father testified in support of his motion and was cross-examined on each of the dates he alleged Mother had withheld parenting time. Father requested 376 regular parenting time hours, twenty-two holiday hours, and eight hours of special-day make-up parenting time which comprised time he missed because of his work as well as hours he alleged Mother had withheld from him. Mother did not testify at the June 9, 2020, hearing.

[9] On August 4, 2020, the trial court convened the second portion of the hearing on the Show Cause Motion. Mother denied Father's allegations and testified about each of the dates Father argued that she had withheld parenting time. Mother admitted into evidence her personal calendar that she had kept contemporaneously since the entry of the Settlement Agreement which reflected her understanding of what had occurred on each of the dates in question, and she introduced Our Family Wizard messages between the parties to corroborate her testimony.

[10] On September 8, 2020, the trial court issued its Order in which it found both parties at fault for Father's inconsistent and inadequate exercise of parenting time after the entry of the Settlement Agreement. More specifically, the trial court faulted both parents for their failure at respectful communication, Father for "deciding he would rather engage in a power struggle with Mother," and Mother for her "rigidity." (Appellant's App. Vol. II, p. 17). The trial court entered the following relevant findings of fact and conclusions thereon:

> 34. The [c]ourt finds Mother in contempt regarding Child's birthday, and post-April 24, 2020 delays regarding parenting time.
>
> 35. [] Father has missed an enormous amount of parenting time with Child; however, the Parties share blame for the majority of this missed time due to their narrow, self-serving interpretations of the [Settlement Agreement]. It is not in Child's best interest to attempt to make-up all Father's lost time, nor would it be practical to do so. It is appropriate, however, that some make-up time be ordered, particularly in light of the relatively small

> amount of time non-custodial parents are afforded with their children by the IPTG prior to 36 months of age.

(Appellant's App. Vol. II, p. 20). The trial court granted Father 100 regular hours and Child's 2021 birthday as make-up parenting time.

[11] Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Contempt*

A. *Standard of Review*

[12] Mother challenges the trial court's contempt finding. Indirect contempt involves acts committed outside the presence of the court which "tend to interrupt, obstruct, embarrass or prevent the due administration of justice." *In re A.S.*, 9 N.E.3d 129, 132 (Ind. 2014). Because it is soundly within the trial court's discretion to determine whether a party is in contempt, we review a trial court's contempt finding for an abuse of its discretion. *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016). We will reverse a trial court's finding of contempt only if there is no evidence or inferences to support it. *Id*.

B. *Due Process*

[13] Mother argues that the trial court violated her right to due process when it allowed Father to address instances of her withholding of parenting time apart from those he specifically alleged in his Show Cause Motion. As a result, Mother contends that the trial court's contempt finding was an abuse of its discretion. As a general matter, due process guarantees apply to contempt

proceedings. *Ind. Diamond, LLC v. City of Indianapolis*, 132 N.E.3d 417, 426 (Ind. Ct. App. 2019). "Indirect contempt proceedings require an array of due process protections, including notice and the opportunity to be heard." *Henderson v. Henderson*, 919 N.E.2d 1207, 1210 (Ind. Ct. App. 2010). The due process and procedural protections applicable to indirect contempt proceedings have been codified at Indiana Code section 34-47-3-5, which provides, in relevant part:

> (a) In all cases of indirect contempt, the person charged with indirect contempt is entitled:
>
> (1) before answering the charge; or
>
> (2) being punished for the contempt; to be served with a rule of the court against which the contempt was alleged to have been committed.
>
> (b) The rule to show cause must:
>
> (2) specify the time and place of the facts with reasonable certainty, as to inform the defendant of the nature and circumstances of the charge against the defendant; and
>
> (3) specify a time and place at which the defendant is required to show cause, in the court, why the defendant should not be attached and punished for such contempt.

"Generally, a court's authority to find a person in contempt rests on whether a trial court has strictly complied with the statutory requirements set forth in the rule to show cause statute." *Reynolds v. Reynolds*, 64 N.E.3d 829, 833 (Ind. 2016). However, our courts have found that strict compliance with the show-cause statute may be excused if "'it is clear the alleged contemnor nevertheless had clear notice of the accusations against him or her . . .'" *Id.* (quoting *In re*

Paternity of J.T.I., 875 N.E.2d 447, 451 (Ind. Ct. App. 2007), and citing *Lasater v. Lasater*, 809 N.E.2d 380, 386 (Ind. Ct. App. 2004); *In re Contempt of Wabash Valley Hosp., Inc.*, 827 N.E.2d 50, 63-64 (Ind. Ct. App. 2005)).

[14] Here, Father alleged in his Show Cause Motion that Mother had "continuously and systematically" withheld his parenting time on "at least" the nine dates in December 2019 and January 2020 that he listed in the Motion. (Appellant's App. Vol. II, p. 54). In his March 30, 2020, motion for an attorneys-only conference, Father alleged that Mother had withheld parenting time "for more than four months. Father has not been permitted any parenting time with [C]hild since November of 2019." (Appellant's App. Vol. II, p. 59). On June 3, 2020, Father's counsel provided Father's trial exhibits to Mother's counsel which included a calendar outlining which dates, including dates not listed in the Show Cause Motion, that he alleged were withheld. The first part of the show-cause hearing took place on June 9, 2020, six days after Mother was provided with Father's trial exhibits, and Mother did not present her case until the second part of the hearing which took place on August 4, 2020. Because Father alleged a continuous pattern of conduct in his Motion, Mother was put on notice as early as March 30, 2020, that Father intended to address conduct spanning from November of 2019 until March 2020, Mother was provided with Father's trial exhibits almost one week before the commencement of the hearing and one month before she was required to address the allegations, we are satisfied that Mother had ample notice of the specific allegations brought by Father and had an opportunity to be heard.

[15] We find Mother's reliance on *Showalter v. Brubaker*, 650 N.E.2d 693 (Ind. Ct. App. 1995), to be misplaced. Contrary to Mother's assertions, *Showalter* does not present "a nearly identical factual scenario to this present matter[.]" (Appellant's Br. p. 16). In *Showalter*, this court reversed the trial court's contempt finding because Wife first received notice at the dissolution hearing that she would be required to defend against twenty-seven additional allegations by Husband of withholding parenting time occurring after the two dates that he listed in his contempt motion, and there was only one evidentiary hearing held in the matter. *Id*. at 701. Here, Father alleged a continuous pattern of conduct, not two discrete incidents, and Mother received notice of the additional dates alleged by Father over one month before she presented her defense. Mother does not address the timing of Father's provision of his trial exhibits, let alone explain how she was not put on notice or was prejudiced thereby. Accordingly, we conclude that Mother's due process protections were preserved in this case.

II. *Make-up Parenting Time*

[16] Mother next challenges the trial court's grant of 100 hours and Child's 2021 birthday as make-up parenting time to Father. As a general matter, when we review a trial court's determination of parenting time, we accord latitude and deference to the trial court and will reverse only for an abuse of discretion. *In re I.E.*, 997 N.E.2d 358, 366 (Ind. Ct. App. 2014), *trans. denied*. Such an abuse of discretion occurs only where the decision is clearly against the logic and effect of the facts and circumstances before the trial court. *Id*. "No abuse of

discretion will be found if there is a rational basis for the trial court's determination." *Id*.

[17] Mother's argument on this issue is essentially that, since the trial court only found her in contempt for Child's 2020 birthday and post-April 24, 2020, delays in parenting time which amounted to the loss of no more than twenty hours of parenting time by Father, there was no rational basis for the trial court's grant of more than 100 hours of make-up parenting time. However, this court has recognized that a trial court may order make-up parenting time when it finds that both parties have violated court orders even if it does not find either parent in contempt. *See In re Paternity of A.S.*, 948 N.E.2d 380, 389 (Ind. Ct. 2011) (remanding for computation of make-up parenting time where Mother had withheld parenting time and Father had recorded conversations in violation of the trial court's orders, even though trial court had declined to hold either in contempt). Put another way, it was not necessary for the trial court to find Mother in contempt for it to grant Father make-up parenting time.

[18] Here, the evidence showed that from July 19, 2019, when the Settlement Agreement was entered, until the June 9, 2020, Show Cause Motion hearing, Father only exercised parenting time on approximately twenty-seven occasions. This was due to a combination of Father's demanding work schedule, Mother's inflexibility, and Father's power struggles with Mother. The fact that the trial court found that both parties were at fault did not change the result: Child was deprived of significant parenting time with Father. Father computed his lost time at more than 400 hours. The trial court found that, at Child's age, making

up all the time lost was unrealistic and granted only 100 hours and Child's 2021 birthday as make-up time. We conclude, therefore, that there was a rational basis for the trial court's grant of make-up parenting time and that no abuse of the trial court's discretion occurred.

CONCLUSION

[19] Based on the foregoing, we conclude that Mother's due process rights were preserved and that the trial court did not abuse its discretion when it granted Father make-up parenting time.

[20] Affirmed.

[21] Mathias, J. and Crone, J. concur