

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CU 2119

LANDRIS TAYLOR

VERSUS

LATOYA DORSEY

*RHS
JEW
by RHS
WFK*

**On Appeal from the Family Court
Parish of East Baton Rouge, Louisiana
Docket No. 144,460, Division B
Honorable Lisa Woodruff-White, Judge Presiding**

**Veronica "Vicky" Jones
Baton Rouge, LA**

**Attorney for
Plaintiff-Appellee
Landris Taylor**

**Miracle D. Myles
Baton Rouge, LA**

**Attorney for
Defendant-Appellant
Latoya Dorsey**

BEFORE: PARRO, WELCH, AND KLINE,¹ JJ.

Judgment rendered AUG 09 2013

¹ Judge William F. Kline, Jr., retired, is serving as judge ad hoc by special appointment of the Louisiana Supreme Court.

PARRO, J.

The defendant appeals a judgment of the family court, which found her in constructive contempt of court for failure to comply with an earlier judgment of the court. For the following reasons, we affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Landris Taylor and Latoya Dorsey are the parents of a minor child, D.N.T., who was born on November 20, 1998. By stipulated judgment rendered on August 20, 2002, and signed on October 18, 2002, the parents were granted the joint custody of D.N.T., with Ms. Dorsey designated as the domiciliary parent. Pursuant to the judgment, Mr. Taylor was entitled to visitation with D.N.T. on every other weekend and at specific times on holidays and other specified days. In addition, by separate judgment purportedly rendered by the juvenile court on October 31, 2002, Mr. Taylor was further granted the right to claim the federal income tax deduction for the minor child in odd-numbered years, beginning in 2003.

On February 3, 2012, Mr. Taylor filed a rule to show cause and rule for contempt, seeking to hold Ms. Dorsey in contempt of court for her alleged failure to comply with the judgments signed on October 18, 2002, and October 31, 2002.² Specifically, Mr. Taylor alleged that Ms. Dorsey had failed to allow him to visit with D.N.T. as required by the judgment and that he had not been allowed to claim the federal income tax deduction for the minor child in odd-numbered years as ordered.

After a hearing on this matter, the family court found Ms. Dorsey in contempt of court for failing to allow Mr. Taylor to claim the federal income tax deduction for the minor child in odd-numbered years. The family court further

² In addition to seeking to have Ms. Dorsey held in contempt of court, Mr. Taylor also requested that the parties be granted joint custody of D.N.T. and that he be designated the domiciliary parent. In the alternative, Mr. Taylor requested that the parties be awarded joint custody of D.N.T., with no designation of a domiciliary parent, subject to the 50/50 sharing of actual physical custody. Finally, Mr. Taylor sought an order prohibiting Ms. Dorsey from having overnight guests of the opposite sex with whom she has a romantic relationship while the child was present. Mr. Taylor ultimately decided to pass these issues without date; therefore, the only issue before this court involves the issue of contempt.

found Ms. Dorsey in contempt of court for failing to allow Mr. Taylor to exercise visitation with D.N.T. as ordered in the judgment signed on October 18, 2002. The family court further ordered that Mr. Taylor would be granted a thirty-day period of time in which he could make up some of the time he had lost with D.N.T. In addition, Ms. Dorsey was ordered to pay court costs in conjunction with the filing of the rule, as well as attorney fees of \$700.³ Finally, a review date was set for sixty days later to determine whether Ms. Dorsey had purged herself of the contempt.⁴ A judgment in accordance with this oral ruling was signed on May 29, 2012.⁵ It is from this judgment that Ms. Dorsey has appealed.⁶

DISCUSSION

On appeal, Ms. Dorsey contends that the family court erred and abused its discretion in holding her in constructive contempt of court, because the rule for contempt failed to state the facts alleged to constitute the contempt, as required by LSA-C.C.P. art. 225, which provides, in pertinent part:

A. Except as otherwise provided by law, a person charged with committing a constructive contempt of court may be found guilty thereof and punished therefor only after the trial by the judge of a rule against him to show cause why he should not be adjudged guilty of contempt and punished accordingly. The rule to show cause may issue on the court's own motion or on motion of a party

³ An interlocutory judgment is appealable only when expressly provided for by law. LSA-C.C.P. art. 2083(C). This court is unaware of any statutory or codal provision authorizing the immediate appeal of a judgment of contempt; however, by ordering Ms. Dorsey to pay attorney fees in this matter, the family court judgment has imposed a sanction. Therefore, the judgment is final and appealable in accordance with LSA-C.C.P. art. 1915(A)(6).

⁴ This hearing was postponed, pending the resolution of this court's ruling on this appeal.

⁵ The judgment at issue was rendered by Judge Luke A. LaVergne, who was serving as an ad hoc judge of the Family Court for the Parish of East Baton Rouge at the time of the hearing. However, the written judgment was signed by Judge Lisa Woodruff-White, a duly-elected judge of the Family Court for the Parish of East Baton Rouge.

⁶ We note that the October 31, 2002 judgment is not in the record and forms no part of this appeal. The parties judicially confessed in the pleadings in this matter that this judgment, which granted Mr. Taylor the right to claim this deduction in odd-numbered years, was rendered by the juvenile court, rather than the family court. While the family court does not have subject matter jurisdiction to find Ms. Dorsey in contempt for the violation of a juvenile court judgment, this does not affect the outcome of this matter, as the family court did find Ms. Dorsey in contempt of its own judgment concerning visitation. Furthermore, the punishment imposed on Ms. Dorsey by the family court applied only to the contempt of the judgment on the visitation issue.

to the action or proceeding and shall state the facts alleged to constitute the contempt.

According to Ms. Dorsey, the rule for contempt in this case did not comply with the requirements of LSA-C.C.P. art. 225, as it pertained to the allegation that Ms. Dorsey failed to allow Mr. Taylor to exercise visitation with D.N.T., because it only made statements of ultimate fact. Ms. Dorsey contends that the rule for contempt did not state any evidentiary facts, such as the dates on which Mr. Taylor was allegedly prevented from exercising his visitation. According to Ms. Dorsey, this information was necessary so that she could properly prepare a defense against the allegation of contempt, particularly since the judgment she is alleged to have violated had been in effect for almost ten years at the time that the rule for contempt was filed.

In support of these contentions, Ms. Dorsey relies on Louisiana State Bd. of Medical Examiners v. England, 252 La. 1000, 215 So.2d 640 (1968). In that case, Jerry England had failed to obtain a certificate or license to practice medicine. Therefore, the Louisiana State Board of Medical Examiners (Board) filed a petition for an injunction to prohibit England from practicing medicine. The trial court found that England was holding himself out to the public as a chiropractor and that the work he was doing constituted the practice of medicine; therefore, the trial court issued a permanent injunction, which prohibited England from engaging in chiropractic or the practice of medicine. England, 215 So.2d at 640-41.

Thereafter, the Board filed a rule for contempt against England, alleging simply that he had "failed to comply with the permanent injunction." England was ordered to show cause why he should not be adjudged guilty of contempt. In response, England filed a peremptory exception pleading the objections of no cause of action and no right of action.⁷ Specifically, England contended that "nowhere in any of the papers served on him is it stated as to what he is

⁷ England also made certain objections to service.

alleged to be in contempt for.” England, 215 So.2d at 641. The trial court overruled the exception of no cause of action and, after a trial on the rule, found England guilty of contempt.⁸ The supreme court ultimately granted supervisory writs after the court of appeal refused to do so. England, 215 So.2d at 641.

In England, the supreme court noted that LSA-C.C.P. art. 225 requires that the rule to show cause “shall state the facts alleged to constitute the contempt.” The supreme court further noted that this requirement is intended to clearly and fairly apprise the person charged with contempt of the nature and cause of the accusation against him. In addition, there should be sufficient particularity in the charge to enable the person charged to properly make his defense. According to the supreme court, the allegation that England “failed to comply with the permanent injunction” was nothing more than a conclusion of the pleader based upon no evidentiary facts, and it was not the type of well-pleaded fact that would serve to set out a cause of action. England, 215 So.2d at 642. Accordingly, the supreme court annulled the judgment finding England guilty of contempt and remanded the matter to the district court to allow the Board an opportunity to amend its rule for contempt. England, 215 So.2d at 642-43.

Ms. Dorsey contends that, like the rule for contempt in England, the rule in this case is lacking in sufficient evidentiary facts, such as the times, dates, or places in which she allegedly prevented Mr. Taylor from exercising his right to visit with D.N.T. Ms. Dorsey suggests that she was unable to properly defend herself at trial without these details. However, a review of the rule for contempt does not support her position.

In the matter before this court, the rule for contempt alleged:

⁸ The trial court sentenced England to pay of fine of \$500 or, in lieu thereof, to serve 30 days in jail. In addition, England was sentenced to serve six months in jail; however, this sentence was suspended, with England being placed on probation for five years, subject to the condition that he not practice chiropractic in the state of Louisiana.

8.

By ***Stipulated Judgment*** rendered by this Honorable Court on August [20], 2002, the Court ordered the parties to have visitation with the minor child on alternate weekends each month from Friday at 5:00 p.m. to Sunday at 5:00 p.m., beginning Friday, the [sic] August 30, 2002. The Court also ordered that for all holidays and the child's birthday, Mover, **LANDRIS TAYLOR**[,] was to visit with the minor child from 4:00 p.m. to 9:00 p.m., and for Father's Day and the Father's birthday, **LANDRIS TAYLOR** will visit with the minor child the entire day, and the time was to be arranged by the parties.

9.

Respondent has not allowed Mover to visit with the minor child on any holiday or weekend as ordered.

10.

Respondent is guilty of willful disobedience of the lawful judgment of this Honorable Court rendered on August [20], 2002[,] in that she has failed to allow Mover to visit with the minor child as ordered. Thus, Respondent should be held in contempt of court and punished accordingly.

While it is true that the rule for contempt does not allege the particular dates on which Mr. Taylor was deprived of his right to visit with D.N.T., it does specifically set forth the dates and times on which Mr. Taylor was supposed to enjoy visitation with his child pursuant to the October 18, 2002 judgment of the family court. The rule for contempt then alleges that Ms. Dorsey had not allowed Mr. Taylor to visit with D.N.T. on any of those dates. Unlike the rule for contempt in England, which simply alleged that England had "failed to comply with the permanent injunction," the allegations of the rule for contempt in this case provide a specific context within which it can be determined exactly what Ms. Dorsey has allegedly done, or failed to do, in violation of the terms of the family court's judgment.

Therefore, we find that these allegations were sufficient to clearly and fairly apprise Ms. Dorsey of the nature and cause of the accusation against her. Furthermore, we find there is sufficient particularity in the charge of contempt

such that Ms. Dorsey was able to properly make her defense.⁹ Accordingly, after a thorough review of the record, we find no manifest error and no abuse of discretion on the part of the family court in this matter. We further find no error of law.

DECREE

For the foregoing reasons, we affirm the judgment of the family court.

All costs of this appeal are assessed to Latoya Dorsey.

AFFIRMED.

⁹ We note that Ms. Dorsey raised no objection to the pleadings in the family court, either prior to, or during, trial of the rule for contempt. We also note that the testimony at trial indicated that the parties had stopped complying with the visitation schedule in the family court judgment many years ago and that Mr. Taylor had apparently been unable to exercise visitation with D.N.T. for several years.