

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CU 2158

TELICIA ANN CATALANOTTO

VERSUS

MICAH DUSTIN CATALANOTTO

 Judgment Rendered: APR 30 2010

APPEALED FROM THE
TWENTY-FIRST JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF TANGIPAHOA
STATE OF LOUISIANA
DOCKET NUMBER 2007-002891

THE HONORABLE ZORRAINE M. WAGUESPACK, JUDGE

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BEFORE: PARRO, KUHN, AND McDONALD, JJ.

Parro, J., concurs.

McDONALD, J.

This is an appeal of a child custody judgment. Micah Dustin Catalanotto and Telicia Ann Catalanotto were married on November 16, 2002. They had one child, Jayde Madyson Catalanotto, born January 19, 2007. The Catalanottos were divorced on October 27, 2008.

On November 21, 2009, a stipulated judgment was signed and granted sole custody of Jayde to Ms. Catalanotto and supervised visitation to Mr. Catalanotto every other Saturday, supervised by Mr. Catalanotto's mother.¹ Ms. Catalanotto was ordered to drop Jayde off on her way to work on every other Saturday and pick her up after work.

On February 9, 2009, Mr. Catalanotto filed a rule for contempt of court, asserting that Ms. Catalanotto had failed to deliver Jayde for visitation after November 2008. He also requested attorney fees and costs, and asked that his visitation be made unsupervised and that it be increased to include every other weekend, alternating holidays, and extended time in the summer.

On March 27, 2009, Ms. Catalanotto filed a peremptory exception raising the objection of no cause of action asserting that Mr. Catalanotto had no cause of action, because he had failed to allege a material change in circumstances that would justify a change in the stipulated custody plan. She further asserted that a change in visitation would not be in the best interest of Jayde. She also filed a motion for contempt, asking that Mr. Catalanotto be found in contempt of court for failure to pay several months of child support and for continually intimidating and

¹ In an earlier stipulated judgment the parties were awarded joint custody, with Ms. Catalanotto designated as the domiciliary parent and liberal physical custody given to Mr. Catalanotto. However, after that judgment was signed, Mr. Catalanotto was arrested twice: once for breaking and entering, which led to a plea of guilty to possession of stolen things, and once for reckless operation of a vehicle. Ms. Catalanotto thereafter filed a motion to modify custody due to a material change in circumstances, and later stipulated judgments awarded sole custody to Ms. Catalanotto with supervised visitation to Mr. Catalanotto every other Saturday. At the time of the hearing on the rulings at issue, Mr. Catalanotto testified he had been arrested for aggravated assault and charges were pending against him.

harassing Ms. Catalanotto. She prayed for costs and attorney fees for her contempt motion.

After a hearing on the motion for modification of visitation, the district court judge signed a judgment on July 1, 2009, continuing sole custody of Jayde with Ms. Catalanotto, and continuing supervised visitation for Mr. Catalanotto every other Saturday, supervised by Mr. Catalanotto's mother. Ms. Catalanotto was ordered to drop off Jayde on her way to work on every other Saturday and pick her up after work. Further, Mr. Catalanotto's motion for contempt was denied with prejudice. But he was awarded one additional Saturday visitation per month from April 2009 through July 2009, in order to make up for his missed visitation. Each party was ordered to bear its own costs.²

Mr. Catalanotto appeals that judgment. He raises two assignments of error: first, that the district court erred by failing to hold Ms. Catalanotto in contempt of court for her failure to obey the stipulated judgment, in that she failed to bring Jayde for visitation every other Saturday; and second, that the district court erred by failing to modify the stipulated judgment to provide for visitation every other weekend, alternating holidays, and extended time in the summer.

ASSIGNMENT OF ERROR NO. 1

In his first assignment of error, Mr. Catalanotto asserts that the district court erred by failing and refusing to hold Ms. Catalanotto in contempt of court for her failure to obey the November 21, 2008 stipulated judgment, in that she failed to bring Jayde for visitation every other Saturday from December 2008 through March 2009.

The trial court is vested with great discretion in determining whether a party should be held in contempt of court and its decision will be reversed only when the

² Ms. Catalanotto's motion for contempt was denied at the hearing. The district court did not rule on Ms. Catalanotto's peremptory exception raising the objection of no cause of action. Thus it is deemed denied.

appellate court discerns a clear abuse of that great discretion. **Haydel v. Pellegrin**, 07-0922, p. 5 (La. App. 1 Cir. 9/14/07), 970 So.2d 629, 632.

A review of the record shows a good deal of acrimony between the parties and a failure to communicate. Each party filed a motion for contempt against the other, and both motions were denied. During the time period that Ms. Catalanotto failed to comply with the visitation order, she was pregnant, went into pre-term labor, was placed on bed rest, and gave birth six weeks before her due date. She testified that she did not believe Mr. Catalanotto wanted her new husband to transport Jayde for visitation. Also, the record indicates that on some of the days that Ms. Catalanotto did not deliver Jayde for visitation, Mr. Catalanotto was working out of state.

After a thorough review, we find no abuse of discretion by the trial court in not holding Ms. Catalanotto in contempt.

ASSIGNMENT OF ERROR NO. 2

In his second assignment of error, Mr. Catalanotto asserts that the district court erred in failing to modify the November 21, 2008 stipulated judgment to allow him regular visitation, consisting of every other weekend, alternating holidays, and extended time in the summer.

When the original child custody decree is a stipulated judgment, a party seeking modification of custody or visitation must prove that there has been a material change in circumstances since the original decree and that the proposed modification is in the best interest of the child. **D'Aquila v. D'Aquila**, 03-2212, p. 5 (La. App. 1 Cir. 4/2/04), 879 So.2d 145, 148, writ denied, 04-1083 (La. 6/25/04), 876 So.2d 838. The paramount consideration in any determination of child custody is the consideration of the best interest of the child. La. C.C. art. 131; **D'Aquila**, 03-2212 at p. 5, 879 So.2d at 148.

Mr. Catalanotto argues that Ms. Catalanotto willfully disobeyed the court-ordered visitation by failing to deliver the child to him, and that such conduct amounts to a material change in circumstances, warranting a modification of the existing visitation order. In his argument, he relies upon Louisiana Revised Statute 13:4611, which provides that:

Except as otherwise provided for by law:

(1) The supreme court, the courts of appeal, the district courts, family courts, juvenile courts and the city courts may punish a person adjudged guilty of a contempt of court therein, as follows:

* * *

(f) A pattern of willful and intentional violation of this Section, without good cause, may constitute a material change in circumstances warranting a modification of an existing custody or visitation order.

As noted in assignment of error number one, with regard to the missed visitation, Ms. Catalanotto had been put on bed rest, given birth to a baby prematurely, and believed Mr. Catalanotto did not want her new husband transporting Jayde for visitation. Also, on some of the visitation days, Mr. Catalanotto was working out of state.

The district court judge spent a good amount of time at the end of the hearing admonishing the parties that they must work together for the good of their child. The district court did not find a pattern of willful and intentional violation on Ms. Catalanotto's part that constituted a material change in circumstances warranting a modification of the existing visitation order. After a thorough review of the record, we cannot say that the trial court erred in that determination.

Thus, for the foregoing reasons, the district court judgment is affirmed. Costs of this appeal are assessed against Mr. Catalanotto.

AFFIRMED.