STATE OF MICHIGAN

IN THE 20th CIRCUIT COURT FOR THE COUNTY OF OTTAWA

414 Washington Street
Grand Haven, MI 49417
616-846-8315

* * * * * * *

KELLY SUE GOEMAN,

Plaintiff,

v

DANIEL JAMES GOEMAN,

Defendant.

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OPINION AND ORDER FINDING CONTEMPT OF COURT
File No. 12-73719-DM
Hon. Jon A. Van Allsburg

Robert D. Jaehnig (P25006)
Attorney for Plaintiff

Judy E. Bregman (P32252)
Attorney for Defendant

At a session of said Court held in the Ottawa County Courthouse in the City of Grand Haven, Michigan, on October 10, 2014,
PRESENT: Hon. Jon A. Van Allsburg, Circuit Judge

These parents have been engaged in extensive litigation in this high-conflict divorce case.[1] They were divorced July 2, 2013, and the Judgment awarded legal and physical custody of the minor children, Connor, age 9 (DOB 7/27/05), and Ryan, age 7 (DOB 4/12/07), to plaintiff mother.[2] Defendant father's parenting time was specified in a phased-in schedule, supervised by specified family members or another mutually agreed individual. Defendant and the children were also ordered to participate in reunification therapy with Merrill Graham, LMSW, with plaintiff required to participate to the extent the counselor deemed necessary. The parties agreed to review parenting time after a recommendation from Ms. Graham.

[1] The evidence is undisputed that the conflict between these parties, over the year prior to the filing of this motion (including both pre- and post-judgment), resulted in 21 law enforcement visits to the parties' homes (primarily initiated by plaintiff), 90 complaints to the Ottawa County Friend of the Court (all by defendant), and six reports of abuse/neglect to Child Protective Services (four submitted by plaintiff, and all of which have been unsubstantiated).

[2] Plaintiff's oldest son, Derek, was adopted by the defendant but turned 18 and graduated from high school prior to the entry of the Judgment.

Post-Judgment Procedural History

Due to the ongoing conflict, the Ottawa County Friend of the Court recommended, and the court ordered, the appointment of a Parenting Time Coordinator on August 29, 2013. An order clarifying the roles of the reunification therapist and the parenting time coordinator was entered on December 6, 2013, as follows:

> "IT IS ORDERED that the Parties shall use reunification therapist, Merrill Graham. The Judgment of Divorce outlines parenting time that follows a phase-in plan. Merrill Graham remains authorized to determine when the parenting time shall proceed to the next phase. Merrill Graham shall communicate with the Parenting Time Coordinator as needed. There is a clear distinction between the roles of Quall & Associates, PLLC and Merrill Graham. The Parenting Time Coordinator is in place to assist the parents and the reunification therapist is in place to assist in the reunification of the children and their father." (Judgment, p. 4).

The Consent Judgment also stated the "Inherent Rights of Children," as follows:

> "IT IS HEREBY ORDERED AND ADJUDGED that the minor children of the parties shall have the inherent right to the natural affection and love of both parents, and neither parent shall do anything which may estrange the minor children from the other parent or tend to discredit, cause disrespect, or diminish the natural affections of the minor children for the respective other parent." (Judgment, p. 3).

In spite of the ongoing conflict, the parties (through counsel) have recently, and finally, been able to enter stipulated orders ending supervision of defendant's parenting time, changing the location of parenting time exchanges, authorizing the release of the parties' personal counseling records subject to a protective order, and scheduling a meeting with a parent coordinator (all in the May 5 and May 9, 2014 orders). On June 11, 2014, at a pre-trial conference requested by the plaintiff, the parties entered a stipulation to adjourn the defendant's motion to enforce the judgment (regarding the reunification therapist and parenting time) for "a couple of months," as they had agreed to expand defendant's unsupervised parenting time to include an overnight on alternate weekends.

Finally, at the hearing on July 8, 2014, they stipulated to a further expansion of defendant's parenting time to include alternate weekends from Friday to Sunday, alternate

holidays, two evenings per week, and extended summer parenting time. A further parenting time order was entered August 22, 2014, modifying the time of weeknight parenting time to 5:30 p.m. to 7:30 p.m., alternate weekends from 5:30 p.m. Friday to 6:00 p.m. Sunday, and providing that when plaintiff has district-scheduled parent-teacher conferences that conflict with defendant's parenting time, the parties "shall cooperate in adjusting or adding to defendant's parenting time so as to avoid the conflict with plaintiff's work obligations."

In the meantime, evidentiary hearings continued on this and other motions on March 28, 2014, June 19, 2014, July 8, 2014, July 31, 2014, September 11, 2014, and September 23, 2014, at which both parties and others testified. This matter is now before the court on Defendant's Amended Motion to Hold Plaintiff in Contempt of Court. Multiple other motions[3] have been filed but are not presently awaiting decision, primarily for the following reasons:

- Defendant's Motion to Enforce Judgment – this motion sought the removal of Merrill Graham as reunification therapist, to allocate her fees between the parties, and to enforce parenting time. The parties agreed to adjourn this motion.
- Defendant's Motion Respecting Expert Witness Fee – defendant took the deposition of Merrill Graham, but disputed the fees charged by Ms. Graham afterward. This matter was resolved at a separate hearing on September 8, 2014.
- Plaintiff's Motion for Attorney Fees - Plaintiff requested attorney fees pursuant to MCR 2.625(A)(1) and MCL 600.2591(1), (2), and (3), for fees incurred in responding to defendant's various motions; adjourned by agreement.
- Plaintiff's Motion to Enforce Judgment - Plaintiff's seeks reimbursement for her 2013 income tax refunds (totaling $7,097) which were allegedly seized by federal and state tax authorities to pay defendant's 2012 tax obligations, and for her related attorney fees. This motion was adjourned by agreement of the parties, and the court has ordered mediation of this issue.

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[3] The parties' 2014 motions (to date) are summarized as follows:
Defendant's Motion for Order to Show Cause (parenting time), filed 1/3/14; amended 3/4/14; pending.
Plaintiff's Motion to Quash Subpoena to JP Morgan Chase, filed 2/26/14; denied 3/10/14, order entered 3/20/14.
Plaintiff's Motion to Adjourn Hearing, filed 3/3/14; granted 3/10/14, order entered 3/20/14.
Plaintiff's Motion for Relief from Subpoena, filed 3/7/14; denied 3/10/14, order entered 3/20/14.
Defendant's Motion to Enforce Judgment (re: therapist and parenting time) filed 3/18/14; adjourned.
Plaintiff's Motion to Consolidate Motions and adjourn hearings, filed 4/2/14; resolved by agreement.
Defendant's Motion Respecting Expert Witness Fee, filed 4/18/14; resolved at hearing held 9/8/14.
Defendant's Motion for Protective Order, filed 4/30/14; resolved by stipulated Order entered 5/5/14.
Plaintiff's Motion for Pretrial Conference, filed 6/5/14; granted.
Defendant's Motion to Compel Discovery, filed 6/12/14; adjourned pending resolution of contempt matter.
Plaintiff's Motion for Attorney Fees, filed 6/16/14; adjourned pending resolution of the contempt matter.
Plaintiff's Motion to Enforce Judgment (re: Taxes), filed 6/16/14; Order for mediation entered 9/11/14.

Factual History and Testimony

Defendant father alleged in his initial motion on January 3, 2014 that defendant was in violation of the August 29, 2013 Order by refusing to sign the parenting coordination agreement and refusing to pay her share of that expense, thus delaying and obstructing his parenting time. In his amended motion, he alleged that plaintiff violated the August 29, 2013 order requiring parenting time coordination by alienating the children from him and by failing to pay the Parenting Time Coordinator. He testified that plaintiff mother has engaged in the following alienating behavior with the intent, and effect, of interfering with and preventing the exercise of his parenting time:

- Telling the children that defendant wanted to send her to jail;
- Making multiple false complaints to Child Protective Services;
- Making multiple complaints to law enforcement;
- Insisting on law enforcement supervision of parenting time exchanges (including those already subject to court-ordered supervision by family members);
- Talking to the children about changing their last names;
- Telling the children their father was not supporting them financially;
- Denying parenting time on the basis that defendant was not paying his child support;
- Refusing to agree to substitute parenting time supervisors;
- Interfering with defendant's phone calls with the children;
- Failing to take the children to counseling and reunification therapy; and
- Failure to participate in her own counseling.

It is undisputed that plaintiff made several complaints to Child Protective Services; plaintiff admits to three complaints and defends the charge of alienation on this ground by stating that she is a mandatory reporter (as a public school teacher). The court also finds it true that plaintiff insisted on law enforcement supervision of parenting time exchanges for a period of time, in spite of Merrill Graham's recommendation against it.

A perceptive overview of the parties' respective contributions to the family dysfunction was provided by Merrill Graham, LMSW, who was involved by the parties to provide reunification counseling.[4] Ms. Graham's doctoral research project is focused on reunification

[4] The parties agreed at a hearing in March 2013 to pursue reunification counseling as part of a global settlement of custody and parenting time issues, which was incorporated in the parties' July 2, 2013 Judgment of Divorce. The Stipulated Order entered April 22, 2013 stated, inter alia: "The children and Defendant shall participate in reunification therapy with Merrill Graham, LMSW. To the extent Ms. Graham deems Plaintiff's participation necessary, Plaintiff shall also participate in therapy with Ms. Graham. The issue of payment for therapy sessions

therapy. Her counseling began in February 2013, and she met with the children on March 21, March 26, April 12,[5] June 17, June 24, July 1, July 8, July 23, and August 13, 2013, and then again on January 17, 2014. She met with the plaintiff on May 6, 2013, and with defendant on June 26, July 10, and July 17, 2013.[6] There were five reunification sessions involving both of the children and the defendant father. Ms. Graham was copied on 130 emails between the parties during this time.[7]

Ms. Graham testified at her deposition on March 11, 2014 that both parties have engaged in "chaotic" behavior. She said plaintiff mother can be very emotional, and bears great hostility toward her ex-husband. She can become emotionally overloaded and unable to manage her emotions, as was evident to the court at several points during this lengthy litigation. She is, in Ms. Graham's opinion, a "naïve alienator" (as opposed to carrying on a deliberate campaign to alienate the children from their father). The court concludes however, as described further below, that plaintiff's alienating words and conduct are at times naïve, and at times deliberate. Plaintiff's testimony over the course of the hearing on this motion has not been persuasive, and

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with Ms. Graham has been reserved and will be addressed through the parties' financial settlement. The parties shall cooperate fully in bringing the children to all scheduled appointments when those appointments occur during their respective parenting times and shall follow Ms. Graham's treatment plan with a goal toward reunifying Defendant and the children. Parenting time shall be reviewed by Merrill Graham after 60 days [Note: changed to "on or about June 12, 2013" in the Judgment] and she shall make a recommendation regarding whether the parties move to Phase Two. Either party may file a motion with the Court if they object to Merrill Graham's recommendation." "Phase Two" parenting time removed the requirement of supervision of defendant's parenting time, and after another 60 days and a further recommendation from Ms. Graham (and a right of objection), "Phase Three" parenting time expanded unsupervised parenting time to full weekends. The parties ultimately reached these goals by agreement in the May, 2014 and July 2014 orders.

[5] Plaintiff admitted canceling multiple sessions with Ms. Graham for a variety of reasons, including that she was having a "busy month," and defendant did not help with transportation (however, the court notes that the parties each agreed in the Consent Judgment of Divorce to transport the children to counseling during their respective parenting time). Following her first appointment with Ms. Graham on May 6, plaintiff notified her that she was withdrawing from counseling, and she canceled the children's appointments in May. On June 6, she attempted to terminate Ms. Graham's services, then revoked that termination later the same day. Appointments with the children resumed on June 17, 2013.

[6] Defendant also attempted to terminate Ms. Graham's services in late August 2013. The court concludes that this was not a violation of the Judgment, but was based upon a misreading of the court's order appointing a parenting time coordinator, and on the petition of the Friend of the Court, a clarifying order was entered on December 6, 2013.

[7] Ms. Graham testified that the emails between the parties showed that plaintiff mother had canceled defendant's parenting time in November and December, 2013, for the reason that he was not paying his child support. Plaintiff testified that she was told by a sheriff's deputy that she did not have to allow parenting time if defendant wasn't paying child support (although she did not recall the amount of the obligation, or the amount of the arrearage). The court does not find her testimony credible on this point.

her credibility has been poor. She was extremely evasive and argumentative on repeated occasions during the hearing, at times refusing to answer straight-forward questions, and at other times claiming a lack of recall on an unusual range of simple questions she should have been able to recall (including what she paid to her mother on a weekly basis for child care over the past year, and even simple math). While some of her lack of recall may be attributable to the highly stressful activity of testifying under oath, the number of occasions on which her factual testimony was directly contradicted by neutral professionals renders this excuse unpersuasive.

Ms. Graham described the defendant father as angry and verbally aggressive, with a low tolerance for frustration, and said his anger has been longer-lasting and more consistent than plaintiff's. However, she also noted that defendant's involvement in counseling with Dr. Mills has given him a better understanding of these issues. The court agrees, and concludes that defendant has gained greater insight and that his behavior has been accordingly modified for the better over the course of this high-conflict litigation. His continued focus on these new insights is vital to maintaining his relationship with the children, as Ms. Graham noted the children have in the past described defendant father as "scary." There is little doubt that this was an accurate description of their perceptions. Defendant has a capacity for rapid-fire verbal conflict that can be described as relentless, and he was undoubtedly intimidating to both the plaintiff and the minor children during past conflicts. His testimony showed his use of language enhances that intimidating effect. For example, when describing his efforts to persuade Ms. Graham to recommend greater and less restricted parenting time for him, he testified that he "screamed at" her to restore his parenting time (which, in his opinion, should never have been restricted). This was likely just a figure of speech, but illustrates the point.

The parties agree that their son Connor, age seven, has some special needs. He has been diagnosed with an adjustment disorder, and he is subject to "meltdowns" and temper tantrums. He was hospitalized at Pine Rest Christian Mental Health Services in November 2012, and again in February 2013. Ms. Graham opined that Conner has in the past been traumatized by his father's behavior, though Connor's symptoms have been greatly alleviated. In fact, Conner's behavior has improved as defendant's parenting time has increased, though plaintiff attributes that improvement to a stabilization of Conner's medications rather than to more regular and normalized parenting time with his father.

Ms. Graham interviewed the children about past incidents which have been the subject of repeated abuse allegations against the defendant. The most notorious of these allegations pertained to a confrontation between Connor and defendant father in which defendant "choked" Conner.[8] The actual incident did occur, but it did not involve choking; Conner described to Ms. Graham that defendant had pushed an open hand against his upper chest – this during an incident of angry parental discipline. The second of these incidents alleged that defendant had pushed Ryan against a door. Ms. Graham testified that the pushing incident was later recanted, and she noted the children's descriptions of both incidents were inconsistent. Ms. Graham also testified that she recommended to plaintiff that she not call the police to attend parenting time exchanges, as they were already supervised and the presence of law enforcement aggravated the children's safety concerns, which is an issue for children going through reunification. She noted that plaintiff wanted law enforcement presence, and plaintiff later testified that Ms. Graham recommended that she call the Sheriff Department for law enforcement presence at parenting time exchanges. Plaintiff's testimony on this point was false.

Plaintiff's therapist since 2010 has been Nance Robson, LPC, who testified by telephone on July 31, 2014. Ms. Robson is a licensed professional counselor and has a Master's degree in pastoral counseling and clinical psychology. She began counseling with Ms. Goeman on November 15, 2010, and with some gaps in treatment (specifically from January 22, 2013 to June 12, 2013, and from July 10, 2013 to January 6, 2014)[9] has been seeing her since then. Ms. Robson diagnosed plaintiff with an adjustment disorder with anxiety and depression in 2010, and her treatment notes record plaintiff's frequent reports of feeling "overwhelmed" and harassed by her husband (now ex-husband).

Ms. Robson shares an office with Merrill Graham, and Ms. Graham left her a phone message once in 2013 with concerns about alienation. In a follow-up phone call with Ms. Graham, they only discussed Ms. Graham's concern about Mr. Goeman's consistency in the exercise of parenting time. This latter remark was consistent with Ms. Goeman's statements to

[8] Plaintiff has described this incident several times, although she wasn't there, and it was the subject of two of her Child Protective Services complaints (both unsubstantiated by CPS).

[9] The second gap in treatment took place over the six months immediately following the entry of the Consent Judgment of Divorce, despite the plaintiff's agreement on the record that she would

her. She was not otherwise aware of concerns of alienation (and was not privy to Ms. Graham's notes or records), as the issue had not been raised (or identified by her) in the course of her treatment of Ms. Goeman. It was her opinion that Ms. Goeman wanted the children to have a relationship with their father. However, she acknowledged that all of her information was self-reported by Ms. Goeman, and for this reason, Ms. Robson's testimony was not of much help to the court with respect to the pending motions.

The Law of Contempt

Courts have both inherent and statutory power to hold a party in contempt. *In re Contempt of Auto Club Insurance Association*, 243 Mich App 697, 708-709; 624 NW2d 443 (2000). The power to hold a party in contempt is inherent in the judiciary as generally established in the Michigan Constitution (Const 1963, art 6, sec 1). The legislature has reinforced the court's inherent power by enacting a number of statutes that permit the courts to punish contempt. The statute specific to this case is found in section 44 of the Michigan Support and Parenting Time Enforcement Act (MCL 552.644), which provides remedies for violation of court-ordered parenting time, in relevant part, as follows:

> "(2) If the court finds that either parent has violated a parenting time order without good cause, the court shall find that parent in contempt and may do 1 or more of the following:
> (a) Require additional terms and conditions consistent with the court's parenting time order.
> (b) After notice to both parties and a hearing, if requested by a party, on a proposed modification of parenting time, modify the parenting time order to meet the best interests of the child.
> (c) Order that makeup parenting time be provided for the wrongfully denied parent to take the place of wrongfully denied parenting time.
> (d) Order the parent to pay a fine of not more than $100.00.
> (e) Commit the parent to the county jail or an alternative to jail.
> (f) Commit the parent to the county jail or an alternative to jail with the privilege of leaving the jail or other place of detention during the hours the court determines necessary, and under the supervision the court considers necessary, for the purpose of allowing the parent to go to and return from his or her place of employment.
> (g) If the parent holds an occupational license, driver's license, or recreational or sporting license, condition the suspension of the license, or any combination of the licenses, upon noncompliance with an order for makeup and ongoing parenting time.

(h) If available within the court's jurisdiction, order the parent to participate in a community corrections program established as provided in the community corrections act, 1988 PA 511, MCL 791.401 to 791.414.
(i) Place the parent under the supervision of the office for a term fixed by the court with reasonable conditions, including 1 or more of the following:
(i) Participating in a parenting program.
(ii) Participating in drug or alcohol counseling.
(iii) Participating in a work program.
(iv) Seeking employment.
(v) Participating in other counseling.
(vi) Continuing compliance with a current support or parenting time order.
(vii) Entering into and compliance with an arrearage payment plan.
(viii) Facilitating makeup parenting time.

(3) The court shall state on the record the reason the court is not ordering a sanction listed in subsection (2). For the purpose of subsection (2), "good cause" includes, but is not limited to, consideration of the safety of a child or party who is governed by the parenting time order.

(4) A commitment under subsection (2)(e) or (f) shall not exceed 45 days for the first finding of contempt or 90 days for each subsequent finding of contempt. A parent committed under subsection (2)(e) or (f) shall be released if the court has reasonable cause to believe that the parent will comply with the parenting time order.
* * *
(6) If the court finds that a party to a parenting time dispute has acted in bad faith, the court shall order the party to pay a sanction of not more than $250.00 for the first time the party is found to have acted in bad faith, not more than $500.00 for the second time, and not more than $1,000.00 for the third or a subsequent time. A sanction ordered under this subsection shall be deposited in the friend of the court fund created in section 2530 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2530, and shall be used to fund services that are not title IV-D services.
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(8) If the court finds that a party to a parenting time dispute has acted in bad faith, the court shall order the party to pay the other party's costs." MCL 552.644.

The primary purpose of the contempt power is to preserve the effectiveness and sustain the power of the courts. *People v Kurz*, 35 Mich App 643, 656; 192 NW2d 594 (1971). Because the power to hold a party in contempt is so great, it "carries with it the equally great responsibility to apply it judiciously and only when the contempt is clearly and unequivocally shown." *People v Matish*, 384 Mich 568, 572; 184 NW2d 915 (1971). When seeking to punish for contempt of court, a court should utilize "'the least possible power adequate to the end

proposed.'" *Harris v United States*, 382 US 162, 165 (1965), quoting *Anderson v Dunn*, 19 US 204, 231 (1821). See also *In re Contempt of Scharg (People v Godfrey)*, 207 Mich App 438, 439 (1994). Due process requires that summary contempt proceedings be used only when absolutely necessary to prevent 'demoralization of the court's authority.'" *In re Oliver*, 333 US 257, 275 (1948), quoting *Cooke v United States*, 267 US 517, 536 (1925).

Criminal contempt differs from civil contempt in that the sanctions are punitive rather than remedial. Although civil sanctions may also have a punitive effect, they are primarily coercive to compel the contemnor to comply with the order. Civil contempt proceedings seek compliance through the imposition of sanctions of indefinite duration, terminable upon the contemnor's compliance or inability to comply. *In re Moroun*, 295 Mich App 312; 814 NW2d 319 (2012). Criminal contempt proceedings, on the other hand, seek to punish past disobedient conduct by imposing an unconditional and definite sentence. "The critical feature that determines whether the remedy is civil or criminal in nature is not when or whether the contemnor is physically required to set foot in a jail but whether the contemnor can avoid the sentence imposed on him, or purge himself of it, by complying with the terms of the original order." *Id.*, at 336.

A party charged with criminal contempt has a presumption of innocence and a right against self-incrimination. In a criminal contempt proceeding, a willful disregard or disobedience of a court order must be clearly and unequivocally shown and must be proven beyond a reasonable doubt. MCL 600.1711(2). A criminal contempt proceeding requires some of the due process safeguards of an ordinary criminal trial. A defendant charged with contempt is entitled to be informed of the nature of the charge, whether the proceedings are civil or criminal, and must be given an adequate opportunity to prepare a defense and to secure the assistance of counsel. *DeGeorge v Warheit*, 276 Mich App 587; 741 NW2d 384 (2007).

"To support a conviction for criminal contempt, two elements must be proven beyond a reasonable doubt. Those two elements are: (1) that the individual engage in a willful disregard or disobedience of the order of the court, and (2) that the contempt must be clearly and unequivocally shown. *In re Contempt of O'Neil*, 154 Mich App 245, 247; 397 NW2d 191 (1986) (citation omitted); see also *DeGeorge v Warheit*, 276 Mich App 587, 592; 741 NW2d 384

(2007). The defendant must have acted culpably. *People v Little*, 115 Mich App 662, 665; 321 NW2d 763 (1982)." *In re Contempt of Dorsey*, ___ Mich App ___, 2014 WL 4435591 (Docket No. 309269, September 9, 2014), slip op., p. 11. Defendant mother in this case is charged with criminal contempt, as she is alleged to have violated the existing parenting time orders.

Analysis

Defendant's amended motion states several bases for his request to hold plaintiff in contempt of court, which the court addresses individually, as follows:

1. Alienating the children from him by telling the children by telling the children about the court proceedings and that defendant wanted to send plaintiff to jail.

In *Meadows v Meadows-Henderson*, unpublished per curiam opinion of the Court of Appeals (Docket No. 296056, Sept. 30, 2010),[10] the Court of Appeals affirmed a finding of the trial court that the defendant had engaged in conduct constituting parental alienation, and quoted the expert witness in the case, as follows:

> "[P]sychologist John D. Ulrich, Ph.D., testified that he concluded that defendant had engaged in a pattern of parental alienation. ... Ulrich described parental alienation as "[t]he process of one parent trying to undermine and destroy to varying degrees the relationship that the child has with the other parent.'"

It is axiomatic that a parent who engages in conduct constituting parental alienation has violated the inherent rights of the child, as described in the parties' Judgment of Divorce (quoted above). In this case, plaintiff admits that she has told the children she could go to jail if they didn't go on parenting time with their father, as she said she was desperate to get them to go with plaintiff. However, she denies telling them that *defendant* would put her in jail for that reason. Whether that distinction, if true, made any difference to the children with respect to their emotional state or their conduct is unlikely. Defendant testified that he was confronted several times by the children asking why he wanted their mother go to jail. The use of this threat by plaintiff to the children could support a finding that she was willing to say anything to obtain the

[10] The court recognizes that it is not bound by this unpublished decision, MCR 7.215(C)(1); *Charles Reinhart Co v Winiemko*, 444 Mich 579, 588 n 19; 513 NW2d 773 (1994), and merely views the opinion as persuasive, *Dyball v Lennox*, 260 Mich App 698, 705 n 1; 680 NW2d 522 (2003). Unpublished opinions can be instructive or persuasive. *Beyer v Verizon North, Inc*, 289 Mich App 195; 795 NW2d 826 (2010); *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136 n 3; 783 NW2d 133 (2010).

children's compliance with the parenting time orders, or that she desired to drive a wedge in the relationship between defendant and the children, by assuming that her incarceration for contempt of court would lead the children to blame the defendant for initiating it.

2. Making multiple false complaints to Child Protective Services in October 2012, July 2013, and January 2014.

The court first notes that a Child Protective Services (CPS) complaint made in October 2012 predates either of the Orders or the Consent Judgment plaintiff is charged with violating, and therefore cannot form the basis for a contempt of court. Plaintiff's July 2013 complaint to CPS alleged that the failure to feed one of the children during a parenting time visit constituted abuse or neglect. This complaint was found to be unsubstantiated by CPS. No specific order is alleged to have been violated by this complaint, and it does not provide a sufficient basis for a finding of contempt, unless determined to be part of a pattern or scheme to interfere with parenting time or alienate the children from their father.

Another CPS complaint was made by plaintiff in January 2014, in which she recycled a claim made in the October 2012 complaint, and added two other allegations of abuse, one of which had allegedly occurred years earlier to the parties' oldest son (who was then an adult), and one of which had allegedly occurred against Conner in the summer of 2012. The complaints were found unsubstantiated, and Ms. Graham testified that the complaints pertaining to the minor child were described inconsistently by the children, and then recanted by them.

Plaintiff testified that she filed the last CPS complaint in January 2014 because that was when Conner first disclosed the allegation involving him, and state law required her, as a mandated reporter (a teacher), to report all disclosures of child abuse or neglect to CPS. The CPS investigator, Emily Fewless, testified about her investigation, and identified the records pertaining to this complaint (Exhibit 6). Ms. Fewless confirmed that plaintiff also reported the same allegations to the Ottawa County Sheriff's Department one-half hour after her interview with the CPS investigator on February 5, 2013. Plaintiff repeated the allegations to the sheriff immediately after the investigator told her that the children had not made any disclosure of abuse

or neglect,[11] and that there was no present risk of harm to the children as defendant's parenting time was supervised. The call to the Sheriff's Department went above and beyond plaintiff's obligations as a mandated reporter. Plaintiff was evasive when asked about her contact with the Sheriff's Department; she would not confirm that she made the call, but admitted talking to an officer. Her repetition of these allegations, even after they had been investigated and found lacking, supports a finding that they were intended to impede or interfere with parenting time, or justify ongoing supervision.

3. Making multiple complaints to law enforcement.

Defendant alleges that plaintiff has made at least fifteen complaints to the Ottawa County Sheriff in which she has alleged harassment or stalking allegations against him. The CPS report indicates 21 calls to law enforcement (as of February 2014). The evidence compiled in this lengthy hearing supports a finding that defendant appeared at plaintiff's home one time under circumstances which she found harassing, and one instance in which she saw defendant drive past her home. The first incident was described by both parties, and involved defendant's attempt to exercise scheduled parenting time which plaintiff had canceled. Defendant had a legitimate reason to be outside the home in his car, and plaintiff knew he was there to exercise parenting time; she was only upset that he remained there for 40 minutes before giving up and leaving. The second incident is not noteworthy, and did not justify a call to law enforcement.

4. Insisting on law enforcement supervision of parenting time exchanges (including those already supervised by family members);

Most of the law enforcement calls have been to request their presence at parenting time exchanges, even though parenting time, and parenting time exchanges, were already being supervised. Plaintiff falsely testified that she had been recommended by Merrill Graham to call law enforcement for parenting time exchanges, but this was directly contradicted by Ms. Graham, who testified that she advised plaintiff *against* a police presence at parenting time exchanges, as this aggravated the children's safety concerns, undermining the goal of reunification counseling. Plaintiff's insistence on law enforcement presence, and false testimony

[11] The CPS investigator noted that neither child disclosed any incident of abuse or neglect, except that Ryan reported his dad had choked Conner, which he knew (as he wasn't present) "because mom told me." However, plaintiff admits she wasn't present during that incident either.

to justify it, supports a finding that she was motivated by a desire to either exaggerate defendant's perceived risk to the children, and/or alarm or incite the children, in either case rendering the exercise of defendant's parenting time less likely.

5. Talking to the children about changing their last names.

Plaintiff denied wanting to change the children's last names, and denies telling Ms. Graham that she "liked the idea" of changing the son Conner's last name from Goeman to something else. She noted that she has not changed her own last name since the divorce. No evidence was presented that the children were exposed to this idea, or that it had any cumulative effect upon the exercise of defendant's parenting time.

6. Telling the children their father was not supporting them financially.

There have been some periods over the course of this litigation when defendant has fallen behind in the payment of his child support (it appears that at present he is current). Part of the problem (and the dispute between the parties as to whether or not he is current) stems from the fact that his child support is payable on the first of the month, and he pays support once a month, and often near the end of the month. It therefore appears that he is a month in arrears for a good part of each month, until his payment is received. However, whether he is in arrears or not, it is inappropriate to share that information with the minor children. The court concludes that plaintiff has done this, and the records admitted suggest that her father has done so as well.

7. Denying parenting time on the basis that defendant was not paying his child support.

Plaintiff has admitted denying defendant parenting time on the basis that he was not paying his child support, and even claims that she was told by a sheriff's deputy that she had the right to refuse parenting time for that reason. The court does not find that claim credible, and concludes that this is not a valid basis for denial of parenting time. Plaintiff therefore failed to comply with the parenting time terms of the Judgment of Divorce.

8. Refusing to agree to substitute parenting time supervisors.

This complaint arises from the fact that defendant's parents became unable to provide supervision in November 2013, and that plaintiff would not communicate or agree with him on a

substitute supervisor so that he could exercise his scheduled parenting time. Defendant testified that in spite of that lack of agreement, and knowing defendant would not come to the parenting time exchange point due to the lack of a court-ordered supervisor (as he had informed her of that), plaintiff brought the children to the exchange point anyway, waiting for defendant whom she already knew would not appear. Her refusal to agree to substitute parenting time supervisors is not a contempt of court, as no court order required her to do so, and defendant had a remedy in that he could have requested the naming of an alternate by the court. However, by taking the children to a parenting time exchange when she already knew defendant would not appear, and forcing the children to sit in the car waiting for a non-appearing parent, the court concludes that plaintiff intended to undermine the relationship between the children and the defendant.

9. Interfering with defendant's phone calls with the children.

The parties dispute the extent to which the defendant exercised, or failed to exercise, his right to communicate with the minor children by telephone. The stipulated Order of April 22, 2013, and the Judgment of Divorce entered July 2, 2013, provided that defendant was entitled to telephone communication with the children on Tuesdays, Thursdays, and Sundays. Defendant complained that the phone calls were frequently chaotic, with the children's end of the line on speakerphone mode, with the television or other noise in the background, with the children acting up and sometimes saying rude or offensive things to defendant, and with plaintiff sometimes directly interfering, such as by tickling the children during the call. Defendant admitted a recording of four calls with the children (out of nearly 100), recorded between January and June 2013 (Exhibit 18) which contain several repeated questions (by Conner) asking, "Why do you lie in court, Dad?" On one recording, Conner stated, "Mom tells us like every day that you lie, right Mom?" Plaintiff is not heard in the four recorded calls.

Both parties testified at length about these calls, and Exhibits C and 14 list the parties' respective details about these calls between April 2013 and January 2014. Plaintiff asserts that defendant failed to make many of those calls, but defendant's phone records, and a comparison of their records, shows that only 21 calls were missed out of a possible 117 phone call opportunities. Defendant testified that some of these may have been missed because the children were with him, or because he had talked to them the day before or the day after the scheduled

call. The court concludes that most of these calls were made. The interference with the calls that were made arise from the children's own bad behavior and remarks, and to some extent with the plaintiff's failure to control the background noise and distractions. The court is not persuaded that she sufficiently created, aggravated, or controlled such interference as to hold her liable for contempt of court on those grounds.

10. Failing to take the children to counseling and reunification therapy.

The court concluded, as described above, that plaintiff canceled or failed to bring the children to multiple sessions with the reunification therapist. Her excuses were varied and generally unpersuasive, and the court concludes she violated the orders requiring her to bring the children to reunification counseling.

11. Failure by plaintiff to participate in her own counseling.

The court has not identified a provision in the Judgment or any post-Judgment order requiring plaintiff to participate in her own counseling. She has participated in her own counseling intermittently, but any failure to do so is not contemptuous.

Conclusion

The court finds that the evidence clearly and unequivocally establishes, beyond a reasonable doubt, that plaintiff willfully disregarded or disobeyed the court's orders contained in the Judgment of Divorce, by denying defendant's court-ordered parenting time, by undermining and damaging the defendant's relationship with the minor children by her words and actions, and by failing to bring the children to court-ordered reunification counseling. Her conduct interfered with the children's right to have a close and continuing relationship with their father, damaged their relationship with him, and delayed the restoration of that relationship.

Plaintiff argues that any violations of the above orders were justified by the defendant's history of angry, abusive, or stalking behavior, and that she therefore had good cause for such violations, so as to excuse any contempt finding under MCL 552.644(2). The court does not excuse or minimize defendant's history of angry words and conduct. He shares responsibility for the estrangement that arose in his relationship with his sons as the parties' marriage broke down.

Plaintiff's words and conduct, however, went above and beyond a "good cause" response to defendant's anger. Whether out of fear, anxiety, outright hostility, or more likely a combination of those influences, she went out of her way to undermine the defendant's relationship with the children and to alienate their affections from him. The good cause defense is unpersuasive. Plaintiff mother is therefore held in contempt of court.

The court is required to impose a sanction on plaintiff mother for her willful violation of the court's orders as described above. MCL 552.644(2) mandates a finding of contempt in such circumstances, but describes a wide range of sanctions and leaves the determination to the discretion of the court, saying the court "may do 1 or more of the following...." These sanctions range from a small fine to lengthy incarceration. In this case, the imposition of any incarceration would have a direct and negative impact on the children, and would potentially undermine the progress that has been made in restoring the relationship between the defendant and the children, as they would likely blame father (as their mother has previously claimed). Incarceration would also have deleterious secondary effects, including the loss of plaintiff's employment and resulting financial hardship affecting the children. There may be circumstances under which incarceration may be justified in spite of such consequences, but the court is not persuaded that point has been reached. The court therefore orders plaintiff to pay a fine in the amount of $100.00.

MCL 552.644 requires the court to impose additional monetary sanctions and order payment of the other party's costs in the event of a bad faith violation of a court order. "Bad faith" is not defined in Michigan Support and Parenting Time Enforcement Act, but is generally defined as "not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; ... it contemplates a state of mind affirmatively operating with furtive design or ill will." *Black's Law Dictionary* (6th ed), p 139. In *Moncada v. Moncada*, 81 Mich App 26; 264 NW2d 104 (1978), the Court of Appeals stated:

> "Although we have found no Michigan cases directly on point, [FN1] there is well-reasoned authority for the rule that voluntary reductions in income, if made in bad faith, will not warrant a modification of support payments. *Nelson v. Nelson*, 225 Or. 257, 357 P.2d 536 (1960). [FN2].
>
> FN1. In the related but arguably distinguishable area of contempt proceedings to enforce support orders there is precedent from this Court and the Supreme Court for viewing unrealized earning

> capacity in light of the father's state of mind. In *Cullimore v. Laureto*, 66 Mich.App. 463, 239 N.W.2d 409 (1976), the Court reviewed a trial court order holding the defendant in contempt for failure to make support payments. ...
> FN2. *Nelson* defined bad faith as follows:"To find bad faith it would be necessary to show that defendant acted with a purpose of jeopardizing the interests of his children." 225 Or. at 261, 357 P.2d at 538."

The Court in *Moncada* concluded that bad faith would be shown if the contemnor "acted with a purpose of jeopardizing the interests of his children." *Id.*, at 31 n2. The Michigan Child Custody Act presumes that it is in the best interests of a child for the child to have a strong relationship with both of his or her parents. MCL 722.27a(1). One who intentionally degrades or damages that relationship is acting contrary to the best interests of the child. In this case, although plaintiff mother was described by the reunification counselor as a naïve alienator, the court determines there are repeat examples of deliberate conduct on her part that violated the parenting time orders in this case. Plaintiff's evasive and untruthful testimony during the course of the lengthy contempt hearing in this case underscores that conclusion. The court finds that plaintiff's violations of the parenting time orders in this case were bad faith violations, as she was motivated by hostility and a desire to minimize defendant's time and relationship wit his children. She is therefore ordered to pay a first-offense sanction in the amount of $250.00 to the Ottawa County Friend of the Court, and to pay Defendant's costs, the amount of which are reserved for hearing to determine the amount and reasonableness of such costs.

Summary

Plaintiff is found in contempt of court for violation of the parenting time orders in this action, as determined above, and shall pay a fine of $100.00 and a bad faith sanction of $250.00 to the Ottawa County Friend of the Court, payable within 30 days of this Order. She is further ordered to pay Defendant's costs, the amount, reasonableness, and terms of which are reserved for an evidentiary hearing to be scheduled.

IT IS SO ORDERED.

Dated: October 10, 2014

Hon. Jon A. Van Allsburg, Circuit Judge