

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA10-977

LUCINDA ANN REYNOLDS
APPELLANT

V.

KEITH HENDRIX
APPELLEE

Opinion Delivered March 9, 2011

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT,
WESTERN DISTRICT
[NO. DR-2006-22]

HONORABLE BRENT DAVIS, JUDGE

APPEAL DISMISSED

DAVID M. GLOVER, Judge

In February 2006, the parties were divorced. In a settlement agreement, which was approved by the trial court in the parties' divorce decree, they agreed to share joint legal and physical custody of their child, A.H., with no child-support payments to be made by either party. On July 17, 2009, they obtained court approval for another settlement agreement, which in pertinent part provided that appellee, Keith Hendrix, would pay appellant, Lucinda Reynolds, \$1500 per month in child support, and which set forth specific, detailed visitation for Hendrix, including visitation on Wednesdays when school was in session. This second settlement agreement also provided that "the minor child shall remain in the Jonesboro School District and he will continue his education in this system unless mutually agreed otherwise in writing by the parties."

On February 3, 2010, Hendrix commenced to file a succession of petitions, the first being a petition for order to show cause and contempt, alleging that on January 4, 2010, Reynolds had “deliberately, and without any notification, consent, or justification, removed the minor child from the Jonesboro School District and enrolled him in Marmaduke Public School in Greene County, Arkansas.” In this initial petition, Hendrix further alleged that these actions had circumvented his Wednesday-night visitation with the minor child and had caused him “a substantial amount of additional transportation for visitation.” He asked the trial court to reduce his child-support obligation to take into consideration his transportation expenses for visitation; to award him full summer visitation because summer visitation had been coordinated around the minor child attending school in Jonesboro; to abate his child-support obligation during his summer visitation; to hold Reynolds in contempt for her actions; and to order Reynolds to pay a reasonable attorney’s fee for Hendrix having to petition the trial court to enforce its previous orders. On March 4, 2010, Hendrix filed a second petition for order to show cause and contempt against Reynolds, alleging that she had refused to sign a medical authorization as required by the July 17, 2009 settlement agreement. He also filed a petition for change of custody and other relief, alleging that all of the actions set forth in his petitions for contempt required a change of custody from Reynolds to Hendrix. On March 12, 2010, Hendrix filed a petition for emergency change of custody and ex parte relief, relying again upon the conduct set forth in his pending petitions for contempt.

The hearing on Hendrix’s petitions for contempt was held on March 29, 2010. On that day, Reynolds filed her own motion for contempt and to show cause and for

modification of visitation against Hendrix, alleging that Hendrix had failed to exercise his weekday visitation since January 2010; that he had not asked for an alternate schedule or arrangement for weekday visitation; that weekday visitation should be terminated; that Hendrix had, in violation of the settlement agreement, requested a blanket release of all medical records to his attorney in an attempt to go beyond the order of the trial court and intimidate her; that Hendrix had used her failure to sign the release to file a motion for contempt against her; and that this clause in the settlement agreement should be stricken from the order. Reynolds also alleged in her motion for contempt against Hendrix that he continued to refuse to communicate with her via email and instead attempted to communicate with her through their minor child. She also alleged that Hendrix was in violation of the “spirit” of the settlement agreement by living full time with his girlfriend, when the parties’ agreement only allowed overnight guests during weekends and vacations, and that occupying a bedroom with such a romantic companion was strictly prohibited while their minor child was present.

The order from this hearing on Hendrix’s motions for contempt was not entered until June 2, 2010. When entered, it was styled as a temporary order. In the order, the trial court found that the July 2009 settlement agreement provided that the minor child shall remain in the Jonesboro School District and would continue his education in the system unless otherwise mutually agreed in writing by the parties; that Reynolds had violated that provision and was therefore held in contempt; and that Reynolds was to pay the sum of \$2500 in temporary attorney’s fees to Hendrix for having to bring this matter before the trial court for

her blatant violation of the trial court's previous order. As sanctions, the trial court ordered that Hendrix would have three weekends a month visitation and all holidays from the hearing until the end of school; that once the child was dismissed from school for summer vacation, Hendrix would have temporary custody of him during the summer months, subject to three weeks' summer visitation with Reynolds; and that during the time until the child returned to school, Hendrix's child-support obligation would be abated and suspended. The trial court further ordered Reynolds to execute and provide to Hendrix a release to obtain her prescription records. Finally, the trial court stated that a full hearing would be held prior to the next school year to determine the issues of custody and visitation, including the issue of where the minor child was going to attend school the next year.

On June 1, 2010, Reynolds filed a motion for reconsideration. At the hearing, held on June 29, 2010, the trial judge stated that he had orally denied the motion for reconsideration on the pleadings; however, a written order denying the motion for reconsideration was never entered. During the hearing, the trial court also took up yet another petition for contempt that had been filed by Hendrix for Reynolds's failure to pay the attorney's fees from the March 29 hearing (where she had been held in contempt), but the trial court deferred making any ruling on that issue of contempt because the parties were going back to court in the near future to determine the remaining issues of custody, visitation, and where the minor child would attend school the following school year. On June 30, 2010, Reynolds filed her notice of appeal and designation of record from the June 2, 2010 order and

from all rulings and orders of the court subsequent thereto, including the hearing conducted on June 29, 2010. This appeal followed.

We hold that the case should be dismissed based upon the reasoning set forth in *Wommack v. Ingram*, 2010 Ark. App. 529. The parties in *Wommack* filed cross-actions for contempt. The trial court found Wommack in civil contempt of court, but Wommack's counterclaim for contempt against Ingram remained unresolved, and there was no Rule 54(b) certification from the trial court. Our court held that without a decision on Wommack's counterclaim for contempt, there was not a final appealable order and dismissed the appeal. In *Wommack*, we noted that while a contempt order imposing sanctions and constituting the final disposition of the contempt matter is ordinarily appealable, because the trial court was faced with cross-actions for contempt that were based upon the same underlying order of the court and the same facts involving the same parties, the appellate court did not regard one contempt order to be final without a decision on the counter petition.

Our facts here are directly on point with *Wommack, supra*. While the trial court disposed of Hendrix's initial petition for contempt against Reynolds, it did not rule on Reynolds's petition for contempt against Hendrix; it also held in abeyance its decision regarding Hendrix's subsequent petition for contempt against Reynolds regarding Reynolds's failure to pay \$2500 of his attorney's fees, which stemmed from the trial court's order finding Reynolds in contempt with regard to Hendrix's initial petition for contempt. And, as in *Wommack*, there is no Rule 54(b) certification. Because there are remaining petitions for

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contempt that remain unresolved and that involve the same underlying order of the court as well as the same facts and the same parties, this is not a final appealable order and the appeal must be dismissed.

Appeal dismissed.

ABRAMSON and HOOFFMAN, JJ., agree.