

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA10-66

JENNIFER ROSS

APPELLANT

V.

TOMASZ BUGAJ

APPELLEE

Opinion Delivered October 6, 2010

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. DR2006-330-II]

HONORABLE VICKI SHAW COOK,
JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

Jennifer Ross challenges an order of the Garland County Circuit Court finding her in contempt for not allowing her ex-husband, Tomasz Bugaj, to exercise his court-ordered visitation with the parties' minor child and for cohabiting with a person of the opposite sex. On appeal, Ross argues that the trial court's contempt finding was arbitrary and against the weight of the evidence, because her reasons for denying visitation were valid. We disagree, and in any event, Ross only challenges a single basis for the contempt finding, leaving an unchallenged basis to support the contempt finding. Accordingly, we summarily affirm.

Certain key facts were never in dispute. Bugaj is a Gulf War veteran who has been diagnosed and treated for Post Traumatic Stress Disorder (PTSD). Since the parties' September 21, 2006 divorce, Bugaj previously filed three contempt petitions against Ross after

Ross interfered with Bugaj's court-ordered visitation with his now five-year-old son. On those three previous occasions, the parties resolved the disputes and entered agreed orders. However, after learning of a suicide attempt by Bugaj, Ross again denied him visitation with the minor child. On May 7, 2009, Ross filed a motion to terminate Bugaj's visitation.

On June 24, 2009, Bugaj filed a fourth contempt petition, citing Ross's denial of visitation and her continued cohabitation with her paramour while in the presence of the minor child. At the contempt hearing, Ross did not deny that she failed to abide by the court's order on either visitation or cohabitation. Ross merely attempted to excuse her actions by claiming that she was concerned with her child's safety after learning of Bugaj's suicide attempt. Ross and her counsel, however, admitted that they did not seek *ex parte* relief from the visitation order.

The trial court found Ross in willful contempt for both her failure to allow visitation and for her continued cohabitation. It imposed a thirty-day sentence that was to be suspended upon Ross surrendering the child to Bugaj so that he could make up missed visitation. The trial court also ordered Ross to pay Bugaj's attorney fees.

On appeal, Ross argues that the lower court's contempt finding was arbitrary and against the weight of the evidence. She asserts that the instant case is controlled by *Wakefield v. Wakefield*, 64 Ark. App. 147, 984 S.W.2d 32 (1998), a case where this court reversed a contempt finding where, as Ross describes it, "the mother withheld visitation in fear that it was a good possibility that her daughter might have been abused by her grandfather as

indicated by professionals.” Ross asserts that she withheld unsupervised visitation “in fear of the well being of the minor child as a result of the father’s suicide attempt and his in-patient treatment from March 23 through May 15.” She also claims that her actions were based in part on the failures of her trial counsel. We find these argument unavailing.

Ross’s reliance on *Wakefield* is clearly misplaced. In the instant case, Ross failed to present any expert who opined that the child was in danger from Bugaj, so there was not even a suggestion that Ross had justifiably relied on mental-health professionals. In *Wakefield*, a psychiatrist, a clinical psychologist, and an investigator from the Sex Crimes Division of the Arkansas State Police testified that they could not rule out the possibility that sexual abuse of the child had taken place. *Wakefield* is also distinguishable in that there were trial court findings that suggested there was a significant basis for Wakefield’s fears, whereas in the case at bar, the trial judge expressed full confidence in Bugaj’s treatment. Accordingly, we believe that the instant case is analogous to *Hunt v. Perry*, 357 Ark. 224, 162 S.W.3d 891 (2004), where the supreme court upheld a contempt finding where a custodial parent withheld grandparent visitation despite professed fears of sexual abuse by the grandmother that a trial court found unpersuasive. Finally, the visitation order in *Wakefield* that was supposedly violated was declared void by the court of appeals because it was entered by a judge who recused that same day, citing his inability to be “fair.” In the instant case, the visitation order that Ross violated was an agreed order that, for obvious reasons, was never challenged.

We are further mindful that Ross has failed to challenge the second basis for the contempt finding, that she continued to cohabit with her romantic interest in the presence

of the minor child. Her total failure to challenge the trial court's ruling is fatal to this appeal. The supreme court has held that, where a trial court makes independent, alternative rulings that are each dispositive of an appellant's claim, and where the appellant attacks only one of those rulings on appeal, the case will be summarily affirmed without addressing either ruling, regardless of the merit of the argument that is actually raised. *Pearrow v. Feagin*, 300 Ark. 274, 778 S.W.2d 941 (1989). Accordingly, even if we were to find merit in Ross's argument—and we certainly do not—it would have no practical effect on this appeal because she has not challenged the contempt finding regarding her cohabitation.

Affirmed.

VAUGHT, C.J., and PITTMAN, J., agree.