No._____

In the Supreme Court of the United States

LINNZI ZAORSKI,
Petitioner
v.
NICHOLAS USNER,
Respondent

On Petition for Writ of Certiorari to the Louisiana Court of Appeal, First Circuit

---

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

Richard Ducote, Esq.
Counsel of Record for Petitioner
318 East Boston Street, 2d Floor
Covington, LA 70433
(985) 898-2755
rducote@ducotelaw.com

TABLE OF CONTENTS

Court of Appeal of Louisiana, First Circuit.

Linnzi ZAORSKI
v.
Nicholas USNER

NO. 2022 CA 1326

Judgment Rendered: October 31, 2023

2022-1326 (La. App. 1 Cir. 10/31/23), 382 So. 3d 959

BEFORE: McCLENDON, HOLDRIDGE, AND GREENE, JJ.

McCLENDON, J.

In this custody case, the mother appeals a trial court's judgment that found her in contempt of court. For the reasons that follow, we affirm in part and reverse in part.

FACTS AND PROCEDURAL HISTORY

Linnzi Zaorski and Nicholas Usner were never married, but during their relationship had a daughter, who was born on March 3, 2015. On August 18, 2017, Ms. Zaorski filed a petition to establish paternity, custody, and child support and to relocate from St. Tammany Parish to Lafayette Parish. On September 12, 2017, the trial court signed a Consent Judgment (the Consent Judgment), which in relevant part recognized Mr. Usner as the biological father of the child, awarded the parents joint custody with Ms. Zaorski designated as the domiciliary parent, allowed

Ms. Zaorski to permanently relocate with her daughter to Lafayette Parish, and granted Mr. Usner physical custody every other weekend. The Consent Judgment included other provisions, including a monthly child support amount to be paid by Mr. Usner, a holiday custody schedule, and language encouraging the parties to be flexible with the custody schedule. **Zaorski v. Usner**, 2021-0530 (La. App. 1 Cir. 12/22/21), 2021 WL 6070690, *1 (unpublished).

Thereafter, the parties filed numerous pleadings back and forth. In particular, on May 29, 2018, Mr. Usner filed a rule to modify custody. **Zaorski**, 2021 WL 6070690 at *1. On January 2, 2020, Mr. Usner filed an expedited rule for contempt and sanctions. Additionally, on January 21, 2020, Mr. Usner filed a supplemental motion to modify custody, requesting authorization to relocate the child from Lafayette back to St. Tammany Parish based on the custody evaluator's recommendation that he be provided the "predominant amount of physical custody." **Zaorski**, 2021 WL 6070690 at *1.

The trial on Mr. Usner's motions to modify custody was held on July 1, 2020, and July 13, 2020. Afterward, the trial court took the matter under advisement. On July 27, 2020, the trial court provided oral reasons, ruling that custody should be modified, continuing joint custody, and granting Mr. Usner domiciliary status. The judgment noted that Mr. Usner's January 2, 2020 rule for contempt and sanctions was still pending. The judgment was signed on October 19, 2020. Ms. Zaorski appealed the October 19, 2020 judgment, and this court affirmed. **Zaorski**, 2021 WL 6070690 at *1.

The hearings on Mr. Usner's rule for contempt and other matters were held on February 9, 2021, March 24, 2021, and July 28, 2021. In Mr. Usner's rule for contempt, he alleged that there were seventeen acts or omissions by Ms. Zaorski that constituted contempt under the Consent Judgment. The trial court found Ms. Zaorski in contempt for ten acts or omissions. The trial court awarded Mr. Usner attorney fees in the amount of $4,625.00 and court costs associated with the January 2, 2020 filing of his rule for contempt, sentenced Ms. Zaorski to serve fifteen days in the St. Tammany Parish jail, and fined her $250.00, payable to the court through the St. Tammany Parish Sheriff's Office. The fine and sentence were suspended on the condition that Ms. Zaorski pay the attorney fees and court costs directly to Mr. Usner's attorney on or before February 1, 2022, and that Ms. Zaorski not be found in contempt in any future proceeding. The judgment was signed on October 15, 2021. Ms. Zaorski now appeals the October 15, 2021 judgment.

DISCUSSION

On appeal, Ms. Zaorski maintains that the trial court erred as a matter of law by applying the wrong standard of proof in a criminal contempt of court proceeding and in finding her in criminal contempt of court, where no proof beyond a reasonable doubt was established as to each element of criminal contempt regarding the ten acts and omissions. Mr. Usner maintains that Ms. Zaorski was found to be in contempt of court in a civil contempt proceeding, rather than a criminal contempt proceeding, and

therefore, the trial court correctly applied the preponderance of the evidence standard.

A contempt of court is any act or omission tending to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority. LSA-C.C.P. art. 221. A contempt of court proceeding is either criminal or civil, which is determined by what the court primarily seeks to accomplish by imposing sentence. In a criminal contempt proceeding, the court seeks to punish a person for disobeying a court order, whereas in a civil contempt proceeding, the court seeks to force a person into compliance with a court order. Billiot v. Billiot, 2001-1298 (La. 01/25/02), 805 So.2d 1170, 1173.

In **Hicks v. Feiock**, 485 U.S. 624, 631-32, 108 S.Ct. 1423, 1429, 99 L.Ed.2d 721 (1988) the U.S. Supreme Court considered whether proceedings in a family law contempt matter case were civil or criminal and found:

> [T]he critical features are the substance of the proceeding and the character of the relief that the proceeding will afford. "If it is for civil contempt the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court." **Gompers v. Bucks Stove & Range Co**., 221 U.S. 418, 441, 31 S.Ct. 492, 498, 55 L.Ed. 797 (1911). The character of the relief imposed is thus ascertainable by

> applying a few straightforward rules. If the relief provided is a sentence of imprisonment, it is remedial if "the defendant stands committed unless and until he performs the affirmative act required by the court's order," and is punitive if "the sentence is limited to imprisonment for a definite period." **Id.,** at 442, 31 S.Ct. at 498. If the relief provided is a fine, it is remedial when it is paid to the complainant, and punitive when it is paid to the court, though a fine that would be payable to the court is also remedial when the defendant can avoid paying the fine simply by performing the affirmative act required by the court's order.

Criminal contempt is a crime, and the Due Process Clause of the Fourteenth Amendment protects a defendant in a criminal proceeding against conviction of a crime except upon proof beyond a reasonable doubt of every fact necessary to constitute the contempt charge. On appellate review of criminal contempt, the reviewing court must determine that the evidence, viewed in the light most favorable to the prosecution, was sufficient for a rational trier of fact to conclude that every element of the contempt charge was proved beyond a reasonable doubt. Billiot, 805 So. 2d at 1174.

A constructive civil contempt of court includes the willful disobedience of any lawful judgment, order, mandate, writ, or process of the court. LSA-C.C.P. art. 224(2). A finding that a person willfully disobeyed a

court order in violation of Article 224(2) must be based on a finding that the person violated an order of the court intentionally, knowingly, and purposefully, without justifiable excuse. Proceedings for contempt must be strictly construed, and the policy of our law does not favor extending their scope. **Bourne v. Bourne**, 2013-2170 (La. App. 1 Cir. 06/18/14), 2014 WL 3702486, *3 (unpublished), writ denied, 2014-1791 (La. 09/12/14), 148 So. 3d 936.

The burden of proving that the accused violated the court order intentionally, knowingly, and purposely without justiciable excuse is on the moving party. Additionally, the burden of proof in a civil contempt case is by a preponderance of the evidence. The trial court is vested with great discretion in determining whether a party should be held in contempt for disobeying a court order, and the trial court's decision should be reversed only when the appellate court discerns an abuse of that discretion. However, the trial court's predicate factual determinations are reviewed under the manifest error standard of review. **Bourne**, 2014 WL 3702486 at *3.

If a person charged with contempt is found guilty, the court shall render an order reciting the facts constituting the contempt. See LSA-C.C.P. art. 225(B). This court has reversed a finding of contempt where the trial court did not recite the facts upon which the contempt judgment was based as required by LSA-C.C.P. art. 225(B). Even where the trial court fails to recite the facts constituting contempt in a written order, however, the jurisprudence has recognized that this requirement is satisfied if such facts are recited by the trial court in open court.

Babin v. McDaniel, 2005-2455 (La. App. 1 Cir. 03/24/06), 934 So. 2d 69, 73-74; **In re Succession of LeBouef**, 2013-0209 (La. App. 1 Cir. 09/09/14), 153 So. 3d 527, 536; **Spring v. Edwards**, 2009-0902 (La. App. 1 Cir. 12/7/09), 2009 WL 5604433, *3 (unpublished).

The trial court found Ms. Zaorski in contempt of court for the following acts or omissions:

1. Refusal to share medical information regarding therapy for C.L.U.;

2. Refusal to share information regarding C.L.U.'s school/change of school;

3. Refusal to provide Mr. Usner with the address of C.L.U.'s new residence in Lafayette;

4. Scheduling of appointments for C.L.U. prior to notifying Mr. Usner and leaving him little to no time to attend the appointments;

5. Signing up C.L.U. for extracurricular activities prior to discussion of the same with Mr. Usner;

6. Making a decision about C.L.U.'s religious observation, including having C.L.U. become a member of a Presbyterian church, without consultation with Mr. Usner;

7. Failure to list Mr. Usner as a parent/emergency contact person person/authorized to pick up C.L.U. from school;

8. Refusal to allow Mr. Usner reasonable phone/Face Time contact with C.L.U.;

9. Refusal to allow Mr. Usner to exercise visitation at her residence in Lafayette; and

10. Refusal to allow Mr. Usner additional visitation.

The trial court imposed a sentence of fifteen days imprisonment, as well as a fine. However, the trial court suspended the sentence and payment of the fine if Ms. Zaorski paid the attorney fees and court costs associated with the contempt filing to Mr. Usner's attorney on or before February 1, 2022, and if Ms. Zaorski was not found in contempt again. Thus, Ms. Zaorski had the option to pay the attorney fees and court costs and comply with the trial court's judgment in order to avoid jail time and a fine. Therefore, the trial court did not impose an unconditional sentence. Accordingly, we find that the proceedings were for civil contempt. We now address each of the ten acts or omissions in turn.

Ms. Zaorski's refusal to share medical information regarding therapy for C.L.U.

The Consent Judgment provides that "the parties shall ... **share information with each other** about the child in a timely and cooperative manner. This information shall include, but is not limited to medical... aspects of the child's life." The trial court found that Ms. Zaorski was in contempt because she "failed to consult or discuss with [Mr. Usner] her unilateral decision to enroll [C.L.U.] in counseling."

Mr. Usner testified that Ms. Zaorski never told him C.L.U. was attending therapy; rather, he learned about the therapy in a court hearing. Ms. Zaorski testified that she did not inform Mr. Usner of the therapy until well after C.L.U. started attending the therapy. The record shows that Ms. Zaorski brought C.L.U. to the Aubrey Hepburn Care Center at Children's Hospital on May 29, 2018, asserting that C.L.U. had exhibited "sexualized" behavior on several occasions, and C.L.U. attended therapy for some time thereafter.1 Ms. Zaorski testified that she followed the protocol and that she did what the professionals told her to do. Under these circumstances, we find that the trial court manifestly erred in finding that Ms. Zaorski willfully disobeyed the Consent Judgment in refusing to share medical information with Mr. Usner regarding therapy for C.L.U. Therefore, the trial court abused its discretion in finding Ms. Zaorski in contempt, and we reverse the trial court as to this issue.

Ms. Zaorski's refusal to share information about C.L.U.'s school/change of school

The Consent Judgment provides that "the **[p]arties shall discuss with each other** *major* non-emergency decisions concerning the child before either one makes an independent decision." It also provides that the parties shall **"share information with each other"** and that "[t]his information shall include ... educational ... aspects of the child's life." The trial court: found Ms. Zaorski in contempt because of "her unilateral decision to refuse to provide information to [Mr. Usner], let alone a complete

failure to consult with and/or discuss her decision about changing [C.L.U.'s] school with [Mr. Usner]."

Mr. Usner testified that Ms. Zaorski did not discuss with or tell him she had taken C.L.U. out of one school and enrolled her in another school. Mr. Usner testified he was only informed of the new school when he was contacted by personnel from the new school. Mr. Usner sent a message to Ms. Zaorski on Our Family Wizard on August 16, 2018, noting that someone from C.L.U.'s school had notified him that C.L.U. had been taken out of the school the previous week. Ms. Zaorski admitted that she took C.L.U. out of one school and enrolled her in another school without informing Mr. Usner until after the fact.

The Consent Judgment requires that the parties share educational information. We find no manifest error in the trial court's finding that Ms. Zaorski failed to consult with or discuss with Mr. Usner her decision to change C.L.U.'s school in advance of the change. Therefore, we find that the trial court did not abuse its discretion in finding Ms. Zaorski in contempt.

Ms. Zaorski's refusal to provide Mr. Usner with the address of C.L.U's new residence in Lafayette

The Consent Judgment provides that **"[e]ach party shall always** keep the other informed of his/her actual address of residence, mailing if different, home, work and cellular telephone numbers, and of any changes to same within twenty-four hours of such change occurring." The trial court found that

Ms. Zaorski was in contempt based on "her unilateral decision to not share her physical and/or mailing address to [Mr. Usner] within 24 hours of moving into a residence with the child. This violated the co-parenting guidelines to which [Ms. Zaorski] agreed to be bound by and her explanation of providing photographs of a residence is not compliant with the terms of the Consent Judgment."

Mr. Usner testified that Ms. Zaorski moved to a residence with C.L.U. and did not timely provide him with the new address. Ms. Zaorski testified that she sent multiple pictures of the new residence to Mr. Usner, which he replied to with a "thumbs up" and that he never asked for the address. She stated that she sent him pictures of another house she had also considered. Ms. Zaorski also testified that as soon as Mr. Usner asked for the address through his attorney, she provided it. Mr. Usner's attorney sent a letter to Ms. Zaorski's attorney on April 27, 2018, asking for the address where Ms. Zaorski was living in Lafayette with C.L.U. Ms. Zaorski's attorney responded by letter on May 2, 2018, providing the address in Lafayette.

The Consent Judgment requires that Ms. Zaorski share her new residence address with Mr. Usner within twenty-four hours of the change. After review, we find no manifest error in the trial court's finding that Ms. Zaorski willfully disobeyed the Consent Judgment for her refusal to timely provide Mr. Usner with C.L.U.'s new residence address in Lafayette. Therefore, we find that the trial court did not abuse its discretion in finding Ms. Zaorski in contempt.

Ms. Zaorski scheduling appointments for C.L.U. prior to notifying Mr. Usner and leaving him little to no time to attend the appointments

The Consent Judgment provides that the parties shall **"share information with each other** about the child in a timely and cooperative manner." It further provides that the information shall include "medical ... aspects of the child's life." The trial court stated that Ms. Zaorski was in contempt because "she failed to timely inform [Mr. Usner] of the scheduled appointments" as required under the terms of the Consent Judgment. The trial court did not recite the facts upon which this contempt judgment was based as required by LSA-C.C.P. art. 225(B). Without a recitation of the facts of which medical appointments were involved and when Ms. Zaorski provided notice to Mr. Usner, we cannot review the trial court's ruling to determine if the trial court abused its discretion in finding Ms. Zaorski in contempt. See LSA-C.C.P. art. 225(B). Thus, this finding of contempt is reversed.

Ms. Zaorski signing C.L.U. up for extracurricular activities prior to discussing same with Mr. Usner

> The Consent Judgment provides that the: **[p]arties shall exchange information** with each other about all of the child's activities and schedules: school, sports, social, etc., to insure their proper and consistent attendance and to encourage and facilitate each party's involvement and attendance when appropriate. This pertains to the child's homework, school

> projects, appointments, and activities that need attention when the child is with the other party.

The trial court found Ms. Zaorski in contempt for not consulting or discussing with Mr. Usner her enrollment of C.L.U. in extra-curricular activities. The evidence cited by the trial court in its written reasons for judgment shows that Ms. Zaorski notified Mr. Usner by Our Family Wizard message on December 10, 2019, that she had signed C.L.U. up for an extracurricular exercise program at school called "Stretch and Grow" on Thursdays during regular school hours. She also informed him C.L.U. had been rehearsing the previous Saturday and Sunday for the Christmas pageant at the Presbyterian church.

The purpose stated in the Consent Judgment regarding extracurricular events is to encourage and facilitate parental attendance, which requires prior notice. We find no manifest error in the trial court's finding that Ms. Zaorski failed to discuss extracurricular activities with Mr. Usner. Therefore, we find that the trial court did not abuse its discretion in finding Ms. Zaorski in contempt.

Ms. Zaorski making a decision about C.L.U's religious observation, including having C.L.U. join a Presbyterian church, without consultation with Mr. Usner

The Consent Judgment provides that the parties shall "**share information with each other** about the child in a timely and cooperative manner. This information shall include, but is not limited to ...

religious aspects of the child's life." The trial court found Ms. Zaorski in contempt for "deciding to make [C.L.U.] a member of the Presbyterian Church without prior consultation or discussion with [Mr. Usner]."

Mr. Usner testified that Ms. Zaorski refused to inform him that she had taken C.L.U. to a certain church or that C.L.U. had joined the church. Mr. Usner testified that the issue was not that Ms. Zaorski was taking C.L.U. to church, but that there was no discussion of religious activities at all. Mr. Usner testified that he learned that C.L.U. had joined the Presbyterian church when a friend told him she had seen C.L.U. on the church's Facebook page showing new church members. Ms. Zaorski sent a message to Mr. Usner on Our Family Wizard on December 10, 2019, stating "We also, last month, formally joined the church we've been attending, First Presbyterian."

Ms. Zaorski testified that she and C.L.U. attended the church "a couple of times." She testified that they were there on a day when "a few different people" were joining the church, and the pastor told her that "some people like to join when there are other people." Ms. Zaorski stated that "it was comfortable to go up to the front, and I mean I really loved it there and felt at home there. So like that day I said '[w]ell, okay.'" Ms. Zaorski also testified that C.L.U. "can't officially join without being baptized," and stated "I misspoke when I [said] we joined."

The Consent Judgment provides that the parties shall share information about religious aspects of the child's life in a timely manner. The trial

court found that Ms. Zaorski decided to make C.L.U. a member of the Presbyterian Church without prior consultation or discussion with Mr. Usner and then attempted to hide this fact from him until Mr. Usner discovered it on social media. Further, the trial court determined that Ms. Zaorski attempted to change her testimony during the hearing as to whether C.L.U. actually became a member of the Presbyterian Church, which testimony the trial court found lacking in candor. We can find no manifest error in the trial court's findings. Therefore, we find that the trial court did not abuse its discretion in finding Ms. Zaorski in contempt on this issue.

Ms. Zaorski's failure to list Mr. Usner as a parent/emergency contact person/person authorized to pick UP C.L.U. from school

The trial court found Ms. Zaorski was in contempt for not listing Mr. Usner on C.L.U.'s school records. Mr. Usner testified that at the Guchereau Early Childhood Development Center (Guchereau Center) he was not listed by Ms. Zaorski as C.L.U.'s father, as an emergency contact, or as a person authorized to pick up C.L.U. Mr. Usner also testified that after he spoke to Ms. Zaorski, she added him as the father on the records, but still did not list him as a person authorized to pick up C.L.U. The enrollment application form for Guchereau Center filled out by Ms. Zaorski on May 31, 2018, shows no information given for C.L.U.'s father, and Mr. Usner is not listed as an emergency contact or as a person authorized to pick up C.L.U.

Ms. Zaorski testified that she filled out the form and put no information about Mr. Usner on the form. However, the September 12, 2017 Consent Judgment does not require that Ms. Zaorski, as the domiciliary parent, list Mr. Usner as a parent, as an emergency contact, or as an individual authorized to pick up C.L.U. from school. While we find that the better practice would be for Ms. Zaorski to list Mr. Usner as a parent on the school form, the Consent Judgment did not require that Ms. Zaorski do so. Thus, we are constrained to find that the trial court manifestly erred in finding that Ms. Zaorski willfully disobeyed the Consent Judgment in failing to list Mr. Usner as a parent/emergency contact person/person authorized to pick up C.L.U. from school, and we reverse the trial court's finding on this issue.

Ms. Zaorski's refusal to allow Mr. Usner reasonable phone/FaceTime contact with C.L.U.

> The Consent Judgment provides that:
> **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that each parent may telephone the child at reasonable times and intervals when the child is in the care of the other parent and the child shall have liberal access to both parents at all times. Should either party desire, the child shall be allowed to communicate with the absent parent via "Skype," "Face Time," or another similar program which allows visual as well as auditory contact upon reasonable notice

which participation of the other party shall not be unreasonably withheld.

The trial court found Ms. Zaorski in contempt for her "refusal to allow [Mr. Usner] reasonable phone/FaceTime contact [with C.L.U.]" The trial court found that Ms. Zaorski admitted that she disabled FaceTime from her phone and gave no "justifiable" excuse for disobeying the Consent Judgment.

Mr. Usner testified that it had been very difficult to schedule FaceTime with C.L.U. while she was in Ms. Zaorski's care and that his calls had been blocked and not accepted. He testified that the parties had agreed that the calls would be made between 5 p.m. and 7 p.m. Mr. Usner introduced into evidence screen shots of his cell phone showing calls to Ms. Zaorski's number which he maintained were blocked. Ms. Zaorski testified that Mr. Usner would attempt to call without scheduling it beforehand, that the screen shots showed that he called at random times, and that he would purposely call when he knew **12 she was unavailable. Ms. Zaorski testified that she disabled FaceTime on her phone for "technical" reasons.

The screen shots show that the calls were made between 4:30 p.m. and 6:31 p.m. Ms. Zaorski admitted to disabling FaceTime and not answering Mr. Usner's calls. We find no manifest error in the trial court's finding that Ms. Zaorski refused to allow Mr. Usner reasonable phone/FaceTime contact with C.L.U. Therefore, we find that the trial court did not abuse its discretion in finding Ms. Zaorski in contempt.

Ms. Zaorski's refusal to allow Mr. Usner to exercise visitation at her residence in Lafayette

The Consent Judgment provides that "[i]n the event [Mr.] Usner exercises his physical custody in Lafayette Parish at [Ms.] Zaorski's home, the physical custody shall be from 3:00 p.m. on Friday to 4:00 p.m. on Sunday. The parish of which the physical custody takes place shall be determined by agreement of the parties and what is in the best interest of the child." The trial court found that "[Ms. Zaorski] testified that [visitation at her residence] made her feel uncomfortable but the ... Consent Judgment specifically provides for this and [Ms. Zaorski] did not take any action to modify the terms of the Consent Judgment nor offer any proof that allowing [Mr. Usner] to exercise his visitation as provided for in the Consent Judgment was harmful to the child or presented a risk to [Ms. Zaorski]."

The Consent Judgment provided for visitation at Ms. Zaorski's home in Lafayette. The trial court found that Ms. Zaorski refused to allow Mr. Usner the right to exercise visitation at her residence in Lafayette and was in willful disobedience of the Consent Judgment. On our review, we find that the trial court's finding was not manifestly erroneous, and the trial court did not abuse its discretion in finding Ms. Zaorski in contempt.

Ms. Zaorski's refusal to allow Mr. Usner additional visitation

> The Consent Judgment provides:
> **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the parties are encouraged to be flexible in this schedule to allow [Mr.] Usner visitation with the minor child above what is stipulated herein when that additional visitation is reasonable, is in the best interest of the child and does not interfere with the child's routine home, school, and extra-curricular activities; however, in the event the parties are unable to agree on reasonable, informal visitation, then the terms of the established schedule here shall be complied with.

The trial court found that "[Mr. Usner] carried his burden of proof and the Court finds [Ms. Zaorski] is in contempt for [Ms. Zaorski's] refusal to allow additional visitation as specifically provided for in the…Consent Judgment. Mother was in willful disobedience of the … Consent Judgment and provided no justifiable excuse for her failure to comply with it." Without a recitation of facts regarding additional visitation, we cannot review the trial court's ruling to determine if the trial court manifestly erred in its factual findings and abused its discretion in finding Ms. Zaorski in contempt. See LSA-C.C.P. art. 225(B). Thus, we reverse this finding.

CONCLUSION

For the foregoing reasons, the trial court's October 15, 2021 judgment is reversed in part, as stated, and otherwise is affirmed. The costs of this appeal are assessed one-half against Linnzi Zaorski and one-half against Nicholas Usner.

REVERSED IN PART AND AFFIRMED IN PART.

Greene, J., agrees in part and dissents in part with reasons.

GREENE, J. agreeing in part and dissenting in part.

I disagree with the majority opinion's affirmance of the trial court finding Ms. Zaorski in contempt for the following: failing to consult with or discuss with Mr. Usner in advance of changing C.L.U.'s school; signing C.L.U. up for extracurricular activities prior to discussing same with Mr. Usner; making a decision about C.L.U.'s religious observation, including having C.L.U. join the Presbyterian church without consultation with Mr. Usner; refusing to allow Mr. Usner reasonable phone/FaceTime contact with C.L.U.; and refusing to allow Mr. Usner to exercise visitation at her residence in Lafayette for the following reasons.

Failing to consult with or discuss with Mr. Usner in advance of changing C.L.U.' s school

The Consent Judgment provides that the **"[p]arties shall discuss with each other** *major*

non-emergency decisions concerning the child before either one makes an independent decision." It also provides that the parties shall **"share information with each other"** and that "[t]his information shall include ... educational ... aspects of the child's life." The trial court found Ms. Zaorski in contempt because of "her unilateral decision to refuse to provide information to [Mr. Usner], let alone a complete failure to consult with and/or discuss her decision about changing [C.L.U.'s] school with [Mr. Usner]."

As the domiciliary parent, Ms. Zaorski had the right to choose C.L.U.'s school. I do not find the school choice for a three-year old child to be a major decision. For a three-year old, this is more a daycare decision than an education decision. Thus, I would find that the trial court abused its discretion in finding Ms. Zaorski in contempt for changing C.L.U.'s school without notifying Mr. Usner in advance.

Signing C.L.U. up for extracurricular activities prior to discussing same with Mr. Usner

> The Consent Judgment provides that the: **[p]arties shall exchange information** with each other about all of the child's activities and schedules: school, sports, social, etc., to [ensure] their proper and consistent attendance and encourage and facilitate each party's involvement and attendance when appropriate. This pertains to the child's homework, school projects, appointments, and activities that need attention when the child is with the other party.

The evidence relied on by the trial court shows that Ms. Zaorski notified Mr. Usner by Our Family Wizard message on December 10, 2019, that she had signed C.L.U. up for an extracurricular program during regular school hours. She also informed him that she was planning to enroll C.L.U. in other extracurricular programs and that C.L.U. had been rehearsing for the Christmas pageant at the Presbyterian Church.

Ms. Zaorski informed Mr. Usner about these activities and I note that Ms. Zaorski was the domiciliary parent at the time of these events. The Consent Judgment ***did not*** provide that ***prior*** notice had to be given before signing up C.L.U. for extracurricular events. I would find that the trial court abused its discretion in finding Ms. Zaorski in contempt for signing up C.L.U. for extracurricular activities prior to discussion of these extracurricular activities with Mr. Usner.

Making a decision about C.L.U.'s religious observation, including having C.L.U. join a Presbyterian Church without consultation with Mr. Usner

The Consent Judgment provides that the parties shall **"share information with each other** about the child in a timely and cooperative manner. This information shall include, but is not limited to ... religious aspects of the child's life." The trial court found Ms. Zaorski in contempt for "deciding to make [C.L.U.] a member of the Presbyterian Church without prior consultation or discussion with [Mr. Usner]."

While the Consent Judgment provides that the parties shall share information about religious aspects of the child's life in a timely manner, it does not require that the information must be shared prior to taking C.L.U. to church. Further, I do not find that Ms. Zaorski taking C.L.U. to church with her is a "major decision" and any attempt by a court to interfere with this inherent right of a parent to make such an intimate, personal decision should not be taken lightly. I believe that the trial court abused its discretion in finding Ms. Zaorski in contempt for making a decision about C.L.U.'s religious observation without prior consultation with Mr. Usner.

Refusing to allow Mr. Usner reasonable phone/FaceTime contact with C.L.U.

> The Consent Judgment provides that:
> [E]ach parent may telephone the child at reasonable times and intervals when the child is in the care of the other parent and the child shall have liberal access to both parents at all times. Should either parent desire, the child shall be allowed to communicate with the absent parent via "Skype," "Face Time," or another similar program which allows visual as well as auditory contact upon reasonable notice which participation the other party shall not be unreasonably withheld.

The trial court found Ms. Zaorski in contempt for her "refusal to allow [Mr. Usner] reasonable phone/FaceTime contact [with C.L.U.]"

Mr. Usner testified that it had been very difficult to schedule FaceTime with C.L.U. while she was in Ms. Zaorski's care and that his calls had been blocked and not accepted. He testified that the parties agreed that the calls would be made between 5 p.m. and 7 p.m. Mr. Usner introduced into evidence screen shots of his cell phone showing calls to Ms. Zaorski's number which he maintained were blocked. Ms. Zaorski testified that Mr. Usner would attempt to call without scheduling it beforehand, that the screen shots showed that he called at random times, and that he would purposely call when he knew she was unavailable. She testified that FaceTime had been disabled on her phone for technical reasons.

The screen shots show that the calls were made at differing times and there was no evidence that reasonable notice was given that the calls would be made. I would find that the trial court abused its discretion in finding Ms. Zaorski in contempt for refusing to allow Mr. Usner reasonable phone/FaceTime contact with C.L.U.

Refusing to allow Mr. Usner to exercise visitation at her residence in Lafayette

The Consent Judgment provides that "[i]n the event [Mr.] Usner exercises his physical custody in Lafayette Parish at [Ms.] Zaorski's home, the physical custody shall be from 3:00 p.m. on Friday to 4:00 p.m. on Sunday. The parish of which the physical custody takes place shall be determined by agreement of the parties and what is in the best interest of the child." The trial court found Ms. Zaorski in contempt for not

allowing Mr. Usner to exercise visitation at her residence in Lafayette.

Ms. Zaorski testified that visitation at her residence made her uncomfortable. The Consent Judgment did not require Ms. Zaorski to allow Mr. Usner's visitation to occur at her residence in Lafayette and further provides that the parties shall agree on which parish custody shall take place. Thus, I would find that the trial court abused its discretion in finding Ms. Zaorski in contempt for refusing to allow Mr. Usner to exercise visitation at her residence in Lafayette.

For these reasons, I respectfully dissent in part from the majority opinion. In all other respects, I agree with the majority opinion.

---

1. We note that Ms. Luscher's report found no evidence of abuse by Mr. Usner, and further, her report recommended that Mr. Usner be provided with the "predominant" amount of physical custody.

Court of Appeal, First Circuit
State of Louisiana

Re: Docket No.2022-CA-1326

Linnzi ZAORSKI	22nd Judicial District Court
Versus	Case #201713865
Nicholas USNER	St. Tammany Parish

On Application for Rehearing filed on 11/14/2023 by Linnzi Zaorski.

Rehearing denied.

/s/ Page McClendon

/s/ Guy Holdridge

/s/ Hunter Greene

Date DEC 20 2023

/s/ Peggy J. Landry

_____

Rodd Naquin, Clerk

Supreme Court of Louisiana

Linnzi ZAORSKI
v.
Nicholas USNER

NO. 2024 CJ 0119

March 12, 2024

24-0119 (La. 03/12/24), 381 So. 3d 50

Applying for Writ of Certiorari, Parish of St. Tammany, 22nd Judicial District Court Number(s) 2017-13865, Court of Appeal, First Circuit, Number(s) 2022 CA 1326.

Writ application denied.

JLW

JDH

SJC

JTG

WJC

JBM

PDG