

201 A.D.3d 939

Supreme Court, Appellate Division,
Second Department, New York.

In the Matter of Mark
L. STONE, appellant,
v.

Jamie M. WEINBERG, respondent.

2021-00231, 2021-01847

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(Docket Nos. V-17473-17, V-1002-18)

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Argued—December 20, 2021

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January 26, 2022

Attorneys and Law Firms

Law Office of Dorothy A. Courten, PLLC,
Hauppauge, NY, for appellant.

Quatela Chimeri, PLLC, Hauppauge, N.Y.
([Christopher J. Chimeri](#) of counsel), for
respondent.

Susan A. DeNatale, Bayport, NY, attorney for
the child (no brief filed).

[BETSY BARROS](#), J.P., [CHERYL E.
CHAMBERS](#), [JOSEPH A. ZAYAS](#),
[DEBORAH A. DOWLING](#), JJ.

DECISION & ORDER

***939** In related proceedings pursuant to Family Court Act article 6, the father appeals from (1) an order of the Family Court, Suffolk County (David Morris, J.), dated September 29, 2020, and (2) an order of the same court

(James F. Quinn, J.) dated December 14, 2020. The order dated September 29, 2020, insofar as appealed from, denied, without a hearing, that branch of the father's motion which was to hold the mother in civil contempt for violating an order of the same court dated July 5, 2019, and granted the mother's cross motion for an award of attorneys' fees in the sum of \$2,500. The order dated December 14, 2020, insofar as appealed from, denied, without a hearing, that branch of the father's separate motion which was to hold the mother in civil contempt for violating the provisions of a temporary restraining order sought in an order to show cause signed by the same court on February 21, 2020.

ORDERED that the order dated September 29, 2020, and the order dated December 14, 2020, are affirmed insofar as appealed from, with one bill of costs to the respondent.

The Family Court providently exercised its discretion in denying, without a hearing, that branch of the father's motion which was to hold the mother in civil contempt for allegedly violating an order dated July 5, 2019, requiring that one telephone call be made each day, at 7:30 p.m., by the parent exercising parental access to the other parent, for the purpose of facilitating communication between the other parent and the parties' child. A motion to punish a party for civil contempt is addressed to the sound discretion of the ****754** Family Court (*see Matter of Hughes v. Kameneva*, [96 A.D.3d 845, 846, 946 N.Y.S.2d 211](#)). To prevail on such a motion, the movant must prove, by clear and ***940** convincing evidence, that “(1) a lawful order of the court, clearly expressing an unequivocal mandate,

was in effect, (2) the order was disobeyed and the party disobeying the order had knowledge of its terms, and (3) the movant was prejudiced by the offending conduct” (*Matter of Freeborn v. Elco*, 188 A.D.3d 677, 680, 134 N.Y.S.3d 389 [internal quotation marks omitted]; see Judiciary Law § 753[A][3]; *El-Dehdan v. El-Dehdan*, 26 N.Y.3d 19, 29, 19 N.Y.S.3d 475, 41 N.E.3d 340). “To satisfy the prejudice element, it is sufficient to allege and prove that the contemnor's actions were calculated to or actually did defeat, impair, impede, or prejudice the rights or remedies of a party” (*Matter of Fruchthandler v. Fruchthandler*, 161 A.D.3d 1151, 1153, 78 N.Y.S.3d 214 [internal quotation marks omitted]). Here, the father's papers failed to sufficiently establish that the mother defeated, impaired, impeded, or prejudiced his rights with respect to the court-ordered daily telephone calls (see *Whitehead v. Whitehead*, 122 A.D.3d 921, 922, 998 N.Y.S.2d 99). In addition, the court providently exercised its discretion in granting the mother's cross motion for an award of attorneys' fees in the sum of \$2,500 (see *Rosenstock v. Rosenstock*, 149 A.D.3d 887, 889, 51 N.Y.S.3d 593).

The Family Court also providently exercised its discretion in denying, without a hearing, that branch of the father's motion which was to hold the mother in civil contempt for violating the provisions of a temporary restraining order sought in an order to show cause signed by the same court on February 21, 2020. Contrary to the father's contention, the court did not grant that temporary restraining order (see *Matter of Smith v. De Paz*, 105 A.D.3d 749, 751, 962 N.Y.S.2d 631). Consequently, there was no basis for a finding of contempt (see *Matter of Spicer v. Spicer*, 162 A.D.3d 886, 887, 80 N.Y.S.3d 328; *Bernard-Cadet v. Gobin*, 94 A.D.3d 1030, 1031, 943 N.Y.S.2d 164).

The father's remaining contention is not properly before this Court (see *Givens v. De Moya*, 193 A.D.3d 691, 694, 146 N.Y.S.3d 291).

BARROS, J.P., CHAMBERS, ZAYAS and DOWLING, JJ., concur.

All Citations

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