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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-624

Filed: 21 March 2017

Caldwell County, No. 13 CVD 730

PAUL EDWARD McLEAN, Plaintiff,

v.

DEBRA KAY KING, Defendant.

Appeal by Defendant from order entered 28 December 2015 by Judge Jane V. Harper in District Court, Caldwell County. Heard in the Court of Appeals 30 November 2016.

No brief for Plaintiff-Appellee.

Wesley E. Starnes for Defendant-Appellant.

McGEE, Chief Judge.

Paul Edward McLean (“Plaintiff”) and Debra Kay King (“Defendant”) are the parents of S.D.M, who was born in the summer of 2003. Plaintiff and Defendant were never married and never cohabitated, but Plaintiff was present for S.D.M.’s birth and is named as S.D.M.’s father on her birth certificate. S.D.M. has always lived with Defendant, but spent time with Plaintiff from birth until April 2012, sometimes frequently, sometimes infrequently, but never overnight. Defendant has always functioned as S.D.M.’s primary parent, and often made parenting decisions without

Plaintiff's input. However, beginning in April 2012, Defendant stopped contacting Plaintiff and excluded him from S.D.M.'s life. In an order entered 12 May 2014, the trial court determined that the reason Defendant denied visitation between S.D.M. and Plaintiff was because of a series of incidents in which Defendant did not like the way Plaintiff interacted with S.D.M. The trial court could not make a determination concerning the accuracy of some of the reported incidents, but ruled that even had all the events transpired as Defendant alleged, those events would not justify preventing Plaintiff from all contact with S.D.M.

In response to Plaintiff's repeated requests to see S.D.M., Defendant agreed only upon the condition that the visits occur at Defendant's house. Plaintiff continued to call S.D.M., and was able to maintain phone contact with her until August 2013 when, following the failure of custody mediation, Defendant prevented any contact, including telephone contact, between Defendant and S.D.M. During this period, S.D.M. began indicating to Defendant that she did not want to see Plaintiff, and the trial court found that Defendant "has encouraged [S.D.M.'s] fear and resistance to resumption of contact."

The trial court found it would be in S.D.M.'s best interest for contact between Plaintiff and S.D.M. to resume. The attorneys for both Plaintiff and Defendant "suggested counseling during a period of transition for [S.D.M.] and [Plaintiff], with [Defendant] involved if needed." The trial court concluded that "[b]oth [Plaintiff] and

[Defendant] are fit and proper persons to have the temporary care of” S.D.M., but that primary care should remain with Defendant subject to visitation rights by Plaintiff. These visitation rights would initially be supervised with both Plaintiff and Defendant present. The visitation would then transition to unsupervised visits between Plaintiff and S.D.M. The trial court ordered that “[n]either parent shall use any physical punishment, or threat of punishment, to discipline [S.D.M.]” The trial court further “encourage[d] the parties to engage in . . . counseling, but [did] not delay resumption of contact until a counselor [was] chosen, or until a counselor weigh[ed] in on the matter. The role of a counselor w[ould] be to assist the parties in moving forward toward normal contact between [S.D.M.] and [Plaintiff].”

The 12 May 2014 order came up for a review hearing on 11 September 2014. Following this hearing, the trial court entered an order on 11 September 2014, in which it found that Plaintiff and Defendant “stipulated that several supervised visits occurred per the [12 May 2014] order, but did not go well.” Plaintiff and Defendant further “stipulated that both have attempted to follow the order regarding . . . unsupervised visits. However, [S.D.M.] has refused to go with [Plaintiff], so no unsupervised visits have occurred.”

At the 11 September 2014 hearing regarding the inability to get S.D.M. to take her visitations with Plaintiff, the following transpired:

[DEFENDANT’S COUNSEL]: Your Honor, we just had a difficult situation. [Defendant] is in a difficult situation, as

is [Plaintiff], under these facts. Basically what Your Honor has told us in chambers, I think Your Honor has indicated that the use of the physically placing the child in the car and that sort of thing, I don't think Your Honor's in favor of being a party of doing that. We understand [Plaintiff's counsel's] position to deliver [S.D.M.] there. If Your Honor decides to do that, our client will comply with that. The problem is, Your Honor, we end up in a situation again where – I know I'm what-if-ing. You can always what-if. What if she doesn't get out of the – out of that car at [Plaintiff]'s house? We understand parents have to control children and we understand Your Honor's position on that.

. . . .

THE COURT: Okay. And one idea – and I'm not going to require this, would be just to sit in the car. *If you can, just sit there, however long it takes. We're not going back home. We're not going to the movies. We're not going to play games. We're not going anywhere. This is what you're doing this weekend, [S.D.M.]. This is your weekend, and there's not going to be an alternative.* And you've got to be willing to hang with that, too, and not give up. You want to see her, don't you?

[PLAINTIFF]: Yes.

THE COURT: Then you've got to try harder. You've both got to try harder. (Emphasis added.)

Regarding the “no physical punishment” provision in the 12 May 2014 order, the trial court found that Plaintiff and Defendant “interpreted the [12 May 2014] order to prohibit them from using or threatening to use *any* type of punishment for [S.D.M.].” (Emphasis added.) The trial court further found that S.D.M. had not received any professional counseling, because Plaintiff and Defendant “could not

agree on a counselor[.]” but that S.D.M. “would benefit from counseling to help her adjust to resuming her relationship with” Plaintiff.

Based upon its findings, the trial court ordered, *inter alia*, that Plaintiff and Defendant confer with each other before making major decisions involving S.D.M., that the visitation schedule laid out in the 12 May 2014 order was permanent, and that S.D.M. “shall not be allowed a choice of not visiting her father[.]” that “[w]hile neither parent shall use or threaten the use of physical punishment, both are free to threaten and use non-physical punishment, such as grounding or withholding privileges[.]” and that Defendant “shall deliver [S.D.M.] to [Plaintiff] at the beginning of scheduled visits and [Plaintiff] shall return her to [Defendant] at the visit’s end.” Plaintiff and Defendant were “strongly encouraged to arrange counseling for [S.D.M.],” but contact between Plaintiff and S.D.M. was not to be delayed “until a counselor [was] chosen, or until a counselor weigh[ed] in on the matter.” No further reviews were scheduled.

According to findings of fact in a 28 December 2015 order, on 12 September 2014, the day following the 11 September 2014 hearing, Defendant’s counsel wrote Plaintiff’s counsel “to confirm our understanding pursuant to yesterday’s hearing and our subsequent discussions.” A portion of the 12 September 2014 letter reads as follows:

[Defendant] will let [S.D.M.] know *that she will stay as long as it takes for [S.D.M.] to cooperate with visitation.*

[Defendant] will remain and the parties will cooperate until such time as [S.D.M.] complies or the parties determine that they should end it for the night.” The next morning at 8:00 a.m. [Defendant] and [S.D.M.] will return to repeat the process for the day until [S.D.M.] complies or they again call it a night. If necessary then this shall be repeated on Sunday.”

Plaintiff and Defendant moved forward with this plan, but the visitation required by the 11 September 2014 order was never achieved. Plaintiff filed a motion for contempt on 7 July 2015, alleging that Defendant was in violation of visitation provisions of the 11 September 2014 order. Defendant filed a motion for contempt on 18 November 2015, alleging that Plaintiff was in violation of child support provisions of the 11 September 2014 order. These motions were heard on 3 December 2015.

Approximately ten months passed between entry of the 11 September 2014 order and Plaintiff's 7 July 2015 motion for contempt. All attempts to get S.D.M. to successfully participate in visitation with Plaintiff during that time period had been unsuccessful. According to Plaintiff's 3 December 2015 testimony, Plaintiff's and Defendant's attorneys initially agreed to an arrangement whereby Plaintiff "would fix a meal for [S.D.M.], and [Defendant] and [Plaintiff] were to communicate and get [S.D.M.] out [of Defendant's car] to join [Plaintiff,] and [Defendant] would [then] leave." During Plaintiff's visitation periods, Defendant and S.D.M. did enter Plaintiff's house on multiple occasions, and Plaintiff would attempt to provide them with breakfast or lunch. S.D.M. would eat some of the food, but "each time when she

would finish, at some point she would rake it off [o]n the floor or spill it. It looked to [Plaintiff] like [S.D.M.] was just knocking it over intentionally.” According to Plaintiff, Defendant did nothing to attempt to correct S.D.M.’s behavior. When the meals were over, Defendant would state her intention to leave Plaintiff’s house and would say to S.D.M., “I’m going to leave you here with your dad,” which would result in S.D.M. running out of Plaintiff’s house and getting into Defendant’s car. Plaintiff testified that no overnight visitations occurred between himself and S.D.M. Plaintiff further testified that, since the 11 September 2014 order, he had completed a three-month parenting course.

In Defendant’s 3 December 2015 testimony, she testified that the vast majority of Plaintiff’s visitation time was spent with Defendant and S.D.M. outside in Plaintiff’s driveway while Plaintiff went about his daily business. Defendant’s attorney asked Defendant:

Q. Why are you waiting there all these hours for this to happen?

A. I don’t want to be in contempt. I want my daughter to do what she needs to do, and I want her dad to do what he needs to do. I want to do what I need to do. I want us all to work as a unit and I want [Plaintiff] and [S.D.M.] to get visiting. And the reason I’m there in the car is I have no other place to go. [Plaintiff] forbid me to come in his house. He told me I was not welcome. I couldn’t go back in his house, and he also told me I had to stay. There was a time when I suggested maybe, you know, leaving, and I suggested that on more than one occasion. And he would tell me, “No, you stay. Go back to the car and sit and stay.”

Q. You stay each time until he tells you you can leave?

A. I wait for him to come to the car and then I lower my window and he says – he usually whistles, and he says, “Take her home and I’ll see you tomorrow.” And the next day I come back.

Q. So on a typical weekend, you show up – visitation starts at what time?

A. Visitation starts Friday at 6.

Q. And usually what time does he let you go home?

A. Usually it’s midnight. Sometimes it’s been after that.

Q. And what about on – and do you come back the next day on Saturday?

A. I go back the next day, Saturday morning at 8.

Q. And about when does he let you go home on Saturdays, typically?

A. Once again, typically it’s midnight.

Q. And what about Sunday?

A. Sunday he has me back at 8 and then he comes back to the car and dismisses me at 6.

Q. Okay. And during these times have you had interactions with [S.D.M.] telling her to get out of the car so you can leave?

A. I have.

Defendant engaged the services of Appalachian State University professor and family therapist Jon Lewis Winek, Ph.D. (“Dr. Winek”) in an attempt to facilitate visitation between Plaintiff and S.D.M. Defendant and S.D.M. had sessions with Dr. Winek on multiple occasions, sometimes separately, and together on some occasions. Plaintiff had three sessions with Dr. Winek, none of which included S.D.M. Plaintiff testified that he talked with Dr. Winek about S.D.M.’s unwillingness to engage in visitation, and in particular that S.D.M. would usually simply refuse to get out of Defendant’s car once it was parked in Plaintiff’s driveway. Plaintiff testified that he would try and engage with S.D.M., but she would not respond. *Plaintiff acknowledged that Defendant would tell S.D.M., “this is your father’s visitation time. You need to get out of the car. You need to get out now[,]” but S.D.M. would ignore [D]efendant.* (Emphasis added.)

According to Plaintiff’s testimony, Dr. Winek told Plaintiff he would be suggesting to S.D.M. and Defendant different things S.D.M. could try and do to become more comfortable at Plaintiff’s house. The first was to get out of Defendant’s car while at Plaintiff’s house and exercise. Plaintiff testified that he approved of that. When asked if he had any objections to the methods Dr. Winek would use to try and encourage S.D.M. to accept visitation with Plaintiff, Plaintiff testified that he did “question” one method, which was for Defendant and S.D.M. to get out of the car and

dance around it. Plaintiff stated that this happened one time shortly after a neighbor's wife had died, and he believed it was inappropriate.

Plaintiff acknowledged that he had “agreed to th[e] arrangement that we made back in September 2014¹ to try to break the pattern of problems with the visits[.]” Defendant testified that, after Christmas vacation in 2014, after the incidents involving S.D.M. dropping food on the floor, Plaintiff “told [Defendant] not to come back in the house[.]” that she “was no longer welcome[.]” though S.D.M. could still come inside. Plaintiff testified that, pursuant to the agreement he had made with Defendant, she would show up with S.D.M. on Thursdays at 2:00 p.m., and they would mostly stay in Defendant's car until 12:00 a.m. when Plaintiff would tell them it was okay to leave. This was also the way the matter was handled on the weekends, when Defendant would bring S.D.M. after school on Fridays and wait outside until midnight, then return Saturday mornings at 8:00 a.m. and remain again until midnight, then return again at 8:00 a.m. on Sunday mornings and remain until 6:00 p.m. This repeated every week except for one week when Defendant was involved in a car accident that totaled her vehicle. Plaintiff testified he asked S.D.M. “numerous times . . . to come in and watch movies[.]” which she never did, but that he never “told her she ha[d] to” get out of Defendant's car, he just asked. In the past, Plaintiff and

¹ This was the 12 September 2014 letter whereby Plaintiff and Defendant agreed that Defendant should remain parked at Plaintiff's house during visitation periods until either S.D.M. agreed to exit the car for the visit, or both Plaintiff and Defendant agreed Defendant could take S.D.M. home.

Defendant had attempted to facilitate the exchange of S.D.M. for visitation at Defendant's house and at the sheriff's office, but none of those attempts were successful. Plaintiff testified that at the sheriff's office S.D.M. would get out of the car, but that "each time I would approach her she would run to a different location." Plaintiff admitted that the times he went to Defendant's house to try and collect S.D.M. for visitation, "the only way [he] could have gotten her in the car was to physically ma[k]e her," but he would not have done that. Plaintiff also testified that Defendant "tried to reach out to [him] about a celebration for [his] mother's birthday," but he didn't respond to her overture.

Dr. Winek testified at the 3 December 2015 hearing, and his testimony included the following. He first saw S.D.M. at a session on 30 March 2015, and described her as a very bright but anxious and sensitive child. Dr. Winek testified that, at these sessions, he usually checked in with Defendant first, then worked with S.D.M. alone and afterwards, worked with both S.D.M. and Defendant. These sessions occurred either every week or every other week, and Dr. Winek saw S.D.M. on 23 separate occasions. Dr. Winek testified that S.D.M. "had vague concerns about safety" related to visitation with Plaintiff. Dr. Winek testified that, regarding visitation, Defendant described to him "a scenario where [S.D.M. and Defendant] would spend long hours waiting in the car, just kind of in a stalemate." Dr. Winek testified that his "concern was the amount of time that [S.D.M.] had just sitting in

the car being idle. It was dangerous for her self-concept, self-esteem.” In order to counteract this detrimental idleness, Dr. Winek devised activities for S.D.M. to try when she was outside Plaintiff’s house. Dr. Winek described Defendant as “very responsive” in their sessions, and stated that Defendant had “done very well at setting more boundaries, helping her daughter – we’ll work on self-soothing more, the ability to calm one’s self down, the ability to manage one’s anxiety.”

Dr. Winek testified that he saw Plaintiff “on two occasions and spoke with him on the phone two or three times.” When Dr. Winek spoke with Plaintiff, Plaintiff mostly expressed concerns about S.D.M.’s unwillingness to leave Defendant’s car. Dr. Winek stated: “I made a few suggestions and [Plaintiff] was rather hesitant for them.” Specifically, Dr. Winek suggested that working together in therapy with S.D.M. could be helpful, as could sessions including both Plaintiff and Defendant. Dr. Winek testified that Plaintiff “was not interested in that idea when I suggested that early on.” Joint sessions including both Plaintiff and S.D.M. were Dr. Winek’s primary suggestion for helping S.D.M. move past her fear of Plaintiff. Plaintiff did not attend any joint sessions with Dr. Winek and S.D.M.

Dr. Winek testified he spoke with Defendant “a lot about a lot of different interventions and ways to support [S.D.M.] in her development, ways to help her through her anxiety.” Specifically, Dr. Winek testified:

One of the things that fairly early on I tried to do would be try to get [S.D.M.] out of the car. She’d been locked in that

environment. So I tried to engage [S.D.M.] and [Defendant] in playing some games in an expressive arts play therapy type approach. So for one session [S.D.M.] and myself and [Defendant] built intention traps. So we took mousetraps and we disarmed them and we wrote [S.D.M.'s] intentions which she wanted moving forward.

Q. If you will, explain to the Court what – what you said to [S.D.M.] about these intention traps and what you were planning to accomplish by having [S.D.M.] engage in this activity.

A. Well, I framed it in a way for her to get out of the car and to move around and to be comfortable and to express what she wanted from the situations, like being comfortable, being secure. And we made, like, one trap in session and I instructed her to continue to make traps and then to move through the yard and lay them out.

Q. Are these – I'm sorry. Go ahead.

A. Well, other examples were I encouraged [S.D.M. and Defendant] to . . . run around the car and trying to get [S.D.M.] out of her cognitive brain where I was afraid she was reinforcing the negative self-concepts into her emotional, playful brain to make room for something spontaneous to occur, to be more – well, to get her out of the car, to be more emotionally available, to be more vulnerable. It's very hard to solve an emotional problem pragmatically. Emotional problems usually need emotional solutions.

Q. So back to the intention traps, the mousetraps were disarmed, a phrase, a word was written on the mousetrap by [S.D.M.]?

A. Yeah, metaphorically trapping that trait, like, peace, caring, those type of things.

Q. You mentioned that one of those was made at the

session.

A. Yes.

....

Q. But the intention was you did the one and then [S.D.M.] was to come up with the other ones –

A. Yeah.

Q. – that she –

A. And [Defendant] was going to support her and [Defendant] had bought these supplies and brought the supplies. I think we had markers, plenty of traps, several packages of traps.

Q. Is it fair to say that because of your concerns with [S.D.M.] spending time in the car you have suggested various ways to try to get [S.D.M.] out of the car at the visits?

A. Yes, and moving around, engaged.

Q. Now, did you have any discussions with [Plaintiff] about the kinds of things that you might be suggesting to [Defendant] and [S.D.M.] to do at those visits?

A. At least one phone conversation I kind of laid it out that I would be moving [S.D.M.] out of the car and trying to get her to do things, and I believe I invited him to participate as much as he felt comfortable.

Q. And what was his response to you relaying that information to him?

A. He was somewhat reluctant, and at one point in our last phone conversation he kind of stated that he was moving forward with legal action, so he was not interested in

participating.

Dr. Winek was asked if he had “thrown a lot of ideas trying to get something with traction, is that fair to say?” He responded: “Yeah[.] [I]n psychotherapy, you know, it’s not an exact science, and the difficulty is what intervention’s going to get traction on what day, and so, yeah, we tried a lot of different things and we got some traction, but never as much as I want[ed].” Dr. Winek agreed that any attempt to forcibly remove S.D.M. from Defendant’s car would have been “damaging.” Another idea Dr. Winek put forth was to have another adult come by and stay with S.D.M. outside Plaintiff’s house while Defendant left for some period of time, in the hope that removal of Defendant from the situation might reduce tension and make S.D.M. more likely to interact with Plaintiff. Dr. Winek also encouraged S.D.M. to get out of Defendant’s car and interact with dogs that spent time in Plaintiff’s yard, and to interact with other members of Plaintiff’s family, especially Plaintiff’s mother. Dr. Winek testified he believed S.D.M. had been making progress in important areas, though clearly there had not been any breakthrough between S.D.M. and Plaintiff. Dr. Winek also noticed improved and more healthy interactions between S.D.M. and Defendant. Dr. Winek maintained that, in his opinion, the best next step “would be to try and have [S.D.M.] and [Plaintiff] meet in some place to work on positive experiences to get [S.D.M.] past her anxiety.” Dr. Winek was asked:

Q. In your opinion, would there be any psychological trauma to [S.D.M. caused by Defendant] letting [S.D.M.]

out of the vehicle and leaving the residence, or leaving [Plaintiff]'s residence for purposes of visitation?

A. Letting her out of the car, well, [S.D.M.'s] refused to get out of the car.

Q. And you have no suggestion that results in a parenting situation where [Defendant] can effectively get her to get out of the car.

A. Well, we can build to where [S.D.M.] gets herself out of the car. But at her age, I don't think it's appropriate to forcibly remove her. You can set up contingencies, you can set up opportunity, and the instances where I started to talk with [S.D.M.] about doing that, we went very little distance and she started to butt up against her parasympathetic response. She would start to move towards the fight, flight or freeze response. Her eyes – and you see this in someone's eyes. Their eyes start to disengage.

So I would try and get her to visualize getting out of the car, and she went a few steps down that path and started to go to freeze. So then, rather than continue to press, I tried a different route, because once someone's triggered, to bring them back down takes a long time.

Defendant testified that, during this period of time, she would arrive at Plaintiff's house with S.D.M. and park in his driveway. Defendant testified that upon arrival at Plaintiff's house: "I stay there for as long as it takes to either, (a) get visitation going, or (b) until [Plaintiff] tells me I can leave." Defendant testified that upon her arrival at Plaintiff's house, Plaintiff would usually come out to the car and say something similar to: "Hey, [S.D.M.], are you ready to come in? Come on in if you want to, or if you don't, just stay here." Defendant testified that, although she

does not recall Plaintiff ever telling S.D.M. that she had to get out of the car and visit with Plaintiff, Defendant would always tell S.D.M. that she needed to get out of the car and visit with Plaintiff.

Defendant admitted that, pursuant to Dr. Winek's advice, she would sometimes get out of her car with S.D.M. and briefly dance around it to music, and on one occasion she purchased mousetraps that S.D.M. decorated with cards saying things like "freedom," "understanding," and "kindness," and that S.D.M. distributed these around Plaintiff's property like "Easter eggs." Defendant explained that was done in response to a suggestion by Dr. Winek to place "intention traps" around Plaintiff's property as a means of allowing S.D.M. to take more ownership of her feelings toward Plaintiff. Defendant testified Plaintiff "had an adverse reaction to the intention traps being left and [S.D.M.] stopped and didn't leave them all." Defendant testified she sometimes attempted to take S.D.M. to visit with Plaintiff on non-visitation days.

Defendant testified she punished S.D.M. in various ways for refusal to visit with Plaintiff, including not letting S.D.M. go skating, swimming, or join friends for dinner, and grounding her from other activities like "sleep-overs," denial of the use of electronic devices, and assigning S.D.M. additional chores. Defendant further testified she also tried to offer S.D.M. incentives for following through with visitation,

such as giving her a set of art markers, but telling her she could only use them when she was visiting with Plaintiff. Defendant testified further:

In addition to that, I have sent [Plaintiff] several texts asking that he please find time to talk to me. I have asked him face to face that he find time to talk to me, and I've sent him letters. And the reason I've been asking him to talk to me is because I wanted to offer suggestions. I wanted him to offer suggestions, and he did offer one and I followed up on it, and that suggestion was that one night – it was November the 21st – that I go sit in the car and wait, you know, until she fell asleep.

See, before that, I had been working under the directive of the Court with the guidance of the letter that was sent, and it said that when I went there I was to stay outside in the car, basically, and to interact with him in an appropriate manner. And on this day, before I got in the house he came to me and he said, "I want you to do this. I want you to sit out here and wait." And I did.

I told him, I said, "I don't really think this is the way to do it. I don't think me sitting in the car is the thing to do, but if you really feel it's going to work, I'm going to try." So that was the only suggestion he made, but any suggestion he made, I followed up on.

In addition to that, I wanted –

Q. Let me stop you right there. What happened?

A. I went and sat in the car and, you know, I talked to her, and I kept saying, "Gosh, it's really uncomfortable. You mean you've been sitting out here like this? You know, we've got to end this. You've just got to go in there and be with your dad." And then after that approach didn't work, I would become very, you know, very direct again, as I had previously, and say to her, "[S.D.M.], get your things and go inside and visit with your dad."

I then took it to, “I want to go home. You must visit. Go and visit.” And when she fell asleep, I went inside and I talked to her dad and I explained to him that, you know, I wasn’t sure that I had really achieved the goal that he and I hoped it would, but that, you know, I had tried, and when I came back the next day or the following visit, which I believe to be the next day, he then told me that I was no longer allowed in the house, that I had to go back and sit in the car. And for a period from November 22nd until January 8th, I sat in [my] car with the contingency that I could enter to use the bathroom or I could enter to get something to eat or enter with [S.D.M.].

....

A. I could sit in the car with the exceptions of I could use the bathroom, I could get something to eat or drink, and I could go in there with [S.D.M.] if, you know, the need arose, and it did. And then on January 8th he comes to me and says – or when I went to the door, he says, “No, you go back and sit in the car. You don’t use my house for the bathroom. You don’t have anything in the refrigerator. You are just completely forbidden to come in my house.”

....

Q. Now, since that time, when you needed to go to the bathroom, what has he told you to do?

A. He suggested that I might use a gas station.

Q. Okay. So on occasions have you gone – left and gone to the gas station to use the bathroom?

A. I think they’re going to start charging me rent at that gas station. I’m not trying to be flip. I apologize if it comes off that way. But I go to the gas station when I have to use the bathroom.

Q. Okay. Now, have you – now, this idea of contacting him and getting his suggestions, was that your idea or did you get that idea from somewhere else?

A. No, those were my ideas.

Q. Were any of these actions a result of the co-parenting classes you mentioned earlier?

A. Yes. They were ideas that – they came from some other sources.

One of the things that I wanted to try to point out to you and to anyone here to listen was that I listened to Judge Harper and I listened to the statements made by the Court and I took them to heart. I went home and I made myself an outline like I did in my entry days in law school, where I sat down and I came up with things that I could think of that might be consistent with the orders of the Court.

I took the parenting class and I was fortunate enough to have someone present that class who let me call with questions and followed up, and I took that advice. I learned so much from that parenting class that, you know, I felt it was – it was expensive, but it was money well spent, and I tried to apply those different things I've learned. And some of the things that [Plaintiff] has done, I shudder because I think that's not consistent with the parenting class. But, nonetheless, I'm not here to oversee, you know, how he handles himself. I'm just here to try to do a better job myself.

Q. Okay. And this Love and Logic (inaudible) – is that the class you're referring to?

A. Yes, that's correct.

Q. Is that the certificate you received from completion of the class?

A. It is.

Q. And that's the same class that Dr. Winek referred you to.

A. It is.

Defendant testified that, until Plaintiff stopped allowing her to enter his house, each time she brought S.D.M. to Plaintiff's house, Defendant had S.D.M.'s bags packed and brought them into Plaintiff's house. 111 Defendant testified she would contact Plaintiff about events involving S.D.M. that occurred during her physical custody times, and would invite him to come join in with the hope that S.D.M. "would get the idea that [Plaintiff] was there because he wanted to be, and she would get the idea that I was okay with it." There was no evidence presented that Plaintiff attended any of S.D.M.'s extracurricular events. Defendant testified that she encouraged S.D.M. to get out of the car to feed dogs that spent time at Plaintiff's house, and to pet a horse that belonged to Plaintiff's cousin and was kept in a nearby pasture, with the hope that S.D.M. would become more invested at Plaintiff's home, and that Plaintiff would come out and join S.D.M. Defendant stated she had asked Dr. Winek about using the animals to help S.D.M. feel more comfortable being at Plaintiff's house, and Dr. Winek agreed the animals might be useful. Concerning Dr. Winek's suggestion that Defendant and S.D.M. get out of the car and "danc[e] around," Defendant testified: "I was embarrassed. I mean, I was totally embarrassed to get

out and do this, but I did it because [Dr. Winek] suggested it and I did it because I hoped it would help.” Defendant testified:

I have done everything that I could possibly think of and I haven’t informed the Court of all the other things that I have done because we can’t stay here for 15 months for me to do it, but over the past 15 to 16 months I have spent every possible moment I could trying to think of a way to do this, and I’m left with nothing. The only thing I could have done was to grab her and yank her out of the car, and then I don’t even know if I could have managed it.

“The party alleging civil contempt must include a sworn statement with the motion ‘setting forth the reasons why the alleged contemnor should be held in civil contempt.’” *Watson v. Watson*, 187 N.C. App. 55, 62, 652 S.E.2d 310, 316 (2007) (citation omitted). Plaintiff filed this contempt action 7 July 2015, arguing the following factual bases for his motion to hold Defendant in contempt for violating the 11 September 2014 order:

6. Defendant has failed and refused to comply with the terms of the May 12th and September 11th orders by way of the following:

a. Defendant has never dropped off [S.D.M.] at Plaintiff’s residence. Defendant remains parked in Plaintiffs driveway for hours on end with [S.D.M.] in the back seat. Defendant does not encourage [S.D.M.] [to] get out of the car.

b. When Defendant brings [S.D.M.] to Plaintiff’s house, Plaintiff goes to the car numerous times to try to get [S.D.M.] out of car but has found both [S.D.M.] and Defendant asleep in the car on numerous occasions. Plaintiff found Defendant and [S.D.M.] asleep in the car on

December 19, December 21, December 23, February 13, February 15, March 1, March 5, March 13, March 14, March 15, March 27, March 28, April 2, April 10, April 11, April 25, April 26, May 14 and May 22 of 2015.

c. [Plaintiff] has witnessed [Defendant] and [S.D.M.] getting out of the car on numerous occasions to feed the dogs, pet the neighbor's horses, or dance and skip around the car to loud music and beating the car with drink bottles for a short period of time before getting back in the car. When [S.D.M.] gets out of car with [Defendant], she never enters [Plaintiff]'s house or speak[s] to [Plaintiff]. These actions occurred on December 23, December 24, December 25, April 11, May 22, May 23, May 24 and May 28 of 2015.

d. [Plaintiff] witnessed [Defendant] and [S.D.M.] get out of the car on June 6, 2015, to place mouse traps with the word "Freedom" written on them all over his property.

e. On May 23, May 24, June 6, and June 7 of 2015, Defendant sat in Plaintiff's driveway in a lawn chair while [S.D.M.] remained in the car. Neither Defendant nor [S.D.M.] spoke to Plaintiff.

f. On June 7, 2015, [S.D.M.] got out of the car to walk in Plaintiff's yard, and Defendant approached Plaintiff's front door. When Plaintiff opened the door to ask what Defendant wants, she said she was "just feeding the dogs and wanted to know if he wanted a dog treat."

g. On May 8, May 9 and May 10 of 2015, Defendant and [S.D.M.] do not show up at Plaintiff's house.

h. On December 20, 2014, Defendant and [S.D.M.] entered Plaintiff's house together and get a drink out of his kitchen and returned to the car. Additionally, Defendant entered the house earlier that day to make herself a sandwich and returned to the car.

i. On December 20, 21, 22, 23, 24 and 25 of 2014, Defendant

and [S.D.M.] entered Plaintiff's house to eat and use the bathroom, but returned to the car to sit for a couple of hours until Plaintiff told them they can go home.

j. On Saturday, June 20, 2015, Defendant and [S.D.M.] exited the car to play badminton while Plaintiff was in the house; however, as soon as Plaintiff walked outside, both Defendant and [S.D.M.] got back into the car and did not speak to him.

k. On Saturday, June 20, 2015, Plaintiff witnessed a white Toyota pull into [his] driveway, and attorney Linda Hebel got out of the car with two lawn chairs and proceeded to sit with [S.D.M.] under a tree in his yard while Defendant left.

Plaintiff's motion for contempt was heard 3 December 2015. Following the 3 December 2015 contempt hearing, the trial court entered an order 28 December 2015² which included the following:

3. Under the controlling custody order, [Plaintiff] is entitled to alternate weekend visits, Friday through Sunday, alternate Thursdays overnight, as well as some other visits with [S.D.M.]. It was understood by the court, as well as the parties, that visiting with [Plaintiff] would be difficult for [S.D.M.]. Although the child had seen [Plaintiff] regularly for the first nine-plus years of her life, those visits were ended by [Defendant] in April 2012, and were not resumed until the 2014 court orders. The parties were encouraged to engage in counseling "for [S.D.M.] and [Plaintiff], with [Defendant] involved if needed." "The parties are strongly encouraged to arrange counseling for the child." For reasons discussed below, no counseling between [S.D.M.] and [Plaintiff] has occurred, although [S.D.M.] has been in counseling, sometimes with [Defendant] included, and [Plaintiff] has gone for a few counseling sessions without [S.D.M.] present. The May

² The trial court first entered an order 14 December 2015, then entered this corrected order 28 December 2015.

2014 order was specific that “[t]he role of a counselor will be to assist the parties in moving toward normal contact between [S.D.M.] and [Plaintiff].”

. . . .

5. On September 12, 2014 [Defendant]’s counsel . . . wrote to [Plaintiff]’s then-counsel . . . ”to confirm our understanding pursuant to yesterday’s hearing and our subsequent discussions.” This letter, in pertinent part, provided for [Defendant] to transport [S.D.M.] to [Plaintiff]’s home for visitation as the orders required. Among other details, however, this [letter] also provided that “[Defendant] will let [S.D.M.] know *that she will stay as long as it takes for [S.D.M.] to cooperate with visitation. . . . [Defendant] will remain and the parties will cooperate until such time as [S.D.M.] complies or the parties determine that they should end it for the night.*” This letter further provided: *“The next morning at 8:00 a.m. [Defendant] and [S.D.M.] will return to repeat the process for the day until [S.D.M.] complies or they again call it a night. If necessary then this shall be repeated on Sunday.”*

6. [T]he court entered an order on September 11, 2014 after the September 11, 2014 review hearing. That order was promptly provided to counsel. It contained no language about [Defendant] remaining at [Plaintiff]’s home until [S.D.M.] agreed to visit with [Plaintiff]. Nor was any such plan brought up to the court during the hour-long hearing of September 11, 2014. The court was made aware that [S.D.M.] had resisted the visits. The court made it plain to the parties that the visits were to occur as previously ordered. *“The child shall not be allowed a choice of not visiting [Plaintiff].”*

7. Despite the court’s order, *the parties*³ have put and kept in place the plan described in [the] September 12, 2014 letter – a plan that was never submitted to the court.

³ Emphasis added.

Indeed, a motion for modification and a consent order *were* submitted to the court in November 2014, with no reference whatever to the plan that the parties had put in place. On the days when [S.D.M.] is to be with [Plaintiff], she is delivered to his home by [Defendant], who stays with [S.D.M.] in [Plaintiff]’s driveway – sometimes as long as 16 hours – until around midnight, when [Plaintiff] tells them they may go home. This has been the practice for at least 15 months. [S.D.M.] has not had a single visit with [Plaintiff], unattended by [Defendant], much less an overnight with him, despite the court’s specific order.

8. [Defendant] denies being in contempt of the court’s order on the basis that [S.D.M.] refuses to visit [Plaintiff].

9. During the “visits,” [Defendant] has on several occasions left [S.D.M.] in the car, briefly, while [Defendant] took a walk away from [Plaintiff]’s property. On just one occasion, she drove away and left [S.D.M.] there briefly – but on that occasion, a friend of [Defendant] had joined the group, and she stayed with [S.D.M.] while [Defendant] was away.

10. During this same 15-month period, [S.D.M.] has done a number of unpleasant things. She has worn an uncomfortable back brace, which she was wearing back in February 2014, for her scoliosis. In the summer of 2015, she spent many hours during very hot days sitting in [Defendant]’s car, in [Plaintiff]’s driveway, wearing the brace, often suffering from skin breakdown because of the effects of the high temperatures, especially in an enclosed space, on her skin while wearing the brace. She has gone with [Defendant] to [Plaintiff]’s home over 100 times, and stayed for hours, until allowed to go back to [Defendant]’s home. Her refusal to visit has resulted in consequences imposed by [Defendant], including being grounded, not having a birthday party, not going to the circus or the mall or to Disney on Ice, not swimming on multiple occasions, missing other activities she enjoys, being required to do household chores, and many other consequences. All of these things [Defendant] has been able to get [S.D.M.] to

do, or to give up doing. Yet [Defendant] maintains that she is unable to compel [S.D.M.] to stay at [Plaintiff]’s home for a visit. The court is not persuaded of [Defendant]’s inability.

11. [Defendant] chose Dr. Jon Winek, a specialist in marriage and family therapy who is on the Appalachian State University faculty and also in private practice in Boone, N.C., for counseling, first for herself and then for herself and [S.D.M.]. Dr. Winek testified on December 3, 2015, and his case notes were submitted in evidence. He first saw [Defendant] on July 1, 2014 for a two-hour session. He described her as “currently distressed around a custody case with the father of her daughter.” He referred her to legal counsel, as well as for parenting classes. Dr. Winek did not see [S.D.M.] until March 30, 2015.

12. Dr. Winek has seen [S.D.M.], and [Defendant], 23 times in 2015. While [S.D.M.] was alone with Dr. Winek for at least part of these sessions, it is unclear, from Dr. Winek’s notes, whether [S.D.M.] was present during all of his sessions with [Defendant]. Certainly [S.D.M.] was present for some of those sessions. For example, April 27, 2015 note: “When [S.D.M.] joined us [Defendant] had significant anxiety around relationship with [Plaintiff]. Encouraged [Defendant] to have less fear of [Plaintiff].”

13. Dr. Winek’s initial diagnoses for [S.D.M.] were anxiety and adjustment disorder. After eight months and 23 therapy sessions, he has not changed those diagnoses, although he has not ruled out major depression or specific phobia. He has never diagnosed [S.D.M.] as having post-traumatic stress disorder. He has found her to be sensitive, naïve, tearful at times (although less so in later sessions), and lacking in self-esteem. His notes refer to [S.D.M.]’s feelings of hurt and abandonment in regard to [Plaintiff].

14. Strategies Dr. Winek has used have included having [S.D.M.] make “intention traps,” one of which she and

[Defendant] made together at a session with Dr. Winek. His purpose was to encourage [S.D.M.] to express her feelings to [Plaintiff]. [Defendant] bought numerous mousetraps and other supplies for [S.D.M.]’s use. [S.D.M.] wrote various words on these traps. On some of them she wrote “Freedom.” On others she may have written other words, such as “Kindness” or “Understanding.” At her next “visit” to [Plaintiff]’s home, she left the car and distributed these mousetraps around his property, while [Defendant] stayed in the car and watched her do this.

15. [Plaintiff] has spoken with Dr. Winek by telephone a few times, and has gone to at least two sessions with him. No notes from these sessions were offered in evidence. Dr. Winek encouraged [Plaintiff] to participate in joint sessions with [S.D.M.], which [Plaintiff] has declined to do. Nor has [Plaintiff] proposed an alternative counselor.

....

19. The court cannot find . . . that [Defendant] has behaved with proper respect and regard for the court’s orders. As stressed above, and as explained from the bench to the parties in the September 11, 2014 hearing, [S.D.M.] was not to be given a choice about visitation – yet a choice is exactly what the child has been given.

20. [Defendant]’s insistence on staying with her daughter throughout the “visits” to [Plaintiff]’s home, and her own apparent determination that being alone with him would be out of the question for [S.D.M.], undermine the letter and the spirit of the court’s orders, and make normal visits impossible. [Defendant] has always called all the shots where [S.D.M.] is concerned, and she has persisted in trying to dictate to [Plaintiff] how he should behave when (if he ever were) with [S.D.M.]. The court did not condition his visits on acting as [Defendant] dictates, although the visits are conditioned in numerous ways – no alcohol, no firearms, no physical punishment, among other restrictions. [Defendant] insists that [S.D.M.] and

[Plaintiff] should work things out between them, but her actions belie these words. From [Defendant]'s testimony, her exhibits of her various directives to [Plaintiff], and Dr. Winek's notes, it is apparent that her distrust of [Plaintiff] and anger toward him have been transferred to [S.D.M.].

....

CONCLUSIONS OF LAW

....

2. Defendant . . . is in civil contempt of the court's order regarding visitation. She is capable of complying with the court's order.

....

BASED ON THE ABOVE FINDINGS AND CONCLUSIONS, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Defendant . . . may purge herself of contempt by following this and previous visitation orders, none of which includes, or sanctions, her staying at father's home during his visitation periods. While the parties are free to try alternate methods of delivery and pick-up of the child, they are expected to adhere to the visitation schedule as set out in the court's orders.

....

3. If counseling for [S.D.M.] continues, Dr. Winek, or any other counselor chosen for [S.D.M.], shall be provided with copies of this and previous orders regarding visitation.

4. [Plaintiff] is again encouraged to participate in counseling with [S.D.M.]. While Dr. Winek was not [Plaintiff]'s choice, he has established rapport with [S.D.M.], and has not intentionally worked against the

court's order.

Defendant appeals.

Defendant argues that certain findings are not supported by the evidence, and that the trial court's findings of fact do not support its conclusion that Defendant was in ongoing civil contempt of the 11 September 2014 order. We agree.

We first note that Defendant includes eighteen arguments in her brief. We will not address each argument separately, and those arguments not addressed have been determined to lack merit, or to be unnecessary for resolution of Defendant's overall argument.⁴ Our standard of review in this matter is as follows:

The standard of review for contempt proceedings is limited to determining whether there is competent evidence to support the findings of fact and whether the findings support the conclusions of law. "Findings of fact made by the judge in contempt proceedings are conclusive on appeal when supported by any competent evidence and are reviewable only for the purpose of passing upon their sufficiency to warrant the judgment." "North Carolina's appellate courts are deferential to trial courts in reviewing their findings of fact."

Watson, 187 N.C. App. at 64, 652 S.E.2d at 317 (citations omitted).

We hold that the trial court's findings of fact do not support its conclusion that "Defendant . . . is in civil contempt of the court's order regarding visitation." Record

⁴ For example, in argument nine, Defendant contends that the trial court erred and denied Defendant her due process rights in considering certain evidence related to S.D.M.'s dental expenses. However, Defendant makes no argument concerning how Defendant was prejudiced, nor what remedy is sought.

evidence demonstrates Plaintiff and Defendant were unable to accomplish appropriate visitation between Plaintiff and S.D.M. pursuant to the trial court's 12 May 2014 order and, for this reason, visitation was revisited by the trial court on 11 September 2014. At the 11 September 2014 hearing, when asked by Defendant's counsel how Defendant might handle S.D.M.'s refusal to get out of Defendant's car to facilitate visitation with Plaintiff, the trial court made the following recommendation:

And one idea – and I'm not going to require this, would be just to sit in the car. *If you can, just sit there, however long it takes. We're not going back home. We're not going to the movies. We're not going to play games. We're not going anywhere. This is what you're doing this weekend, [S.D.M.]. This is your weekend, and there's not going to be an alternative. And you've got to be willing to hang with that, too, and not give up. (Emphasis added.)*

In response to this recommendation, both Plaintiff and Defendant made the following agreement:

[Defendant] will let [S.D.M.] know that she will stay as long as it takes for [S.D.M.] to cooperate with visitation. . . . [Defendant] will remain and the parties will cooperate until such time as [S.D.M.] complies or the parties determine that they should end it for the night." The next morning at 8:00 a.m. [Defendant] and [S.D.M.] will return to repeat the process for the day until [S.D.M.] complies or they again call it a night. If necessary then this shall be repeated on Sunday."

Plaintiff's testimony was that he consented to this agreement, and the actions of both Plaintiff and Defendant appear to have been in accord with this agreement. There is no dispute that Defendant sought out counseling for herself and S.D.M. in

this matter, and that she followed through with suggestions of Dr. Winek, including getting out and dancing around Defendant's car, helping S.D.M. with materials for "intention traps," and interacting with animals and other people outside of Defendant's car. Plaintiff's motion for finding Defendant in contempt focused mainly on these actions, which Defendant and S.D.M. engaged in at the suggestion of Dr. Winek. Plaintiff's motion also focused on Defendant and S.D.M. remaining in Defendant's car when S.D.M. refused to exit the car, which was in conformity with the agreement Plaintiff and Defendant entered into on 12 September 2014, following the trial court's oral suggestion, made 11 September 2014. It is unclear from the record, or the 28 December 2015 order, what constructive actions Plaintiff took to try and facilitate appropriate visitation with S.D.M. The trial court's findings in support of its 28 December 2015 order finding Defendant in contempt are mainly the following:

19. The court cannot find, however, that [Defendant] has behaved with proper respect and regard for the court's orders. As stressed above, and as explained from the bench to the parties in the September 11, 2014 hearing, [S.D.M.] was not to be given a choice about visitation – yet a choice is exactly what the child has been given.

It is unclear to this Court how Defendant's actions have demonstrated a lack of respect for the trial court's 11 September 2014 order, especially in light of the fact that both Plaintiff and Defendant agreed to the course of action taken – apparently in response to a suggestion made by the trial court at the 11 September 2014 hearing.

To the extent that S.D.M. was given the choice to deny Plaintiff visitation, that choice was inherent in the 12 September 2014 agreement, to which Plaintiff was a party.

The 28 December 2015 order further found:

20. [Defendant]’s insistence on staying with her daughter throughout the “visits” to [Plaintiff]’s home, and her own apparent determination that being alone with him would be out of the question for [S.D.M.], undermine the letter and the spirit of the court’s orders, and make normal visits impossible. [Defendant] has always called all the shots where [S.D.M.] is concerned, and she has persisted in trying to dictate to [Plaintiff] how he should behave when (if he ever were) with [S.D.M.]. The court did not condition his visits on acting as [Defendant] dictates, although the visits are conditioned in numerous ways – no alcohol, no firearms, no physical punishment, among other restrictions. [Defendant] insists that [S.D.M.] and [Plaintiff] should work things out between them, but her actions belie these words. From [Defendant]’s testimony, her exhibits of her various directives to [Plaintiff], and Dr. Winek’s notes, it is apparent that her distrust of [Plaintiff] and anger toward him have been transferred to [S.D.M.].

Though the facts show Defendant was able to walk away from S.D.M. on multiple occasions and, on one occasion, drive away from S.D.M., the findings of fact are insufficient to demonstrate that abandoning S.D.M. in front of Plaintiff’s house would have been an appropriate manner in which to comply with the court’s order. We are particularly concerned about this potential because the record contains no evidence that Plaintiff took advantage of Defendant’s absences to join S.D.M. outside and try and connect with her. Absent findings that Plaintiff was prepared to take care of S.D.M, and was capable of doing so, and findings that Plaintiff and Defendant

had agreed upon such an action, we do not believe abandonment of S.D.M. by Defendant in front of Plaintiff's house would constitute a responsible course of action. While it might be true that "[Defendant] has always called all the shots where [S.D.M.] is concerned, and she has persisted in trying to dictate to [Plaintiff] how he should behave when (if he ever were) with [S.D.M.]," there are not sufficient findings of fact in the 28 December 2015 order to support this assertion. Further, assuming *arguendo* that Defendant's "distrust of [Plaintiff] and anger toward him have been transferred to" S.D.M., this alone does not constitute actionable contempt. If the trial court meant to state that Defendant was intentionally engendering in S.D.M. anger and distrust against Plaintiff, then it should have clearly stated such and included other findings in support.

The trial court may find a party in continuing civil contempt for failure to follow a court order pursuant to N.C. Gen. Stat. § 5A-21:

(a) Failure to comply with an order of a court is a continuing civil contempt as long as:

- (1) The order remains in force;
- (2) The purpose of the order may still be served by compliance with the order;
- (2a) The noncompliance by the person to whom the order is directed is willful; and
- (3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable the person to comply with

the order.

N.C. Gen. Stat. § 5A-21(a) (2015). Further:

At the conclusion of the [contempt] hearing, the judicial official must enter a finding for or against the alleged contemnor on each of the elements set out in G.S. 5A-21(a). If civil contempt is found, the judicial official must enter an order finding the facts constituting contempt and specifying the action which the contemnor must take to purge himself or herself of the contempt.

N.C. Gen. Stat. § 5A-23(e) (2015).

The implication of the 28 December 2015 contempt order seems to be that although Defendant stated her desire to facilitate visitation between Plaintiff and S.D.M., and she showed up at Plaintiff's home according to the schedule to which both she and Plaintiff had agreed, Defendant's real intent was always to thwart visitation between Plaintiff and S.D.M. It was the proper function of the trial court, as the trier of fact, to assess the witnesses' credibility. *Ingle v. Ingle*, 42 N.C. App. 365, 368, 256 S.E.2d 532, 534 (1979). For this reason, the trial court had the authority to find Defendant in contempt even if the testimony of the witnesses did not suggest her actions were in reality an attempt to *not* comply with the trial court's order.

However, in order to find Defendant in contempt, the trial court was required to find, *inter alia*, that:

(2a) The noncompliance by the person to whom the order is directed is willful; and

(3) The person to whom the order is directed is able to

comply with the order or is able to take reasonable measures that would enable the person to comply with the order.

N.C. Gen. Stat. § 5A-21(a). The trial court found that Defendant was “capable of complying with the court’s order.” However, we hold that the 28 December 2015 order does not include sufficient findings in support of the conclusion that Defendant was capable of complying with the trial court’s orders. N.C. Gen. Stat. § 5A-21(a)(3). We further hold that the findings of fact before us are insufficient to demonstrate that any noncompliance by Defendant was “willful.” N.C. Gen. Stat. § 5A-21(a)(2a). This fails to meet the requirements of N.C. Gen. Stat. § 5A-23(e).

In addition, the 28 December 2015 order does not sufficiently guide Defendant in terms of what specifically she could do “to purge . . . herself of the contempt.” N.C. Gen. Stat. § 5A-23(e) (“If civil contempt is found, the judicial official must enter an order finding the facts constituting contempt and specifying the action which the contemnor must take to purge himself or herself of the contempt.”).

The 11 September 2014 order, laudably, makes clear that neither Defendant nor Plaintiff may use force to extract S.D.M. from Defendant’s car to facilitate overnight visitation with Plaintiff. The trial court has repeated its belief that joint counselling between Plaintiff and S.D.M. at a neutral location might facilitate bringing about the desired result, but the trial court specifically ruled that such joint counselling was not *required*. We believe the trial court should provide more

guidance as to the specific actions Defendant and Plaintiff should take to facilitate visitation since its prior suggestion that Defendant and S.D.M. remain in Plaintiff's driveway as long as it takes for S.D.M. to exit the vehicle and engage with Plaintiff has yet to bear fruit.

We reverse that portion of the 28 December 2015 order finding Defendant in contempt and remand to the trial court for further action. We do not disturb the remainder of the 28 December 2015 order. If the trial court again determines Defendant is in contempt of the 11 September 2014 order, it shall enter sufficient findings of fact demonstrating that Defendant has not made a sincere attempt to facilitate visitation between S.D.M. and Plaintiff, but is in fact willfully attempting to thwart the court-ordered visitation. If the trial court determines Defendant has been dishonest in her testimony and that her testimony is unreliable, it should make appropriate findings in support. If the trial court determines Defendant willfully chose not to comply with its order, it must then make sufficient findings of fact demonstrating that Defendant is capable of complying with the trial court's order, and give express guidance on how Defendant is to do so. We simply note that both the trial court and Dr. Winek have opined that the best way to facilitate visitation between S.D.M. and Plaintiff might involve a professional who could facilitate communication between Plaintiff and S.D.M. in a neutral and safe environment, such as a therapist's office.

MCLEAN V. KING

Opinion of the Court

AFFIRMED IN PART; REVERSED IN PART, AND REMANDED.

Judges ELMORE and DIETZ concur.

Report per Rule 30(e).