STATE OF MICHIGAN

COURT OF APPEALS

MATTHEW JOHN MAGRYTA, Plaintiff-Appellant,	UNPUBLISHED June 20, 2017
v	No. 336433 Washtenaw Circuit Court
LISA SUZANNE MAGRYTA, Defendant-Appellee.	LC No. 14-002268-DM

Before: TALBOT, C.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

In this post-divorce dispute, plaintiff, Matthew Magryta, appeals by right the trial court's order setting aside a temporary order awarding him legal and physical custody of the parties' minor children and denying his motion to find defendant, Lisa Magryta, in contempt for failure to follow various court orders.[1] For the reasons stated in this opinion, we affirm in part, reverse in part, and remand for further proceedings before a different judge.

I. BASIC FACTS

The parties divorced in December 2015. As part of the consent judgment of divorce, Lisa was awarded physical custody of the children, and the parties shared joint legal custody. Relevant to this appeal, the parties entered a stipulated order that the South Lyon School District would assess the learning disabilities of the children and would deliver "services as reasonably necessary for their academic achievement as set forth" in the children's individualized education programs (IEPs). The parties were supposed to submit a joint request to the South Lyon School District to begin the IEP process.

The IEPs, however, were never completed. On March 29, 2016, Matthew filed a petition seeking an order to show cause because the IEPs were not completed. He alleged that Lisa was adamantly opposed to the IEPs. At a hearing on the petition, he asserted that Lisa was giving excuses for the children's lack of attendance, and he argued that Lisa needed motivation to get the IEPs completed. He requested that the court order the children be enrolled in the South Lyon

[1] For ease of reference we will refer to the parties by their first names.

School District and begin summer school if the IEPs were not completed. Lisa, however, asserted that she was making good-faith attempts to complete the IEPs. Ultimately, the trial court ordered that the parties fully cooperate with the South Lyon School District to complete the IEPs and that the parties appear in court on Monday, April 18, 2016, and every successive Monday thereafter in the event that the IEPs were not complete. Only Matthew appeared on April 18, 2016, and the court entered an order for Lisa to appear on April 22, 2016, to show cause why she should not be held in contempt for failure to comply with the previous order and why the children should not be enrolled in summer school. At the show-cause hearing, the trial court concluded that the parties could not agree on the fundamental issue of schooling. The court therefore ordered that, in the absence of an agreement by the parties, the children shall be enrolled fulltime in the fall at the South Lyon School District. Despite the court order, the children have not attended classes at the South Lyon School District.

Matthew filed a number of additional motions relating to the children's counseling, the parties' minor son's alleged medical diagnosis, and parenting time. He also requested attorney fees. On August 4, 2016, the trial court entered an order addressing the motions. The court ordered that (1) Dr. Sandler continue as the children's therapist, (2) that the parties' minor son be evaluated regarding his bipolar diagnosis, (3) that Matthew have parenting time with all of the minor children pursuant to the Washtenaw County parenting time guidelines, and (4) that Matthew's request for attorney fees was granted.

On September 2, 2016, Matthew filed a petition for an order to show cause based on violations of the August 4, 2016 order. The petition asserted that the children refused to leave and told Matthew, "We do not trust you" and "We are not happy with your interference in [the minor son's] medical care," when he arrived to pick them up for parenting time. The petition further asserted that Matthew offered alternatives to the children for 30 minutes, that the children adamantly refused to leave, and that Matthew had no choice but to leave after stating to the children that he was open to their preference of activities. The petition maintained that there were several other unsuccessful attempts at parenting time on different occasions. With respect to the parties' minor son, the petition asserted that the child asked Matthew, "Why are you stopping me from seeing Dr. Garcia?" In addition, the child expressed concerns that Dr. Sandler, Matthew, and the trial court judge were "in cahoots." The petition maintained that the children were coached by Lisa and that Lisa enrolled the children in a homeschooling program instead of the South Lyon School District.

On September 22, 2016, the trial court held a hearing on the show-cause petition, and Lisa appeared without her lawyer. The trial court asked Lisa whether the children were enrolled in South Lyon School District, and, after failing to answer the question several times, Lisa indicated that Matthew enrolled the children in South Lyon School District, but the children were also "enrolled in their school they have only ever known their whole life." The trial court then asked Lisa several times whether she took the children to South Lyon School District, and she eventually answered no because they were enrolled in Mother of Divine Grace school, which she described as a nonpublic school with a "rigorous" criteria.

Lisa also indicated that she was allowing Matthew parenting time with a supervisor at a neutral location. The trial court noted that it never ordered supervised visitation, and Matthew stated that he was going along with supervised parenting time because he was taking whatever

time he could get with the children under the circumstances. The trial court asked Lisa whether she would bring the children in if it ordered her to do so, and she stated that the children have been traumatized for years and that she did not believe it would be in their best interests. Eventually, after being asked several more times, Lisa indicated that she would bring in the children. Lisa stated that the children had mental disabilities and that it would not be good for them, but Matthew's lawyer noted that there were no medical records establishing mental disabilities. The trial court stated that it was struggling with what to do with the case and questioned whether Children's Protective Services (CPS) should be involved because something was terribly wrong. Lisa responded that she obeyed her priest and doctors, that she withheld video of bruises on the children because she did not believe the matter should be resolved in the courtroom, and that she never stood in the way of Matthew and the children. According to Lisa, any animosity between Matthew and the children was caused by Matthew's actions. The trial court indicated that its view of the situation did not comport with Lisa's view and that it would be making a CPS referral. The trial court further stated that it did not believe an order regarding parenting time would have any effect, so it was going to make the CPS referral and see what happened next.

In October and November 2016, Matthew filed the following: (1) a motion to enforce parenting time and for compliance with the settlement agreements because Lisa refused parenting time, except for 15 to 20 minutes of supervised parenting time a week; (2) a motion to enforce the order for a medical evaluation of the parties' minor son because Lisa failed and refused to comply with the order; (3) a motion to compel compliance with and enforce the April 22, 2016 order regarding the minor children's school because Lisa still refused to comply with the order and continued to homeschool the children; and (4) a motion to enforce the August 4, 2016 order regarding therapy for the minor children because Lisa had not brought the children to Dr. Sandler since on or about April 13, 2016.

On November 17, 2016, the trial court held a hearing on the motions described above. Both Lisa and her lawyer were absent. Matthew explained that truancy officers were contacting him asking why the children were not at school. In addition to reiterating his arguments from his various motions, Matthew noted that Lisa had texted him that the hearing was canceled, that CPS merely checked to see if the children had food and were dressed and manicured, and that there was no "nuance" into that investigation. The trial court stated that it would grant Matthew's requests regarding specific parenting time, completion of the IEPs, contact with Dr. Sandler by the following week, and evaluation of the supposed bipolar condition. Matthew noted concern about Lisa's behavior and stated that something needed to be done to get her attention. Matthew argued that Lisa's failure to follow court orders was, by definition, contrary to the minor children's best interests. Matthew therefore asked for the order to include a condition that, if the orders were not complied with in a timely manner, Matthew's parenting time would be extended until there was an evidentiary hearing.

Significantly, the trial court questioned whether it should award temporary custody to Matthew if there was not full compliance with its orders by the end of the month. Thereafter, the trial court placed Matthew under oath. Matthew testified that the statements in his motions were true and that he received a text message from Lisa at 7:58 p.m. on the night before the hearing indicating that the hearing was canceled. Matthew further testified that he was not able to see his children other than the children standing in front of the neighbor's house, that he had not been

able to get the ordered evaluations completed, and that the children were not attending the South Lyon School District. Following the testimony, the trial court stated that it was "granting temporary full custody, legal and physical, to" Matthew immediately. The trial court entered a written order stating that, based on Lisa's failure and/or refusal to comply with its orders, Matthew was granted temporary legal and physical custody of the minor children. The trial court further ordered that the Washtenaw County Sheriff's Department shall assist Matthew in taking the children into his physical custody. The order noted that Lisa could object within 14 days of service of the order and request that it set an evidentiary hearing.

On November 22, 2016, Lisa filed an objection to the temporary change in custody and argued that the request for a change in custody was not raised in an independent motion and was merely made orally at the hearing. She asserted that there were procedural and legal deficiencies with the temporary custody order, noting that a change in custody required proper cause or a change of circumstances, that a court must also address the established custodial environment before changing custody, and that the best-interest factors must be weighed. Lisa further argued that the best-interest factors weighed against a change in custody and that she believed that the change in custody was purely punitive in nature. She requested the trial court to enter an ex parte order preserving the status quo regarding custody, but the court denied her request.

On December 6, 2016, Matthew filed a motion for an order finding Lisa in criminal contempt. The motion asserted that Matthew went to Lisa's residence accompanied by two Washtenaw County sheriffs; that Lisa "did nothing to facilitate the minor children stepping out of her van (which she had placed the children in at the end of her driveway)" despite a sheriff advising Lisa of the lawful nature of the court order; that the sheriffs declined to physically remove the children from the van because it was a civil matter; and that the children were still not in Matthew's physical custody, which placed Lisa in contempt of the November 17, 2016 order. The motion further asserted that Lisa was in violation of the April 14, 2016, April 22, 2016, and August 4, 2016 orders regarding schooling, the IEPs, and the medical evaluation.

On December 12, 2016, Lisa filed an objection to Matthew's motion for an order finding her in criminal contempt. She reiterated that the temporary change in custody was not requested in any of the written motions and that she and her lawyer both had independent medical emergencies, which was why they were not present at the hearing. Lisa noted that her ex-parte motion was denied, but a hearing on her objection was set to be heard on December 15, 2016. Further, Lisa explained that Matthew wished to pick up the children on the day before Thanksgiving, that she had the children packed and ready, and that she and the children waited at the end of the driveway because a "previous decree" disallowed Matthew from walking upon or entering the premises. Lisa further explained that she did everything short of physically lifting the children out of her vehicle, that she could not even lift the children because they were taller and stronger than her, and that Matthew did nothing to aid in the transportation of the children. Moreover, in addition to factual reasons, Lisa argued that she objected to the legal basis for the contempt order Matthew requested, that a change in custody required proper cause or a change in circumstances, and that a trial court must also determine whether an established custodial environment exists and analyze the best-interest factors. Lisa further argued that she acted in good faith to comply with the order, that the children did not feel safe with Matthew, and that she could not "be expected to forcefully manhandle the" children, which would be contrary to her training in "Gentle Teaching" and her moral responsibility to the children. Lisa maintained that

the prior orders were not in the children's best interests, that all orders should be stayed until an evidentiary hearing could be conducted, and that the previous orders were not properly scrutinized as to the harm that they could have on the children. Lisa asserted that each minor child was entitled to have a best-interest analysis under MCL 722.23, that the best-interest factors favored her having custody, and that the relevant orders by the trial court were not entered in compliance with MCR 2.602(B).

On December 15, 2016, the trial court held a hearing on Lisa's objection to the order modifying temporary custody and Matthew's motion for an order finding Lisa in criminal contempt. At the start of the hearing, the trial court stated that it had no interest in punishing people or locking them up, and it asked Lisa's lawyer how it could have Lisa comply with its orders. Lisa's lawyer argued that the trial court should first hear testimony regarding the order modifying temporary custody and that the previous orders were not supported by testimony. The trial court acknowledged that Lisa was raising procedural challenges but asked how to gain compliance with orders in the event that it ruled against Lisa. Lisa's lawyer explained that Lisa was merely fighting for the children's best interests and that the facts should be put before the trial court. The trial court countered that Lisa did not accept the facts every time they were heard, noted that it heard the facts, and indicated that Lisa failed to comply with the orders such as the children attending the South Lyon School District.

The trial court recommended that Lisa's lawyer advise her of the seriousness of where the case was at with the contempt issue and took a five-minute recess. Once back on the record, the trial court asked Lisa's lawyer whether Lisa would comply, and Lisa's lawyer indicated that the matter was not as simple as that. After several exchanges back and forth, Lisa's lawyer eventually indicated that Lisa would not follow the temporary order modifying custody because she had filed an objection. Lisa's lawyer also noted that there were three previous orders that had no basis whatsoever, that the children were thriving with Lisa, and that an objection was raised to the temporary change in custody. Lisa's lawyer explained that the children did not want to go with Matthew and that they were afraid of him.

Matthew argued that Lisa failed to follow the orders throughout the case; that the orders were prepared pursuant to the court rules at the various hearings; and that Lisa did not appeal the orders regarding the IEPs, the doctors, or counseling. Matthew further argued that Lisa did not appeal the order modifying temporary custody or the order denying the ex parte motion to set the custody order aside. Matthew maintained that all of the orders were valid and that Lisa defied them. Matthew explained that the judgment of divorce was a consent judgment, that Lisa agreed to joint legal custody, and that Lisa was negatively affecting the children's relationship with him. Matthew further asserted that Lisa would continue to disobey orders and that they would have to be back in court the following week.

The trial court asked whether the parties could agree on anything, and Lisa stated that she would not enroll the children in the South Lyon School District. The trial court then asked Lisa several times whether she would reinstate counseling, but Lisa never gave a straight answer and instead stated that she followed the instructions of the counselors throughout the case. The trial court stated that it was "really at wit's end" and did not know what to do, and it asked Lisa whether she would bring the children into court in order to talk with them. Lisa replied that it was "not in their best interest, so no." Eventually, the trial court stated to Matthew's lawyer, "I

think what we need to do is you need to file a separate action for parental alienation. I will give—I need guidance from the Court of Appeals. I'm not interested in locking people up. I see no ability for me to do anything to help your client." The following exchange then occurred between the trial court and Matthew's lawyer:

> *Trial court:* At this stage, what I'm going to do is I think it is an exercise in futility for me to grant your client temporary custody. It was to try to get these children in here and this mother in here to have rational discussions. I have no confidence that there is a rational approach to this case. It is the most extreme circumstance I have ever seen in domestic relations on the bench. So—
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> *Father's counsel:* And your Honor, I am asking—there is a valid order giving my client custody. You signed it. It wasn't appealed. I'm asking this—
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> *Trial court:* I'm not going to do it, counsel.
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> *Father's counsel:* —woman be incarcerated.
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> *Trial court:* I can see how this is going to play. This is becoming a theater of the absurd.
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> *Father's counsel:* And your Honor, pursuant—
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> *Trial court:* I'm not going to do it. I'm rescinding the temporary order, I think you probably have to file a claim for parental alienation, which we'll run through, and will take its course. I'm abating any child support in the interim. You certainly shouldn't be paying for in—for child support in the interim. I can't even get the mother to bring the children in to interview me and I think you should appeal my decision to the Court of Appeals and I would appreciate their guidance. But at this stage, it is clear to me, anything I do is not helpful to this situation.

In addition, the trial court indicated that it would "like to know what the Court of Appeals think[s]" about the trial court's options. Ultimately, the trial court denied the contempt motion and set aside the order granting Matthew temporary legal and physical custody of the children. The trial court also ordered that its prior orders, except the order temporarily modifying custody, (i.e., orders regarding the IEPs, the South Lyon School District, counseling, and parenting time) remained in full force and effect and that Matthew's child support obligation was abated as noted in its prior order.

This appeal follows.

II. TEMPORARY CUSTODY ORDER

A. STANDARD OF REVIEW

Matthew first argues that the trial court erred by setting aside the temporary custody order awarding him legal and physical custody of the children. "Under the Child Custody Act, MCL

722.21 *et seq*., 'all orders and judgments of the circuit court shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue.' " *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010), quoting MCL 722.28.

B. ANALYSIS

In accordance with MCL 722.27(1)(c), a trial court may only modify a custody order when there is proper cause shown or a change of circumstances. *Foskett v Foskett*, 247 Mich App 1, 5; 634 NW2d 363 (2001). The party seeking the change of custody "has the burden of proving by a preponderance of the evidence that either proper cause or a change of circumstances exists *before* the trial court can consider whether an established custodial environment exists (thus establishing the burden of proof) and conduct a review of the best interest factors." *Vodvarka v Grasmeyer*, 259 Mich App 499, 509; 675 NW2d 847 (2003). Next, a trial court must determine the appropriate burden for the moving party, and, "[t]o discern the proper burden, the trial court's initial inquiry is whether an established custodial environment exists." *Foskett*, 247 Mich App at 5. "Whether an established custodial environment exists is a question of fact that the trial court must address before it makes a determination regarding child custody." *Demski v Petlick*, 309 Mich App 404, 445; 873 NW2d 596 (2015) (citation and quotation marks omitted). A trial "court may not change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child." *Pierron*, 486 Mich at 86 (citation and quotation marks omitted). However, when "there is no change in the established custodial environment, the heightened evidentiary burden is not applicable, and" a preponderance of the evidence must show that the decision is in the child's best interests. *Id*. at 89-90. "To determine the best interests of the children in child custody cases, a trial court must consider all the factors delineated in MCL 722.23(a)-(l) applying the proper burden of proof." *Foskett*, 247 Mich App at 9. "Whether a court is establishing custody in an original matter, or altering a prior custody order, the requirement is the same: specific findings of fact regarding each of twelve factors that are to be taken into account in determining the best interests of the child must be made." *Grew v Knox*, 265 Mich App 333, 337; 694 NW2d 772 (2005) (citation and quotation marks omitted). Moreover, "[a] trial court should not temporarily change custody by a postjudgment interim order when it could not do so by a final order changing custody." *Id*.

Here, after a November 17, 2016 hearing, the trial court entered an order temporarily transferring legal and physical custody to Matthew. The hearing was set to address a series of motions filed by Matthew, none of which sought a change in custody. At the hearing, a temporary change in custody was suggested even though neither Lisa nor her lawyer were present. The trial court briefly elicited testimony from Matthew, before entering the order granting him temporary physical and legal custody of the minor children.

Even without considering any potential notice issues,[2] the trial court plainly failed to engage in a proper analysis and make the necessary findings to change custody. The trial court did not make the initial inquiry as to whether there was proper cause shown or a change of circumstances, did not determine the proper burden by analyzing whether an established custodial environment would be changed, and failed to make specific findings of fact regarding the best-interest factors. Such an analysis is required even with temporary changes in custody. See *Vodvarka*, 259 Mich App at 508-509; *Grew*, 265 Mich App at 337. Lisa objected to the order, but the trial court never expressly ruled on whether the order was proper. Nevertheless, because the order was entered in violation of the statutory requirements for a change in child custody as set forth in *Vodvarka*, we conclude that the trial court did not err in setting aside the improper order. See MCR 2.612(C)(1)(a) (providing that "[o]n motion and on just terms, the court may relieve a party . . . from a final judgment, order, or proceeding" because of a mistake).[3]

III. CONTEMPT

A. STANDARD OF REVIEW

Matthew also asserts that the trial court abused its discretion by failing to hold Lisa in contempt even though the circumstances show that a finding of contempt was clearly warranted. "The issuance of an order of contempt rests in the sound discretion of the trial court and is reviewed only for an abuse of discretion." *In re Contempt of Henry*, 282 Mich App 656, 671; 765 NW2d 44 (2009). "The abuse of discretion standard recognizes that there will be circumstances where there is no single correct outcome and which require us to defer to the trial court's judgment; reversal is warranted only when the trial court's decision is outside the range of principled outcomes." *Porter v Porter*, 285 Mich App 450, 455; 776 NW2d 377 (2009).

B. ANALYSIS

"The power to hold a party, attorney, or other person in contempt is the ultimate sanction the trial court has within its arsenal, allowing it to punish past transgressions, compel future adherence to the rules of engagement, i.e., the court rules and court orders, or compensate the complainant." *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 708; 624 NW2d 443 (2000). Courts must use the contempt power "with the utmost restraint" and "have the

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[2] When certain conditions are met, a trial court may enter ex parte and temporary orders regarding custody. See MCR 3.207 (outlining requirements for ex parte orders and indicating that the order, amongst other requirements, must indicate that a party may file a written objection to the order within 14 days after service). In this case, however, the trial court did not explicitly frame its order as an ex parte order. Furthermore, to the extent that the order could be construed as an ex parte order, the order did not provide the requisite notice under MCR 3.207(B)(5).

[3] Nothing in our opinion should be construed as preventing Matthew from making a proper motion to change custody. However, in the event that such a motion is made, the court should carefully follow the *Vodvarka* framework before making a custody decision.

responsibility to apply the contempt power judiciously and only when the contempt is clearly and unequivocally shown." *In re Contempt of Dudzinski*, 257 Mich App 96, 109; 667 NW2d 68 (2003) (citation and quotation marks omitted). In this case, the contempt is both clear and unequivocal.

Here, the trial court issued several orders before the contempt hearing. Lisa stated on the record that she either had not or would not comply with them.[4] Accordingly, Lisa's contempt was both clear and unequivocal. Based on our review of the record, it is evident that the trial court did not find Lisa in contempt despite the clear, unequivocal, and ongoing refusal to follow court orders because it did not believe that she would comply with its orders unless those orders were in her favor. Rather than resorting to its contempt powers, the court attempted to reach a compromise with Lisa by asking her what it would take to get her to comply with its orders, and the court stated that it was "really at wit's end" and did not know what to do. The court further proclaimed on the record that it was not going to incarcerate a parent for failing to follow a court order. We recognize that a trial court may have a rational reason for declining to hold a litigant in contempt even in cases where the contempt is clear and unequivocal. In this case, however, the court's reasons for not finding Lisa in contempt—when a finding of contempt was so clearly warranted—constituted a decision falling outside the range of reasonable and principled outcomes.

A litigant should expect that when a court issues an order in his or her favor, the opposing party will follow the order and if they do not the court will take action to compel compliance. Likewise, the party to whom the order applies must comply with the order, even if he or she believes it is improper or invalid. See *Kirby v Mich High Sch Athletic Ass'n*, 459 Mich 23, 40; 585 NW2d 290 (1998). And the court issuing the order need not plead with or bargain with the party in order to obtain compliance with its orders. As this Court noted in *Porter*, "a party's parenting time rights might become meaningless if a court cannot enforce a visitation schedule through the use of its contempt powers." *Porter*, 285 Mich App at 457. We conclude that similarly, a party's rights under a court order *are* meaningless when, instead of enforcing its orders, a trial court simply "throws in the towel" by setting aside the order that a party refuses to follow, informing the parties that it does not know how to ensure compliance, and declining to use its contempt powers because it will not incarcerate a parent. For these reasons, we conclude that the trial court abused its discretion by refusing to find Lisa in contempt. We therefore reverse the trial court's order denying Matthew's motion for contempt and remand for entry of

[4] With regard to the temporary custody order, Lisa stated that she would not comply with it because it was improperly entered. However, "[a] party must obey an order entered by a court with proper jurisdiction, even if the order is clearly incorrect, or the party must face the risk of being held in contempt and possibly being ordered to comply with the order at a later date." *Kirby v Mich High Sch Athletic Ass'n*, 459 Mich 23, 40; 585 NW2d 290 (1998). "Civil disobedience is not the appropriate course of action when a person disagrees with a court order." *In re Contempt of Dudzinski*, 257 Mich App at 111. "There exists no place in our justice system for self-help." *Id*.

an order finding Lisa in contempt for her blatant refusal to comply with the court orders issued in this case.

Finally, because of the circumstances present in this case and under MCR 7.216(A)(7), we believe remand to a different judge is appropriate. Generally, the same judge will hear a remanded case unless the appearance of justice requires that a different judge hear the case. *Bayati v Bayati*, 264 Mich App 595, 602; 691 NW2d 812 (2004). However, remand to a different judge is appropriate "if the original judge would have difficulty in putting aside previously expressed views or findings, if reassignment is advisable to preserve the appearance of justice, and if reassignment will not entail excessive waste or duplication." *Id*. at 603. While we recognize that different judges have different styles, personalities, and temperaments, and that a trial court should be given broad discretion in how to operate its court room, the comments made by the lower court suggest that it apparently harbors a philosophical aversion to exercising its power of contempt. A court's power of criminal contempt should always be used judiciously. But we remind the trial court that the power exists for a reason and that there is a time and place when it becomes necessary to exert that power. This is such a case. Based upon our review of the record, it is plain that the presiding judge would have difficulty putting aside his previously expressed views in order to compel Lisa's compliance with his orders. Given that the presiding judge expressly stated that it would not incarcerate a parent—even when that parent is unequivocally stating that she will not comply with the court's orders—we have no confidence that a remand to the presiding judge for a finding of contempt and the imposition of contempt sanctions will have any effect. Further, the reassignment is advisable to preserve the appearance of justice because, as the case now stands, Lisa is essentially free to disregard the trial court's orders without fear of punishment for doing so. Finally, although assigning the case to a different judge may lead to some waste or duplication, we believe it is in the best interests of the children to do so and do not believe such duplication would be "out of proportion to any gain in preserving the appearance of fairness" given the trial judge's personal stance with regard to incarcerating a parent in order to obtain compliance with its orders. See *People v Hill*, 221 Mich App 391, 398; 561 NW2d 862 (1997) (citation and quotation marks omitted). See also *Truitt v Truitt*, 172 Mich App 38; 431 NW2d 454 (1988) (stating that "[d]ue to the trial judge's apparent moral indignation, he will be spared from revisiting the issue in this case."). Accordingly, we remand the case to a different trial judge.

On remand the new trial judge shall enter an order finding Lisa in contempt for her failure to follow the trial court's orders and shall impose such sanctions as necessary to obtain her compliance with the court orders still in effect.

Affirmed in part, reversed in part, and remanded for further proceedings before a different judge. We do not retain jurisdiction. Neither party having prevailed in full, we award no costs under MCR 7.219(A).

/s/ Michael J. Talbot
/s/ Jane M. Beckering
/s/ Michael J. Kelly