

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
November 21, 2014 Session

**CODY S. THOMAS v. JENNA R. (THOMAS) MILLER**

**Appeal from the Chancery Court for Moore County  
No. 2314 J. B. Cox, Judge**

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**No. M2013-01485-COA-R3-CV - Filed February 27, 2015**

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In this post-divorce case, Father filed a petition to modify the permanent parenting plan to make him the primary residential parent and to hold Mother in contempt for failure to abide by the joint decision-making provision of the plan. The trial court found a material change of circumstances existed warranting a change in the primary residential parent and held Mother in contempt, awarding Father \$675.00 in attorney's fees as a sanction. Mother appeals. We find no error in the trial court's decision to change the primary residential parent; however, we vacate the trial court's finding of contempt because Father's petition did not comply with the mandates of Tenn. R. Crim. P. 42(b).

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed in Part and Vacated in Part**

ANDY D. BENNETT, J., delivered the opinion of the court, in which RICHARD H. DINKINS, and W. NEAL MCBRAYNER, JJ., joined.

Jenna R. Miller, Manchester, Tennessee, Pro Se.

Michael E. Giffin and Karen S. Price, Tullahoma, Tennessee, for the appellee, Cody S. Thomas.

**OPINION**

FACTS AND PROCEDURAL HISTORY

Cody S. Thomas ("Father") and Jenna R. Miller ("Mother") were divorced by final

decree entered on February 9, 2009, in Moore County Chancery Court. The decree incorporated a marital dissolution agreement and a permanent parenting plan concerning their only daughter (“the Child”), born in January 2008. By an agreed order entered June 20, 2011, the parties modified the original permanent parenting plan. Under the terms of this agreed order, Mother was designated the primary residential parent, having 235 days with the Child; Father had 130 days of parenting time. The plan also provided, *inter alia*, that major decisions involving the Child, including educational decisions, were to be made jointly between the parties. On February 27, 2012 the trial court entered an agreed order modifying Father’s child support obligation to reflect an increase in his income. The parties’ respective parenting time remained the same.

On August 1, 2012, Father filed a petition for contempt and for modification alleging that he had been providing care for the Child in excess of the parenting times prescribed in the agreed order and that Mother “has engaged in an unstable lifestyle which has place[d] the parties’ minor child in physical and emotional threat of harm . . . .” Specifically, Father averred that Mother sought an order of protection against her then-husband, Mr. Miller, in which she alleged:

I now fear for the safety of myself and my child due to multiple incidents involving physical attacks as well as stalking, (following me), breaking into the home [and] my vehicle and threatening to burn down my house or kill me . . . I have witnessed [Mr. Miller] driving while intoxicated with the minor child in the vehicle.

Father alleged that Mother subsequently entered into an agreed order dismissing the order of protection and resumed living with Mr. Miller, thereby threatening the health, safety, and welfare of the Child. Father also alleged that Mother enrolled the Child in the Franklin County School System pre-kindergarten program without including him in the decision-making process and that she did so by “misrepresenting” that she and the Child were residents of Franklin County, Tennessee. Father asserted that Mother’s actions constituted “willful contempt,” for which Mother should be punished “as the Court deems appropriate.” Finally, Father requested that the court 1) enter a temporary restraining order restraining Mother from having Mr. Miller around the Child; 2) restrain Mother from enrolling the Child in the Franklin County School System; 3) find that a substantial and material change in circumstances had occurred; and 4) modify Father’s parenting time and name him primary residential parent of the Child.

On August 24, 2012, a hearing was held on Father’s request for a temporary restraining order. By order entered September 22, 2012, the court restrained Mother from having the Child around Mr. Miller and ordered that the Child attend school in the Moore

County School System, where Father resided. On May 6, 2013, a hearing was held on Father's petition for contempt and modification.<sup>1</sup> In its order, entered May 28, 2013, the trial court concluded that a substantial and material change of circumstances had occurred since the entry of the February 27, 2012, agreed order such that it was in the best interest of the Child for Father to be designated as the primary residential parent. The court incorporated a permanent parenting plan with the order and granted each parent 182.5 days of residential parenting time with the Child. The court also held that Mother was in willful contempt for her violation of the agreed order and awarded Father \$675.00 in attorney's fees as a sanction.

On June 24, 2013, Mother filed a Tenn. R. Civ. P. 52 motion for findings of fact, requesting the court to "find the facts specially and state separately its conclusions." Mother also filed a Tenn. R. Civ. P. 59 motion to alter or amend in which she requested the court to amend its judgment to find that no substantial and material change of circumstances existed and to allow the Child to attend school in Tullahoma instead of Moore County. On July 15, 2013, a hearing was held on Mother's motions. On September 27, 2013, the trial court entered a memorandum opinion and order granting Mother's request for findings of fact. The court found the following:

A. The Court . . . affirmatively finds that the credibility of the parties is in favor of [Father] over [Mother] in that the [Mother] has been a party to and witness of deceptive acts and behavior which have a profound bearing on the findings of this Court in regard to the issues of contempt and custody modification. The Court further finds that the [Mother] is the victim of domestic violence . . . despite [Mother's] efforts to minimize said abuse.

B. [Mother] is in willful contempt of the lawful orders of this Court for her violation of the provisions of the Agreed Order and Permanent Parenting Plan previously entered in this cause on February 27, 2012. Specifically, the Court finds that the [Mother] willfully violated the provision of the Permanent Parenting Plan which provides that the parties would make joint educational decisions for [the Child], by her deceptive actions in procuring a Tennessee driver's license containing a false address for the [Mother] in Franklin County, Tennessee; submitting said driver's license to Franklin County school officials as proof of her residency in Franklin County; making false representations on the "Application to Determine Income Eligibility for the Voluntary Pre-K Program" . . . ; wrongfully certifying that the information provided on said application was true and correct; and willfully failing to advise the [Father] of her actions in this matter and obtaining his consent in regard to said actions.

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<sup>1</sup> The record does not include a transcript of this hearing.

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With respect to its determination that a substantial and material change of circumstances occurred such that it was in the best interest of the child for Father to be designated the primary residential parent, the trial court made the following findings:

i) The [Mother] was the victim of domestic violence perpetrated by her then-husband, [Mr. Miller], who abused alcohol and operated a motor vehicle in which the . . . minor child was a passenger. These acts of violence necessitated the [Mother] to seek and obtain an Order of Protection from the General Sessions Court of Moore County, Tennessee against her husband. Despite this prior conduct, the [Mother] now believes that it is in [the Child's] best interest to be around [Mr. Miller] and that he would be a positive influence on the child. Such exposure of [the Child] to Mr. Miller is not in the minor child's best interest.

ii) The [Mother] engaged in an adulterous relationship with a man by the name of Brian McGinnis, who had been to the [Mother]'s residence as well as [the Child] having been taken to Mr. McGinnis' home by the [Mother].

iii) The [Mother] has been romantically involved with several different individuals who have been exposed to [the Child] and who have stayed with the [Mother] at her current residence at various times. On one occasion, one of the [Mother's] paramours administered corporal punishment on [the Child]. On another occasion, one of the paramours took the child swimming while wearing only his underwear. The Court affirmatively finds that the administering of corporal punishment by one of the [Mother]'s paramours alone constitutes a substantial and material change of circumstances and adversely affects the minor child. Moreover, exposure to a paramour in an inappropriate state of undress is not in the minor child's best interest.

iv) The [Mother] has demonstrated an unstable living situation in regard to establishing and maintaining housing, given her deceptive acts in making false and misleading representations to Franklin County school officials and her subsequent temporary move to Manchester, Tennessee. The Court affirmatively finds that the [Mother] sought and obtained a Tennessee driver[']s licence listing a false residential address for the [Mother]. The [Mother] then presented this driver's license to Franklin County school officials as proof of her residency in Franklin County and filled out an enrollment application listing her parents' residence in Franklin County as her

own. However, the [Mother] did not intend to live at the residence noted on her driver's license and listed on the enrollment application, but instead planned on moving into another residence down the road (the address of which is unknown to the [Mother]), purportedly belonging to her grandfather with whom she had been negotiating the purchase of said residence for over a year. Subsequent to the denial by this Court of the [Mother]'s request to dismiss the Temporary Restraining Order restraining the [Mother] [from] enrolling [the Child] in the Franklin County School System, the [Mother] purchased an "investment" home in Manchester, Coffee County, Tennessee, in which she intends to sell in a year. The [Mother] is unsure where she will be living after the sale of the Manchester home or where [the Child] will be attending school. Such uncertainty and instability in where the minor child will be living and attending school is not in the minor child's best interest.

v) The [Mother] has ceased seeking to obtain a full-time teaching position; ceased substitute teaching; failed to actively develop her career/employment as a realtor; obtained only part-time employment working one day per week with the U.S. Postal Service; and delayed completing her legal education at the Nashville School of Law which has delayed her possible employment as an attorney. Such instability in the [Mother's] ability to earn income adversely affects the minor child's living situation.

The court further found that Father had been exercising parenting time with the Child in excess of the time prescribed in the prior permanent parenting plan at Mother's request. The court stated that Mother's "deceptive representations . . . as to her need to go out-of-town, as well as claiming to be sick while attending a concert with one of her paramours" contributed to Father's additional parenting time. Finally, the court found that Father's work schedule had changed which allowed him to provide care for the Child on a daily basis. The court denied Mother's Rule 59 motion to alter or amend and reiterated its previous award of \$675.00 in attorney's fees as a punishment for contempt.

The parties submitted competing statements of the evidence. On February 21, 2014, the trial court entered an order adopting Father's statement of the evidence with certain modifications. Mother appeals, asserting that the evidence preponderates against the trial court's finding that a substantial and material change of circumstances had occurred such that Father should be named primary residential parent of the Child. She also argues that the court erred in finding her in contempt and awarding attorney's fees to Father.

#### ANALYSIS

## I. Change of Primary Residential Parent

The statute governing the modification of an existing parenting arrangement with respect to the primary residential parent provides:

If the issue before the court is a modification of the court's prior decree pertaining to custody, the petitioner must prove by a preponderance of the evidence a material change in circumstance. A material change of circumstance does not require a showing of a substantial risk of harm to the child. A material change in circumstance may include, but is not limited to, failures to adhere to the parenting plan or an order of custody and visitation or circumstances that make the parenting plan no longer in the best interest of the child.

Tenn. Code Ann. § 36-6-101(a)(2)(B). Thus, when faced with a petition to change the primary residential parent, the threshold issue for the court is whether there has been a material change of circumstance since the plan took effect. *See* Tenn. Code Ann. § 36-6-101(a)(2)(B); *Cranston v. Combs*, 106 S.W.3d 641, 644 (Tenn. 2003). If the trial court finds that there has been a material change in circumstances, it must then determine whether it is in the child's best interests to modify the parenting plan by considering the factors in Tenn. Code Ann. § 36-6-106(a). *Cranston*, 106 S.W.3d at 644; *In re T.R.Y.*, No. M2012-01343-COA-R3-JV, 2014 WL 586046, at \*12 (Tenn. Ct. App. Feb. 12, 2014).

A trial court's determinations as to "whether a material change in circumstances has occurred and whether modification of a parenting plan serves a child's best interests are factual questions." *Armbrister v. Armbrister*, 414 S.W.3d 685, 692 (Tenn. 2013). We presume that the trial court's findings of fact are correct unless the evidence preponderates against them. TENN. R. APP. P. 13(d). To preponderate against the trial court's findings of fact, the evidence "must support another finding of fact with greater convincing effect." *Austin v. Gray*, No. M2013-00708-COA-R3-CV, 2013 WL 6729799, at \*6 (Tenn. Ct. App. Dec 18, 2013).

"Because decisions regarding parenting arrangements are factually driven and require careful consideration of numerous factors, trial judges, who have the opportunity to observe the witnesses and make credibility determinations, are better positioned to evaluate the facts than appellate judges." *Armbrister*, 414 S.W.3d at 693 (citations omitted). Thus, "[a] trial court's decision regarding the details of a residential parenting schedule should not be reversed absent an abuse of discretion." *Id.* A trial court abuses its discretion when its decision "falls outside the spectrum of rulings that might reasonably result from an application of the correct legal standards to the evidence found in the record." *Eldridge v.*

*Eldridge*, 42 S.W.3d 82, 88 (Tenn. 2001). Therefore, an appellate court will not alter a parenting arrangement fashioned by a trial court without finding that it “was based on a material error of law or the evidence preponderates against it.” *In re T.R.Y.*, 2014 WL 586046, at \*12 (citing *In re T.C.D.*, 261 S.W.3d 734, 742 (Tenn. Ct. App. 2007)).

On appeal, Mother argues that the evidence preponderates against the trial court’s conclusion that a material change of circumstance existed requiring a change in the Child’s primary residential parent. Neither party disputes the trial court’s conclusion that it was in the Child’s best interests to modify the parenting plan as requested. Therefore, we focus our analysis on whether the trial court erred in determining that there was a material change in circumstances.

While there are no precisely delineated rules<sup>2</sup> for determining when a child’s circumstances have changed to warrant a change in her primary residential parent, the change in circumstances must be “significant” to qualify as “material,” *Boyer v. Heimermann*, 238 S.W.3d 249, 257 (Tenn. Ct. App. 2007), and it must “affect[] the child’s well-being in a meaningful way.” *Cranston*, 106 S.W.3d at 644 (citing *Kendrick v. Shoemake*, 90 S.W.3d 566, 570 (Tenn. 2002)); see *Boyer*, 238 S.W.3d at 255-257 (discussing evolution of the standard for finding a material change in circumstances). We also note that the change in circumstances does not have to rise to the level of “substantial harm” to a child in order to be “material.” See Tenn. Code Ann. § 36-6-101(a)(2)(B); *Armbrister*, 414 S.W.3d at 701.

To begin its analysis, here, the trial court made a credibility finding in favor of Father over Mother. We afford findings of fact based on a witness’s credibility great weight on appeal. *In re Adoption of A.M.H.*, 215 S.W.3d 793, 809 (Tenn. 2007). Next, the court discussed the facts leading to its determination that a material change in circumstances had occurred since the entry of the prior parenting plan. The court focused on the following facts: 1) Mother used a false address when filling out an application to enroll the Child in a school program and did so without informing Father or seeking his input; 2) Mother downplayed the fact that she was a victim of domestic violence and allowed the perpetrator

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<sup>2</sup> In his concurring and dissenting opinion in *Kendrick v. Shoemake*, 90 S.W.3d 566 (Tenn. 2002), Justice Adolpho A. Birch, Jr. criticized the “material change in circumstances” analysis, noting that it is “fraught with danger because neither the terms nor the criteria used to construe them have fixed meanings.” *Kendrick*, 90 S.W.3d at 576. He went on to state:

[E]very debatable decision made by the custodial parent about employment, education, medical care or social welfare is open to scrutiny as potential evidence that the decision has had a “meaningful” effect on the child’s “well-being.”

*Id.* at 576.

of the violence to come back into the home with the Child while she attempted to reconcile with him; 3) Mother exposed the Child to paramours who conducted themselves inappropriately (*i.e.*, by administering corporal punishment to the Child and by swimming with the Child in an inappropriate state of undress); 4) Father exercised additional parenting time at Mother's behest; and 5) Father's work schedule changed allowing him to spend additional time with the Child.

We have reviewed the record and the statement of evidence adopted by the trial court and find that the evidence does not preponderate against the trial court's factual findings. We find it troubling that Mother failed to engage Father in the educational decision-making process in contravention of the permanent parenting plan. *See Hansen v. Hansen*, No. M2008-02378-COA-R3-CV, 2009 WL 3230984, at \*2 (Tenn. Ct. App. Oct. 7, 2009) (noting that the "failure of a joint decision-making provision in a parenting plan can constitute a material change in circumstances") (citing *Marlow v. Parkinson*, 236 S.W.3d 744, 749 (Tenn. Ct. App. 2007)). In her brief, Mother states that "the parties were at odds regarding the educational decisions for the minor child." The record belies this statement, however, and reflects that Mother unilaterally made the decision to submit an enrollment application without first consulting with Father.

We are also concerned, as was the trial court, about the prevalence of domestic violence in Mother's home prior to her divorce. Mother swore under oath that she was the victim of "multiple incidences involving physical attacks," and she claimed that her ex-husband drove while intoxicated with their minor child<sup>3</sup> in the vehicle. Mother sought to reconcile with her ex-husband following the incidences of violence toward her which allowed the Child to be exposed to further domestic violence. Similarly, the Child was exposed to Mother's overnight paramours who administered corporal punishment to the Child and went swimming with the Child while wearing only underwear. According to the statement of the evidence, Mother testified that "she 'doesn't recall' whether a belt was used" when her paramour spanked the Child.

This Court has previously recognized the "common-sense understanding that . . . children can be adversely affected by exposure to . . . overnight paramour visits with a parent." *Barker v. Chandler*, No. W2008-02255-COA-R3-CV, 2009 WL 2986105, at \*4 (Tenn. Ct. App. Sept. 18, 2009) (discussing the implementation of "paramour provisions" in parenting plans). The evidence regarding Mother's paramours, especially the administration of corporal punishment, combined with the Child's exposure to domestic violence, does not preponderate against the trial court's determination that the Child's well-

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<sup>3</sup> It is unclear from the record whether the child in the car was the Child at the center of this dispute or whether it was Mother's child with her ex-husband.



being has been affected in a meaningful way.

Finally, we acknowledge that Father's work schedule has changed to allow him to spend more time with the Child. In fact, Mother has requested Father to exercise parenting time more frequently, and Father testified that he and Mother were exercising approximately equal parenting time. Father also testified that Mother has often asked Father to keep the Child during her parenting time. On one occasion, Father explained that Mother asked him to keep the Child because Mother was ill; however, Mother was not actually ill and instead went to a concert with her then-boyfriend and posted as such on her Facebook page. In sum, we find that the evidence does not preponderate against the trial court's conclusion that all of these circumstances, when taken together, constitute a material change in circumstance affecting the child's well-being in a significant and meaningful way. We further hold that the trial court did not err in concluding that it is in the best interest of the Child for Father to be designated as her primary residential parent.

## II. Contempt

We next consider whether the trial court erred in finding Mother in contempt of court and awarding \$675.00 to Father as a sanction. Mother argues that the original petition was insufficient to put her on notice of whether Father was asking the court to hold her in criminal or civil contempt.

Conduct punishable as contempt of court includes "[t]he willful disobedience or resistance of any officer of the such courts, party, juror, witness, or any other person, to any lawful writ, process, order, rule, decree, or command of such courts." Tenn. Code Ann. § 29-9-102(3). This Court has observed that "[t]he threshold issue in every appeal from a finding of contempt is whether the contempt is civil or criminal." *Jones v. Jones*, No. 01A01-9607-CV-00346, 1997 WL 80029, at \*2 (Tenn. Ct. App. Feb. 26, 1997). As a general matter, a court's classification of contempt as civil or criminal "depend[s] upon the action taken by the court to address the contempt." *Ahern v. Ahern*, 15 S.W.3d 73, 78 (Tenn. 2000). Making the distinction between civil and criminal contempt is necessary because doing so determines the procedure to be followed and the constitutional protections to be afforded the alleged contemnor. *Storey v. Storey*, 835 S.W.2d 593, 599-600 (Tenn. Ct. App. 1992).

An action for civil contempt is brought to enforce private rights when a party refuses or fails to comply with a court order. *Black v. Blount, III*, 938 S.W.2d 394, 398 (Tenn. 1996). The primary purpose of civil contempt sanctions, which may include imprisonment, is to compel the contemnor to comply with the court's order. *Doe v. Bd. of Prof'l Responsibility of Sup. Ct. of Tenn.*, 104 S.W.3d 465, 473-74 (Tenn. 2003); *Ahern*, 15 S.W.3d at 79. Thus, sanctions for civil contempt are remedial and coercive in character. The

contemnor, who must have the ability to comply at the time of the hearing, can purge the contempt by complying with the court's order. *Ahern*, 15 S.W.3d at 79.

Unlike civil contempt, “sanctions for criminal contempt are designed to punish the contemnor and are unconditional in nature.” *State ex rel. Flowers v. Tenn. Trucking Ass’n Self Ins. Grp. Trust*, 209 S.W.3d 602, 613 (Tenn. Ct. App. 2006). Their primary purpose is to “vindicate the court’s authority.” *Long v. McAllister-Long*, 221 S.W.3d 1, 12 (Tenn. Ct. App. 2006). The maximum sentence for each act of criminal contempt is ten days of imprisonment, and the maximum fine is \$50.00. Tenn. Code Ann. § 29-9-103. Due to their punitive nature, criminal contempt proceedings require many of the due process protections that apply to other criminal proceedings, including adequate notice, a presumption of innocence, the right to an attorney, and the requirement that guilt be proven beyond a reasonable doubt. *Norfleet v. Norfleet*, No. M2013-00652-COA-R3-CV, 2014 WL 1408146, at \*4 (Tenn. Ct. App. Apr. 9, 2014); *Jones*, 1997 WL 80029, at \*3.

Unless the contemptuous act is committed in the presence of the court,<sup>4</sup> proceedings for criminal contempt must comply with the notice requirements of Tenn. R. Crim. P. 42(b). *Jones*, 1997 WL 80029, at \*3. Tennessee Rule of Criminal Procedure 42(b) states:

**(b) Disposition on Notice and Hearing.** A criminal contempt shall be initiated on notice, except as provided in subdivision (a) of this rule.

(1) *Content of Notice.* The criminal contempt notice shall:

- (A) state the time and place of the hearing;
- (B) allow the alleged contemner a reasonable time to prepare a defense;
- and
- (C) state the essential facts constituting the criminal contempt charged and describe it as such.

(2) *Form of Notice.* The judge shall give the notice orally in open court in the presence of the alleged contemner or by written order, including an arrest order if warranted. The notice and order may also issue on application of the district attorney general, an attorney appointed by the court for that purpose, or an

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<sup>4</sup> Criminal contempt is categorized as either “direct” or “indirect,” depending on whether the misbehavior occurred in the court’s presence. *Long*, 221 S.W.3d at 13 n.11. Because the court held Mother in contempt for actions that occurred outside the court’s presence, the contempt was indirect, and the court was required to make sure that proper notice was provided and that the procedural due process requirements of Tenn. R. Crim. P. 42(b) were satisfied. *See Sprague v. Sprague*, No. E2012-01133-COA-R3-CV, 2013 WL 3148278, at \*6 (Tenn. Ct. App. June 18, 2013).

attorney representing a party in the case.

Therefore, Tenn. R. Crim. P. 42(b) requires that a party facing criminal contempt must be “given explicit notice that they are charged with criminal contempt and must also be informed of the facts giving rise to the charge.” *Long*, 221 S.W.3d at 13.

In his August 1, 2012 petition for contempt and modification, Father requested the court to hold Mother in “willful” contempt for filling out an application to enroll the Child in the Franklin County School System pre-kindergarten program without his consent, which he believed was a violation of the joint decision-making provision in the permanent parenting plan. Specifically, Father stated that Mother’s “unilateral actions in violating the provisions of the prior orders of this Court constitute willful contempt for which the [Mother] should be punished as the Court deems appropriate.” In the memorandum opinion and order entered September 27, 2013, the trial court held:

[Mother] is in willful contempt of the lawful orders of this Court for her violation of the provisions of the Agreed Order and Permanent Parenting Plan previously entered in this case on February 27, 2012. Specifically, the Court finds that the [Mother] willfully violated the provision of the Permanent Parenting Plan which provides that the parties would make joint educational decisions for the minor child . . . . *As punishment for her contempt, [Father] is granted a judgment against [Mother] in the amount of \$675.00 for attorney fees in this matter.*

(Emphasis added).

Neither the petition nor the trial court’s order specified whether the contempt was criminal or civil. Nevertheless, it is apparent that the court found Mother in criminal contempt, because the sanction of \$675.00 was neither conditioned on Mother’s correcting or remedying a failure to comply with a prior order, nor was Mother given an opportunity to purge her contempt. Therefore, Father’s petition was required to comply with the mandates of Tenn. R. Crim. P. 42(b). As this Court has cautioned, “it is imperative that notice specifically charge a party with criminal contempt.” *Long*, 221 S.W.3d at 13 (citing *Jones*, 1997 WL 80029, at \*2-3); see *Weissfeld v. Weissfeld*, E2004-00134-COA-R3-CV, 2004 WL 2070979, at \*4 (Tenn. Ct. App. Sept. 16, 2004) (stating that the Tenn. R. Crim. P. 42(b) notice must “specifically” charge a party with criminal contempt). Father’s petition did not specifically charge Mother with criminal contempt. Moreover, there is nothing in the record to indicate that the trial court advised Mother at the hearing that she was being tried for

criminal contempt.<sup>5</sup>

In light of these facts, we are not satisfied that Mother was aware that she was facing charges of criminal contempt. Therefore, the contempt judgment Mother received in this case must be vacated because she did not receive the notice required by Tenn. R. Crim. P. 42(b). *See Sprague v. Sprague*, No. E2012-01133-COA-R3-CV, 2013 WL 3148278, at \*7 (Tenn. Ct. App. June 18, 2013) (reversing judgment holding party in criminal contempt for lack of notice); *Jones*, 1997 WL 80029, at \*4 (vacating contempt sanctions where party did not receive notice mandated by Tenn. R. Crim. P. 42(b) or the procedural safeguards due to persons facing criminal contempt).

#### CONCLUSION

For the foregoing reasons, the trial court's judgment is affirmed in part and vacated in part. Costs of appeal are assessed against the parties equally.

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ANDY D. BENNETT, JUDGE

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<sup>5</sup> We note that, even if Mother had received notice in compliance with Tenn. R. Crim. P. 42(b), the maximum fine to be imposed for criminal contempt is \$50.00. Tenn. Code Ann. § 29-9-103.