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Order For “Reasonable” Parenting Time Too Vague For Contempt In MA Probate & Family Court

Appeals Court: “Reasonable” parenting time too ambiguous for enforcement in Massachusetts.



The Massachusetts Appeals Court has ruled that an agreed-upon parenting schedule which provided that the “[f]ather shall have visitation with [the child] at reasonable times as agreed with [the] [m]other” was too vague to be enforced through contempt proceedings brought in the Probate & Family Court. In the unpublished opinion, [Austin v. McGlone \(2021\)](#), the Court held that the parenting provision that provided the father with parenting time at

“reasonable times” by agreement with the mother was insufficiently clear and unequivocal for the Probate & Family Court to find the mother in contempt for failing to provide the father with parenting time.

In her [comprehensive review of Massachusetts contempt law](#), Attorney Levy laid out the basic criteria for a finding of contempt in a Probate & Family Court case. As Attorney Levy noted in her [2016 blog](#), a finding of contempt must be “supported by clear and convincing evidence of disobedience of a clear and unequivocal command.” Attorney Levy wrote:

As the Supreme Judicial Court held in [Judge Rotenberg Educ. Ctr., Inc. v. Commissioner of the Dep’t of Mental Retardation \(No. 1\) \(1997\)](#), “Where the order is ambiguous ... there cannot be a finding of contempt.” What does “ambiguous” mean in this context? The SJC defined the term in the following way in [Bercume v. Bercume \(1999\)](#): a “term is ambiguous only if it is susceptible to more than one meaning and reasonably intelligent persons would differ as to which meaning is the proper one.” As the Appeals Court remarked in [Sax v. Sax \(2002\)](#): In the end, “[a] final decree should be as definite and certain as the circumstances allow in order that a defendant may know what conduct is prohibited and not be subjected to contempt proceedings that might possibly arise out of any ambiguity in the decree.”

For a finding of contempt to stand, the order must be clear enough for a defendant what he or she *must* do in each situation. The order is vague enough to allow for several interpretations, it may be deemed unenforceable for contempt purposes.

Austin Case Reflects Familiar Principles in Child Custody Contempt Cases

The case reflects many of the concepts set forth in my 2016 blog, [“Complaints for Contempt for Violations of Visitation and Custody Orders in](#)

[Massachusetts](#)". In that [blog](#), I reviewed how Massachusetts Probate Court enforce unambiguous parenting orders through the contempt process. In contrast, courts are less apt to find a parent in contempt for violating an ambiguous order:

Massachusetts courts view the clear terms of a parenting schedule as unambiguous orders that must be obeyed unless a defendant can produce persuasive evidence that he or she could not comply with the order. By the same token, courts are less willing to find parents in contempt for engaging in less clearly defined behavior, such as failing to "adequately supervise" a child or communicating in a manner that the other parent interprets as uncooperative.

In Austin, the Appeals Court reinforced how parenting orders that rely on the agreement of the parties or substitute specific days and times with general terms like "reasonable parenting time", are less likely to be enforced in a contempt action.



The advertisement features a dark blue background with a portrait of Jason V. Owens, a man in a suit and tie, smiling. On the left, the logo "L&O" is displayed in a large, white, serif font, with a horizontal line underneath. Below the logo, the text "DIVORCE & FAMILY LAW ATTORNEYS" is written in a smaller, white, sans-serif font. To the right of the portrait, the text "Need a Child C" is visible in a white, italicized serif font. In the bottom right corner, there is a dark blue button with the word "CONTACT" in white, sans-serif font. Below the logo, the text "Need a family law lawyer? Hire the Best" is written in a white, italicized serif font. To the right of the portrait, the text "Jason V. Owens Partner & Senior Co" is written in a white, italicized serif font.

Clear and Unequivocal Order Required for Contempt Finding

In Austin, the Appeals Court references several prior cases in which Massachusetts courts have declined to exercise their contempt powers to enforce a vaguely worded order. For example, the Austin Court

cites [Demoulas v. Demoulas \(1997\)](#), in which the SJC declined to enforce an order using the phrases “unreasonable manner” and “reasonable enjoyment” as too “generally phrased”. The Court also cites [Smith v. Atlantic Props \(1981\)](#), in which Appeals Court held that an order providing for a “reasonable dividend at the earliest practical date” was too vague to enforce through civil contempt.

In the Austin case, the Court specifically highlighted the lack of a specific parenting schedule as a source of ambiguity:

[T]he 2013 judgment contained no parenting schedule specifying the periods during which the father was entitled to visit with the child.

The Court found that the absence of a specific order providing for the time, place and manner of the Austin father’s parenting time distinguished the case from another landmark contempt case, [O’Connell v. Greenwood \(2003\)](#), in which the Appeals Court upheld a contempt against mother where she refused to produce child for visitation on dates specifically assigned to father in the judgment. Indeed, the Court contrasted the order in Austin with the portion of the O’Connell ruling that states:

The requisite unequivocal clarity [to support a contempt finding] requires more than a general statement that might or might not include the accused] [contemnor's] conduct.

Appeals Court Acknowledges the “Collateral” Damage Caused by Contempt Findings in Custody Cases

In my 2016 blog on contempt actions in custody and visitation cases, I compared findings contempt against parents with DUI arrests. Specifically, I noted that each finding of contempt against a parent for non-compliance with

the parenting schedule harms that parent's standing with the court with increasing severity:

Like DUI convictions, findings of contempt in the Probate Court can have a cumulative effect ... The first time a party is found in contempt, the penalty is unlikely to be overly harsh. Like DUI offenses, however, a second finding of contempt against a parent will result in a significant sterner response. And a third finding of contempt may cause a judge to consider more drastic action, as well as coloring the judge's view of the defendant's credibility in other areas.

As noted in Attorney Lynch's 2017 blog, "[Court Holds Parent in Contempt for Shared Custody Bad Behavior](#)", judges penalize bad parenting behavior in a variety of ways. In cases of severe [parental misconduct](#), judicial remedies can even include a [change in physical custody](#) of the child to the other parent. In Austin, the Appeals Court acknowledged the damaging effect that a finding of contempt can have on parent's standing in the Probate & Family Court, even when the contempt judgment itself does not include any severe curtailment of the party's parental rights:

We note that although the judge chose not to impose sanctions in connection with the contempt finding against the mother, the contempt finding could have been considered by a judge in a future custody proceeding. Given that potential collateral consequence, we do not think it an "empty exercise" to determine whether the mother should have been held in contempt, notwithstanding the lack of sanctions.

Like a first DUI conviction, a party found in contempt for violating a parenting order may receive a "slap on the wrist" for their first offence. But if that party is found in contempt a second or third time, the penalties can grow increasingly severe. The Austin Court appeared to acknowledge the "potential collateral consequence[s]" that a finding of contempt against the mother could have in future custody proceedings in making its ruling.

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