EXHIBIT B

COLORADO COURT OF APPEALS
No. 98CA0560

June 10, 1999
NOT SELECTED FOR PUBLICATION

In re the Marriage of

Johanna C. Wilkenson,

Appellee,

and

David E. Wilkenson,

Appellant.

Appeal from the District Court of Mesa County
Honorable Nicholas R. Massaro, Judge
No. 96DR372

Division V
Opinion by JUDGE ROY
Rothenberg and Taubman, JJ., concur

JUDGMENT AFFIRMED

No Appearance for Appellee

David E. Wilkenson, Pro Se

David E. Wilkenson (husband) appeals from the judgment granting Johanna C. Wilkenson (wife) custody of their two children. We affirm.

A decree dissolving the parties' marriage was entered in March 1997. The parties stipulated that joint custody was not appropriate, and a hearing to determine custody was held over three days in December 1997. Thereafter, the trial court concluded that it was in the best interests of the children that mother be designated the sole legal and physical custodian and that father be granted specified parenting time. In the order denying husband's post-trial motion, the trial court prohibited wife from consuming alcohol while the children are in her care.

I.

Because the notice of appeal was timely filed from the entry of the December 18, 1997, order granting wife sole legal and physical custody of the minor children, our discussion is limited to the propriety of the custody order and the assertions of error related to it. Therefore, we do not address or reject certain additional contentions of error that husband has raised.

A.

First, we do not address the contentions of error concerning the dependency and neglect proceedings.

The children were placed in the emergency protective custody of the department of social services on April 26, 1996. A

petition in dependency and neglect was filed in May 1996, alleging that the children had been subjected to physical, verbal and emotional abuse and that they lacked proper parental care due to lack of heat in the home, dangerous conditions, and failure to be immunized.

In August 1996, the parties stipulated that exclusive jurisdiction under the Children's Code existed over the children, pled "no contest" to an amended petition in dependency and neglect, deferred adjudication, and agreed to the adoption of a treatment plan for "quasi-dispositional" purposes. After both parties complied with their treatment plans, the juvenile proceeding was terminated in May 1997, with the exception that all custody orders were certified to the dissolution proceedings.

Generally, orders entered before the initial dispositional order, including an adjudication that a child is dependent or neglected, are not subject to appeal. See People in Interest of E.A., 638 P.2d 278 (Colo. 1981); People in the Interest of C.L.S., 934 P.2d 851 (Colo. App. 1996). However, an order that ends the particular action, leaving nothing further to be done to determine the rights of the involved parties completely is a final order for purposes of appeal. D.H. v. People, 192 Colo. 542, 561 P.2d 5 (1977); see §19-1-109(2)(b), C.R.S. 1998 (order terminating or refusing to terminate parent-child legal relationship is final and appealable after entry of disposition order).

Here, the May 1997 order effectively terminated the juvenile proceedings. Since father did not file a notice of appeal from that order, we lack jurisdiction to address the assertions of error concerning that proceeding, including the child support order. In addition, husband testified at the custody hearing that he was instrumental in the initiation of the juvenile proceedings. Thus, he cannot now complain that there was no basis for certification of the custody issues to the juvenile court.

B.

We reject the assertion that the magistrate erred in issuing a citation for contempt against husband for failure to pay child support.

Wife filed a verified motion for contempt citation in June 1997, alleging that husband had failed to comply with the May 1997 order requiring him to pay $705 per month in child support beginning October 1, 1996. Husband was properly ordered and served to appear on August 13, 1997, to show cause why he should not be held in contempt. When he failed to appear, a bench warrant was issued pursuant to C.R.C.P. 107(c).

In the meantime, husband had filed two motions with the magistrate on July 28, 1997. In the first, he requested reconsideration of the order to issue a contempt citation, and in the second, he requested a dismissal of the citation. Both motions were summarily denied on August 25, 1997.

Husband also filed a motion under C.R.M. 6(e)(2), in which he requested that the trial court review and dismiss the magistrate's order to issue the citation which the trial court denied.

A hearing on the contempt order was ultimately held on November 7, 1997. Husband was present initially, but left during the proceedings because he disputed the court's jurisdiction. Therefore, he did not present any evidence in his defense.

The magistrate found that husband had been present when the child support order of May 6, 1997, was entered in the juvenile proceedings and concluded that he had the ability to pay support and had willfully disobeyed the order to do so. The magistrate did not impose any sanction but indicated that she would award wife attorney fees incurred in pursuing the "remedial contempt" after the submission of an affidavit on fees and any response from husband within the time limits imposed.

We agree with the magistrate that she had jurisdiction to enforce the child support order even though husband's motion for review was pending. See Muck v. Arapahoe County District Court, 814 P.2d 869 (Colo. 1991); see also Schnier v. District Court, 696 P.2d 264 (Colo. 1985); Colorado State Board of Medical Examiners v. Lopez-Samayoa, 887 P.2d 8 (Colo. 1994). Further, under the plain language of C.R.C.P. 107(c), the trial court was entitled to issue a warrant for husband's arrest when he failed to appear at the time designated in the citation.

For similar reasons, we also reject husband's assertion that the trial court erred in denying the motion for imposition of C.R.C.P. 11 sanctions against wife's attorney. That motion was based upon the premise, which we have rejected, that the magistrate erred in issuing the show cause citation.

C.

Also, we do not address the contentions of error concerning husband's motion to disqualify the magistrates who entered rulings in this case.

Husband filed a C.R.C.P. 97 motion seeking to disqualify two magistrates that had entered orders in the dissolution action. The motion was denied. The trial court affirmed. The court found that husband's motion was not supported by facts that would support a reasonable inference of actual or apparent bias or prejudice by either magistrate.

Whether to grant a motion for disqualification in a civil case is a matter within the discretion of the trial court, and its ruling will not be disturbed on appeal except for an abuse of discretion. In re Marriage of Mann, 655 P.2d 814 (Colo. 1982).

The determination of the legal sufficiency of a motion and affidavit seeking disqualification, however, is subject to an independent review by an appellate court. Smith v. District Court, 629 P.2d 1055 (Colo. 1981). Consequently, we generally could consider the sufficiency of the husband's allegations. In re Marriage of Elmer, 936 P.2d 617 (Colo. App. 1997).