

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
PFA DIVISION**

J. D. and MINOR,

Plaintiff,

vs.

D. S.,

Defendant.

No.: C-48-PF-2014-602

**PENNSYLVANIA RULE OF APPELLATE PROCEDURE
1925(a) STATEMENT**

AND NOW, this 29th day of April, 2015, the court issues the following statement:

On February 19, 2015, Appellant D. S. ("Defendant") filed a timely Notice of Appeal to the Superior Court of Pennsylvania from this court's January 20, 2015 Order finding Defendant guilty of Indirect Criminal Contempt under the Protection from Abuse ("PFA") Act. Defendant did not serve the Notice of Appeal upon this court. However, we received notice from the Pennsylvania Superior Court on March 23, 2015 that Defendant filed the Notice of Appeal. On April 15, 2015, pursuant to our request under Pennsylvania Rule of Appellate Procedure 1925(b), we received Defendant's "Statement of Matters Complained of on Appeal." For the reasons that follow, we respectfully suggest that Defendant's appeal lacks merit and should be dismissed.

BACKGROUND

I. Parties' Relationship

Defendant married J. D. ("Plaintiff") on July 27, 2013 in Montgomery County, Pennsylvania. See Complaint in Divorce, *D. v. S.*, No.C-48-CV-2014-762 (C.P. Northampton Co. Jan. 31, 2014) ("Divorce Complaint"). The parties are the parents of one minor child, L. J. S. (the "Child"), born on June 3, 2013. See Petition for Special Relief, *D. v. S.*, No. C-48-CV-2014-762 (C.P. Northampton Co. Feb. 12, 2014) ("February 2014 Petition"). The parties separated on December 20, 2013, at which time Plaintiff and the Child left the marital residence and moved into Plaintiff's parents' residence. See Divorce Complaint.

II. Custody Action

Plaintiff commenced a custody action by filing a divorce complaint with a custody count on January 31, 2014. See Divorce Complaint. Shortly thereafter, Defendant filed a Petition for Special Relief requesting periods of physical custody of the Child. See February 2014 Petition. On February 18, 2014, the court adopted an agreement of the parties as an Order of Court, providing Plaintiff with primary physical custody and Defendant with periods of partial physical custody of the Child. See Order of Court dated February 18, 2014, *D. v. S.*, No. C-48-CV-2014-762 (C.P. Northampton Co. Feb. 12, 2014) ("February 2014 Agreement").

III. Plaintiff's Protection from Abuse Action

On August 25, 2014, Plaintiff, on behalf of herself and the Child, filed for, and was granted a temporary Protection from Abuse ("PFA") Order against Defendant. See Temporary Protection from Abuse Order, *D. v. S.*, No. C-48-PF-2014-602 (C.P. Northampton Co. Aug. 25, 2014) ("Temporary PFA Order"). Plaintiff alleged that Defendant assaulted her during a child custody exchange. See Temporary PFA Order. The Temporary PFA Order superseded any prior orders relating to custody and eliminated Defendant's periods of partial physical custody of the Child until the final hearing. See Temporary PFA Order at ¶ 5. Additionally, the Temporary PFA Order provided that Defendant "shall not contact Plaintiff, or any other person protected under this Order, by telephone or by any other means, including through third persons." Temporary PFA Order at ¶ 3. Further, the Temporary PFA Order explicitly stated that:

1. Defendant shall not abuse, harass, stalk, or threaten any of the above persons in any place where they might be found.
2. Defendant is evicted and excluded from the residence at: 2272 Easton Road, Bethlehem PA 18015 or any other permanent or temporary residence where Plaintiff or any other person protected under this order may live. Plaintiff is granted exclusive possession of the residence. Defendant shall have no right or privilege to enter or be present on the premises of Plaintiff or any other person protected under this order.

Temporary PFA Order at ¶¶ 1, 2. Attached to the PFA Order was a sheriff's return of service, which indicated that Defendant was served with the PFA Order on August 29, 2014. See Temporary PFA Order.

On September 3, 2014, the parties appeared in court for a hearing regarding the Plaintiff's request for a final PFA Order against Defendant. See Extension Order, *D. v. S.*, No. C-48-PF-2014-602 (C.P. Northampton Co. Sept. 3, 2014). Due to pending criminal charges against Defendant, the court extended the Temporary PFA Order until February 17, 2015, at which time a hearing on Plaintiff's request for a final PFA would be conducted. See Extension Order. Further, the parties agreed to resume Defendant's periods of partial physical custody, with the exchange point for transfers of physical custody of the Child to occur at the Skippack State Police Barracks. See Order of Court under Protection from Abuse Act dated Sept. 3, 2014, *D. v. S.*, No. C-48-PF-2014-602 (C.P. Northampton Co. Sept. 3, 2014).

On September 17, 2014, Plaintiff appeared in Northampton County's Motions Court requesting a Rule to Show Cause on a Motion for Modification of the Temporary PFA Order. See Rule to Show Cause on Motion for Modification, *D. v. S.*, No. C-48-PF-2014-602 (C.P. Northampton Co. Sept. 17, 2014). Plaintiff requested that the court modify the September 3, 2014 agreement to split the exchange point for physical transfer of the Child between the Skippack State Police Barracks and the Hellertown Police Department. See Rule to Show Cause on Motion for Modification. The court

scheduled the hearing on the Motion for Modification for September 24, 2014 in Northampton County's Motions Court. See Rule to Show Cause on Motion for Modification.

The parties appeared as directed in Northampton County's Motions Court on September 24, 2014. See Notes of Transcript of September 24, 2014, *D. v. S.*, No. C-48-PF-2014-602 (C.P. Northampton Co. Sept. 24, 2014) ("N.T. Sept. 2014"). Plaintiff reiterated that she did not intend to agree to conduct all of the custody exchanges at the Skippack State Police Barracks. See N.T. Sept. 2014 at 5. Following the hearing, the court vacated the custody agreement of September 3, 2014, and advised the parties to return to custody court in order to resolve their custody dispute. See *id.* at 8; see also Order of Court under Protection from Abuse Act dated September 24, 2014, *D. v. S.*, No. C-48-PF-2014-602 (C.P. Northampton Co. Sept. 24, 2014). On October 15, 2014 and October 20, 2014, Plaintiff filed indirect criminal contempt complaints, alleging that Defendant violated the Temporary PFA Order by arriving at her property on one occasion, and refusing to return the Child on another. See Indirect Criminal Contempt Private Complaint dated Oct. 15, 2014, *D. v. S.*, No. C-48-PF-2014-602 (C.P. Northampton Co. Oct. 15, 2014) ("First Contempt Complaint"); Indirect Criminal Contempt Private Complaint dated Oct. 20, 2014, *D. v. S.*, No. C-48-PF-2014-602 (C.P. Northampton Co. Oct. 20, 2014) ("Second Contempt Complaint").

IV. Custody Agreement

On October 28, 2014, the court adopted an agreement of the parties concerning custody of the Child as an Order of Court. See Order of Court dated October 28, 2014, *D. v. S.*, No. C-48-CV-2014-762 (C.P. Northampton Co. Oct. 30, 2014) (“Custody Agreement”). The Custody Agreement provides that Plaintiff retain primary physical custody of the Child subject to Defendant’s period of partial physical custody of the Child. See Custody Agreement at ¶ 2. When Plaintiff is receiving custody, she shall obtain custody of the Child at the Skippack State Police Barracks, and when Defendant is receiving custody, he shall obtain custody of the Child at the Hellertown Police Department. See Custody Agreement at ¶ 2. The Custody Agreement granted the parties the right to share holidays as they could agree, but, in relevant part, if they could not agree, physical custody of the Child is as follows:

From 12:00 p.m. on New Year’s Eve until 12:00 p.m. on New Year’s Day. In even numbered years, Mother shall have custody. In odd-numbered years, Father shall have custody. From 12:00 p.m. until 6:00 p.m. on New Year’s Day. In even numbered years, Father shall have custody. In odd-numbered years, Mother shall have custody.

Custody Agreement at ¶ 3(e), 3(f). Additionally, communication

between the parties is governed as follows:

The parties shall communicate with each other regarding the Child’s medications and daily routines. Each party shall check his or her voice, text, and email messages at least once per day, and more frequently when it would be reasonable to do so, and promptly respond to all communication from the other party

concerning the Child. Neither party shall use the Child as an intermediary for communications concerning parenting issues. Neither party shall discuss the custody litigation with the Child. The parties shall not engage in arguments or confrontational conversations in the presence or hearing of the Child. All contacts between the parties and their family members and companions that occur in the presence or hearing of the Child shall be polite, civil, and respectful.

Custody Agreement at ¶ 15.

Finally, the Custody Agreement provides that “[t]he custody provisions of this order supersede any and all prior orders, including any temporary or final Protection from Abuse (“PFA”) orders.” See Custody Agreement at ¶ 20.

V. January 2015 Indirect Criminal Contempt Private Complaint

On January 2, 2015, Plaintiff filed an indirect criminal contempt complaint against Defendant, alleging that Defendant violated the Temporary PFA Order by sending her multiple text messages alleging he should have custody of the Child and arriving at her residence to attempt to regain custody of the Child. See Indirect Criminal Contempt Private Complaint dated Jan. 2, 2015, *D. v. S.*, No. C-48-PF-2014-602 (C.P. Northampton Co. Jan. 2, 2015) (“Third Contempt Complaint”).

On January 20, 2015, both parties appeared for a hearing on Plaintiff’s January 2, 2015 Indirect Criminal Contempt Complaint. See Notes of Testimony of January 20, 2015, *D. v. S.*, No. C-48-PF-2014-602 (C.P. Northampton Co. Jan. 20, 2015) (“N.T. Jan. 2015”). Plaintiff

testified that she filed for indirect criminal contempt of the Temporary PFA Order because Defendant contacted her on New Year's Eve, December 31, 2014, stating that he wanted custody of the Child. See N.T. Jan. 2015 at 10. When Plaintiff did not respond, Defendant contacted the Lower Saucon Police Department, who responded to Plaintiff's residence to speak with Plaintiff and review the Custody Agreement. See *id.* at 10. Pursuant to the terms of the Custody Agreement, the Lower Saucon Police Department did not remove the Child from Plaintiff's custody. See *id.* Following the visit from the police, Defendant contacted Plaintiff by text message "later that night stating that he was still waiting at the Hellertown Police Department, which is about five minutes down the road, which [was], to [her], terrifying because the police told him there was nothing they can do." *Id.* at 11.

Plaintiff testified that on the following day Defendant appeared at Plaintiff's residence, despite the provisions of the Temporary PFA Order prohibiting him from appearing at the residence, and the warnings of the Lower Saucon Police Department on New Year's Eve not to appear at Plaintiff's residence. See *id.* Plaintiff testified that this was not the first time Defendant appeared at Plaintiff's residence following the enactment of the Temporary PFA Order. See *id.* at 12. Finally, Plaintiff testified that she fears for her safety when Defendant comes

to her residence because “[h]e’s unpredictable,” “[h]e’s a dangerous man,” and “[she doesn’t] know what he is going to do next.” *See id.* at 15. We found Plaintiff’s testimony to be credible.

Defendant testified that he believed, pursuant to the Custody Agreement, that he had custody of the Child on New Year’s Eve. *See id.* at 35. Defendant admitted that he sent text messages to Plaintiff on New Year’s Eve and then called the Lower Saucon Police Department when she did not respond. *See id.* Defendant also admitted that he sent Plaintiff a text message after the police department responded to Plaintiff’s residence. *See id.* at 36.

Defendant testified that he sent a text message to Plaintiff on New Year’s Day that he should have custody of the Child, but did not receive a response. *See id.* at 37. Again, Defendant called the police and sent them to Plaintiff’s address to retrieve the Child. *See id.* Defendant admitted that on New Year’s Day he drove to Plaintiff’s residence, arrived there after the police arrived, and “pulled across the street and waited.” *Id.* However, when questioned, Defendant admitted that he had been told on numerous occasions by Plaintiff, Plaintiff’s parents, and the police not to appear at Plaintiff’s residence, and that he does appear at her residence or violate the PFA. *See id.* at 41. Finally, Defendant argued that he believed that the Custody Agreement gave him the right to text Plaintiff about the Child, and to

appear at Plaintiff's residence. *See id.* at 43. We did not find Defendant's testimony to be credible.

Following the hearing, the court found Defendant guilty of indirect criminal contempt of the Temporary PFA Order. *See Contempt Disposition, D. v. S., No. C-48-PF-2014-602 (C.P. Northampton Co. Jan. 20, 2014)*. Defendant was ordered to pay a fine of \$500 and serve seven days in Northampton County Prison. *See Contempt Disposition*. Finally, the court ordered that the Temporary PFA Order already on file shall remain in full force and effect. *See Contempt Disposition*.

VI. Defendant's Appeal

On February 19, 2015, Defendant filed a Notice of Appeal to the Superior Court of Pennsylvania. *See Notice of Appeal, D. v. S., No. C-48-PF-2014-602 (C.P. Northampton Co. Feb. 19, 2015)*.

On appeal, Defendant contends that:

1. Defendant believes and therefore avers that this Honorable Court erred in finding him in criminal contempt of a Temporary PFA Order dated September 24, 2014 because Defendant acted at all times in compliance with the parties' custody order, which was entered subsequent to the PFA Order and superseded the PFA Order.

Defendant's Statement of Matters Complained of on Appeal Pursuant to Pa.R.A.P. 1925(b) at ¶ 1, *D. v. S., C-48-PF-2014-602 (C.P. Northampton Co. Apr. 14, 2015)* ("Defendant's Statement of Errors").

DISCUSSION

The purpose of the PFA Act is “to bring about a cessation of abuse to the plaintiff.” See 23 Pa.C.S.A. § 6108. The PFA Act defines “abuse” to include “(i) intentionally, knowingly, or recklessly causing bodily injury; [or] (ii) placing another in reasonable fear of imminent bodily injury.” *Id.* “The PFA Act operates to protect victims of domestic violence and permit the courts to respond quickly and flexibly to both early signs and subsequent acts of abuse with the issuance of protection orders.” See *Commonwealth v. Walsh*, 36 A.3d 613, 618 (Pa. Super. 2012). Here, after considering the purpose of the PFA Act, the court issued a Temporary PFA Order on August 25, 2014. See Temporary PFA Order. The Temporary PFA Order was extended until February 17, 2015, and both parties were advised that the Temporary PFA Order would remain in full force and effect until the final hearing on that date. See Extension Order. Therefore, the provisions of the Temporary PFA Order were in effect when Plaintiff filed a Complaint for Indirect Criminal Contempt against Defendant on January 2, 2015.

II. Indirect Criminal Contempt of PFA Order

Defendant’s sole allegation on appeal is that we erred in finding him in indirect criminal contempt of the Temporary PFA Order because he acted at all times in compliance with the parties’ custody agreement which superseded the PFA Agreement. See Defendant’s Statement of Errors at ¶ 1. We disagree.

“When a defendant allegedly violates a protective order, section 6114 of the [PFA Act] allows police or a plaintiff to file a charge of indirect criminal contempt against the defendant.” *Commonwealth v. Snell*, 737 A.2d 1232, 1235 (Pa. Super. 1999). “A charge of indirect criminal contempt consists of a claim that a violation of an Order or Decree of court occurred outside the presence of the court.” *Commonwealth v. Baker*, 722 A.2d 718, 720 (Pa. Super. 1998 (citing *Brocker v. Brocker*, 241 A.2d 336 (Pa. 1968))). “Where a PFA Order is involved, an indirect criminal contempt charge is designed to seek punishment for violation of the protective order.” *Baker*, 722 A.2d at 720 (citing *Commonwealth v. Nelson*, 690 A.2d 728 (Pa. Super. 1997)).

An appellate court reviewing a contempt conviction must rely on the trial court’s discretion, and should reverse a trial court’s determination only when there has been a plain abuse of discretion. *See Commonwealth v. Kolansky*, 800 A.2d 937, 939 (Pa. Super. 2002). Further, in PFA matters, the appellate court “defers to the credibility determinations of the trial court as to the witnesses who appeared before it.” *Raker v. Raker*, 846 A.2d 720, 724 (Pa. Super. 2004); *accord Thompson v. Thompson*, 963 A.2d 474, 477 (Pa. Super. 2008) (same).

A. Custody Agreement Did Not Supersede Entire Temporary PFA

Defendant contends that the Custody Agreement entered into by the parties on October 28, 2014 superseded the Temporary PFA Order. *See* Defendant’s Statement of Errors at ¶ 1. We disagree.

First, while a trial court is permitted to enter an order concerning custody subsequent to the entrance of a PFA Order concerning the same parties,

section 6108(a)(4) [of the PFA Act] precludes a custody award, pre-existing or following the PFA Order, from nullifying the PFA Order as its purpose is to assure the safety of a child or children above and beyond any other Orders or relationships involving children. To hold otherwise would have the effect of emasculating the central and extraordinary feature of the PFA which is to prospectively control and prevent domestic violence.

Dye for McCoy v. McCoy, 621 A.2d 144, 145 (Pa. Super. 1993). Therefore a trial court is not permitted to enter a custody order that entirely supersedes or nullifies a PFA Order.

Further, the Custody Agreement in this case did not purport to supersede the Temporary PFA Order in its entirety. The Custody Agreement of the parties states that “[t]he *custody provisions* of this order supersede any and all prior orders, including any temporary or final Protection from Abuse (“PFA”) orders.” See Custody Agreement at ¶ 20 (emphasis added). Because *only* the custody provisions of the Custody Agreement supersede prior orders, the only logical conclusion is that these provisions replace prior provisions related to custody in prior orders, namely the Temporary PFA Order. Despite Defendant’s contention, it would be illogical to believe that the Custody Agreement would supersede *any and all prior orders*, including the Temporary PFA Order, completely.

Here, at the time the Custody Agreement was enacted, the Temporary PFA Order governed custody between the parties. The Temporary PFA Order superseded any prior orders relating to custody. See Temporary PFA Order at ¶ 5. While there was a subsequent custody order following the Temporary PFA Order and before the Custody Agreement, this Order was vacated by the court on September 24, 2014. See Order of Court under Protection from Abuse Act dated September 3, 2014; see *also* Order of Court under Protection from Abuse Act dated September 24, 2014. The only provisions in the Temporary PFA Order related to custody were that Defendant was not to have partial physical custody of the Child until the final hearing on the PFA Order, and that the parties should be prepared to discuss custody issues with the court at the final hearing. See Temporary PFA Order at ¶ 5.

After the Custody Agreement was adopted as an Order of Court, the custody provisions replaced the custody provisions in the Temporary PFA Order. Most notably, the Custody Agreement provided that Defendant and Plaintiff could contact each other regarding the Child, the exchange points for physical custody of the Child would be at the Skippack State Police Barracks and the Hellertown Police Department, and that Defendant would be allowed to resume visitation with the Child. See Custody Agreement at ¶¶ 2, 15. However, the Custody Agreement did not alter the fundamental aspects of the Temporary PFA Order, namely that:

1. Defendant shall not abuse, harass, stalk, or threaten any of the above persons in any place where they might be found.
2. Defendant is evicted and excluded from the residence at: 2272 Easton Road, Bethlehem PA 18015 or any other permanent or temporary residence where Plaintiff or any other person protected under this order may live. Plaintiff is granted exclusive possession of the residence. Defendant shall have no right or privilege to enter or be present on the premises of Plaintiff or any other person protected under this order.

Temporary PFA Order at ¶¶ 1, 2. Notably, although Defendant now contends that the Custody Agreement superseded the Temporary PFA Order, at the hearing on January 20, 2015, he informed the court that he does not violate the Temporary PFA Order. See N.T. Jan. 2015 at 41. This allegation indicated that Defendant still believed that the Temporary PFA Order was still in place at the time of the January 20, 2015 hearing. Following this analysis, we do not believe that the Custody Agreement actually did, or legally could, supersede the Temporary PFA Order completely.

B. Defendant Did Not Abide By Terms of Custody Agreement

Defendant argues that the court erred by finding him in indirect criminal contempt of the Temporary PFA Order because he acted at all times in compliance with the parties' Custody Agreement. See Defendant's Statement of Errors at ¶ 1. As discussed above, we do not find that the Custody Agreement replaced the Temporary PFA Order in its entirety. Therefore, even if Defendant acted in compliance with the parties' Custody Agreement, he could still be found in indirect criminal contempt if he violated

the remaining provisions of the Temporary PFA Order. Therefore, we believe that by finding Defendant violated the Temporary PFA Order, this argument is without merit.

C. Defendant Violated Temporary PFA Order

“The burden of proof in an indirect criminal contempt proceeding is beyond a reasonable doubt.” *Commonwealth v. Nelson*, 690 A.2d 728, 732 (Pa. Super. 1997) (citations omitted). “To establish indirect criminal contempt, it must be shown that 1) the order was sufficiently clear to the contemnor as to leave no doubt of the conduct prohibited; 2) the contemnor had notice of the order; 3) the act must have been one prohibited by the order; and 4) the intent of the contemnor in committing the act must have been wrongful.” *Commonwealth v. Ashton*, 824 A.2d 1198, 1202 (Pa. Super. 2003).

Defendant was alleged to have violated the Temporary PFA Order when he contacted Plaintiff multiple times concerning custody of the Child, sent the police to Plaintiff’s home, and parked outside of Plaintiff’s home to regain custody of the Child. See Third Contempt Complaint. Therefore, in order to establish indirect criminal contempt, Plaintiff was required to show that 1) the Temporary PFA Order was clear enough to Defendant as to leave no doubt that his conduct was prohibited; 2) Defendant had notice of the Temporary PFA Order; 3) Defendant’s conduct was prohibited by the

Temporary PFA Order; and 4) Defendant's course of conduct was motivated by wrongful intent.

i. Temporary PFA Order Was Clear

Although Defendant alleges that the Custody Agreement superseded the Temporary PFA Order, there is no question that the Temporary PFA Order was specific, clear, and definite, allowing Defendant to have no doubt of what conduct was prohibited. The Temporary PFA Order specifies that Defendant is prohibited from abusing, harassing, stalking, or threatening Plaintiff, as well as appearing at Plaintiff's residence. See Temporary PFA Order at ¶¶ 1, 2. While there were subsequent orders that modified the Temporary PFA, it was clear that these provisions remained unchanged. Furthermore, the fact that Defendant was aware that he was not permitted to appear at Plaintiff's residence is illustrated by the fact that Defendant had received two other complaints for contempt for appearing at Plaintiff's property. See First Contempt Complaint; Second Contempt Complaint. Defendant's awareness of the fact that appearing at Plaintiff's property was prohibited is also demonstrated by the fact that Defendant admitted that Plaintiff, Plaintiff's parents, and the police told him multiple times not to appear at Plaintiff's Property. See N.T. Jan. 2015 at 41. Therefore, we find that these factors prove beyond a reasonable doubt that the Temporary PFA Order was sufficiently clear for the Defendant to know what conduct was prohibited by the Temporary PFA Order.

ii. Defendant Received Notice of the Temporary PFA Order

There does not appear to be any argument from Defendant that he did not have notice of the Temporary PFA Order, and each subsequent order relating to that Order. The Sheriff served Defendant with the notice of the Temporary PFA, as evidence by the sheriff's return of service attached to the Temporary PFA Order. See Temporary PFA Order. Defendant was present in court for all subsequent hearings relating to the Temporary PFA Order. See N.T. Sept. 2014; N.T. Jan. 2015. Therefore, we find this evidence sufficient to conclude beyond a reasonable doubt that Defendant received notice of the Temporary PFA Order.

iii. Defendant Acted in Violation of the Temporary PFA Order

Next, the evidence presented at Defendant's indirect criminal contempt hearing was sufficient to show that at least some of the conduct committed by Defendant was in violation of the Temporary PFA Order. As discussed above, the Custody Agreement modified the portions of the Temporary PFA Order that related to custody of the Child. Therefore, although the Temporary PFA Order prohibited Defendant from contacting Plaintiff, following the Custody Agreement, Defendant was permitted to contact Plaintiff regarding the Child. In this case, both Plaintiff and Defendant admit that Defendant's numerous text messages over New Year's Eve through New Year's Day were concerning physical custody of the Child. See N.T. Jan. 2015 at 10-11, 35-37.

We do note that although Defendant is permitted to contact Plaintiff regarding the Child, he is prohibited from abusing, harassing, stalking, or threatening Plaintiff under the terms of the Temporary PFA Order. See Temporary PFA Order at ¶ 1. While Plaintiff did not provide the court with information relating to the number of text messages Defendant sent her over this two day period, we do believe that there may be a threshold where text messages regarding the Child turn into harassment under the Temporary PFA Order. See N.T. Jan. 2015.

However, while we do not find the text messages violate the Temporary PFA Order, we find that Defendant's actions in going to retrieve the Child outside of Plaintiff's residence were clearly in violation of the Temporary PFA Order. The Temporary PFA Order provides that Defendant was excluded from Plaintiff's property and not permitted to be on the premises. See Temporary PFA Order at ¶ 2. As discussed above, Defendant clearly knew that he was not allowed to appear at Plaintiff's property, and had been advised so by the Temporary PFA Order, Plaintiff, Plaintiff's parents, and the police. See N.T. Jan. 2015 at 41. Further, despite this knowledge, Defendant admitted that he went to Plaintiff's property on New Year's Day to receive custody of the Child. See *id.* at 37. Therefore, we find that there is sufficient evidence to show that Defendant violated the provisions of the Temporary PFA Order.

iv. Defendant was Motivated by Wrongful Intent

Finally, there is sufficient evidence to show that Defendant acted with wrongful intent by appearing at Plaintiff's residence in violation of the Temporary PFA Order on New Year's Day. The Temporary PFA Order specifically directed Defendant to stay away from Plaintiff's residence. See Temporary PFA Order at ¶ 2. After listening to both parties' testimony and observing their behavior and body language during the January 2, 2015 hearing on this matter, we determined that Plaintiff's testimony was credible and that Defendant's testimony was not credible. Defendant testified that he believed he had the right to go to Plaintiff's property following the enactment of the Custody Agreement. See *id.* at 43. However, Defendant knew that he was not allowed to be on Plaintiff's premises, and had been warned against going to Plaintiff's premises by the police. See N.T. Jan. 2015 at 41. Further, Defendant contradicted himself by stating that he does not go to Plaintiff's residence or violate the Temporary PFA Order a few minutes after he admitted that he went to Plaintiff's residence to retrieve the Child on New Year's Eve. See *id.* at 37, 41. Instead, we believe that Defendant went to Plaintiff's residence because he was upset that she was not answering his text messages and is now attempting to use the Custody Agreement to shield himself from his wrongful actions. Therefore, we find that Defendant was motivated by wrongful intent in violating the Temporary

PFA Order, and subsequently was correctly found guilty of indirect criminal contempt.

CONCLUSION

For the reasons above, we respectfully submit that Defendant's appeal lacks merit and should be denied.

BY THE COURT:

/s/ Michael J. Koury, Jr.

MICHAEL J. KOURY, JR., J.