

[Cite as *Slater v. Slater*, 2018-Ohio-4897.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106925

ERIN M. SLATER

PLAINTIFF-APPELLANT

vs.

THOMAS F. SLATER II, ET AL.

DEFENDANT-APPELLEE

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-16-361510

BEFORE: S. Gallagher, P.J., Laster Mays, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: December 6, 2018

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SEAN C. GALLAGHER, P.J.:

{¶1} Appellant Erin M. Slater appeals the decision of the trial court that referred to arbitration the issues raised in her motions to show cause. Upon review, we find the trial court erred by determining that the matter was subject to arbitration and reverse the decision of the trial court. We remand the matter to the trial court, which has continuing jurisdiction to enforce its divorce decree along with the terms of the separation agreement incorporated therein through contempt proceedings.

Background

{¶2} The parties to this action, Erin M. Slater and Thomas F. Slater II, were divorced on October 10, 2017. The trial court incorporated into the judgment entry of divorce a separation agreement that was entered into by the parties on December 15, 2015. The judgment entry of divorce states that the separation agreement is “included herein as if fully rewritten and its terms

ordered into execution.” After the divorce decree was entered, various motions were filed with the court. Relevant hereto, appellant filed a motion to show cause and a second motion to show cause claiming appellee had failed to comply with the judgment entry of divorce and should be held in contempt. Appellee filed a motion to dismiss asserting that the parties had agreed to the arbitration of any disputes under the terms of the settlement agreement.

{¶3} On February 23, 2018, the trial court issued a judgment entry that “referr[ed] the issues raised by Plaintiff’s Motion to Show Cause and Second Motion to Show Cause to arbitration.” The trial court referenced the arbitrator’s reservation of jurisdiction under Section XVI of the separation agreement. Appellant timely filed this appeal.

Law and Analysis

{¶4} Under her sole assignment of error, appellant claims the trial court “erred by abdicating its exclusive authority and power to hear appellant’s motion to show cause and related motions and forcing the parties into arbitration[.]” We find merit to her argument.

{¶5} R.C. 2705.02 provides that a person “may be punished as for a contempt” when the person is guilty of “[d]isobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or an officer[.]” R.C. 2705.02(A). Also, “the power of contempt is inherent in a court.” *Harris v. Harris*, 58 Ohio St.2d 303, 307, 390 N.E.2d 789 (1979); *see also Denovchek v. Bd. of Trumbull Cty. Commrs.*, 36 Ohio St.3d 14, 15, 520 N.E.2d 1362 (1988).

{¶6} In *Holloway v. Holloway*, 130 Ohio St. 214, 215, 198 N.E. 579 (1935), the Supreme Court of Ohio held that where a separation agreement is incorporated into a divorce decree, the agreement is superseded by the decree, and the obligations imposed are those imposed by decree and are enforceable as such. Moreover, when a trial court incorporates into a divorce decree the

terms of a separation agreement between the parties, the terms become part of the court's decree and are subject to enforcement through contempt proceedings. *Harris* at 308-309; *see also Robrock v. Robrock*, 167 Ohio St. 479, 150 N.E.2d 421 (1958). "The decree of the court is a command of the court to a party to make certain payments, or convey or transfer certain property. Such command or order of the court in reference to certain property of the parties should be enforceable by way of the statutory power of contempt." *Id.* at 311.

{¶7} As this court has previously acknowledged, the act of incorporating a separation agreement into a divorce decree gives the included language the force and effect of being part of the court's decree. *Hogan v. Hogan*, 29 Ohio App.2d 69, 71, 278 N.E.2d 367 (8th Dist.1972). In the event of defiance thereof, "[t]he contemnor is punished for his willful failure to comply with a valid judicial order." *Id.*

{¶8} In *Cobler v. Cobler*, 2d Dist. Montgomery No. 8742, 1984 Ohio App. LEXIS 10705 (Aug. 27, 1984), the court rejected a claim that a party to a divorce decree that incorporated a separation agreement had been deprived of her right to arbitration when she was found in contempt of a property settlement agreement, which was incorporated into the final decree. The court held that "the domestic relations court has continuing jurisdiction to enforce its divorce decrees which incorporate a separation agreement" and may issue ancillary orders effecting its former decree. *Id.* at 2-3.

{¶9} Pursuant to the foregoing authority, once the separation agreement herein was incorporated into the divorce decree, the obligations thereunder became subject to enforcement through contempt proceedings. Whether appellee is in contempt of the court's judgment is a matter for the court, not an arbitrator, to determine. Therefore, appellant was not required to seek relief through arbitration in this particular instance.

{¶10} Even if we were to consider the contractual obligations under the separation agreement, as opposed to the legal obligations imposed by the court, the same result is reached. While a trial court retains broad discretion to clarify ambiguity in a contract, the determination of whether a contract is ambiguous is a matter of law that is reviewed de novo. *Wiseman v. Wiseman*, 9th Dist. Medina No. 13CA0009-M, 2014-Ohio-2002, ¶ 7. A plain reading of the separation agreement reveals that the parties intended to preserve their ability to complain of contempt behavior in court. Section XII of the separation agreement states that the agreement was to be embodied in and made part of the final decree in an action for divorce. Section IX of the separation agreement shows the parties intended that a default in the performance of any obligations would be subject to legal proceedings to effectuate performance of any provisions of the separation agreement “by a court of competent jurisdiction.” No ambiguity exists.

{¶11} To the extent the arbitrator reserved jurisdiction over any disputes “concerning this Agreement and its terms,” the agreement nowhere provides that arbitration is a condition precedent to post-divorce decree contempt proceedings. Furthermore, the parties’ agreement cannot divest the trial court of jurisdiction to issue a contempt order prescribed by statute. To require arbitration prior to invocation of the court’s enforcement powers would impose a substantial impediment to a party’s right to pursue judicial review for noncompliance of a court order and would run contrary to the statutory scheme.

{¶12} Accordingly, appellant’s motions for contempt were properly before the trial court, and the court’s determination that the matter was subject to arbitration was in error.

Conclusion

{¶13} The agreement of the parties could not deprive the trial court of jurisdiction to issue a contempt order prescribed by statute. Upon incorporation into the divorce decree, the

obligations imposed did not arise from a contract between the parties, but arose from an order of the court. The court is specifically empowered to issue contempt orders in such matters, and appellant has the right to a judgment from the court.

{¶14} Appellant's sole assignment of error is sustained. We need not address any further issues raised by the parties.¹

{¶15} Judgment reversed, and case remanded.

It is ordered that appellant recover from appellee costs herein taxed. The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, domestic relations division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, PRESIDING JUDGE

ANITA LASTER MAYS, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR

¹ However, we note that Sup.R. 15(B) has no applicability in this matter.