

[Cite as *Wolf v. Wolf*, 2010-Ohio-2762.]

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

MELVIN W. WOLF,	:	APPEAL NO. C-090587
	:	TRIAL NO. A-8508821
Plaintiff-Appellee,	:	
	:	<i>DECISION.</i>
vs.	:	
DARLENE S. WOLF,	:	
	:	
Defendant-Appellant.	:	

Civil Appeal From: Hamilton County Court of Common Pleas, Domestic Relations  
Division

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: June 18, 2010

*Timothy N. Tepe*, for Plaintiff-Appellee,

*Zachary Gottesman, James F. Keller, and Gottesman & Associates, LLC*, for  
Defendant-Appellant.

**WILLIAM L. MALLORY, Judge.**

{¶1} Under their 1986 divorce decree, the parties agreed that plaintiff-appellee Melvin W. Wolf would pay the “educational expenses for [their daughter Shaela Wolf] to attend an accredited college of her choice,” and that “such obligation shall be limited to the payment of tuition, books, and room and board at such institution of higher learning.” In June 2008, defendant-appellant Darlene S. Wolf moved to have Melvin held in contempt, alleging that Melvin had not paid Shaela’s “educational expenses.” The contempt motion was heard by a magistrate, who concluded that Darlene had not shown contempt by clear and convincing evidence. Darlene objected, and the common pleas court upheld the magistrate’s decision and denied her contempt motion. Darlene now appeals that decision, arguing that the trial court erred in denying her contempt motion. We affirm.

*1. Background and the Separation Agreement*

{¶2} Darlene and Melvin were married in 1983, and Shaela was born in 1985. The parties divorced in 1986, and a separation agreement was incorporated into the divorce decree. In that agreement, Melvin agreed to pay for Shaela’s education expenses according to the terms outlined above. Darlene moved for contempt and sought over \$55,000 in unpaid obligations under the decree’s educational-expense provision.

{¶3} Shaela attended the University of North Carolina at Wilmington from the fall semester of 2003 through the summer semester of 2007. Melvin admitted that he had not paid the education expenses for the 2006 fall and 2007 summer semesters. The divorce decree obligated Melvin to pay for Shaela to attend an accredited college. In addition to undergraduate expenses, Darlene also sought reimbursement from Melvin for Shaela’s expenses relating to her pursuit of a

graduate degree. Our reading of the divorce decree convinces us that Melvin was not obligated to pay Shaela's graduate expenses. And we conclude that the court did not abuse its discretion in finding that Melvin was not in contempt for failing to pay for the 2006 fall and 2007 summer semesters.

***II. The Standard of Review and a Prima Facie Showing of Contempt***

{¶4} We initially note that a reviewing court applies an abuse-of-discretion standard to a lower court's decision whether to hold a party in contempt.<sup>1</sup> A prima facie case of civil contempt is made when the moving party proves both the existence of a court order and the nonmoving party's noncompliance with the terms of that order.<sup>2</sup> The burden then shifts to the nonmoving party to establish a defense for its noncompliance.<sup>3</sup> We also note that, in considering a contempt motion, the trial court may consider whether the nonmovant has attempted to comply with the court order.<sup>4</sup>

{¶5} In this case, Melvin admitted that he had not paid the tuition for the 2006 fall and 2007 summer semesters. Darlene thus proved the existence of a court order obligating Melvin to pay for Shaela's educational expenses, as well as his noncompliance with the order, and, therefore, with respect to those expenses, she established a prima facie case of contempt. But the trial court did not abuse its discretion in concluding that Melvin was not in contempt.

{¶6} In ruling on Darlene's objections to the magistrate's decision, the trial court adopted the magistrate's findings of fact and conclusions of law. The magistrate found that Melvin had paid \$80,675.02 for tuition, books, and room and board and for numerous miscellaneous expenses, including suite fees, apartment

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<sup>1</sup> *Abernethy v. Abernethy*, 8th Dist. No. 92708, 2010-Ohio-435; *Rosen v. Rosen* (1964), 2 Ohio App.2d 381, 208 N.E.2d 764.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

rent, meals, telephone bills, electric bills, internet bills, permit fees, housing deposits, and computer-related expenses. The court noted that Melvin had paid these miscellaneous expenses even though they did not qualify for payment under the divorce decree, and that Melvin had often paid in lump sums, under the rubric of legitimate expenses for which he was responsible. Finally, the court noted that Melvin had made two lump-sum payments of \$6,690 and \$7,012 to which Shaela was not entitled under the divorce decree, that it was impossible to compute how much more Melvin had paid than he was required to pay, and that whatever additional amount, if any, that he owed could not be quantified. We are thus left to decide whether the court abused its discretion in crediting the miscellaneous expenses that Melvin had paid against his obligations under the divorce decree. And we conclude that it did not.

{¶7} That Melvin paid for expenses that he was not obligated to pay for was undisputed below, and we cannot say that the trial court abused its discretion in considering those payments to have gone toward satisfying Melvin's obligations under the divorce decree. As we have noted, in reviewing a contempt motion, a court may consider whether a party has attempted to comply with the order in question, and our review of the record in this case convinces us that Melvin had attempted to comply with the divorce decree. Thus, the trial court's adoption of the magistrate's decision was within its sound judgment, and Darlene's assignment of error is overruled.

{¶8} The trial court's judgment is accordingly affirmed.

Judgment affirmed.

**CUNNINGHAM, P.J., and HILDEBRANDT, J. concur.**

*Please Note:*

The court has recorded its own entry this date.