

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Juliana H. Brooks-Lee,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 11AP-284
	:	(C.P.C. No. 01DR-06-2609)
Paul W. Lee,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on February 2, 2012

Vincent A. Dugan, Jr., for appellee.

Paul W. Lee, pro se.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations

CONNOR, J.

{¶1} Appellant, Paul W. Lee, appeals from the February 28, 2011 decision of the Franklin County Court of Common Pleas, Division of Domestic Relations, finding him in contempt of court. For the reasons that follow, we affirm.

{¶2} This is the third time this matter has presented to this court. On May 18, 2001, appellant and his former spouse, appellee Juliana H. Brooks-Lee, entered into a separation agreement. On October 21, 2003, the trial court granted the parties a divorce and incorporated the separation agreement into its judgment entry. Appellant appealed, and we affirmed. *Brooks-Lee v. Lee*, 10th Dist. No. 03AP-1149, 2005-Ohio-

2288 ("*Brooks-Lee I*"), discretionary appeal not allowed by 106 Ohio St.3d 1545, 2005-Ohio-5343. Appellant then filed various post-decree motions, which were denied by the trial court. Appellant again appealed, and we again affirmed. *Brooks-Lee v. Lee* (Mar. 29, 2007), 10th Dist. No. 05AP-1369, discretionary appeal not allowed by 115 Ohio St.3d 1410, 2007-Ohio-4884.

{¶3} Of relevance to this appeal are competing motions for contempt filed by each party. On November 6, 2006, appellant filed a motion for contempt, alleging appellee's failure to comply with a provision of the trial court's October 21, 2003 judgment entry, which awarded him any potential refunds for previously filed income tax returns. Specifically, the judgment entry provided:

The Court finds that the parties may receive a tax refund for previously filed joint tax returns. In the event that the parties do receive such [a] refund, the [appellant] shall be awarded said refund, free and clear of all claims of the [appellee]."

(Judgment Entry – Decree of Divorce, at 3.)¹

{¶4} On January 10, 2007, appellee filed her own motion for contempt, alleging three branches of contemptuous conduct. First, appellant allegedly refused to pay his equal share of the children's uninsured medical expenses, despite a provision requiring him to do so in the October 21, 2003 judgment entry. (Judgment Entry – Decree of Divorce, at 3.) The second branch concerned real estate located at 5689 Walnut View Boulevard in Gahanna, Ohio. In the parties' May 18, 2001 settlement agreement, appellant agreed to quit claim to appellee the rights he had to this real estate. He did this on June 5, 2001. Nevertheless, on September 5, 2003, and again on July 16, 2004, appellant filed affidavits of interest regarding this real estate, in which he claimed an

¹ On January 4, 2007, appellant filed a motion for contempt, the substance of which is not at issue herein.

interest to the property. Consequently, in appellee's January 10, 2007 motion for contempt, she cited appellant's refusal to remove these affidavits as additional contemptuous conduct. The third branch of appellee's motion concerned appellant's refusal to pay, indemnify, and hold appellee harmless for interest, tax, penalties, and attorney fees relating to deficiencies resulting from prior tax returns. This alleged violation related to paragraph 13 of the parties' separation agreement, which provided:

[Appellant] shall pay, indemnify and save [appellee] harmless upon all interest, tax, penalties and attorney fees which arise from any deficiencies on any previously filed joint income tax returns.

(Separation Agreement, at 7.) Finally, as a result of appellant's alleged contemptuous conduct, appellee sought attorney fees and costs related to the prosecution of her motion.

{¶5} The competing contempt motions came before a magistrate for a hearing. On July 13, 2010, the magistrate issued a decision. Appellant filed timely objections and then supplemented his objections. On February 28, 2011, the trial court sustained in part and overruled in part appellant's objections.

{¶6} With respect to appellant's motion, the trial court concluded that appellant failed to meet his burden of proof and cited two reasons in support. First, the court noted that its order awarding any anticipated tax refunds to appellant was not rendered until October 21, 2003. Thus, appellee's admitted receipt of a refund check before this date could not have amounted to contemptuous conduct. Secondly, however, the funds received from this refund check were applied to the amount appellant owed for uninsured medical expenses. As a result, the trial court refused to find appellee in contempt.

{¶7} As for appellee's motion, the trial court separated its analysis into the three branches of allegedly contemptuous conduct. With respect to the first branch, the court

concluded that appellant failed to pay his equal share of the uninsured medical expenses and provided no defense. Nevertheless, it separated pre-decree from post-decree expenses and noted that portions of the expenses were offset by the tax refund check appellee retained. As a result, the court held appellant in contempt but reduced the amount awarded by the magistrate from \$749.18 to \$327.43. Furthermore, while attorney fees and costs associated with this branch were awarded, they were offset by the fees awarded to appellant based upon his January 4, 2007 motion for contempt. The court sentenced appellant to 30 days in jail but held that appellant could purge the contempt by paying \$327.43 to appellee within 30 days of the date of the entry.

{¶8} With respect to the second branch of appellee's motion, the court noted: (1) appellant agreed to quit claim his interest to the property to appellee; (2) appellant filed a quit claim deed relinquishing any and all of his interest; and (3) appellant then filed two affidavits of interest regarding appellee's property. The trial court concluded that these affidavits effectively revoked the quit claim transfer, and appellant had refused to remove them. It further noted that appellant had provided no legitimate explanation for his conduct. As a result, the court found appellant in contempt, awarded appellee \$1,500 in attorney fees, and sentenced appellant to 30 days in jail. Again, appellant was afforded an opportunity to purge the contempt by: (1) cancelling, rescinding and negating the effect of the affidavits on or before March 15, 2011; (2) filing a quit claim deed to the property on or before March 15, 2011; and (3) paying to appellee attorney fees of \$1,500 within 30 days of the entry.

{¶9} With respect to the third branch of appellee's motion, the court found that appellant had attempted to avoid his obligations under the separation agreement. Rather than paying and holding appellee harmless for a deficiency related to their joint federal tax

return for 1997, as was agreed, appellant challenged his liability for the deficiency. Consequently, appellee incurred legal fees to defend her own liability for the deficiency. Appellant provided no defense to this charge of contempt. As a result, the court awarded to appellee \$4,093 in attorney fees related to the tax liability, in addition to \$3,000 in attorney fees related to the prosecution of appellee's contempt motion. Again, the court sentenced appellant to 30 days in jail but afforded him with the opportunity to purge the contempt by paying appellee \$7,093 at the rate of \$1,500 per month until the balance was liquidated. The court further provided appellant with 60 days to make the first monthly payment.

{¶10} Appellant timely appealed and presents the following assignments of error:

ASSIGNMENT OF ERROR NUMBER ONE:

THE TRIAL COURT ERRED WHEN IT DENIED DEFENDANT'S MOTION FOR CONTEMPT AGAINST PLAINTIFF FOR FAILING TO PAY HIM REFUNDS FOR JOINT TAX RETURNS.

ASSIGNMENT OF ERROR NUMBER TWO:

THE COURT ERRED IN GRANTING THE PLAINTIFF'S MOTION FOR CONTEMPT AGAINST DEFENDANT FOR FAILING TO PAY HIS PORTION OF UNCOVERED MEDICAL EXPENSES.

ASSIGNMENT OF ERROR NUMBER THREE:

THE COURT ERRED IN GRANTING THE PLAINTIFF'S MOTION FOR CONTEMPT AGAINST DEFENDANT FOR IMPROPERLY FILING AND REFUSING TO REMOVE AFFIDAVITS RELATING TO REAL ESTATE.

ASSIGNMENT OF ERROR NUMBER FOUR:

THE COURT ERRED IN GRANTING THE PLAINTIFF'S MOTION FOR CONTEMPT AGAINST DEFENDANT FOR NOT PAYING FEES SHE PAID TO HER TAX ATTORNEY.

ASSIGNMENT OF ERROR NUMBER FIVE:

THE COURT ERRED IN SENTENCING DEFENDANT TO A JAIL TERM FOR CONTEMPT IN THIS MATTER AS IT CONSTITUTES IMPRISONMENT FOR DEBT UNDER THE OHIO CONSTITUTION.

{¶11} Appellant's assignments of error all regard the trial court's resolution of the parties' competing contempt motions. This court recently outlined the law on contempt.

See *Flowers v. Flowers*, 10th Dist. No. 10AP-1176, 2011-Ohio-5972:

Contempt results when a party before a court disregards or disobeys an order or command of judicial authority. *Fidler v. Fidler*, 10th Dist. No. 08AP-284, 2008-Ohio-4688, ¶10, citing *First Bank of Marietta v. Mascrote, Inc.* (1998), 125 Ohio App.3d 257, 263. Contempt of court may also involve an act or omission substantially disrupting the judicial process in a particular case. *Fidler* at ¶10, citing *In re Davis* (1991), 77 Ohio App.3d 257, 262. The law surrounding contempt was created to uphold and ensure the effective administration of justice, secure the dignity of the court, and affirm the supremacy of law. *Fidler* at ¶10, citing *Cramer v. Petrie*, 70 Ohio St.3d 131, 133, 1994-Ohio-404.

Contempt may be characterized as either direct or indirect. *Sansom v. Sansom*, 10th Dist. No. 05AP-645, 2006-Ohio-3909, ¶23. Direct contempt occurs in the presence of the court and obstructs the administration of justice. R.C. 2705.01; *Sansom*; *Turner v. Turner* (May 18, 1999), 10th Dist. No. 98AP-999. “ ‘Since direct contempt interferes with the judicial process, the court may summarily deal with it in order to secure the uninterrupted and unimpeded administration of justice.’ ” *Sansom* at ¶23, quoting *Turner*. By contrast, indirect contempt involves behavior that occurs outside the presence of the court and demonstrates a lack of respect for the court or its lawful orders. *Id.*

Courts may further classify contempt as civil or criminal, depending upon the character and purpose of the contempt sanctions. *Sansom* at ¶24. Civil contempt is remedial or coercive in nature and will be imposed to benefit the complainant. *Id.*, citing *Pugh v. Pugh* (1984), 15 Ohio St.3d 136, 139. The burden of proof for civil contempt is clear and convincing evidence. *Sansom* at ¶24. A sanction for civil contempt must provide the contemnor the opportunity to

purge himself or herself of the contempt. *Id.* “ ‘The contemnor is said to carry the keys of his prison in his own pocket * * * since he will be freed if he agrees to do as so ordered.’ “ *Id.*, quoting *Brown v. Executive 200, Inc.* (1980), 64 Ohio St.2d 250.

In contrast, criminal contempt sanctions are not coercive, but punitive in nature. *Sansom* at ¶25, citing *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 555, 2001-Ohio-15. Such sanctions are designed to punish past affronts to the court and to vindicate the authority of the law and the court. *Sansom* at ¶25. Criminal contempt is usually characterized by an unconditional prison sentence, and the contemnor is not afforded an opportunity to purge himself or herself of the contempt. *Id.*, citing *Brown* at 254. The burden of proof for criminal contempt is beyond a reasonable doubt. *Sansom* at ¶25, citing *Brown* at 251. Criminal contempt requires proof of a purposeful, willing or intentional violation of a trial court's order. Courts typically view contempt proceedings for failure to appear as criminal in nature. *Sansom* at ¶25. Normally, contempt proceedings in domestic relations matters are indirect and civil in nature because their purpose is to coerce or encourage future compliance with the court's orders and they concern behavior that occurs outside the presence of the court. *Fidler* at ¶11; see also *Foley v. Foley*, 10th Dist. No. 05AP-242, 2006-Ohio-946, ¶34.

When reviewing a finding of contempt, including a trial court's imposition of penalties, an appellate court applies an abuse of discretion standard. *Fidler* at ¶12, citing *In re Contempt of Morris* (1996), 110 Ohio App.3d 475, 479, citing *Dozer v. Dozer* (1993), 88 Ohio App.3d 296; *Arthur Young & Co. v. Kelly* (1990), 68 Ohio App.3d 287, 294. An abuse of discretion connotes more than an error of law or judgment; it implies the trial court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

Id. at ¶7-11.

{¶12} Based upon the record before us, the sanctions imposed by the trial court were coercive rather than punitive. Indeed, they were designed to enforce appellee's rights under the parties' separation agreement and divorce decree. Thus, the purpose was to benefit appellee rather than to punish appellant. Moreover, while appellant was

sentenced to a suspended 30 days in jail for his contemptuous conduct, he was offered the opportunity to purge the contempt. As a result, we classify the February 28, 2011 decision as an indirect civil contempt order.

{¶13} Civil contempt must be demonstrated by clear and convincing evidence. *Flowers* at ¶13, citing *Fidler* at ¶14, quoting *Jarvis v. Bright*, 5th Dist. No. 07CA72, 2008-Ohio-2974, ¶19, citing *Brown*. The trier of fact is vested with discretion in determining whether clear and convincing evidence supports a contempt finding. *Fidler* at ¶14, citing *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279. This is because "[c]redibility issues are not resolved as a matter of law, but are left to the trier of fact to determine." *Nott v. Ohio Dept. of Rehab & Corr.*, 10th Dist. No. 10AP-1079, 2011-Ohio-5489, ¶6, quoting *Ciccarelli v. Miller*, 7th Dist. No. 03 MA 60, 2004-Ohio-5123, ¶35, citing *Lehman v. Haynam* (1956), 164 Ohio St. 595. Indeed, "[a] reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not." *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶24, citing *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80.

{¶14} In this appeal, appellant generally challenges the extent of the evidence supporting the trial court's contempt findings. These challenges to the weight of the evidence fail when there exists some competent, credible evidence supporting the contempt finding. (Internal citations omitted.) *Flowers* at ¶14.

{¶15} In his first assignment of error, appellant argues that the trial court erred by refusing to find appellee in contempt. However, he challenges only one of the two independent bases supporting the trial court's decision. Indeed, he states that the trial

court was incorrect in concluding that appellee retained the tax refund pre-decree. However, as we previously noted, the trial court set forth an additional reason for refusing to hold appellee in contempt. Again, the record revealed that appellant never submitted a payment to appellee for his equal share of the children's uninsured medical expenses. As a result, appellee retained the \$665 tax refund in order to offset a portion of the amounts due from appellant. Clearly, the trial court adjudged the credibility of the respective parties and accepted appellee's explanation. The trial court had the authority to do so. *Nott* at ¶6, citing *Ciccarelli* at ¶35, citing *Lehman*. Consequently, nowhere has appellant demonstrated an abuse of discretion in the record before us. Appellant's first assignment of error is overruled.

{¶16} By way of his second, third, and fourth assignments of error, appellant argues that the trial court improperly held him in contempt. In his second assignment of error, appellant argues that appellee should have been required to provide more detailed documentation regarding the children's uninsured medical expenses. However, appellee offered testimony and documentation regarding the children's uninsured medical expenses. The trial court was free to accept appellee's evidence in this regard. *Nott* at ¶6, citing *Ciccarelli* at ¶35, citing *Lehman*. Furthermore, it was undisputed that appellant never submitted a payment for these expenses. As a result, some competent, credible evidence supported the trial court's finding with respect to the children's uninsured medical expenses. *Flowers* at ¶14. No abuse of discretion exists in the record before us. We accordingly overrule appellant's second assignment of error.

{¶17} In his third assignment of error, appellant contends that nothing specifically prevented him from filing affidavits regarding appellee's real estate. He states that the contents of the affidavits were truthful at the time they were made. Further, according to

appellant, if he rescinds or revokes his affidavits, then he might be guilty of the crime of falsification.

{¶18} We are reluctant to dignify these specious arguments with much comment. More than one full decade ago, appellant agreed to quit claim his interest in the real estate to appellee. The trial court incorporated this agreement into its final judgment, and we affirmed on appeal. See *Brooks-Lee I* at ¶73. Nevertheless, appellee still seeks the benefit of the bargain she entered over a decade ago. As is clear, appellant has absolutely no legal interest to the real estate. Indeed, a quit claim deed conveys to the releasee whatever interest the releaser has in the property. *Whitt v. Whitt*, 2d Dist. No. 02-CA-93, 2003-Ohio-3046, ¶10, citing *In re Vine Street Congregational Church* (1910), 20 Ohio Dec. 573, 588. Appellant filed a quit claim deed, then filed affidavits of interest, and then refused to remove the affidavits after the divorce was finalized. Not only has appellant made it more difficult for appellee to refinance or sell the property, but he has also interfered with the administration of justice and undermined the dignity and authority of the judiciary. This occurred in spite of the fact that appellant is an attorney at law and is therefore an officer of the court. We see no abuse of discretion in holding appellant in contempt for his conduct. As a result, we overrule appellant's third assignment of error.

{¶19} Appellant's fourth assignment of error regards his failure to pay for attorney fees appellee incurred as a result of a tax dispute. As background, in January 2003, the Internal Revenue Service ("IRS") notified appellee of its intent to levy assets based upon a deficiency, penalties, and interest resulting from the parties' joint federal tax return for 1997. Appellee retained a tax attorney to resolve the matter. Appellee was awarded "innocent spouse relief" under the tax code and was consequently absolved of any personal liability. Thereafter, appellant too sought innocent spouse relief. As a practical

matter, appellant's request for innocent spouse relief essentially challenged the award of innocent spouse relief previously awarded to appellee. Consequently, appellee was forced to appear and contest appellant's request. She incurred attorney fees as a result.

{¶20} In his fourth assignment of error, appellant argues that the deficiency was either caused by the IRS or appellee. He notes that appellee's income was several times his, so he could not have caused the deficiency. He argues that the deficiency must have occurred pre-decree, so there could not have been a violation of a court order to serve as the basis for contempt. Finally, he notes that he never had to pay the deficiency because the IRS failed to pursue its claim in his bankruptcy proceedings.

{¶21} It is well established that a settlement agreement incorporated into a divorce decree is a binding contract. *Brilla v. Mulhearn*, 168 Ohio App.3d 223, 2006-Ohio-3816, ¶15. A party cannot simply repudiate a settlement agreement when, in hindsight, he finds that he no longer agrees with its terms. *Michaels v. Michaels*, 9th Dist. No. 09CA0047-M, 2010-Ohio-963, ¶12. Indeed, to permit a party to unilaterally repudiate such an agreement would render the entire settlement proceedings a nullity. *Spercel v. Sterling Industries, Inc.* (1972), 31 Ohio St.2d 36, 40.

{¶22} The arguments advanced in support of appellant's fourth assignment of error all miss the mark. Indeed, they focus on the cause of the deficiency and ultimate outcome of the dispute. Again, the parties reached a settlement agreement that was incorporated into the final divorce decree. The enforceability of the settlement agreement was upheld in the first appeal before this court. See *Brooks-Lee I* at ¶23. Res judicata prohibits appellant from challenging the enforceability of the agreement at this stage in the proceedings. See *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 382, 1995-Ohio-331.

{¶23} Based upon the parties' agreement, they clearly contemplated that unresolved tax issues might arise after the divorce. They therefore included provisions in the separation agreement to deal with these issues. They agreed that appellant would receive post-decree refunds from previously filed returns, while he would also be responsible for interest, taxes, penalties, and attorney fees associated with deficiencies from previously filed returns. Appellee's attorney fees resulted from interest, taxes, and penalties associated with a deficiency from 1997. Testimony from appellee's tax attorney verified this. The trial court was fully capable of weighing this testimony against appellant's testimony, which was often evasive and non-responsive. Thus, competent, credible evidence supports the trial court's finding in this regard. No abuse of discretion exists in the record before us. We therefore overrule appellant's fourth assignment of error.

{¶24} Appellant's fifth assignment of error regards the suspended jail sentence imposed as sanctions for his conduct. Appellant concedes, however, this challenge was never raised in appellant's objections to the magistrate's decision.

{¶25} "Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion [set forth in a magistrate's decision], * * * unless the party has objected to that finding or conclusion[.]" Civ.R. 53(D)(3)(b)(iv).

{¶26} Appellate courts find plain error only in " 'extremely rare circumstances' where the error seriously affects the basic fairness, integrity, or public reputation of the judicial process itself." *Skydive Columbus Ohio, LLC v. Litter*, 10th Dist. No 09AP-563, 2010-Ohio-3325, ¶13, citing *Unifund CCR Partners v. Hall*, 10th Dist. No. 09AP-37, 2009-Ohio-4215, ¶22, quoting *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121, 1997-Ohio-401.

Indeed, the plain error doctrine implicates errors in the judicial process where the error is clearly apparent on the face of the record and is prejudicial to the appellant. *Reichert v. Ingersoll* (1985), 18 Ohio St.3d 220, 223; see also *Allegro Realty Advisors, Ltd. v. Orion Assoc., Ltd.*, 8th Dist. No. 87004, 2006-Ohio-4588, ¶56, citing *Goldfuss* at 121 (referring to errors "challenging the legitimacy of the underlying judicial process itself").

{¶27} In his fifth assignment of error, appellant makes no mention of errors in the judicial process itself. Instead, he merely presents substantive arguments regarding the conditions of the purge order. Indeed, he argues that portions of the purge order are impossible to perform.

{¶28} The imposition of purge conditions that are impossible to perform constitutes an abuse of discretion. *Peach v. Peach*, 8th Dist. No. 82414, 2003-Ohio-5645, ¶37, citing *Burchett v. Miller* (1997), 123 Ohio App.3d 550, 552. However, the burden of proving such a defense rests on the party challenging the purge conditions. *Id.*, citing *Pugh v. Pugh* (1984), 15 Ohio St.3d 136, 140.

{¶29} Because appellant never objected to the magistrate's decision, the question of impossibility was never presented to the trial court. Appellant therefore could not have sustained his burden on this issue. Regardless, however, we note that the hearing before the trial court was a contempt hearing and not a purge hearing. As a result, this case does not present the " 'extremely rare circumstances' where an error seriously affects the basic fairness, integrity, or public reputation of the judicial process itself." *Skydive Columbus* at ¶13, citing *Unifund CCR Partners* at ¶22, quoting *Goldfuss* at 121. Thus, appellant has failed to demonstrate plain error in the record before us. Appellant's fifth assignment of error is overruled.

{¶30} Based upon the foregoing, we overrule appellant's five assignments of error and accordingly affirm the decision of the Franklin County Court of Common Pleas, Division of Domestic Relations, finding appellant in contempt of court.

Judgment affirmed.

KLATT and FRENCH, JJ., concur.
