[Cite as *Rife v. Rife*, 2012-Ohio-949.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Marcia L. Rife,	:	
Plaintiff-Appellee,	:	
		No. 11AP-427
v.	:	(C.P.C. No. 03DR-12-4778)
Robert W. Rife, II,	:	(ACCELERATED CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 6, 2012

Omar Tarazi, for appellee.

Todd G. Finneran, Co., LPA, and *Richard J. Neal*, for appellant.

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

DORRIAN, J.

{¶ 1} Defendant-appellant, Robert W. Rife, II ("appellant"), appeals from the April 12, 2011 judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, modifying and adopting the October 27, 2010 magistrate's decision, which found appellant in contempt, and ordering appellant to pay plaintiff-appellee, Marcia L. Rife ("appellee"), attorney fees. For the following reasons, we affirm.

{¶ 2} Appellant and appellee were married on September 5, 1992, and two children were born of their marriage. On December 19, 2003, appellee filed a complaint for divorce. On February 6, 2004, appellant filed an answer and counterclaim. In an Agreed Judgment Entry—Decree of Divorce, journalized on December 1, 2006, the parties agreed to the following:

1.9 Additional Property Settlement

1.9.1. As and for an additional property settlement in this matter, and in consideration of the equitable distribution of the parties' marital assets and liabilities as set forth above, [appellant] shall pay [appellee] the sum of thirty-seven thousand dollars and zero cents ($37,000.00), plus six percent (6%) interest per annum, to be paid in equal monthly installments of five hundred dollars and zero cents ($500.00) per month until liquidated. [Appellant's] first payment of such sum shall be due on January 1, 2007, and each such payment shall be due on the first day of each month thereafter until repaid in full.

1.9.2. The total annual interest due and owing shall be computed on December 31st of each year in which an unpaid balance remains on this sum, and such interest shall be added to the principal until total liquidation. Each party shall compute the annual interest owed and forward the calculation to the other by January 15th of the following year.

* * *

1.9.4. The parties recognize that [appellant] may be entitled to distributions from Fairport Gardens, Ltd. in the future. In the event that [appellant] receives such distributions, until such time as the property settlement set forth in Section 1.9.1 is liquidated, any funds so received shall be applied/disbursed as follows:

1.9.4.1. [Appellant] shall deduct from the gross amount received the amount necessary to satisfy any tax liability or obligation associated with his receipt of such distribution;

1.9.4.2. Fifty percent (50%) of the net proceeds (after deduction of such taxes) shall be applied against any unpaid tax liability in [appellant's] name associated with his 2005 income taxes, with [appellant] providing to [appellee] copies of proof of all such payments made; and

1.9.4.3. Fifty percent (50%) of the net proceeds (after deduction for taxes) shall be paid to the [appellee] and applied against any unpaid balance on the property settlement set forth in Section 1.9.1[.] above.

1.9.4.4. At such time as [appellant] pays in full his income tax liability associated with his 2005 income taxes, one

> hundred percent (100%) of the net proceeds (after deduction for taxes) shall be paid to [appellee] and applied against any unpaid balance on the property settlement set forth in Section 1.9.1[.] above.
>
> 1.9.4.5. Until the property division payment set forth in Section 1.9.1. is paid in full [appellant] shall take all necessary steps to ensure that [appellee] is provided with copies of financial statements for Fairport Gardens, including but not limited to any such statements associated with any distributions made to partners/shareholders, as the same are produced and kept in the normal and ordinary course of business, but in no event less frequently than quarterly. [Appellee] shall maintain any such records produced under the terms of this section as confidential business records.
>
> 1.9.5. **Acceleration Provision:** In the event that [appellant's] regular monthly payment of $500.00 is more than thirty (30) days past due, the entire remaining unpaid balance of the property settlement shall become due and owed in full, and shall be payable to [appellee] by [appellant] within fourteen (14) days thereafter.

{¶ 3} On December 31, 2009. appellee filed a pro se motion for contempt and court fees and attached an affidavit setting forth reasons that the trial court should find appellant in contempt. (*See generally* Marcia L. Rife affidavit, attached to Motion for Contempt.) In her affidavit, appellee alleged that appellant ignored the prior orders of the trial court by: (1) never providing appellee with any financial documents, (2) ceasing to deposit the $500 per month property settlement beginning July 1, 2009, (3) not providing copies of tax returns for years 2006 and 2007, (4) refusing to pay any uninsured medical or dental expenses for the parties' minor children from March 1, 2006 to the present, and (5) spending the funds on deposit in the minor children's "529" or college savings account. Further, appellee objected to the Franklin County Child Support Enforcement Agency's ("FCSEA") recommendation to reduce appellant's child support payment from $1,166.17 per month to $115.01 per month because, in its calculation, FCSEA did not impute minimum wage upon appellant.

{¶ 4} The record is void of any evidence that appellant filed a memorandum contra to appellee's motion for contempt.

{¶ 5} On July 28, 2010, this matter came on for hearing before a magistrate of the trial court. At the hearing, both parties testified regarding the allegations set forth in appellee's motion. On October 27, 2010, the magistrate issued a decision finding appellant in contempt of court for his conduct regarding the property settlement. (*See* Magistrate's Decision, 3.) The magistrate ordered appellant to serve a term of incarceration of 14 days and to pay appellee's attorney fees in the amount of $2,000. (*See* Magistrate's Decision, 3.) In addition, the magistrate issued a purge order stating that appellant can avoid serving the term of incarceration as long as he does all of the following:

> 1. Pays the sum of $250 on the first day of each and every month hereafter until he pays off the loan as set forth in the next provision;
>
> 2. Pays [appellee] on or before February 1, 2011, the accelerated amount of the loan with interest through 2010 in the total amount of $26,469.90, plus 6% interest due on 12/31/10, but less any amounts he pays prior to obtaining the loan and less the amounts he may have paid in August and September of 2009 if he can provide evidence of those payments;
>
> 3. Pays [appellee] her attorney fees incurred in this matter of $2,000 on or before February 1, 2011.

(*See* Magistrate's Decision, 3-4.) That same day, the trial court journalized a judgment entry adopting the magistrate's decision.

{¶ 6} On November 10, 2010, appellant filed the following objections to the magistrate's decision with the trial court: (1) the purge order on pages three and four of the decision is ambiguous and confusing; (2) the finding of [appellant] in contempt is against the manifest weight of the evidence; (3) the trial court did not consider impossibility of performance; (4) the decision is punitive rather than designed to gain performance; and (5) [appellee] should not have been awarded attorney fees. (*See* Objections to Magistrate's Decision, 1-4.)

{¶ 7} On April 12, 2011, the trial court issued a decision and entry adopting the magistrate's decision. In addition, the trial court modified the magistrate's decision, in part, with regard to the amount of attorney fees awarded to appellee. In its decision and

entry, the trial court addressed appellant's five objections, which we have summarized below:

> (1) The magistrate's decision clearly states the terms that appellant must abide by to purge the contempt;
>
> (2) Appellant's manifest weight of the evidence argument has no merit; furthermore, manifest weight of the evidence is an appellate standard of review, whereas the trial court applies a de novo standard of review;
>
> (3) It is not impossible for appellant to perform because he testified that he was receiving approximately $374 per week in unemployment compensation and, as soon as the magistrate's decision was issued, he appeared to have no problems making payments in the amount of $250 per month;
>
> (4) The magistrate's imposition of a lump sum payment upon appellant is not punitive because appellant admitted that his own failure to abide by the terms of the cash property settlement landed him in a situation where a lump sum amount is due; and
>
> (5) Appellee shall be entitled to the amount of legal fees she was able to prove at the July 28, 2011 hearing before the magistrate in the amount of $1,209, rather than the $2,000 award originally ordered by the magistrate.

(*See* Decision and Entry, 4-6.)

{¶ 8} On May 10, 2011, appellant filed a timely notice of appeal, setting forth the following assignments of error for our consideration:

> I. The trial court abused its discretion by unreasonably finding Defendant-Appellant in contempt of Court after Defendant-Appellant met his burden of establishing impossibility of performance.
>
> II. The trial court abused its discretion by issuing an unreasonable, arbitrary, and unconscionable purge order that does not give Defendant-Appellant a reasonable or realistic opportunity with which to comply.
>
> III. The trial court abused its discretion by arbitrarily, unreasonably, and unconscionably granting Plaintiff-Appellee attorney fees in the amount of $1,209.00.

{¶ 9} "Contempt is a disregard of, or disobedience to, an order or command of judicial authority." *Wesley v. Wesley*, 10th Dist. No. 07AP-206, 2007-Ohio-7006, ¶ 10, citing *Sansom v. Sansom*, 10th Dist. No. 05AP-645, 2006-Ohio-3909. "The determination of a court regarding contempt proceedings will not be reversed absent an abuse of discretion." *Hopson v. Hopson*, 10th Dist. No. 04AP-1349, 2005-Ohio-6468, ¶ 9. "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 10} "Additionally, in a civil contempt proceeding, the movant bears the initial burden of demonstrating by clear and convincing evidence that the other party has violated an order of the court." *Hopson* at ¶ 19, citing *Allen v. Allen*, 10th Dist. No. 02AP-768, 2003-Ohio-954, ¶ 16. However, "[o]nce the movant has met her burden, the burden shifts to the other party to either rebut the showing of contempt or demonstrate an affirmative defense by a preponderance of the evidence." *Hopson*, citing *Pugh v. Pugh*, 15 Ohio St.3d 136, 140 (1984). Therefore, while "[i]mpossibility is a defense to a contempt of court order, * * * it is incumbent upon the party seeking to raise impossibility of compliance to prove the defense by a preponderance of the evidence." *Hopson* at *5, citing *State ex rel. Cook v. Cook*, 66 Ohio St. 566, 570 (1902).

{¶ 11} Finally, in a case of civil contempt, "[t]he purpose of sanctions, including punishment, is not for the purpose of punishment, but rather for the purpose of encouraging or coercing a party in violation of the decree to comply with the violated provision of the decree for the benefit of the other party." *Williamson v. Cooke*, 10th Dist. No. 05AP-936, 2007-Ohio-493, ¶ 11, citing *Pugh* at 139. "Moreover, a sanction for civil contempt must allow the [contemnor] the opportunity to purge himself of the contempt *prior to* imposition of any punishment." (Emphasis added.) *Williamson*, citing *O'Brien v. O'Brien*, 5th Dist. No. 2003CA12069, 2004-Ohio-581. Therefore, so long as the contemnor obeys the trial court's order, "[p]rison sentences are conditional." *See Brown v. Executive 200, Inc.*, 64 Ohio St.2d 250, 253 (1980).

{¶ 12} In his first assignment of error, appellant argues that the trial court abused its discretion in finding appellant in contempt because appellant (1) asserted his defense of inability to pay, and (2) met his burden by clear and convincing evidence. (*See*

Appellant's brief, 6.) In support of this argument, appellant contends that his "financial situation was beyond his control" because he had been laid off since September of 2009. (*See* appellant's brief, 8.) Further, appellant contends that he attempted to make payment arrangements with appellee at a lesser amount and also made several unsuccessful efforts to actively seek gainful employment. (*See* appellant's brief, 8.) Additionally, appellant contends that the businesses awarded to him pursuant to the decree are not producing income and that the property settlement specifically contemplated future distributions from Fairport Gardens, Ltd. to pay the settlement. (*See* appellant's brief, 9.)

{¶ 13} In response, appellee contends that "[a]ppellant's basic argument is that he met the burden of establishing impossibility of performance of paying off the debt pursuant to the acceleration clause simply by virtue of the fact that he was receiving unemployment." (*See* appellee's brief, 6.) Appellee also contends that appellant never: (1) filed a motion asking for an extension of time to comply with the order, (2) offered into evidence an accounting of his current assets/equity, (3) offered into evidence an accounting of all the places he has applied to seek employment, or (4) provided a detailed list of all the banks and credit card companies that he has applied to attempting to seek the money to comply with the court order. (*See* appellee's brief, 6.)

{¶ 14} Because it addresses the defense of impossibility, we look to our decision in *Hopson* for guidance in the present matter. In *Hopson* at ¶ 2, the parties terminated their marriage by an agreed judgment entry decree of divorce. Pursuant to the terms of the parties' decree, the appellant "was required to pay the appellee $50,000 plus interest at a rate of four percent due on the sale of [the] appellant's interest in 1227-1229 North High Street or by December 31, 2003, which ever occurred first." *Id*. At the show cause hearing, although the appellant "admitted that he did not pay [the] appellee the sum required by the decree, [the appellant] argued that because he did not know the location of [the] appellee, he was not able to pay her." *Id*. at ¶ 4. A magistrate of the trial court granted the appellee's motion for contempt. *Id*. at ¶ 5. Further, the trial court overruled the appellant's objections, adopted the magistrate's decision, and entered judgment. *Id*. at ¶ 6. In its decision, "[t]he trial court determined that though [the] appellant may not have been able to locate [the] appellee after the sale in order to pay her the sum, the fact that he invested the proceeds of the sale, instead of setting aside the $50,000 in trust for

[the] appellee cast doubt upon the intensions of [the] appellant to pay [the] appellee." *Id*. at ¶ 18. In affirming the trial court's decision, we found that the trial court did not abuse its discretion in finding the appellant in contempt because "it was not impossible for appellant to comply with the court order." *Id*. at ¶ 21.

{¶ 15} Here, appellee testified that, in their divorce decree, appellant agreed to a property settlement where he would pay $500 a month in order to pay off a $37,000 debt that he owed until liquidated. Appellee also testified that "sometime in July of 2009, [appellant] decided not to do that anymore." (Tr. 8.) Further, appellee testified that appellant never paid interest on the balance of the $37,000, computed at six percent per year, and owed to appellee on December 31st of each year. (Tr. 9.) Finally, appellee testified that the parties' divorce decree also stated that "if [appellant] is ever more than 30 days late, the entire amount is due, so I would like the entire amount. That's what [appellant] agreed to. I would like the interest that [appellant] owes me." (Tr. 11.)

{¶ 16} In response, appellant testified as follows:

> Q. Robert, you heard Marcia's testimony, correct?
>
> A. Correct.
>
> Q. Ok. Can you tell me a little bit about this $500 debt?
>
> A. It was a property settlement that once the divorce came to an end we agreed upon that I would pay, providing that asset—well, because the asset—the way the asset balance sheets came down.
>
> Q. Have you been paying on that?
>
> A. No, I have not.
>
> Q. When was the last time you made a payment?
>
> A. September of '09.
>
> Q. Okay. Why did you stop making payments?
>
> A. I was laid off from my job.
>
> Q. Okay. Are you making any money now?

A. No, I'm not.

Q. Are you looking for a job?

A. Yes, I am.

Q. And any success?

A. Not yet.

Q. What have you been doing trying to look for a job?

A. Putting in applications through the internet, monster.com, Craig's List. I have gone so far as actually reenlisting, trying to reenlist back into the US army.

Q. Any luck with any of that?

A. No, not at this time yet.

(Tr. 20-21.) On cross-examination, appellee also inquired regarding appellant's income:

Q. * * * You said you are not working at all, you are not getting any income from any source at all; is that correct?

A. No, I have no income.

Q. You have no income at all?

A. No income.

Q. Okay. You are not collecting unemployment?

A. I collect unemployment, but I'm talking about income as far as if I was to get a job, of course.

* * *

THE MAGISTRATE: What are you receiving in unemployment?

THE WITNESS: 375 or 374 a week, Your Honor.

THE MAGISTRATE: 374?

THE WITNESS: I believe that's what it is.

> THE MAGISTRATE: Per week. How long have you been receiving it?
>
> THE WITNESS: Since I was laid off back in September of '09, Your Honor.
>
> THE MAGISTRATE: How long are you approved to continue receiving it?
>
> THE WITNESS: Up through September of this year.

(Tr. 24-25.) Further, in response to the magistrate's question regarding Fairport Gardens, Ltd., appellant explained that:

> Fairport Gardens was an apartment complex that was owned, but at the same time that I lost my job, it was also taken back. It was going into foreclosure, and the banks were taking it back, which that's something that was done a while back, Your Honor.

(Tr. 23.) However, after careful examination of the record, we find that appellant did not present, to the magistrate, any additional evidence, other than his above testimony, regarding the current financial status of Fairport Gardens, Ltd., Neal Organization/Neal Investors, Ltd., or Bexley Court, Ltd.[1] Nor did appellant provide any evidence of how these businesses affected his financial situation and/or ability to pay appellee the $500 per month additional property settlement. In addition, appellant admitted that, beginning in September of 2009, he no longer made the $500 monthly payments to appellee on the additional property settlement. (Tr. 21.) (*See also* Agreed Judgment Entry-Decree of Divorce, 5-7.) Finally, although appellant briefly testified about being unemployed and receiving $374 per week in unemployment compensation, he failed to present any other financial evidence in support of his defense of impossibility to comply with the parties' divorce decree. (Tr. 24-25.)

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[1] Although appellant states in his brief that he "proffered to the court that Fairport Gardens, Ltd. was, in fact, in receivership by virtue of Case No. 10 CV 002475," appellant did not present this evidence to the magistrate during the contempt hearing. (*See* appellant's brief, 5.) Appellant did, however, include information regarding the receivership in his objections to the magistrate's decision. In its decision, the trial court found appellant's argument that he was unable to pay for reasons that are "not his fault," to be of no merit, and, consequently, did not consider the same. A trial court "may hear additional evidence but may refuse to do so unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate." Civ.R. 53(D)(4)(d). Appellant did not

{¶ 17} Based upon the record before us, we cannot find that the trial court abused its discretion in finding appellant in contempt for noncompliance with the additional property settlement set forth in Section 1.9 of the parties' divorce decree. As previously stated, it is incumbent upon the party seeking to raise impossibility of compliance to prove the defense by a preponderance of the evidence. In the present matter, appellant clearly admitted to not making any $500 payments to appellee since September of 2009, and, although appellant testified to being unemployed, he also testified to receiving unemployment compensation in the amount of $374 per week. Therefore, we find that appellant failed to prove, by a preponderance of the evidence, the defense of impossibility.

{¶ 18} In his second assignment of error, appellant argues that the trial court abused its discretion in issuing an order that does not properly or reasonably give appellant the opportunity to purge his contempt. (*See* appellant's brief, 9-10.) In support of this argument, appellant contends that "[t]he record clearly indicates that [he] does not have the ability or the earning capacity to pay the accelerated lump sum of the property settlement due by 02/01/2011." (*See* appellant's brief, 10.) In addition, appellant contends that the record does not indicate that he has $26,496.90 at his disposal to pay the lump sum. (*See* appellant's brief, 10.)

{¶ 19} In response, appellee contends that, while "[i]t is true that the 'record does not indicate (or even imply) that [appellant] has $26,469.90 disposable to him' * * * [i]t was [a]ppellant's responsibility to admit evidence that he had tried everything possible to get the money together but could not." (*See* appellee's brief, 8.)

{¶ 20} As previously stated, "[j]udicial sanctions for civil contempt may be employed to coerce a defendant into compliance with a court order. * * * Such sanctions will not be reversed unless there has been an abuse of discretion." *McEnery v. McEnery*, 10th Dist. No. 00AP-69, 2000 WL 1863370 (Dec. 21, 2000) at *5, citing *Burchette v. Miller*, 123 Ohio App.3d 550, 552 (6thDist.1997). "However, a sanction for civil contempt must allow the contemnor the opportunity to purge himself or herself of contempt. * * * The trial court abuses its discretion in ordering purge conditions that are unreasonable or where compliance is impossible." *Id*.

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address or demonstrate that he could not have presented this evidence, with reasonable diligence, for consideration by the magistrate. Therefore, the trial court did not err in not considering this evidence.

{¶ 21} In *McEnery* at *1, 7, we affirmed the trial court's decision and purge order finding the appellant in contempt for failing to pay child support, spousal support, property settlement, and bills; and for failing to maintain his life and disability insurance. *T*he *McEnery* divorce decree ordered the appellant to pay the appellee a cash settlement of $125,000 in monthly installments of $718.39, for 174 months. *Id*. At some point, the appellant stopped making his court ordered support and property settlement payments. *Id*. The trial court found appellant in contempt for failure to comply with the court's orders and sentenced him to 60 days of incarceration. *Id*. at *2. Further, the trial court issued an order allowing appellant to purge his contempt over a six-month period, including his ongoing child support and property support payments, totaling $22,228.12. *Id*. at *5. In his appeal, the appellant argued, among other things, that "the trial court's award of excessive sums to appellee to purge the contempt was not fair, equitable or in accordance with law, and that it was an abuse of discretion, since there was no finding of appellant's ability to pay." *Id*. We disagreed. *Id*. Based upon the record and the appellant's testimony, we found that the appellant did not meet his burden of proving inability to pay. *Id*. at *6. In finding that the trial court did not abuse its discretion, we noted that the trial court did not find the appellant's testimony to be credible regarding his inability to find a job paying $50,000. *Id*. We further noted that the appellant voluntarily terminated his employment and, then, failed to seek comparable employment within the same industry. *Id*. Finally, we stated that "the record supports the amounts of the arrearages, and the trial court spread the payments over a six-month period." *Id*.

{¶ 22} Here, the purge order states that appellant must:

> 1. Pays the sum of $250 on the first day of each and every month hereafter until he pays off the loan as set forth in the next provision;
>
> 2. Pay [appellee] on or before February 1, 2011, the accelerated amount of the loan with interest through 2010 in the total amount of $26,469.90, plus 6% interest due on 12/31/10, but less any amounts he pays prior to obtaining the loan and less the amounts he may have paid in August and September of 2009 if he can provide evidence of those payments;

> 3. Pay [appellee] her attorney fees incurred in this matter of $2,000 on or before February 1, 2011.

(*See* Magistrate's Decision, 3-4.)

{¶ 23} In the purge order, the magistrate gave appellant four months to pay the accelerated amount of $26,469.90 plus six percent interest. However, in Section 1.9.5 of the parties' divorce decree, appellant originally agreed that, if the monthly payment of $500 was more than 30 days past due, he would pay the entire remaining unpaid balance to appellee *within 14 days*. (*See* Agreed Judgment Entry—Decree of Divorce, 8.) Therefore, because the magistrate's purge order gave appellant approximately three and one-half additional months to pay the remaining unpaid balance of the loan, this court cannot find that the trial court abused its discretion in issuing the order. In fact, compared to the acceleration provision set forth in the parties' divorce decree that "[i]n the event that [appellant's] regular monthly payment of $500.00 is more than thirty (30) days past due, the entire remaining unpaid balance of the property settlement shall become due and owed in full, and shall be payable to [appellee] by [appellant] within fourteen (14) days thereafter," we find the purge order to be quite reasonable. (*See* Agreed Judgment Entry—Decree of Divorce, 8.) Further, although appellant argues that the record clearly indicates that he does not have the earning capacity or disposable income to pay the $26,469.90, we simply cannot discern this conclusion from the limited evidence before us.

{¶ 24} Appellant's first and second assignments of error are overruled.

{¶ 25} In his third assignment of error, appellant contends that the trial court erred in ordering him to pay attorney fees in the amount of $1,209. We disagree.

{¶ 26} "An award of attorney fees in a domestic relations action is within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion." *McEnery* at *3, citing *Goode v. Goode*, 70 Ohio App.3d 125, 134 (10thDist.1991). "However, a party requesting attorney fees must prove that the fees were actually incurred and that they are reasonable and necessary." *Id*. As stated above, "[a]n abuse of discretion requires more than an error of law or judgment, but, instead, it entails an action of the trial court that is unreasonable, arbitrary or unconscionable." *McEnery* citing *Blakemore* at 219.

{¶ 27} Here, the record indicates that, at the July 28, 2010 contempt hearing, appellee submitted evidence of an invoice from Grossman Law Offices. (*See* Plaintiff's Exhibit 2.) The invoice details the nature of the services rendered and the amount due for those services. (*See* Plaintiff's Exhibit 2.) According to the invoice, Alyson B. Miller spent 6.10 hours working on appellee's case for a total cost of $1,209. (*See* Plaintiff's Exhibit 2.) Further, appellee testified that she retained the services of Andrew Grossman when she started this case, but was unable to keep paying for him or his associate, Alyson Miller. (Tr. 17.)

{¶ 28} In her decision, the magistrate held that appellant "shall pay attorney fees [that appellee] incurred in this matter of $2,000 related to both the property settlement and the uncovered medical expenses." (*See* Magistrate's Decision, 3.) However, the trial court found that the evidence indicated that appellee incurred $1,209 in attorney fees, and, as such, ordered appellant to pay the modified amount of $1,209 within 60 days of its decision. (*See* Decision and Entry, 6.)

{¶ 29} Because the trial court's award of attorney fees is clearly based upon appellee's testimony regarding retaining the services of Andrew Grossman and the invoice submitted as evidence at the July 28, 2010 contempt hearing, we find that the trial court did not act in an unreasonable, arbitrary or unconscionable manner. Therefore, based upon the evidence before us, the trial court did not abuse its discretion in awarding attorney fees to appellee in the amount of $1,209.

{¶ 30} Appellant's third assignment of error is overruled.

{¶ 31} Having overruled appellant's three assignments of error, the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is affirmed.

Judgment affirmed.

KLATT and TYACK, JJ., concur.

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