

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Leonard Nyamusevya,	:	
Plaintiff-Appellant,	:	No. 12AP-405
v.	:	(C.P.C. No. 09DR-05-1832)
Consolata Nkurunziza,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on April 18, 2013

Leonard Nyamusevya, pro se.

Consolata Nkurunziza, pro se.

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

BROWN, J.

{¶ 1} Leonard Nyamusevya, plaintiff-appellant, appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, in which the court denied Leonard's Civ.R. 60(B) motion for relief from judgment, granted Leonard's motion to set aside the magistrate's September 30, 2011 order, found moot Leonard's motion to stay, denied Leonard's motion for contempt, and denied the motion for contempt filed by Consolata Nkurunziza, defendant-appellee. Leonard has also filed a motion to strike Consolata's brief because it was untimely filed.

{¶ 2} The present case has a lengthy history, and the following comprises a general summary of the proceedings pertinent to the present appeal. On October 1, 2010, the parties were divorced pursuant to an agreed entry decree of divorce. On October 15,

2010, Leonard filed a motion for contempt, arguing that he was not able to obtain certain furniture in contravention of the court's prior order. On May 3, 2011, Leonard filed a motion for relief from judgment with regard to the decree of divorce asserting that there was newly discovered evidence that demonstrated Consolata engaged in financial misconduct prior to the decree by hiding or transferring \$16,000 in marital funds. The trial court found that Leonard established that he was entitled to an evidentiary hearing on his Civ.R. 60(B) motion, and an evidentiary hearing was held.

{¶ 3} On October 7, 2011, Leonard filed a motion to set aside and a motion to stay the magistrate's September 30, 2011 order, asserting that the parties should equally share the costs of the guardian ad litem ("GAL").

{¶ 4} On November 9, 2011, the court issued a decision finding Leonard in contempt for failing to pay Consolata \$1,500 for a 2006 Jeep Liberty, consistent with the decree, and ordered Leonard to pay Consolata \$1,500 by December 17, 2011. The court also found Consolata in contempt for her failure to allow Leonard to retrieve furniture from her home, consistent with the decree, and ordered Consolata to allow Leonard to obtain his furniture and personal effects by December 17, 2011. On December 27, 2011, Consolata filed a motion for contempt, asserting, in pertinent part, that Leonard failed to pay her the \$1,500.

{¶ 5} The trial court granted an evidentiary hearing on Leonard's motion for relief from judgment, and the hearing was held on January 27, 2012. The trial court held a hearing on March 2, 2012 to review whether Consolata and Leonard purged their respective contempts.

{¶ 6} On April 6, 2012, the trial court issued a decision and entry in which it denied Leonard's Civ.R. 60(B) motion for relief from judgment, granted Leonard's motion to set aside the magistrate's September 30, 2011 order, found moot Leonard's motion to stay, denied Leonard's October 15, 2010 motion for contempt, and denied Consolata's December 27, 2011 motion for contempt. Leonard, pro se, appeals the judgment of the trial court, asserting the following assignments of error:

[I.] The Trial Court abused its discretion and erred to prejudice Plaintiff-Appellant, by Failing to Make Clear which Ohio Laws and Statutory Factors it Considered and Failed to

Make Written Finding of Facts Supporting its Determination in the April 06, 2012 Decision and Judgment Entry.

[II.] The Trial Court abused its discretion and erred to prejudice Plaintiff-Appellant, because the April 06, 2012 Decision and Judgment Entry is Not Supported by Any Evidence in the Trial Court's Records.

[III.] The Trial Court abused its discretion and erred to prejudice Plaintiff-Appellant, by Denying Plaintiff-Appellant's request for Further Discovery for the Testimony of the Gahanna Police Officer Janson Jones and the Moving Company Employees, who can under oath testify as eyewitnesses with personal knowledge of the facts and provide the listing of the furniture that were removed from Defendant-Appellee's apartment on December 17, 2011.

[IV.] The Trial Court abused its discretion and erred to prejudice Plaintiff-Appellant, by Rushing to Judgment and by Presuming Reasonable Property would be Removed and by Expecting the Parties to Act Reasonably, while Disregarding the Testimony of the Parties and that of Ike Asamoah Ensah, which did not Clarify to the Trial Court the Whereabouts of the Missing Furniture.

[V.] The Trial Court abused its discretion and erred to prejudice Plaintiff-Appellant, because its Attitude was Unreasonable, Arbitrary and Unconscionable, as Proven by its lack of Finding of Facts in its April 06, 2012 Decision and Judgment Entry.

{¶ 7} Leonard has filed a motion to strike Consolata's brief because it was untimely filed. Consolata has not filed a response. Leonard's motion is granted, and Consolata's brief is hereby stricken.

{¶ 8} Leonard argues in his first assignment of error that the trial court abused its discretion when it failed to make clear which Ohio laws and statutory factors it considered and failed to make written findings of facts supporting its determination. Leonard does not cite to which part of the trial court's judgment he is referring, and the only authority Leonard cites in support of his contentions is our decision in *Mantle v. Sterry*, 10th Dist. No. 02AP-286, 2003-Ohio-6058. Leonard asserts that *Mantle* supports his proposition that a trial court must make written findings of fact to support its determination

pertaining to the division of marital property. However, *Mantle* is inapplicable to the present case. *Mantle* involved the requirements under R.C. 3105.171(G) that a trial court must make written findings of fact that support a determination that marital property has been equitably divided in orders for the division or disbursement of property or a distributive award. Here, the trial court found that Leonard's complaint regarding Consolata's handling of \$16,000 involved the issue of financial misconduct rather than the improper designation of marital and separate property. The trial court made no order for the division of property or a distributive award. Therefore, neither *Mantle* nor R.C. 3105.171(G) supports Leonard's argument.

{¶ 9} We also note that Civ.R. 52 requires a trial court to issue findings of fact and conclusions of law when questions of fact are tried by the court without a jury. However, even assuming, *arguendo*, that Civ.R. 52 applies to Civ.R. 60(B) hearings, *see Millhon v. Millhon*, 10th Dist. No. 90AP-1111 (Mar. 26, 1991), Civ.R. 52 requires that a party request findings of fact and conclusions of law, and no party requested such in the present case. Also, Civ.R. 52 does not require the trial court to issue findings of fact and conclusions of law in contempt proceedings. *Hamad v. Hamad*, 10th Dist. No. 06AP-516, 2007-Ohio-2239, ¶ 23, citing *State ex rel. Ventrone v. Birkel*, 65 Ohio St.2d 10, 12 (1981); *Jackson Twp. v. Stickles*, 10th Dist. No. 95APC09-1264 (Mar. 21, 1996); *McCord v. McCord*, 10th Dist. No. 97APF03-298 (Dec. 16, 1997). Therefore, the trial court was not required to issue findings of fact pursuant to Civ.R. 52. Leonard presents no other argument or authority to support his proposition that the trial court was required to file written findings of fact or to cite unspecified statutory factors under the circumstances in the present case. Therefore, Leonard's first assignment is overruled.

{¶ 10} Leonard argues in his second assignment of error that the trial court's judgment is not supported by any evidence in the record. Leonard seems to be contesting the trial court's decision with regard to his October 15, 2010 contempt motion, in which Leonard contended Consolata did not permit him to retrieve the furniture he was allowed to retrieve pursuant to the terms of the decree. On November 9, 2011, the trial court ordered Consolata to allow Leonard to obtain his furniture and personal effects by December 17, 2011. Leonard claimed that, when he went to retrieve the furniture, the dining room table, a buffet, and eight chairs were missing. The trial court denied

Leonard's contempt motion, finding that the decree was devoid of specific descriptions of what Leonard was permitted to remove. Leonard was given an opportunity to obtain the furniture he chose from what was present at the house, and the testimony of the parties and Consolata's pastor did not clarify the whereabouts of the furniture Leonard claims was missing.

{¶ 11} An appellate court's standard of review of a trial court's contempt finding is an abuse of discretion. *State ex rel. Celebrezze v. Gibbs*, 60 Ohio St.3d 69 (1991). In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore*, 5 Ohio St.3d 217 (1983).

{¶ 12} As mentioned, Leonard does not argue with any specificity how the trial court erred in its decision regarding the furniture. We agree with the trial court that the transcript from the March 2, 2012 hearing on the purging of the contempts does not reveal the location of the allegedly missing furniture, and even whether the furniture was at the home when Leonard retrieved the other furniture. The only witness at that hearing was Consolata's pastor, Ike Asamoah Ensah, who stated he had no knowledge of whether the dining room set was in Consolata's home. Consolata and Leonard gave conflicting non-sworn statements during the hearing regarding the furniture, with Leonard claiming the disputed furniture was not at Consolata's home and Consolata claiming Leonard took "everything," including the dining room table. Given the state of the record, we can find no abuse of discretion. Therefore, Leonard's second assignment of error is overruled.

{¶ 13} Leonard argues in his third assignment of error that the trial court erred when it denied his request for further discovery regarding the testimony of Gahanna Police Officer Janson Jones and employees from a moving company, who could provide the listing of furniture that was removed from Consolata's apartment on December 17, 2011. In support, Leonard quotes part of his discussion with the trial court from the March 2, 2012 contempt review hearing, in which he stated:

Then I tried to look for people to come in so that we can settle this because it is hard for me to get a job now that the criminal case was dismissed. But she is just willing to fight for no reason and she's lying. If we can subpoena this officer, Jason Jones, based on what she just finished to proclaim in this

Court in front of you, if you're not going to condone continuous lying, we can subpoena this officer and the moving company, they will say exactly what was removed in the house and we can confirm what she just finished to tell you that I removed everything as she just said.

(Mar. 12, 2012 Tr., 8.)

{¶ 14} However, Leonard's above statements cannot be construed as a request to subpoena witnesses. He does not even actually ask the court to subpoena any witnesses. He states only he "can" subpoena the police officer and moving company employees. Importantly, although Leonard was permitted to speak directly to the court during this hearing, he was represented by counsel at the proceeding. Leonard's counsel never requested any subpoenas, and when the trial court asked Leonard's counsel whether Leonard wished to call any witnesses, she replied "no." Therefore, we find the trial court did not commit any error in this respect, and Leonard's third assignment of error is overruled.

{¶ 15} Leonard argues in his fourth assignment of error that the trial court erred when it rushed to judgment and presumed that reasonable property would be removed and when it expected the parties to act reasonably, while disregarding the testimony of the parties and that of Ike Asamoah Ensah. Although Leonard does not precisely specify how the trial court erred or present a cogent argument, he seems to be contesting the following portion of the trial court's judgment:

The Decree allows Mr. Nyamusevya to obtain reasonable property he may desire by a date certain and anything not removed at that time belongs to Ms. Nkurunziza. While Mr. Nyamusevya argues the word "reasonable" does not belong in the Decree, the Court finds his argument to be of no consequence. The parties' Decree is devoid of specific descriptions of what Mr. Nyamusevya was allowed and not allowed to remove. Even if the word "reasonable" was not in the Decree, without further specificity, the Court presumes reasonable property would be removed and expects the parties to act reasonably.

Mr. Nyanusevya was able to obtain all of the furniture and personal effects that he chose to obtain that were present. The testimony of the parties and that of Ike Asamoah Ensah, Ms.

Nkurunziza's pastor, did not clarify to the Court the whereabouts of the furniture Mr. Nyamusevya claims was missing.

The Court finds Ms. Nkurunziza sufficiently complied with the terms of the Court's order and therefore is not in contempt.

{¶ 16} We find no error in the trial court's above findings. Ike Asamoah Ensah's testimony did not indicate the whereabouts of the allegedly missing furniture. Ike Asamoah Ensah testified that he did not know if Consolata's home ever had a dining set because he never went into the dining room, and he never saw Leonard remove a dining room set. Furthermore, we can find no specific abuse of discretion in the trial court's presumption that the parties would act reasonably in carrying out the court's orders. Therefore, we find appellant's argument without merit and overrule his fourth assignment of error.

{¶ 17} Leonard argues in his fifth assignment of error that the trial court's judgment was unreasonable, arbitrary, unconscionable, and against the manifest weight of the evidence, as proven by its lack of finding of facts in its judgment. However, in his short argument under this assignment of error, he merely reiterates his vague arguments presented in his third and fourth assignments of error. As we have already addressed and dismissed those arguments, we must overrule Leonard's fifth assignment of error based upon the same reasons.

{¶ 18} Accordingly, Leonard's five assignments of error are overruled, Leonard's motion to strike Consolata's brief is granted, and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is affirmed.

*Motion granted and
judgment affirmed.*

KLATT, P.J., and TYACK, J., concur.
