

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Neal Hamad,	:	
	:	
Plaintiff-Appellee/ Cross-Appellant,	:	
	:	
v.	:	No. 12AP-617 (C.P.C. No. 08CVH12-18169)
	:	
Ikram Hamad,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant/ Cross-Appellee.	:	

D E C I S I O N

Rendered on May 30, 2013

*Eugene R. Butler Co., LPA, and Eugene R. Butler, for
appellee/cross-appellant.*

*Georgeff Law Office, and George C. Georgeff, for
appellant/cross-appellee.*

APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶ 1} Defendant-appellant/cross-appellee, Ikram Hamad ("Ikram"), appeals from a judgment of the Franklin County Court of Common Pleas granting judgment for plaintiff-appellee/cross-appellant, Neal Hamad ("Neal"), on Ikram's counterclaim for fraud, conversion, breach of contract, and unjust enrichment. Neal cross-appeals from a judgment granting summary judgment in favor of Ikram on his claim for false imprisonment. Because we conclude that some competent, credible evidence supported the trial court's judgment in favor of Neal on the counterclaim and because Ikram was entitled to judgment as a matter of law on Neal's false-imprisonment claim, we affirm.

{¶ 2} The events leading to this appeal began during the dissolution of the parties' marriage. Neal and Ikram were married in Jerusalem in 1971 and made their home in the United States. *Hamad v. Hamad* ("*Hamad I*"), 10th Dist. No. 06AP-516, 2007-Ohio-2239, ¶ 26. While they were married, Neal and Ikram owned and operated several businesses, including a furniture store called Europa Fine Furnishings ("*Europa*"). *Id.* at ¶ 28. On July 30, 2004, Neal filed a complaint for divorce in the Franklin County Court of Common Pleas, Division of Domestic Relations. *Id.* at ¶ 1. Ikram filed an answer and counterclaim for divorce on October 13, 2004. *Id.*

{¶ 3} During the course of the divorce proceedings, Neal and Ikram entered into an agreement whereby Neal agreed to sell his interest in Europa to Ikram for \$95,000. *Id.* at ¶ 28. On November 12, 2004, they signed a letter of intent to purchase providing that Ikram would pay Neal a down payment of \$64,500 and would pay the remaining balance of \$30,000 no later than February 28, 2005. *Id.* The letter of intent to purchase further provided that Ikram would be immediately entitled to all proceeds from accounts receivable and accounts presently maintained for the benefit of the business. In January 2005, Ikram discovered that, between November 2004 and January 2005, \$38,000 in credit-card purchase payments for transactions conducted at Europa was deposited into Neal's bank account, rather than Europa's bank account. Ikram instructed her former attorney to notify Neal that \$30,000 should be credited toward the balance she owed on the purchase of Europa and that he owed her \$8,000. *Id.*

{¶ 4} While the divorce case was pending, Ikram filed motions requesting that the court find Neal in contempt for violating the restraining order enjoining the parties from transferring marital real estate or withdrawing marital funds from bank accounts by withdrawing funds from a certificate of deposit and transferring certain property to his father and sister. *Id.* at ¶ 6. The domestic relations court found Neal in contempt ("the first contempt order") for violating the restraining order and sentenced him to a 30-day jail term, suspended subject to certain conditions. *Id.* at ¶ 8. Ikram later filed a motion to enforce the first contempt order on the grounds that Neal failed to comply with the conditions. *Id.* at ¶ 9. The domestic relations court filed a judgment entry sustaining Ikram's motion to enforce the first contempt order and ordered Neal to serve the 30-day jail term. *Id.* at ¶ 13.

{¶ 5} On May 1, 2006, the domestic relations court filed a judgment entry/decreed of divorce. *Id.* at ¶ 3. This court affirmed the judgment entry in most respects, including the first contempt order. *Id.* at ¶ 90. While the appeal was pending, Ikram filed another motion seeking a finding of contempt against Neal for failing to follow the court's orders. *Hamad v. Hamad ("Hamad II")*, 10th Dist. No. 08AP-53, 2008-Ohio-4111, ¶ 3. This motion was mailed to Neal's attorney but was not served on Neal. *Id.* The domestic relations court found Neal guilty of contempt ("the second contempt order") and sentenced him to a 60-day jail term. *Id.* at ¶ 5. On November 27, 2007, Neal was arrested on a capias related to the first contempt order. Following a hearing, the domestic relations court directed Neal to serve the 30-day sentence imposed on the first contempt order. While Neal was being held on that sentence, Ikram filed a motion seeking enforcement of the 60-day jail sentence imposed under the second contempt order. The trial court held a hearing on the motion to enforce and ultimately directed Neal to serve the 60-day sentence for the second contempt order. *Id.*

{¶ 6} Neal filed a direct appeal of the decision imposing the 60-day jail sentence under the second contempt order. *Id.* While that appeal was pending, he filed an original action in this court seeking a writ of habeas corpus directing the Franklin County Sheriff to release him from incarceration. *Id.* at ¶ 7. Neal argued that he was entitled to a writ of habeas corpus because he had not been personally served with Ikram's motion seeking a finding of contempt that led to the second contempt order. *Id.* On January 30, 2008, we granted Neal's requested writ of habeas corpus mandating his release. *State ex rel. Hamad v. Karnes*, 10th Dist. No. 08AP-63 (Jan. 30, 2008) (Journal Entry of Judgment). In ruling on Neal's direct appeal of the order imposing the jail sentence under the second contempt order, this court held that, because Neal had not been served with the motion for contempt, it was insufficient to invoke the domestic relations court's continuing jurisdiction. We therefore reversed the domestic relations court's judgment finding Neal in contempt. *Hamad II* at ¶ 14.

{¶ 7} On December 22, 2008, Neal filed the action giving rise to this appeal, asserting a claim of false imprisonment against Ikram. Neal argued that Ikram intentionally sought to have him jailed under the second contempt order and actively opposed his release. Ikram counterclaimed, asserting that, between December 1, 2004

and June 26, 2006, Neal improperly received proceeds from credit card purchases that were made at Europa. Europa filed a third-party complaint asserting the same causes of action as those in Ikram's counterclaim.¹ Both Neal and Ikram moved for summary judgment. The trial court granted Ikram's motion for summary judgment on Neal's false-imprisonment claim and denied Neal's motion for summary judgment on Ikram's counterclaim and Europa's third-party claim. The trial court referred the case to a magistrate for a bench trial on Ikram's counterclaim and Europa's third-party claim. After conducting a hearing, the magistrate entered a decision ruling in favor of Neal on the counterclaim and the third-party claim. Ikram and Europa submitted objections to the magistrate's decision. The trial court overruled the objections and adopted the magistrate's decision granting judgment in favor of Neal on Ikram's counterclaim and Europa's third-party claim.

{¶ 8} In addition to the civil case leading to this appeal, we note that, during the same period, Neal was indicted on a criminal charge of felony theft in Franklin County Court of Common Pleas case No. 09CR-4723 ("the criminal case"). The indictment charged that, between January 17 and July 5, 2006, Neal improperly obtained or exerted control over cash and/or credit card deposits belonging to Ikram or Europa. Ultimately, Neal pled guilty to the lesser-included offense of misdemeanor theft. The court imposed a suspended sentence of 30 days of imprisonment and imposed a 30-month term of probation and ordered Neal to pay restitution of \$15,122 to Europa in care of Ikram. Although not directly related to the present appeal, as explained below, the result of the criminal case is relevant to our analysis.

{¶ 9} Ikram appeals from the trial court's judgment granting judgment in favor of Neal on her counterclaim, assigning four errors for this court's review:

[1.] Did the trial [c]ourt err in refusing a continuance when a necessary third parties' banks [sic] had failed to timely comply with subpoena?

[2.] The trial court erred by ignoring the direct testimony of Neal Hamad confirming his receipt of Europa Fine Furniture Credit Card Deposits totaling \$96,489.17 as delimited in Defendant's exhibits C – V.

¹ We note that Europa did not appeal the trial court's judgment and it is not a party to the present appeal.

[3.] The Magistrate failed to take judicial notice of the basic nature of a merchant account.

[4.] The trial court erred by substituting its general knowledge of accounting for the clear terms of the parties' signed agreement.

{¶ 10} Neal cross-appealed from the trial court's judgment granting summary judgment in favor of Ikram on his false-imprisonment claim. Neal assigns one error for this court's review:

The trial court erred as a matter of law in granting summary judgment on cross-appellant's claim for false imprisonment.

{¶ 11} We will begin by considering Ikram's assignments of error and then turn to the merits of Neal's cross-appeal.

{¶ 12} In Ikram's first assignment of error, she argues that the magistrate erred by denying her request for a continuance. At the opening of the trial before the magistrate, Ikram's counsel stated that he had issued subpoenas to several banks and that those banks had not provided the requested documents. He requested a continuance of the case until he could obtain the documents. On questioning from the magistrate, Ikram's counsel indicated that he had records from some of the banks but did not have records from American Express. The magistrate denied the continuance and proceeded with the trial.

{¶ 13} We review a decision on a request for continuance under an abuse-of-discretion standard. *Young v. Young*, 10th Dist. No. 11AP-1148, 2012-Ohio-4377, ¶ 6. An abuse of discretion occurs where a trial court's decision is "unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). The Supreme Court of Ohio set forth the factors that should be considered in reviewing a motion for continuance in *State v. Unger*, 67 Ohio St.2d 65 (1981):

In evaluating a motion for a continuance, a court should note, inter alia: the length of the delay requested; whether other continuances have been requested and received; the inconvenience to litigants, witnesses, opposing counsel and the court; whether the requested delay is for legitimate reasons or whether it is dilatory, purposeful, or contrived; whether the defendant contributed to the circumstance which

gives rise to the request for a continuance; and other relevant factors, depending on the unique facts of each case.

Id. at 67-68.

{¶ 14} In ruling on the continuance request, the magistrate noted that the trial court issued an order on February 9, 2011 setting the trial date for April 5, 2011. However, Ikram's counsel did not issue subpoenas to the banks until March 2, 2011, nearly one month after the court entered the scheduling order. The magistrate also concluded that granting a continuance would have a prejudicial effect toward Neal, who had traveled from Florida for the trial.

{¶ 15} In addition to the factors the magistrate explicitly addressed, we note that Ikram filed her counterclaim in this case in February 2009 and, after the case had been transferred to the trial court's inactive docket by agreement of the parties, requested that the case be reinstated to the active docket in May 2010. Thus, Ikram had over two years from the time she filed her counterclaim, and nearly one year from the time she requested reinstatement of the case, to obtain any necessary records. Further, we note that Ikram previously requested and received a continuance in July 2010, arguing that a new case schedule was necessary because the deadline for dispositive motions passed while the case was on the trial court's inactive docket. Finally, Ikram's counsel did not indicate the length of time necessary to obtain the records; thus, the magistrate could have considered this as effectively being a request for an indefinite continuance. *See State v. Woods*, 10th Dist. No. 09AP-667, 2010-Ohio-1586, ¶ 27 ("The trial court also could consider that defendant was unable to specify the length of delay he needed to procure Officer Moran's presence.").

{¶ 16} Applying the factors in *Unger*, we conclude that the magistrate did not abuse his discretion in denying the continuance and proceeding with the trial as scheduled. We overrule Ikram's first assignment of error.

{¶ 17} In Ikram's second assignment of error, she asserts that the trial court erred by overruling her objections and adopting the magistrate's decision. In her objections, Ikram argued that the magistrate's decision was against the manifest weight of the evidence and that the magistrate erred by concluding that she failed to prove her claims

because she did not establish that any deposits Neal received were related to transactions made at Europa after she purchased the store.

{¶ 18} "When reviewing a trial court's disposition of objections to a magistrate's report, we will not reverse the trial court's decision if it is supported by some competent, credible evidence." *O'Connor v. O'Connor*, 10th Dist. No. 07AP-248, 2008-Ohio-2276, ¶ 16. "Our review of the trial court's findings is limited to whether the trial court abused its discretion in adopting the magistrate's decision." *Id.*

{¶ 19} Ikram objected to the magistrate's decision, arguing that the magistrate erred by concluding that she had not proved her claim because she failed to establish that the deposits Neal received were related to transactions conducted by Europa after Ikram purchased Europa—i.e., after November 12, 2004. In effect, Ikram appears to argue that, under the language of the letter of intent to purchase, she was entitled to any deposits accruing to Europa after November 12, 2004, regardless of when the underlying transactions leading to those deposits occurred. Therefore, Ikram argues that it was not necessary to trace the underlying transactions and connect them to specific deposits that Neal received in order to prove her case. The trial court rejected this argument, finding Neal could rightfully use funds resulting from purchases made prior to November 12, 2004 because he owned Europa prior to that date.

{¶ 20} However, even if Ikram is correct that she was entitled to all deposits occurring after November 12, 2004, and that the magistrate erred by concluding that she failed to prove her case because she did not connect the deposits to specific transactions that occurred after the sale, the trial court further noted that the magistrate provided an alternative reason for ruling against Ikram. The magistrate concluded that Ikram failed to prove that she suffered any uncompensated damages because she did not demonstrate that her claimed damages were not already awarded to her through the divorce decree or the restitution order in the criminal case. However, Ikram did not object to this portion of the magistrate's decision. The trial court adopted the magistrate's conclusion that Ikram failed to show she suffered any uncompensated damages.

{¶ 21} Pursuant to Civ.R. 53(D)(3)(b)(iv), "[e]xcept 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, whether or not specifically designated as a finding of fact or conclusion of law

under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b)." Thus, by failing to object to the magistrate's conclusion that she failed to prove she had any uncompensated damages, Ikram waived all but plain error. *See In re A.L.D.*, 10th Dist. No. 08AP-238, 2008-Ohio-3626, ¶ 18. In a civil proceeding, "plain error involves those extremely rare cases where exceptional circumstances require its application to prevent a manifest miscarriage of justice, and where the error complained of, if left uncorrected, would have a material, adverse effect on the character of and public confidence in, judicial proceedings." *In re Moore*, 10th Dist. No. 04AP-299, 2005-Ohio-747, ¶ 8, citing *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 122 (1997).

{¶ 22} In the divorce decree, the domestic relations court expressly noted Ikram's claim that Neal improperly received deposits to which he was not entitled. As part of the decree, the court awarded Europa to Ikram. The domestic relations court entered the decree on May 1, 2006. In the criminal case, Neal was charged with felony theft and the indictment specified that he had deprived Ikram or Europa of credit card deposits from on or about January 17 to July 5, 2006. Ultimately, Neal pled guilty to the lesser-included offense of misdemeanor theft and was ordered to pay restitution of \$15,122 to Europa in care of Ikram. At trial in this case, both Neal and Ikram testified that Neal had made regular payments to Ikram toward satisfying the restitution order. Under R.C. 2929.18(A)(1), "[a]ll restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender."

{¶ 23} In support of her claims, Ikram submitted bank statements purporting to show deposits that Neal improperly received between November 12, 2004 and June 30, 2006. As noted above, the divorce decree was entered on May 1, 2006 and, under the criminal case, Neal was charged with improperly receiving deposits between January 17 and July 5, 2006. Thus, the evidence that Ikram presented involved events that could have been covered under the divorce decree or the restitution order. Under these circumstances, we cannot conclude that the trial court committed plain error by adopting the magistrate's conclusion that Ikram failed to establish that she had uncompensated damages that were not covered under the divorce decree or the criminal restitution order.

{¶ 24} Accordingly, we overrule Ikram's second assignment of error.

{¶ 25} Ikram's third and fourth assignments of error fail to meet the requirements of the Ohio Rules of Appellate Procedure. App.R. 16(A)(7) provides that an appellant's brief must include an argument with respect to each assignment of error "with citations to the authorities, statutes, and parts of the record on which appellant relies." If the appellant fails to argue an assignment of error separately in the brief, an appellate court may disregard that assignment of error. App.R. 12(A)(2). In her third assignment of error, Ikram argues that the magistrate failed to take judicial notice of the basic nature of a merchant account. However, in support of this assignment of error, she offers only two sentences, asserting that Neal admitted that the funds deposited to his account belonged to Europa and including a cursory citation to the portions of the transcript in which he allegedly made these admissions. The brief contains no detailed citations to the record, nor any citations to legal authority in support of the assignment of error. Moreover, the brief fails to explain how taking judicial notice of the "basic nature of a merchant account" would have changed the magistrate's analysis. Similarly, in her fourth assignment of error, Ikram argues that the trial court erred by substituting its general knowledge of accounting for the terms of the parties' signed agreement. However, Ikram offers only minimal argument and no citations to legal authority in support of this assignment of error. The brief cites to a "compilation" gleaned from evidence introduced below but fails to establish that this document was part of the record presented to the magistrate or the trial court. Due to the lack of authority and argument in support of Ikram's third and fourth assignments of error, we will consider them to be waived. *See Cantrell v. Dietz*, 10th Dist. No. 12AP-357, 2013-Ohio-1204, ¶ 33-34; *Ford Motor Credit Co. v. Ryan*, 189 Ohio App.3d 560, 2010-Ohio-4601, ¶ 23.

{¶ 26} Accordingly, we overrule Ikram's third and fourth assignments of error.

{¶ 27} In the sole assignment of error raised in his cross-appeal, Neal argues that the trial court erred by granting summary judgment in favor of Ikram on his false-imprisonment claim. The trial court concluded that the contempt order resulting in Neal's imprisonment was void and, therefore, could form the basis for a false-imprisonment claim. However, the trial court further concluded that false imprisonment would not lie against Ikram in this case because by pursuing the contempt order she sought to bring

Neal before the trial court to determine whether he was in contempt of the court's prior orders, rather than seeking to detain him for a private end.

{¶ 28} We review a trial court's ruling on a summary judgment motion de novo. *Capella III, L.L.C. v. Wilcox*, 190 Ohio App.3d 133, 2010-Ohio-4746, ¶ 16 (10th Dist.), citing *Andersen v. Highland House Co.*, 93 Ohio St.3d 547, 548 (2001). "De novo appellate review means that the court of appeals independently reviews the record and affords no deference to the trial court's decision." (Citations omitted.) *Holt v. State*, 10th Dist. No. 10AP-214, 2010-Ohio-6529, ¶ 9. Summary judgment is appropriate where "the moving party demonstrates that (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made." *Capella III* at ¶ 16, citing *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, ¶ 6. "When considering whether summary judgment is appropriate, a court must construe the evidence in the nonmoving party's favor." *Pate v. Quick Solutions, Inc.*, 10th Dist. No. 10AP-767, 2011-Ohio-3925, ¶ 20, citing *Kaminski v. Metal & Wire Prods. Co.*, 125 Ohio St.3d 250, 2010-Ohio-1027, ¶ 103. Therefore, we undertake an independent review to determine whether Ikram was entitled to judgment as a matter of law on Neal's false-imprisonment claim.

{¶ 29} The Supreme Court of Ohio has stated that a false-imprisonment claim cannot arise from a voidable judgment. *Brinkman v. Drolesbaugh*, 97 Ohio St. 171 (1918), syllabus. This court previously held that, because Ikram failed to serve her contempt motion on Neal, it was not sufficient to invoke the domestic relations court's continuing jurisdiction. *Hamad II* at ¶ 14. Where the notice requirements under Civ.R. 75(J) are not met and the domestic relations court's continuing jurisdiction is not invoked, the court lacks personal jurisdiction. *Fisher v. Fisher*, 10th Dist. No. 01AP-1041, 2002-Ohio-3086, ¶ 33. "A judgment which is issued where the trial court lacks personal jurisdiction of a necessary party to the action is a nullity and void ab initio." *Id.* Because the contempt judgment was void, it could give rise to a false-imprisonment claim.

{¶ 30} However, we agree with the trial court that, under the facts of this case, false imprisonment does not lie against Ikram. The Supreme Court explained the nature of false arrest and false-imprisonment claims in *Rogers v. Barbera*, 170 Ohio St. 241 (1960):

"[F]alse arrest and false imprisonment as causes of action are indistinguishable. The only distinction lies in the manner in which they arise. In a false arrest, false imprisonment exists, but the detention is by reason of an asserted legal authority to enforce the processes of the law; in a false imprisonment, the detention is purely a matter between private persons for a private end, and there is no intention of bringing the person detained before a court, or of otherwise securing the administration of the law."

Id. at 243, quoting 22 American Jurisprudence, False Imprisonment, Sections 2-3, at 353 (1939).

{¶ 31} In *Norwell v. Cincinnati*, 133 Ohio App.3d 790 (1st Dist.1999), the First District Court of Appeals relied on *Rogers* in affirming a trial court grant of summary judgment on a false-imprisonment claim. *Norwell* involved two ticket brokers who were arrested on four occasions by members of the Cincinnati police department for scalping baseball tickets. *Id.* at 797. Three of the charges resulted in acquittals, and the fourth was dismissed at the request of the prosecutor. The ticket brokers then filed a civil suit against the arresting officers in their official capacity and the city of Cincinnati, asserting violations of federal civil rights statutes, false arrest, false imprisonment, malicious prosecution, tortious interference with business relations, and conversion. The trial court granted summary judgment in favor of the defendants on all claims. *Id.* On appeal, the First District affirmed the summary judgment ruling on the false-imprisonment claim, noting that "the tort of false imprisonment is reserved for those situations in which detention is purely a matter between private persons." *Id.* at 810. Because the police officers were sued in their official capacity, they were not liable for false imprisonment. *Id.* See also *Evans v. Smith*, 97 Ohio App.3d 59, 69-70 (1994).

{¶ 32} Neal argues that Ikram is liable for false imprisonment because she failed to ensure personal service of the motion for contempt on him and then initiated an enforcement hearing that led to his imprisonment. However, we note that, even construing the evidence in Neal's favor, it is clear that his detention was not "purely a matter between private persons for a private end." *Rogers* at 243. Neal's detention and imprisonment was conducted pursuant to the authority of the domestic relations court and its contempt order. Moreover, the purpose of the detention was to enforce the court's

prior order, which does not constitute a private end. Therefore, under these circumstances, Ikram is not liable for false imprisonment. Because there is no material issue of fact and Ikram is entitled to judgment as a matter of law, the trial court did not err by granting summary judgment in favor of Ikram.

{¶ 33} Accordingly, we overrule Neal's cross-assignment of error.

{¶ 34} For the foregoing reasons, we overrule Ikram's four assignments of error and Neal's cross-assignment of error and affirm the judgments of the Franklin County Court of Common Pleas.

Judgments affirmed.

KLATT, P.J., and SADLER, J., concur.
