

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
LAKE COUNTY, OHIO**

GREG PINZONE,	:	<b>O P I N I O N</b>
Plaintiff-Appellant,	:	
- VS -	:	<b>CASE NO. 2011-L-133</b>
LISA MARIE PINZONE, et al.,	:	
Defendant-Appellee.	:	

Civil Appeal from the Lake County Court of Common Pleas, Domestic Relations Division, Case No. 08 DR 000785.

Judgment: Affirmed in part; reversed in part and remanded.

*Anna M. Parise*, Dworken & Bernstein Co., L.P.A., 60 South Park Place, Painesville, OH 44077 (For Plaintiff-Appellant).

*Lisa Marie Pinzone*, pro se, 9449 Euclid Chardon Road, Kirtland, OH 44094 (Defendant-Appellee).

THOMAS R. WRIGHT, J.

{¶1} This is an accelerated-calendar appeal, taken from a final judgment of the Lake County Court of Common Pleas, Domestic Relations Division. In that judgment, the trial court disposed of two motions regarding whether appellee, Lisa Marie Pinzone, had complied with provisions of the parties' separation agreement. As the primary basis for the appeal, appellant, Greg Pinzone, challenges the trial court's ruling that he did not have standing to compel appellee to make certain payments owed to his parents under the agreement.

{¶2} The underlying divorce proceeding was initiated by appellant in December 2008. Approximately two years later, immediately before the final hearing on the merits of the divorce, the parties were able to negotiate a separation agreement that eventually was incorporated into the final divorce decree. This agreement contained a provision governing the payment of a marital debt owed to appellant's parents:

{¶3} "The parties further agree that the parties have a marital debt held with Mr. and Mrs. Robert Pinzone, in the current amount of Two Hundred Forty-One Thousand Eight Hundred Dollars (\$241,800.00). The parties hereby agree that this debt shall be split in equal shares wherein Husband shall be responsible for \$120,900.00 of the debt, and Wife shall be responsible for \$120,900.00. Said debt shall be repaid at the monthly amount of \$275.00 by Wife on a monthly basis, commencing January 1, 2011, and repaid at the rate of \$375.00 by Husband on a monthly basis. The parties acknowledge and specifically agree that this debt is not dischargeable in bankruptcy and shall survive any bankruptcy filing of any nature whatsoever by either Husband and/or Wife. Each party shall pay their respective monthly payment directly to Mr. and Mrs. Robert Pinzone on or before the 1<sup>st</sup> of each month, commencing January, 2011."

{¶4} Despite the fact that the separation agreement was executed in November 2010, the final divorce decree was not issued until April 2011. In addition to expressly incorporating the separation agreement, the decree had a separate order that required appellee to pay \$450 in attorney fees to appellant's trial counsel.

{¶5} Even before the final divorce decree had been released, appellant filed a motion to show cause as to why appellee should not be found in contempt for failing to comply with the terms of the separation agreement. Specifically, the motion stated that, even though the agreement had provided that the respective monthly "debt" payments

to appellant's parents were to begin in January 2011, appellee had failed to make any payment through March 2011. In conjunction with the motion, appellant made a request to be reimbursed for the attorney fees associated with this matter.

{¶6} Approximately 40 days after the issuance of the final decree, appellant submitted a second contempt motion regarding appellee's compliance. As the grounds for this motion, appellant asserted that appellee had not made the required payment of attorney fees to his trial counsel, in accordance with the decree. Like the first contempt motion, the second motion also requested a separate award of attorney fees associated with the disposition of the contempt issue.

{¶7} The Ohio Supreme Court, in *Harris v. Harris*, 58 Ohio St.2d 303, syllabus paragraphs 1 and 2, clarified the following:

{¶8} "1. A property settlement provision contained in a separation agreement, which is subsequently incorporated into a divorce decree, or a decree of dissolution, is enforceable by contempt proceedings.

{¶9} "2. For purposes of enforcing a decree entered in a domestic relations proceeding, provisions relating to the division of property as contained within a separation agreement do not constitute a 'debt' within the meaning of that term as used in the constitutional inhibition against imprisonment for debt."

{¶10} Therefore, the trial court in a case such as this clearly has the authority to issue an order of contempt for failure of appellee to comply with the terms of the court ordered division of property.

{¶11} After conducting an evidentiary hearing on both pending motions, the trial court rendered a separate judgment in September 2011. Regarding the first contempt motion, the court overruled it on the basis that, since the debt in question was owed to

appellant's parents only, he did not have the standing to compel appellee's compliance. As to this point, the trial court held that it would be necessary for the parents to pursue a distinct action to enforce their rights under the separation agreement. In relation to the second motion, the court found that, despite the fact that she was employed and had the ability to pay, appellee had not satisfied the "fee" order in the final decree. In light of this, appellee was found in contempt and sentenced to ten days in the county jail, but was also afforded an opportunity to purge.

{¶12} In appealing aspects of both contempt rulings, appellant has asserted two assignments of error for review:

{¶13} "[1.] The trial court erred in denying standing to Appellant-Husband to enforce the obligation of Appellant-Wife pursuant to a separation agreement incorporated into a judgment entry of divorce.

{¶14} "[2.] The trial court erred in failing to award attorney fees in a finding of contempt."

{¶15} Appellant's first assignment pertains to the trial court's decision on his first contempt motion, which addressed appellee's failure to make the required payments to his parents under the separation agreement. In challenging the trial court's "standing" analysis, appellant essentially contends that, since he was a party to the agreement in question, he had the requisite standing to pursue any necessary proceeding to compel appellee to comply.

{¶16} As a general proposition, a party must have a personal stake in the results of a legal controversy before he will be deemed to have "standing" to maintain an action for relief. *Kincaid v. Erie Ins. Co.*, 128 Ohio St.3d 322, 2010-Ohio-6036, ¶9. Although the concept of standing has its origins in the common law, modern courts have held that

it is similar in nature to the “real-party-in-interest” requirement under Civ.R. 17(A); thus, the two terms and their underlying principles are now used interchangeably. *Abroms v. Synergy Bldg. Systems*, 2nd Dist. No. 23944, 2011-Ohio-2180, ¶46. “Indeed, one who has standing by possessing a ‘personal stake’ in a lawsuit undoubtedly also has a ‘real interest in the subject matter of the litigation.’” *Id.*

{¶17} As previously noted, the trial court based its entire analysis upon the following basic proposition: since appellant himself was not entitled to receive the disputed monthly payments under the separation agreement, he did not have the requisite standing to bring the contempt motion. However, in reaching this conclusion, the trial court did not consider the nature of the underlying debt that appellant and appellee owed to his parents. Specifically, there is no language in the contempt judgment to indicate that the trial court considered whether, despite the relevant provision of the separation agreement, appellant could still be liable for appellee’s share of the basic debt if she did not make the required payments. Obviously, if appellant could be held responsible for the entire debt of \$241,800, he would have a “personal stake” in the enforcement of the separation agreement against appellee.

{¶18} As an initial point, this court would emphasize that, in reviewing the entire record, we have not located either a copy of a written agreement between appellant, appellee, and his parents, or any description of an oral agreement between those parties. Even though an evidentiary hearing was conducted on the contempt motion, no testimony was offered concerning the exact nature of the underlying agreement on the debt. Similarly, despite the fact that docket in this case had over 300 entries, none of the submissions provided a substantial description of the agreement with appellant’s parents. While there is no dispute that such an agreement did exist, it only described as

a “personal debt” owed by the couple to his parents.

{¶19} Under Ohio law, the nature of a person’s contractual liability, joint, several, or joint and several, is controlled by the wording of the contract. *Stanley Electric Co., Inc. v. Crawford Equipment & Engineering Co.*, 249 F.R.D. 267, 2008 U.S. Dist. LEXIS 15264, \*22-23 (S.D. Ohio). If the contractual language does not expressly state the nature of a party’s liability, it will be presumed that co-signers of the agreement are jointly and severally liable for the underlying debt. *Id.*, citing *Spicer v. James*, 21 Ohio App.3d 222, 223 (2nd Dist. 1985). As stated in *Spicer*, “an obligation entered into by more than one person is presumed to be joint, and several responsibility will not arise except by words of severance.” *Spicer*, at 223.

{¶20} During the evidentiary hearing on the two contempt motions, appellant did not attempt to present any evidence as to the terms of the contract with his parents. However, the lack of evidence was attributable to the fact that the issue of standing was never raised by appellee or the trial court.

{¶21} In order for the trial court to render a proper decision on the issue of appellant’s standing to enforce the “debt” provision of the separation agreement, it is necessary for the court to first make a finding regarding the exact nature of appellant’s liability to his parents. That is, the court must determine whether the contract with the parents had an express term addressing the nature of appellant’s liability. If appellant’s debt is joint and several, he would readily have standing to ensure appellee’s compliance with the separation agreement so that he could not be held responsible for the entire debt; i.e., he has a personal stake.

{¶22} Since the issue of standing was never raised during the evidentiary hearing, no evidence was submitted about the terms of the underlying contract between

appellant, appellee, and his parents. In turn, given the total lack of any evidence on the controlling point, the trial court's finding of no standing to go forward is not supported by the evidence. In light of this, the trial court's decision on appellant's first contempt motion is reversed, and the case must be remanded for an evidentiary hearing on the "standing" issue. For this reason, appellant first assignment has merit.

{¶23} Appellant's second assignment pertains to his request for the payment of attorney fees under his second contempt motion. He submits that the trial court failed to render any type of ruling on his new request for fees.

{¶24} As previously noted, appellant's second contempt motion, filed on June 8, 2011, concerned appellee's failure to comply with the order in the final divorce decree regarding the payment of \$450 in attorney fees. In its September 2011 "contempt" judgment, the trial court first found appellee in contempt for not paying the "divorce decree" attorney fees, and then sentenced her to ten days in the county jail. However, the trial court further ordered that appellee could purge herself of the contempt by paying "(1) \$225.00 by September 30, 2011 to the firm of Dworken & Bernstein and (2) \$225.00 by October 31, 2011 to the firm of Dworken & Bernstein for the total payment due of \$450."

{¶25} At the end of the contempt judgment, the trial court summarized its decision by stating that it was granting the June 8, 2011 contempt motion. As a separate order, the court also stated that appellee "shall pay \$450.00 as and for attorney fees incurred by [appellant] for the prosecution of his June 8, 2011 motion. Said sum shall be paid to [appellant's] attorney by November 15, 2011."

{¶26} Pursuant to the quoted orders in the contempt judgment, appellee presently owes a total of \$900 in attorney fees: \$450 under the divorce decree and \$450

in relation to the second contempt motion. Furthermore, in order to ensure that there was no confusion in the matter, the trial court delineated a separate payment schedule for each of the two amounts.

{¶27} To the extent that the trial record plainly demonstrates that the trial court did issue a ruling on appellant's request for attorney fees under his second contempt motion, his second assignment of error is overruled.

{¶28} Pursuant to our analysis under appellant's first assignment, it is the judgment and order of this court that the judgment of the trial court is affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. Specifically, the trial court shall vacate that aspect of its September 14, 2011 judgment in which it denied appellant's first contempt motion, and hold an evidentiary hearing on the issue of standing.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.