[Cite as *Wall v. Wall*, 2015-Ohio-1928.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PIKE COUNTY

TEWEY WALL,	:	
	:	Case No. 14CA848
Plaintiff-Appellant,	:	
	:	
vs.	:	DECISION AND JUDGMENT
	:	ENTRY
SANDRA WALL,	:	
	:	
Defendant-Appellee.	:	**Released: 05/13/15**

APPEARANCES:

Tewey Wall, Chillicothe, Ohio, Pro Se Appellant.

Chase Carter, Chillicothe, Ohio, for Appellee.[1]

McFarland, A.J.

{¶1} This is an appeal by Appellant Tewey Wall of the April 8, 2014 judgment of the Pike County Court of Common Pleas which denied various motions for contempt. The entry further clarified Appellant's rights with regard to visitation with the parties' older son "M.C.W." Upon review, we find the trial court did not err and abuse its discretion when, sua sponte,[2] it clarified the provision from the parties' prior decree of divorce as to visitation as part of its April 8, 2014 ruling on the contempt motions.

[1] Appellee did not file a brief or otherwise participate in this appeal.
[2] Black's Law Dictionary, Abridged Sixth Edition, 1991, defines "sua sponte" as "[o]f his or its own will or motion; voluntarily; without prompting or suggestion."

Accordingly, we overrule Appellant's sole assignment of error and affirm the judgment of the trial court.

FACTS

{¶2} Appellant and his ex-spouse, Sandra Wall (Appellee), were married in 1996 in Pike County, Ohio. The parties have eight children together. On June 26, 2013, the parties were granted a decree of divorce in the Pike County Common Pleas Court, Domestic Relations Division.

At the time of the decree, Appellant was 67-years old and totally and permanently disabled as determined by the Social Security Administration. He receives a Social Security Disability benefit. At the time of the decree, Appellee was 43-years old and was not gainfully employed. As part of the decree, the trial court ordered an equitable division of marital property and allocation of debts between the parties. The trial court further designated Appellee as the sole residential parent and legal custodian of the six minor children.[3]

{¶3} Furthermore, the trial court awarded Appellant standard parenting time according to the Parenting Time Schedule of the court. The trial court provided for a holiday schedule which specifically incorporated Appellant's religious practices. The trial court also provided for additional

[3] Two of the couple's eight children were over the age of 18 at the time of the parties' separation. Since the decree of June 2013, another minor child attained majority.

parenting time for the parties' older son, M.C.W., to spend with Appellant. The decree stated at Paragraph 6:

> "In addition to the parenting time set forth in the standard Parenting Time Schedule, Plaintiff shall have parenting time with [the older Son] for a full week each calendar month arranged such that the Plaintiff shall pick up [M.C.W.] on Friday for the normal parenting time, and then [M.C.W.] will stay over for a full week instead of returning to the Defendant's possession on Sunday of that week. If the parties are unable to agree upon the full week each month that is to be the Plaintiff's additional parenting time with [M.C.W.], then the Plaintiff shall have the second full week of the month."

On August 13, 2013, Appellee filed a motion for contempt alleging Appellant failed to return both of their sons and failed to accept phone calls for the children.

{¶4} Beginning on September 10, 2013, Appellant filed the first of nine motions for contempt, also alleging violations of the visitation orders.[4] The trial court heard the parties' motions on January 16, 2014 and February 27, 2014; on April 8, 2014, it issued its decision and journal entry denying all motions. However, the trial court stated:

> "The Court finds that instructions by the Court are needed in order to prevent confusion and in order to prevent further allegations of contempt in the future concerning the exercise of the Plaintiff-father's additional parenting time with [M.C.W.], especially in view of the parties' demonstrated inability or

[4] Appellant also filed motions for contempt on September 17, 2013; September 23, 2013; October 10, 2013; October 18, 2013; October 24, 2013; October 28, 2013; November 1; 2013; and December 5, 2013. Most of the allegations in these motions concerned one of the parties' minor daughters.

> unwillingness to communicate and work with each other concerning these matters."

It is the trial court's clarification, addressed in the language of the April 8, 2014 contempt decision, that the Appellant contests, and from which this timely appeal has followed.

ASSIGNMENT OF ERROR

> "I. THE LOWER COURT HAS ERRED BY REDUCING THE TIME SPENT BETWEEN THE APPELLANT AND HIS SON. THE APPELLANT WAS GIVEN A FULL WEEK OF VISITATION WITH HIS SON IMMEDIATELY FOLLOWING A WEEKEND VISIT WITH ALL OF HIS YOUNGER CHILDREN. THE COURT HAD NOT BEEN PETITIONED TO CHANGE THE VISITATION BY EITHER THE APPELLANT OR THE APPELLEE."

A. STANDARD OF REVIEW

{¶5} Appellate review of a contempt order is under the highly deferential abuse-of-discretion standard; therefore, we will not lightly substitute our judgment for that of the issuing court. *Robinette v. Bryant,* 4th Dist. Law. No. 14CA28, 2015-Ohio-119, ¶ 31; *State v. Graham,* 4th Dist. Highland No. 13CA11, 2014-Ohio-3149, ¶ 24, citing *State ex rel. Cincinnati Enquirer v. Hunter,* 138 Ohio St.3d 51, 2013-Ohio-5614, ¶ 29. A trial court abuses its discretion when it is unreasonable, arbitrary, or unconscionable. *Robinette, supra; Cullen v. State Farm Mut. Auto. Ins. Co.,* 137 Ohio St.3d 373, 2013-Ohio-4733, 999 N.E.2d 614, ¶ 19.

B. LEGAL ANALYSIS

{¶6} Appellant is representing himself pro se. Under App.R. 16(A)(7), an appellant's brief shall include "[A]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies." *Robinette, supra,* at ¶ 33. Appellant has attempted to prepare a brief in accordance with the rules. However, Appellant has failed to file a transcript of the proceedings. The duty to provide a transcript for appellate review falls upon the appellant. *State v. Hess,* 17 N.E.3d 15, 2014-Ohio-3193, ¶ 42, citing *Knapp v. Edwards Laboratories,* 61 Ohio St.2d 197, 400 N.E.2d 383 *199. This is necessarily so because an appellant bears the burden of showing error by reference to matters in the record. *Id.* App.R. 9(B). When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm. *Id.* Here, Appellant has failed to provide transcripts of the contempt hearings which took place on January 16, 2014 and February 27, 2014. Nevertheless, relying on the record as it stands, and, "[g]iven the importance of the

visitation rights at issue and the general practice of affording pro se litigants a degree of leniency, we will address Appellant's assignment of error in the interests of justice." *Robinette, supra*; See *McKim v. Finley,* 4th Dist. Wash. No. 13CA5, 2014-Ohio-4012, ¶ 9.

{¶7} Appellant contends the trial court erred in its April 8, 2014 contempt decision by reducing his visitation with M.C.W. when neither party had requested a change. We summarize Appellant's argument directly from his brief as follows:

> "By definition, a week is seven days. * * * A weekend and an additional full week totals nine continuous days of visitation with M.C.W. The 'key' to understanding the Appellant's argument is based upon the words 'in addition' and 'full week.' The words 'in addition' mean to increase. The term 'full week' strongly implies seven days. * * * The lower court 'subtracted' days from the full week of visiting between the Appellant and his son."

{¶8} Appellant makes his argument within the context of contempt proceedings. Contempt is "conduct which brings the administration of justice into disrespect, or which tends to embarrass, impede or obstruct a court in the performance of its functions." *Robinette, supra,* at ¶ 45, quoting *Windham Bank v. Tomasczyk,* 27 Ohio St.2d 55, 271 N.E.2d 815 (1971), paragraph one of the syllabus; *State v Graham,* 4th Dist. Highland No. 13CA11, 2014-Ohio-3149, ¶ 25. Contempt proceedings are classified as civil or criminal based on the purpose to be served by the sanction.

Robinette, supra; State ex rel. Corn v. Russo, 90 Ohio St.3d 551, 554-555, 740 N.E.2d 265 (2001). "Civil contempt sanctions are designed for remedial or coercive purposes and are often employed to compel obedience to a court order." *Id.* at 555. Civil contempt must be established by clear and convincing evidence. *Id.* The purpose of a civil contempt motion is to compel compliance with the court's order rather than to punish disobedience. *Robinette, supra* at ¶ 47. See *Sheridan v. Hagglund*, 4th Dist. Meigs No. 13CA6, 2014-Ohio-4031, ¶ 22.

{¶9} Here, in the parties' decree of divorce, the trial court provided for additional parenting time for Appellant with M.C.W. In the closing arguments submitted to the trial court following the contempt hearings, both Appellant and Appellee acknowledged ambiguity in Paragraph 6. It is obvious in the contempt decision that the trial court's objective was to facilitate future compliance with the visitation order. The trial court stated:

> "Having considering (sic) all of the evidence, the Court finds and determines that it has not been shown by clear and convincing evidence that the Plaintiff-father is in contempt of Court as alleged in the Defendant-mother's motion filed on August 13, 2013. In making this determination, the Court has considered, among other things, the fact that reasonable confusion exists concerning the meaning of the language granting the Plaintiff-father 'a full week each calendar month' of parenting time with M.C.W., as stated in paragraph "6" of the Decree of Divorce. The Court finds that instructions by the Court are needed in order to prevent confusion and in order to prevent further allegations of contempt in the future concerning

> the exercise of the Plaintiff-father's additional parenting time with M.C.W., especially in view of the parties' demonstrated inability or unwillingness to communicate and work with each other concerning these matters."

{¶10} Clarifying an ambiguous order is permitted. *Dennison v. Dennison,* 7th Dist. Monroe No. 08MO1, 2008-Ohio-6924, at ¶ 23. Ambiguity arises "when a provision in an order or decree is reasonably susceptible of more than one meaning." *Dennison, supra,* at ¶ 22, quoting *McKinney v. McKinney,* 142 Ohio App.3d 604, 609, 756 N.E.2d 694 (2001). In the context of resolving ambiguous property division, for example, the courts have said "[A] trial court may not modify or rewrite a prior decree in order to ensure that it is equitable," but the court must in interpreting, "consider both the equities involved and the law in determining intent." *Dennison, supra,* at ¶ 22, quoting *Hale v. Hale,* 2nd Dist. Montgomery No. 21402, 2007-Ohio-867, ¶ 15, quoting *Proctor v. Proctor,* 122 Ohio App.3d 56, 60, 701 N.E.2d 36, and *Bond v. Bond,* 69 Ohio App.3d 225, 227, 590 N.E.2d 348. However, "[t]he trial court has broad discretion in clarifying ambiguous language [in a separation agreement] by considering not only the intent of the parties but the equities involved." *Erwin v. Erwin,* 9th Dist. Wayne No. 13CA0009, 2014-Ohio-874,¶ 19, quoting *Musci v. Musci*, 9th Dist. Summit No. 23088, 2006-Ohio-5882, ¶ 42, citing *In re Marriage of Seders,* 42 Ohio App.3d at 156. Therefore, "[a]bsent a showing of an abuse

of discretion, an interpretative decision by the trial court cannot be disturbed upon appeal." *Erwin, supra,* quoting *Musci,* at ¶ 42, citing *Blakemore v. Blakemore,* 5 Ohio St.3d 217, 219, (1983).[5]

{¶11} In *Dennison v. Dennison,* 7th Dist. Monroe No. 08MO1, 2008-Ohio-6924, the appellate court affirmed the trial court's clarification of a property division order. The appellant had argued the trial court erred when it "modified" the divorce decree because such action was prohibited under R.C. 3105.171(I) and because the appellee had not filed a Civ.R. 60(B) motion to vacate. The 9th District appellate court noted appellee was not seeking a modification from a trial court order; rather she was seeking enforcement of a prior judgment through a contempt motion. Trial courts have the power to enforce their prior judgments and a motion for contempt is a means to have a trial court enforce its prior judgment. *Dennison, supra,* at ¶ 20; *Leslie v. Johnston,* 5th Dist. Licking No. 2006-CA-00114, 2007-Ohio-2901, ¶ 5. The 9th District appellate court further observed that the disagreement as to what the prior decree meant arose during the contempt hearing.

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[5] In *Erwin,* appeal was taken from a trial court's order adopting a magistrate's decision finding the husband/appellant in contempt for failing to comply with the parties' divorce decree as it pertained to mortgages and the marital residence. After considering the parties' intent along with provisions of their separation agreement, the trial court clarified the ambiguity in the separation agreement with regard to their retirement accounts. The 9th District appellate court, after analyzing the underlying facts, held the trial court's clarification was not an abuse of discretion.

{¶12} In *McNabb v. McNabb*, 12th Dist. Warren Nos. CA212-06-056, CA2012-06-057, 2013-Ohio-2158, the parties cross-appealed from the Warren County Court of Common Pleas, Division of Domestic Relations' order which modified child support of the appellant/father. As one of the father's assignments of error, he contended the domestic relations court erred in modifying, *sua sponte*, the provision in the parties' original shared parenting plan regarding the parties' minor child's uninsured medical expenses because the issue was not raised by either party in their motions to modify, and thus, was not properly before the domestic relations court. It was also pointed out that the domestic relations court offered no explanation as to why it modified the provision.

{¶13} The appellant/father contended the court had abused its discretion by modifying the provision. However, the 12th District appellate court found the appellant/father's argument lacked merit, and the assignment of error was overruled. Citing R.C. 3119.30(A), the appellate court in *McNabb* found the domestic relations court had continuing authority to modify, *sua sponte,* the parties' obligations regarding the medical bills of their minor child.

{¶14} In the case sub judice, the record reveals via Appellant's "Final Written Argument" that Appellant lobbied for "nine consecutive days" to

live with the Appellant each month. The trial court's April 8, 2014 decision clarified, sua sponte, the ambiguous provision regarding Appellant's additional parenting time with M.C.W. The trial court ordered:

> "The Court therefore finds and orders that paragraph "6" of the Decree of Divorce, concerning the father's additional parenting time with M.C.W. shall be interpreted to mean that one time each calendar month, except during the exercise of the Plaintiff-father's extended summer parenting time, the plaintiff-father is granted an additional five full days of parenting time with M.C.W., to be exercised at the end of, and continuous with, the Plaintiff's regular weekend parenting time with M.C.W. and his siblings, arranged such that the Plaintiff shall pick up both M.C.W. and his siblings on Friday for the normal parenting time, and then M.C.W. will stay over for the remainder of that week, ending on the immediately succeeding Friday at 6:00 p.m., instead of returning to the Defendant's possession on Sunday of that week. If the parties are unable to agree upon the full week each month that is to be the Plaintiff's additional parenting time with M.C.W., the Plaintiff shall have the additional parenting time from Sunday at 6:00 p.m. to Friday at 6:00 p.m. immediately following the Plaintiff's first full weekend of parenting time with the children during each calendar month. (The term 'full weekend' shall be interpreted to mean a weekend on which both Friday and Sunday of that weekend fall within the same calendar month.) Further, the Plaintiff shall not have this additional parenting time with M.C.W. during the Plaintiff's exercise of the Plaintiff's extended summer parenting time with all of the minor children of the parties, and provided in the Standard Parenting Time Schedule."

{¶15} As previously observed, Appellant failed to provide this court with transcripts from the hearings which took place on January 16, 2014 and February 27, 2014. The parties' testimony at these hearings would have

provided this court with additional insight as to the parties' understandings and intents when they agreed to the original visitation order regarding M.C.W. Without these transcripts, we must presume the regularity in the proceedings. We are further mindful that the trial court is in the best position to view the witnesses and observe their demeanor, gestures, and voice inflections and to use those observations in weighing credibility. *Sulfridge v. Kindle,* 4th Dist. Adams No. 04CA975, 2005-Ohio-3929, ¶ 20. See *Myers v. Garson,* 66 Ohio St.3d 610, 615, 614 N.E.2d 742; *Seasons Coal Co. v. Cleveland,* 10 Ohio St.3d 77, 461 N.E.2d 1273 (1984). Appellate courts typically defer to trial courts in credibility maters. *Sulfridge, supra*.

{¶16} Here, the trial court, as in *McNabb, supra,* clarified the ambiguous provision regarding the additional parenting time for Appellant with M.C.W. Unlike the trial court in *McNabb,* the court explained its reasons for doing so, to prevent confusion and further allegations of contempt. On this record, we cannot find the trial court abused its discretion in rendering an interpretive decision, sua sponte, as part of the April 8, 2014 judgment entry on the contempt motions. As such, we overrule Appellant's sole assignment of error and affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pike County Court of Common Pleas to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J. & Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Matthew W. McFarland,
Administrative Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.