

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

RICHARD OSBORNE	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
	:	Hon. W. Scott Gwin, J.
Plaintiff-Appellant	:	Hon. William B. Hoffman, J.
	:	
-vs-	:	
	:	Case No. 2009-CA-35
CARLA OSBORNE	:	
	:	
	:	
Defendant-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING:	Civil appeal from the Fairfield County Court of Common Pleas, Domestic Relation Division, Case No. 07DR120
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT ENTRY:	December 3, 2009
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APPEARANCES:

For Plaintiff-Appellant	For Defendant-Appellee
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Gwin, J.

{¶1} Plaintiff-appellant Richard Osborne appeals a judgment of the Court of Common Pleas, Domestic Relations Division, of Fairfield County, Ohio, which imposed a five-day jail sentence because appellant had previously been found in contempt of court but had failed to purge. Appellant assigns a single error to the trial court:

{¶2} “I. THE TRIAL COURT ERRED WHEN IT IMPOSED UPON APPELLANT A FIVE DAY JAIL SENTENCE BASED UPON ITS FINDING THAT APPELLANT WAS IN CONTEMPT AS A RESULT OF HIS FAILURE TO PAY \$25,000.00 TO HIS FORMER WIFE AND HAD FAILED TO PURGE THE CONTEMPT WITHOUT TAKING INTO CONSIDERATION MITIGATING CIRCUMSTANCES WHICH RENDERED PLAINTIFF-APPELLANT UNABLE TO COMPLY WITH THE ORDER OF THE COURT.”

{¶3} Appellant and defendant-appellee Carla Osborne were divorced on October 11, 2003. Appellant was to pay a partial property settlement of \$25,000. Appellee filed a show cause motion and on May 7, 2008, appellant agreed he was in contempt of court. The court ordered that he could purge himself of contempt by paying the \$25,000, plus \$1,220 as fees and costs by June 30, 2008.

{¶4} On May 19, 2009, the court found appellant had not purged himself of the contempt even though eleven months had passed.

{¶5} The trial court found appellant testified he tried to obtain loans to pay the money but was denied by the banks. He also alleged appellee had taken the tools he needed to obtain employment. The court found appellant’s evidence showed he knew he could not secure a loan before entering into the agreement to pay appellee. The trial court also found the whereabouts of appellant’s tools were unknown at the time of

parties' decree. The court concluded because these facts were known to appellant prior to May 7, 2008, he did not have a valid excuse for failing to comply with the purge conditions to which he had agreed.

{¶16} The trial court found the divorce decree instructed appellee to relinquish any and all claims to certain property and to provide certain items to appellant if appellee knew the whereabouts of the items. The court found the evidence appellant presented to show appellee knew of the whereabouts of appellant's missing personal property was not convincing. The court also rejected appellant's claim against appellee for damage to the residence.

{¶17} Appellant cites our earlier case of *Fabre v. Fabre* (December 28, 1998), Stark App. Nos. 1998-CA-00088 and 1998-CA-00171. In *Fabre*, this court found a finding of contempt may be overturned only if the reviewing court determines the finding is the result of an abuse of discretion. *Fabre* at page 7, citing *Booth v. Booth* (1989), 44 Ohio St. 3d 142, 541 N.E. 2d 1028. The Supreme Court has consistently defined the term abuse of discretion as demonstration the trial court's decision was unreasonable, arbitrary or unconscionable. See, e.g., *Blakemore v. Blakemore* (1983), 5 Ohio St. 3d 217, 450 N.E. 2d 1140.

{¶18} In *Fabre*, supra, we found contempt is a demonstration of disregard for judicial authority, *Fabre*, at page 8, citing *State v. Flinn* (1982), 7 Ohio App. 3d 294, 455 N.E. 2d 691. Disregard for judicial authority is conduct showing disrespect for the administration of justice, or which otherwise impedes, obstructs, or frustrates the ability of the court to perform its lawful functions. Id. citing *Arthur Young & Co. v. Kelly* (1990), 68 Ohio App. 3d 297.

{¶19} Civil contempt is designed to benefit the complainant and is remedial in nature. *Pugh v. Pugh* (1984), 15 Ohio St. 3d 136, 472 N.E. 2d 1085. In *Fabre*, supra we found a failure to pay spousal and child support obligations is civil in nature.

{¶10} When a party is charged with contempt for violating a court order, the person may defend by proving that it was not in his or her power to obey the law. *Courtney v. Courtney* (1984), 16 Ohio App. 3d 329. Appellant argues his inability to pay was due to appellee's misconduct, and thus, his failure to pay was not willful.

{¶11} In *Seasons Coal Company v. City of Cleveland* (1984) 10 Ohio St.3d 77, 461 N.E.2d 1273, the Ohio Supreme Court quoted 5 Ohio Jurisprudence 3d (1978) 191-192, Appellate Review, Section 603, which states: "If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment." The *Seasons* court went on to explain "The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons* supra, at 80.

{¶12} The trial court here was the finder of fact, and it is clear from the judgment entry the trial court simply chose not to believe appellant's evidence. Based upon the record before us, this court cannot say the trial court erred.

{¶13} The assignment of error is overruled.

{¶14} For the foregoing reasons, the judgment of the Court of Common Pleas, Domestic Relations Division, of Fairfield County, Ohio, is affirmed.

By Gwin, J.,

Farmer, P.J., and

Hoffman, J., concur

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. WILLIAM B. HOFFMAN

WSG:clw 1116

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

RICHARD OSBORNE

Plaintiff-Appellant

-VS-

CARLA OSBORNE

Defendant-Appellee

JUDGMENT ENTRY

CASE NO. 2009-CA-35

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Domestic Relations Division, of Fairfield County, Ohio, is affirmed. Costs to appellant.

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. WILLIAM B. HOFFMAN