

[Cite as *Shell v. Shell*, 2010-Ohio-5813.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

REGINA SHELL

Plaintiff-Appellant

-vs-

STEVEN SHELL

Defendant-Appellee

JUDGES:

Hon. W. Scott Gwin, P. J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 2010 CA 00026

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Domestic Relations Division, Case
No. 2009 DR 00191

JUDGMENT:

Affirmed in Part; Reversed in Part and
Remanded

DATE OF JUDGMENT ENTRY:

November 29, 2010

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

DON E. CAPLEA
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500 Courtyard Centre
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Wise, J.

{¶1} Appellant Regina Shell appeals from her divorce in the Stark County Court of Common Pleas, Domestic Relations Division. Appellee Steven Shell is appellant's former spouse. The relevant facts leading to this appeal are as follows.

{¶2} Appellant and appellee were married in August 1996. Two children were born of the marriage, both of whom are presently minors.

{¶3} On February 19, 2009, appellant filed a complaint for divorce. Appellee, then represented by Attorney Mark Whitaker, filed an answer on March 10, 2009.

{¶4} On March 12, 2009, a domestic relations magistrate issued temporary orders. However, appellant filed a motion to set aside the temporary orders, which the court set for hearing before the assigned judge on June 1, 2009. Both parties appeared on that date and informed the court that based upon the guardian-ad-litem's report, all "child-related issues" had been resolved. The remaining issues, including property division and debt allocation, were set for an evidentiary hearing to take place on July 28, 2009.

{¶5} The parties appeared for the evidentiary hearing on that date. After hearing the evidence and arguments, the court issued the following orders:

{¶6} "The court will grant a divorce upon the grounds testified to and the parties' agreement. Both counsel shall submit proposed Findings of Fact and Conclusions of Law and any written final argument and proposed final JE [judgment entry] if submitted w/i 14 days." Judgment Entry, July 28, 2009, at 1.

{¶17} An agreed judgment entry was filed on August 13, 2009, extending the time for the parties to submit proposed findings of fact and conclusions of law and a proposed judgment entry to August 21, 2009.

{¶18} On or about August 20, 2009, each counsel submitted a proposed judgment entry/divorce decree. (Appellee's version was not file-stamped.)

{¶19} On November 25, 2009, still awaiting a final decision in the divorce action, appellant filed a motion for contempt of court against appellee, alleging failure of appellee to make spousal support payments and payments on two vehicles as per the temporary orders of March 12, 2009. The contempt was scheduled for a hearing on January 13, 2010. Appellant also requested that the court issue a final divorce entry, but also moved for a new trial based on recently discovered evidence.

{¶10} On December 29, 2009, the court issued a judgment entry dismissing appellant's motion for new trial and motion for contempt as being premature. The court also ordered as follows:

{¶11} "The parties are granted a divorce on the grounds of incompatibility and the parties' agreement as read into the record and acknowledged by them both in open court. * * * As to the remaining (and all issues) the court does order Atty. Whitaker to prepare in final form the JE tendered by him in August as [sic] except that the court does decide on the outstanding issues as follows:

{¶12} "At page 2, #4 --- 'In no event shall child support continue beyond any child's NINETEENTH (19th) birthday;

{¶13} "At page 2 #5--- . . . 'The court DOES reserve jurisdiction to affect the spousal support order'; and

{¶14} “At page 2 #7--- . . . ‘The debt from the Stark Federal Credit Union shall be paid from the sale of the 1951 Ford Truck’

{¶15} “Atty Whitaker shall prepare the appropriate JE w/i 10 days and he is relieved from circulating same to the parties/counsel prior to submitting same to the court. Costs applied and case closed.” Judgment Entry, December 29, 2009, at 1.

{¶16} On January 6, 2010, the court issued a judgment entry based on Attorney Whitaker’s prepared submission to the court.

{¶17} On February 5, 2010, appellant filed a notice of appeal. She herein raises the following four Assignments of Error:

{¶18} “I. THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO RECOGNIZE IN ITS ORDER OF DECEMBER 29, 2009, THE FILING OF PLAINTIFF/APPELLANT’S MOTION FOR CONTEMPT FILED ON NOVEMBER 25, 2009 AND AFFORDING THE PLAINTIFF/APPELLANT AN OPPORTUNITY TO BE HEARD TO PRESENT TESTIMONY AND EVIDENCE RELATIVE TO THE DEFENDANT/APPELLEE’S VIOLATIONS OF THE TEMPORARY ORDERS WHICH WERE IN FORCE AT THAT TIME AND WHICH IMPACTED ON THE FINANCIAL ORDERS RELATIVE TO THE DIVISION OF PROPERTY IN THIS CASE.

{¶19} “II. THE TRIAL COURT ABUSED ITS DISCRETION AND ACTED CONTRARY TO LAW IN DISMISSING THE PLAINTIFF/APPELLANT’S MOTION FOR NEW TRIAL IN ITS ORDER OF DECEMBER 29, 2009 AND CONSTITUTES AN ABUSE OF DISCRETION AND IS CONTRARY TO LAW.

{¶20} “III. THE COURT’S ORDER OF DECEMBER 29, 2009, ORDERING ATTORNEY WHITAKER TO PREPARE AN APPROPRIATE JUDGMENT ENTRY,

WITHIN TEN DAYS, AND RELIEVING HIM OF HIS RESPONSIBILITY TO CIRCULATE THE SAME TO THE PARTIES AND COUNSEL PRIOR TO THE SUBMISSION OF [SIC] THE COURT CONSTITUTES AN ABUSE OF DISCRETION AND IS CONTRARY TO LAW.

{¶21} “IV. THE TRIAL COURT ACTED CONTRARY TO LAW IN ORDERING A SPECIFIC AMOUNT OF CHILD SUPPORT TO BE PAID BY THE DEFENDANT APPELLEE WITHOUT THE SUBMISSION OF A CHILD SUPPORT GUIDELINE WORKSHEET.”

I.

{¶22} In her First Assignment of Error, appellant contends the trial court erred in dismissing her temporary orders-based contempt motion as premature without allowing a hearing. We agree.

{¶23} The purpose of civil contempt proceedings is to compel compliance with a court's order. See *Natl. Equity Title Agency, Inc. v. Rivera* (2001), 147 Ohio App.3d 246, 252. The Ohio Supreme Court has held that “[i]n a domestic relations action, interlocutory orders are merged within the final decree, and the right to enforce such interlocutory orders does not extend beyond the decree, *unless* they have been reduced to a separate judgment or *they have been considered by the trial court and specifically referred to within the decree.*” *Colom v. Colom* (1979), 58 Ohio St.2d 245, 389 N.E.2d 856, syllabus (emphasis added).

{¶24} At a minimum, due process of law requires notice and opportunity for a hearing, that is, an opportunity to be heard. See *Mathews v. Eldridge* (1976), 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18. In the case sub judice, the divorce judgment entry of

January 6, 2010, clearly states that the “temporary orders shall not merge into the decree.” As such, the issue of contempt would have been ripe for review on the scheduled hearing date of January 13, 2010, had it been allowed to go forward. We thus find the trial court committed reversible error under these circumstances by summarily dismissing appellant’s contempt motion of November 25, 2009.

{¶25} Appellant’s First Assignment of Error is sustained.

II.

{¶26} In her Second Assignment of Error, appellant contends the trial court erred in denying her motion for a new trial. We disagree.

{¶27} A party’s filing of a new trial motion prior to the entry of judgment is premature and is effectively overruled by the subsequent entry of judgment. See *Collins v. Jordan* (1952), 65 Ohio Law Abs. 253, 113 N.E.2d 911. Accordingly, we find no reversible error in the trial court’s decision to treat appellant’s new trial motion as premature under the circumstances presented.

{¶28} Appellant’s Second Assignment of Error is overruled.

III.

{¶29} In her Third Assignment of Error, appellant argues the trial court committed reversible error by ordering opposing trial counsel to prepare and submit a final judgment entry without affording appellant’s counsel the opportunity to review it before approval by the judge. We disagree.

{¶30} Stark County Loc.R. 18.01(A) states the following in pertinent part:

{¶31} “Counsel for the party in whose favor a *** judgment or decree is entered in a cause in Civil or Domestic Relations Divisions shall, within ten (10) days thereafter

unless otherwise specified by the Court, prepare a proper judgment entry and submit the same to counsel for the opposite party who shall approve or reject the same within three (3) days after its receipt by opposing counsel and may, in case of rejection, file objections thereto in writing by the Court * * *.”

{¶32} The aforesaid local rule, although applicable to cases in Stark County’s General Division and Domestic Relations Division, was not fully enforced by the trial court. Nonetheless, we must recognize that an appellant, in order to secure reversal of a judgment upon appeal, must generally show that a recited error was prejudicial to her. See *Janssen v. Janssen*, 186 Ohio App.3d 488, 928 N.E.2d 1156, 2010-Ohio-648, ¶ 27, citing *Tate v. Tate*, Richland App. No. 02-CA-86, 2004-Ohio-22, ¶ 15 (additional citations omitted). Appellant presently asserts that the trial court “placed Plaintiff and her Counsel at a very distinct disadvantage in not being able to review that which was being submitted to the judge ***.” Appellant’s Brief at 8-9. However, upon review, given that the trial court had already heard the evidence and taken the matter under advisement (per its judgment entry of July 28, 2009), we are unpersuaded that appellant’s counsel’s review of opposing counsel’s submitted judgment entry would have altered the final outcome of the case, and we are therefore unable to conclude that appellant has established prejudicial error under the circumstances presented.

{¶33} Appellant’s Third Assignment of Error is overruled.

IV.

{¶34} In her Fourth Assignment of Error, appellant argues the trial court erred in failing to attach a child support guideline worksheet to the divorce decree at issue. We disagree.

{¶35} In Ohio, when a child support order is issued, a child support guideline computation worksheet must be completed and made a part of the trial court's record. See *Cutlip v. Cutlip*, Richland App.No. 02CA32, 2002-Ohio-5872, citing *Marker v. Grimm* (1992), 65 Ohio St.3d 139, 139, 601 N.E.2d 496, at paragraph one of the syllabus; R.C. 3119.022.

{¶36} However, in the case sub judice, the divorce decree at issue reiterated the child support figure in the magistrate's temporary orders of March 12, 2009, which did incorporate a guideline worksheet. We therefore find sufficient compliance with the rule set forth in *Cutlip*. Accord *Low v. Malone*, Fairfield App.No. 08CA79, 2009-Ohio-3565, ¶ 19.

{¶37} Appellant's Fourth Assignment of Error is overruled.

{¶38} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Domestic Relations Division, Stark County, Ohio, is hereby affirmed in part, reversed in part, and remanded for hearing on appellant's contempt motion of November 25, 2009.

By: Wise, J.

Gwin, P. J., and

Farmer, J., concur.

JUDGES

