

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ERICA OHMAN

Plaintiff-Appellee

-vs-

JAMES OHMAN

Defendant-Appellant

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JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 2014CA00221

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common
Pleas, Domestic Relations Division,
Case No. 2012-DR-01316

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

June 29, 2015

APPEARANCES:

For Plaintiff-Appellee

RODNEY A. BACA
610 Market Avenue North
Canton, OH 44702

For Defendant-Appellant

KENNETH L. SHEPPARD, JR.
Belden Village Tower, Suite 200
4450 Belden Village Street, NW
Canton, OH 44718

Farmer, J.

{¶1} On September 5, 2013, appellant, James Ohman, and appellee, Erica Ohman, were granted a divorce via a judgment entry decree of divorce issued pursuant to a negotiated settlement. According to the divorce decree, appellant retained the marital residence and was to pay the second mortgage on the property. Appellant was also obligated to pay spousal support to appellee in the amount of \$1,300.00 per month for forty-six months. The trial court retained jurisdiction to modify the spousal support award, specifically in the event appellee became obligated on any debt that appellant had agreed to pay.

{¶2} On March 5, 2014, appellee filed a motion for contempt, claiming her credit had been affected due to appellant's failure to pay the second mortgage. On June 18, 2014, appellant filed a motion to modify spousal support. A hearing was held on October 20, 2014. By judgment entry filed November 3, 2014, the trial court found appellant guilty of contempt and sentenced him to thirty days in jail, suspended on the payment of attorney fees and adherence to the divorce decree regarding the second mortgage. The trial court provided appellant with the opportunity to purge the contempt if he paid off the second mortgage within one year. The trial court also denied appellant's motion to modify spousal support, finding although there had been a change of circumstances, the previous award was still appropriate and reasonable.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶4} "THE TRIAL COURT ABUSED ITS DISCRETION IN FINDING THAT APPELLANT WAS IN CONTEMPT OF THE COURT'S PRIOR ORDER AND WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

II

{¶5} "THE TRIAL COURT ABUSED ITS DISCRETION IN FINDING THAT SPOUSAL SUPPORT OBLIGATION REMAIN THE SAME AND THIS FINDING WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

I

{¶6} Appellant claims the trial court erred in finding him in contempt of the divorce decree. We disagree.

{¶7} We review contempt decisions under an abuse of discretion standard. *State ex rel. Celebrezze v. Gibbs*, 60 Ohio St.3d 69 (1991). In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore*, 5 Ohio St.3d 217 (1983).

{¶8} As explained by our brethren from the Fourth District in *McDonald v. McDonald*, 4th Dist. Highland No. 12CA1, 2013-Ohio-470, ¶ 17-18:

Civil contempt exists when a party fails to do something ordered by a court for the benefit of an opposing party. *Pedone v. Pedone*, 11 Ohio App.3d 164, 165, 463 N.E.2d 656 (1983); *Beach v. Beach*, 99 Ohio App. 428, 431, 134 N.E.2d 162 (1955). The punishment is remedial, or

coercive, in civil contempt. *State ex rel. Henneke v. Davis*, 66 Ohio St.3d 119, 120, 609 N.E .2d 544 (1993). In other words, civil contempt is intended to enforce compliance with a court's orders.

The party seeking to enforce a court order must establish, by clear and convincing evidence, the existence of a court order and the nonmoving party's noncompliance with the terms of that order. *Wolf v. Wolf*, 1st Dist. Hamilton No. C-090587, 2010-Ohio-2762, 2010 WL 2473277, ¶ 4; *Morford v. Morford*, 85 Ohio App.3d 50, 55, 619 N.E.2d 71 (4th Dist.1993).

{¶9} "Clear and convincing evidence" is that evidence "which will provide in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

{¶10} In her March 5, 2014 motion for contempt, appellee claimed appellant violated the following provisions in the September 5, 2013 divorce decree:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED the Real Estate located at 6083 Sunscape Drive NE, Louisville, OH, shall be retained by ***James G. Ohman, Sr.*** which shall have exclusive possession and control of said premises without interference from ***Erica M. Ohman.*** The mortgage(s), insurance, tax assessments, utilities and maintenance upon said premises shall be the sole responsibility of ***James G. Ohman,***

Sr., who shall hold **Erica M. Ohman**, absolutely harmless on any debt, taxes, etc. The Husband shall refinance said property within thirty six (36), months, to remove Wife's name.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED the Husband shall be responsible for any and all outstanding debts and plans on filing a Chapter 13 plan. The Wife currently has no credit card debt, however, the Wife shall be responsible for any debt solely in her name. Each party shall agree to indemnify, defend and hold the other party absolutely harmless from any expense, loss, claim or liability whatsoever arising from or in any way connected with such outstanding debts, except as herein otherwise agreed.

{¶11} In her affidavit filed March 5, 2014, appellee claimed appellant failed to make payments on the second mortgage to the marital property which he had retained, thereby affecting her credit. In its judgment entry filed November 3, 2014, the trial court found the following:

9. The second provision of the Decree of Divorce that is relevant for the current proceedings is the paragraph related to real estate. Husband was given exclusive possession and control over the premises located at 6083 Sunscape Drive, N.E., Louisville, Ohio. However, he was ordered to pay the mortgages, insurance, tax assessments, utility and maintenance on that property and hold Wife absolutely harmless on any debt, taxes, et

cetera. Wife has filed a motion to show cause alleging that Husband has failed to pay the second mortgage on that property. Plaintiff's Exhibit 1 is a monthly billing statement from Green Tree Servicing related to the second mortgage. It indicates that the last payment was made on December 19, 2012, some nine months before the final Decree was filed. Husband says he is current on the first mortgage, but admits that he has not made any payments on the second mortgage. He testified that the original plan was for him to file bankruptcy and discharge that second mortgage. He has not been able to do that because he says his income is not sufficient to cover his expenses under a Chapter 13.

10. Wife admits that she has not been approached by any debt collectors relative to the second mortgage. It appears that the lender has written the debt off. However, the debt is on her credit report along with nine other adverse accounts. Since there were no payments after December 19, 2012, the debt may have been on her credit report before the divorce was final in September 2013, but there was no evidence of that. In any case, it will remain on her credit report for two years longer than the other nine adverse accounts. It is very clear that Husband was ordered to be responsible for that second mortgage in the final Decree. It is unfortunate that he has not been able to relieve himself of that obligation through bankruptcy, but the Court finds him to be in contempt of its order. The parties stipulated to the reasonableness of Attorney

Glantz's fees. The Court finds \$750 of attorney fees to be appropriate for the prosecution of this contempt.

{¶12} Appellant admitted to not paying on the second mortgage as required to do so under the divorce decree. T. at 6; Plaintiff's Exhibit 1. Appellee conceded the second mortgage company has not "come after" her for payment, but explained her credit had been affected. T. at 8; Defendant's Exhibit C.

{¶13} Given the testimony presented, we find clear and convincing evidence to support the trial court's decision finding appellant in contempt for failing to pay on the second mortgage.

{¶14} Assignment of Error I is denied.

II

{¶15} Appellant claims the trial court erred in denying his motion to modify spousal support. We disagree.

{¶16} As explained by our brethren from the Tenth District in *Cox v. Cox*, 10 Dist. Franklin No. 14AP-490, 2015-Ohio-1660, ¶ 36-37:

A trial court lacks jurisdiction to modify a prior order of spousal support unless (1) the decree of the court expressly reserved jurisdiction to make a modification, (2) the court finds that a substantial change in circumstances has occurred, and (3) the court finds that the change was not contemplated at the time of the original decree. *Piliro v. Piliro*, 10th

Dist. No. 10AP-1142, 2012-Ohio-1153, ¶ 3, citing *Mandelbaum v. Mandelbaum*, 121 Ohio St.3d 433, 2009-Ohio-1222.

A party seeking modification of spousal support bears the burden of demonstrating modification is warranted. *Piliero* at ¶ 3, citing *Burkart v. Burkart*, 191 Ohio App.3d 169, 2010-Ohio-5363, ¶ 22 (10th Dist.). Appellate courts generally afford trial courts wide latitude in considering spousal support issues. *Id.* at ¶ 20, citing *Grosz v. Grosz*, 10th Dist. No. 04AP-716, 2005-Ohio-985, ¶ 89. Accordingly, appellate courts review decisions regarding modification of spousal support for abuse of discretion. *Id.*, citing *Grosz* at ¶ 9.

{¶17} The September 5, 2013 divorce decree ordered the following:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED the Husband, shall pay to Wife, as and for spousal support, the sum of One Thousand Three Hundred Dollars (\$1300.00) per month, plus poundage, for a period of Forty Six (46) months, commencing August 1, 2013, said spousal support shall be paid by the Husband through the Stark County Child Support Enforcement Agency, and shall terminate upon death or the remarriage of the Wife. The Court shall retain jurisdiction to modify said support, specifically if the Wife becomes obligated on any debt that Husband has agreed to be responsible for under this agreement for any

reason, including but not limited to his impending bankruptcy. Any existing arrearage shall not merge into this Decree.

{¶18} In its judgment entry filed November 3, 2014, the trial court found the following:

***Husband has filed a motion to modify spousal support. Wife argues that the Court does not have jurisdiction because only she can trigger the continuing jurisdiction by becoming obligated on a debt that Husband has agreed to be responsible for. Husband counter argues that Wife filed a contempt against him for failure to pay the second mortgage on the marital property. Husband believes that, if she is entitled to relief under that motion to show cause, she is, by definition, prejudiced by a debt that Husband was ordered to pay; and, therefore, Husband can invoke the Court's continuing jurisdiction over spousal support. The Court agrees with Husband that, under this specific set of facts, the Court does have continuing jurisdiction.

{¶19} The trial court went on to find there had been "a change of circumstances since the previous order of spousal support," but found the previous award was still appropriate and reasonable and denied the motion to modify.

{¶20} We find the divorce decree retained jurisdiction in the event appellee "becomes obligated on any debt that Husband has agreed to be responsible for under

this agreement for any reason." The evidence presented during the hearing indicates although appellant did not pay on the second mortgage, appellee has not become responsible for the debt and in fact the debt has been "charged off." T. at 8, 15; Defendant's Exhibit C. Therefore, the trial court's reservation of jurisdiction to modify spousal support was not invoked under these facts. Nevertheless, the trial court correctly denied the motion to modify, albeit for a different reason.

{¶21} Assignment of Error II is denied.

{¶22} The judgment of the Court of Common Pleas of Stark County, Ohio, Domestic Relations Division is hereby affirmed.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.