

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
FULTON COUNTY

Robert L. Burton

Court of Appeals No. F-12-018

Appellee

Trial Court No. 10DV000053

v.

Carolyn J. Nagel

DECISION AND JUDGMENT

Appellant

Decided: October 25, 2013

* * * * *

Steven C. Hales, for appellee.

George R. Royer, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} Appellant, Carolyn J. Nagel, appeals from a decision of the Fulton County Court of Common Pleas, denying her Civ.R. 60(B) motion and finding her in contempt. For the foregoing reasons, we affirm.

{¶ 2} The relevant procedural history is as follows. After being married for 68 days, appellee, Robert L. Burton, filed for divorce from appellant on November 25, 2009, in the Lucas County Court of Common Pleas, Domestic Relations Division. On March 4, 2010, the case was transferred to the Fulton County Court of Common Pleas.

{¶ 3} On August 5, 2011, a hearing was held wherein the parties read a settlement agreement into the record. Among the matters settled, appellee agreed to pay appellant's outstanding medical bills incurred during the marriage, within 90 days. It was agreed that appellant would receive the parties' 2009 tax refund in the approximate amount of \$33,000, and appellee agreed to pay appellant's attorney fees in the amount of \$6,500. Both parties took the stand and testified that they understood the agreement and that they were entering into the agreement freely and voluntarily. The court accepted the agreement and adopted it as an order of the court. Lastly, the court granted the parties a divorce.

{¶ 4} Before the agreement and divorce decree were journalized, appellant filed a "motion to set aside settlement proposal." In her motion, appellant alleged that she did not "fully comprehend the overall settlement agreement as read unto (sic) the record, and does not agree with the same." Appellant alleged that her confusion was the result of being heavily medicated on the day of the hearing. She also alleged that appellee made false statements during the hearing.

{¶ 5} The court denied appellant's motion finding that:

[appellant], while testifying under oath, appeared to the court to be entirely alert, entirely cogent, and in full control of her faculties, while discussing the terms of the settlement and the grounds, on the record. If she was "heavily medicated," it was not apparent in her mannerisms, nor in her profile and responses.

The court further noted that before the settlement agreement there had been numerous proceedings, mediations and conferences between the parties and that appellant has continuously resisted appellee's attempts to get a divorce. As for the settlement agreement, the court opined that it is exceedingly beneficial and favorable to appellant and that had the matter proceeded to trial, appellant would most likely not be awarded better terms.

{¶ 6} The parties' final judgment entry of divorce was journalized on August 23, 2011. Appellant filed a direct appeal. However, on November 30, 2011, the appeal was dismissed at appellant's request.

{¶ 7} On March 19, 2012, appellant filed a motion to set aside the judgment pursuant to Civ.R. 60(B) and a motion for appellee to show cause as to why he should not be held in contempt for failing to pay appellant's medical bills. Appellant once again contended she was too medicated to fully understand the settlement agreement entered into in 2011. Appellee responded with a motion to show cause as to why she should not be held in contempt.

{¶ 8} A hearing commenced on June 11, 2012. Appellant testified that appellee only paid \$14,000 of the \$33,000 in medical bills he was ordered to pay. She claims she paid the remaining amount with her credit cards to avoid harassment from creditors. Appellant acknowledged that all of the \$33,000 in medical bills had been paid. However, she testified she wants reimbursed for the amount she transferred to credit cards. Appellee countered with the fact that he was ordered to pay appellant's outstanding medical bills incurred during the marriage and that he indeed paid the outstanding medical bills that were presented to him. This was not disputed.

{¶ 9} The court denied appellant's Civ.R. 60(B) motion and found her in contempt of court. Appellant now appeals setting forth the following assignments of error:

I. The court should have ruled that appellee did not pay all medical bills of the appellant during the marriage, as required in such divorce agreement. 9and (sic) should have ruled that plaintiff was in contempt of court.

II. The court erred in finding appellant in contempt of court.

III. The court ordered the judgment for \$500.00 against defendant (appellant) which order was not based on any finding of what justified such judgment.

IV. The court did not address fully the issue of personal property transfer.

{¶ 10} In her first assignment of error, appellant contends that appellee should have been held in contempt of court for failing to pay her medical bills as ordered by the court in the very judgment entry, interestingly enough, she seeks to set to set aside through her Civ.R. 60(B) motion.

{¶ 11} The pertinent part of the judgment entry at issue states:

[Appellee] shall pay the outstanding medical debts and obligations of the parties, said debts and obligations further described as the after insurance balance of the bills for medical services provided to [appellant] herein during the period of September 18, 2009 to the final hearing of divorce, inclusive.

{¶ 12} The evidence shows that appellee paid the outstanding medical bills that were presented to him. It was appellant's choice to pay some of the bills with her credit cards and there is no evidence that she ever presented appellant with the original bills showing a date of service. The fact remains; there are no more outstanding medical bills from the marriage. Accordingly, appellant's first assignment of error is found not well-taken.

{¶ 13} In her second assignment of error, appellant contends that the court erred in finding her in contempt. Appellant contends that it is unclear from the judgment entry why she was found in contempt.

{¶ 14} An appellate court will not overturn a trial court's finding of contempt absent an abuse of discretion. *State ex rel. Ventrone v. Birkel*, 65 Ohio St.2d 10, 11, 417

N.E.2d 1249 (1981). An abuse of discretion is the trial court's "failure to exercise sound, reasonable, and legal decision-making." *State v. Beechler*, 2d Dist. Clark No. 09-CA-54, 2010-Ohio-1900, ¶ 62, quoting Black's Law Dictionary 11 (8th Ed.2004).

{¶ 15} Appellee asked the court to find appellant in contempt for two reasons. First, pursuant to the August 23 order, appellant was to cooperate with the execution and filing of a general warranty deed to a specific buyer of appellee's home. As of the filing of the motion to show cause, appellant had failed to do so. At the time of the hearing, appellant had delivered the deed and the court, therefore, found the issue moot.

{¶ 16} The second reason appellee asked the court to find appellant in contempt was her failure to pay \$350 in appellee's attorney's fees, pursuant to the court's 2011 decision denying appellant's motion to set aside the settlement offer. At the time of the hearing, appellant had failed to pay. The court's contempt order stated:

[Appellant] is found to be in contempt of court, and she is hereby assessed a penalty of \$500.00. [Appellant's] attorney shall deliver a check for \$850.00 (\$500.00 assessed herein, and the \$350.00 previously assessed), to [appellee's] attorney, on or before January 15, 2013, * * *

Clearly, appellant was found in contempt for failing to pay appellee's attorney fees as ordered in 2011. Finding no abuse of discretion, appellant's second assignment of error is found not well-taken.

{¶ 17} In her third assignment of error, somewhat related to her second assignment of error, appellant contends that she was not aware of the court's judgment

denying her motion to set aside the settlement agreement due to her mental state at the time the order was issued. As the court pointed out, the matter of appellant's comprehension of the settlement agreement was already litigated.

{¶ 18} To prevail on a motion for relief from judgment under Civ.R. 60(B), a party must demonstrate: (1) a meritorious defense or claim; (2) entitlement to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) timeliness of the motion. *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus. If any of these three requirements is not met, the motion is properly overruled. *Strack v. Pelton*, 70 Ohio St.3d 172, 174, 637 N.E.2d 914 (1994).

{¶ 19} It is well settled that: “[A] motion for relief from judgment is not a substitute for an appeal, and errors which could have been corrected by a timely appeal cannot be the predicate for a Civ.R. 60(B) motion for relief from judgment.” *Ward v. Hengle*, 134 Ohio App.3d 347, 350, 731 N.E.2d 198 (9th Dist.1999), quoting *Kelm v. Kelm*, 73 Ohio App.3d 395, 399 (10th Dist.1992).

{¶ 20} With regard to her current claims of mental incapacity, the court stated:

Unfortunately for appellant she did not have, and still does not have any medical opinion, from a competent physician or psychiatrist, to support this position. * * * [Appellant] may have some medical and psychological deficits, and she may be in reduced financial straits, but such facts will not, and do not excuse nor justify the latest actions-especially in light of this

court's findings made in its [2011 judgment entry.] [Appellant's] route of action and request for relief should have been made through the Court of Appeals. She did that, but then dismissed it. A 60(B) is not a substitute for appeal, especially where it is unfounded.

{¶ 21} We agree with the reasoning of the trial court and therefore find appellant's third assignment of error not well-taken.

{¶ 22} Finally, in her fourth assignment of error, appellant contends that appellee failed to return certain items of her personal property pursuant to, once again, the very judgment entry she seeks to set aside. This too is a matter that should have been addressed on direct appeal. Appellant's fourth assignment of error is found not well-taken.

{¶ 23} For the foregoing reasons, the judgment of the Fulton County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

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