

[Cite as *Crick v. Starr*, 2009-Ohio-6754.]
DeGenaro, J.

{¶1} This timely appeal comes for consideration upon the record in the trial court, the briefs of the parties, and their oral arguments before this Court. Appellants, Roy Crick and David Starr, Co-Administrators of the Estate of Ray Starr Sr., appeal the August 25, 2008 decision of the Mahoning County Court of Common Pleas, Division of Domestic Relations. The decision dismissed Appellants' Motion to Show Cause pursuant to the equitable "unclean hands" doctrine, and held that Appellee Beverly Starr was not obligated to reimburse Ray for the payment of use tax on two boats that were given to Ray Starr Jr. and Todd Starr through Beverly pursuant to the property division section of Ray and Beverly's Separation Agreement and subsequent Decree of Dissolution.

{¶2} The Estate argues that the trial court's decision was against the manifest weight of the evidence because Beverly was obligated to pay taxes on all personal property transferred to her pursuant to the separation agreement. The Estate does not assert that Ray had clean hands in the tax matter, but indicates that Beverly's knowledge of Ray's actions in creating the tax liability bars Beverly from asserting an unclean hands defense.

{¶3} The record indicates that Ray, operating as RS Motors, made misrepresentations when he purchased the two boats for his sons in 2004 in order to avoid Ohio taxes, and that he attempted to pass the tax liability on to Beverly through their 2005 separation agreement. Beverly was not involved with RS Motors and did not participate in the misrepresentations made in 2004 which delayed the Ohio Department of Taxation's collection of the tax. It was not an abuse of discretion for the trial court to find that equity prevented Ray, and now the Estate, from demanding reimbursement from Beverly, regardless of her limited knowledge of the potential taxes due on the boats. The decision of the trial court is affirmed.

FACTS AND PROCEDURAL HISTORY

{¶4} Ray and Beverly Starr were married on November 17, 1963, and had three children, Ray Starr, Jr., Todd Starr, and Scott Starr. Ray was the owner of the limited liability corporations, Player Wire Wheels, Ltd., and Fountain Valley Holdings, Ltd. Ray was also the owner of certain business entities, including RS Motors, Ray's Fashions and Ray's Custom Jewelry.

{¶15} In 2004, Ray purchased two 48-foot Sea Ray watercrafts from Marinemax of Ohio, Inc. through his business entity, RS Motors. Because the boats were purchased with RS Motors' dealer permit, Ray did not pay sales tax at the time of purchase.

{¶16} On June 30, 2005, Ray and Beverly filed a Petition for Dissolution of Marriage and Separation Agreement with the Mahoning County Court of Common Pleas Division of Domestic Relations. The trial court granted the motion and entered a Decree of Dissolution on August 4, 2005. In their separation agreement, the parties included the following language:

{¶17} "Article 3: Division of Property:

{¶18} "C: Boats

{¶19} * * *

{¶10} "2. Wife shall be the owner of the following boats, free and clear of any and all claims of husband and she will transfer them to R.J. Starr and Todd Starr or their nominees within 30 days; to wit;

{¶11} "a. 48 Foot Sea Ray, Serial No: 480DBSERP60221304.

{¶12} "b. 48 Foot Sea Ray, Serial No: 480DBSERP6070K304.

{¶13} * * *

{¶14} "Article 5: Tax Matters:

{¶15} * * *

{¶16} "B. Wife acknowledges that any monies or personal property that she receives from husband pursuant to the terms of the property settlement may be subject to state and federal tax. Wife acknowledges that if there is any tax due on the money or personal property transferred to her by husband, she is responsible to pay the tax and the husband has no duty or obligation to reimburse her."

{¶17} In 2007, the Ohio Department of Taxation (ODT) conducted an audit of various boats purchased by RS Motors, two of which are the boats at issue in this appeal. The ODT noted that the titles for the two boats were transferred from the name of RS Motors into the names of Ray Starr, Jr. and Todd Starr with the designation of "gift" on the titles. As the gift transfer indicated that the boats were for personal use rather than

inventory, the ODT commanded Ray to pay the use tax on both boats. On November 9, 2007, Ray's company Player Wire Wheels made a tax payment of \$184,869.91, \$104,860.52 of which was payment for the taxes on the two boats in question.

{¶18} On December 17, 2007, Ray filed a Motion to Show Cause, arguing that Beverly was required to reimburse Ray for the taxes on the boats pursuant to Article 5 of their separation agreement. Beverly's response argued that Ray should have paid tax at the time of purchase of the boats, and indicated that the transfer contemplated by the separation agreement would not have been subject to sales tax because the titles were to be transferred from Ray (i.e., not RS Motors) to Beverly. Magistrate Donald Hepfner held a hearing on the merits on April 28, 2008, at which both parties testified.

{¶19} Charles E. Dunlap represented Ray during his divorce from Beverly. Dunlap testified that Ray did not want to transfer the boats to Beverly because of the tax consequences. Dunlap did not know if RS Motors was actually registered as a legal entity, whether it was "real or fictitious," or if it had a tax identification number. Dunlap stated that he discussed the tax liability consequences of the boat transfers with Beverly's attorney, James Wilsman. However, Dunlap had no correspondence or other documentation to demonstrate what he had discussed with Beverly's attorney. Dunlap personally notarized Ray's signature on the titles for the two boats, and no one wrote the word "gift" on the titles at that time. The transferee's name was left blank on both titles. Ray was irritated with Dunlap for having him transfer open titles, but Dunlap assured Ray that he would not have the tax liability either way. Dunlap could not recall when exactly he rendered possession of the open titles to Beverly.

{¶20} Dunlap testified that there was a concern that once the boats transferred out of the dealer's name, the deferred sales tax would be assessed. There was also a concern that Ray's two sons would have to pay income tax on the boats, because Ray purchased the boats as a bonus for the sons for their work at Ray's business, Player Wire Wheels. Dunlap testified that the transfer of personal property pursuant to a divorce decree is exempt from taxation. Dunlap identified the two boats as personal property in the settlement agreement, but he was not aware of Ray's additional business entities at the time of the divorce proceedings.

{¶21} Ray Starr, Sr. testified that when he executed the transfer of the boat titles, he intended to indicate Beverly as the transferee, but Dunlap told him to leave the titles open. Ray was assured that the terms of the separation agreement would protect him from tax liability for the boats. Ray left the titles with Dunlap to hand over to Beverly, and Ray was not present when Dunlap did so. Ray did not find out until 2007 that the titles had been transferred directly to the sons and designated as gifts. Ray testified that the total tax liability of \$184,869.91 included taxes for two boats in addition to the boats given to his sons, and that there were many other boats included in the audit.

{¶22} Ray did not write "gift" on the titles, and believed that the transaction would have been fine if such designation had not been made. Ray believed that the separation agreement obligated Beverly to pay the sales tax on the boats once she gave them to the boys, and that she lied to "jump title" and designated the boats as a gift from Ray. Ray was not sure if Beverly would have to pay sales taxes if she had kept the boats, but knew she would have to pay them if she transferred the boats to another party. Ray wanted the separation agreement to require Beverly to transfer the boats within thirty days because he thought "she was going to do something shaky." Ray testified that he created the entity RS Motors and obtained a vendor's license. Ray obtained the license fifteen or twenty years ago, because he had purchased eight boats within five years. He testified that he would buy boats without paying sales tax by using his vendor license. Ray would then personally use the boats for an unspecified amount of time without paying use tax, and then pay the tax due on the boats once he sold them. Ray denied that he obtained the dealer's license for the purpose of evading taxes. He stated that he kept some records for RS Motors with the office of Player Wire Wheel, but did not submit any records to the court. Ray testified that RS Motors no longer exists, but that he still holds the dealer permit under the name "Claire" through Player Wire Wheels.

{¶23} Ray admitted that he had additional business entities, Ray's Fashion and Ray's Custom Jewelry, and used their vendor statuses to receive wholesale prices on items purchased. He stated that there is no sales tax for out of state purchases on such items, and that he did not create Ray's Fashion or Ray's Custom Jewelry in order to evade taxes. Ray testified that over the course of his business career he has created

many such entities to buy wholesale when another party would not sell to Player Wire Wheels.

{¶24} Beverly testified that Ray had bought the two boats in 2004 and promised them to Ray Jr. and Todd, but then did not give them to the boys. The divorce interceded, and Beverly wanted to ensure that Ray kept his promise to give the boats to the boys. Beverly testified that Ray had promised to give the boats to the boys as bonuses for their employment. Beverly did not know that she would be expected to pay sales taxes on the boats. Beverly stated that she would not have agreed to do such a transfer if she had known about the taxes, and only wanted to make sure that the boats would be given to her sons. Beverly testified that she specifically asked her attorney if she would be expected to pay any taxes on the boats, and he informed her that she would not.

{¶25} Beverly testified that Ray's attorney (Dunlap) came to her home to meet with her in order to inspect the house and exchange some items pursuant to the separation agreement. Dunlap brought the boat titles at that time. Beverly's attorney and Ray were not present, but Ray Starr, Jr. and Todd Starr were present at the meeting. When Dunlap presented the boat titles, Beverly instructed him to hand them to her sons, which he did. Beverly testified that Dunlap did not instruct her to first sign the titles into her own name. Beverly did not realize that there would be any problem with giving the boat titles to the boys in that manner. Beverly never had the titles for the boats in her name, but did not intentionally avoid having the titles come into her name. Beverly testified that Ray managed all property and tax issues during their marriage, and that she did not understand such things.

{¶26} In lieu of closing arguments, both parties briefed the issues for the magistrate.

{¶27} On May 29, 2008, the magistrate issued a decision, finding that Beverly was not in contempt, but that she should reimburse Ray for the \$104,860.52 in taxes paid for the two boats. The magistrate found that the issue revolved around the interpretation of the tax portion of the parties' settlement agreement, which stated that Beverly would be responsible for any taxes due on any personal property transferred to her pursuant to the

agreement. The magistrate found that the plain meaning of the word "tax" included the sales or use tax due on the boats, and that Beverly could not avoid responsibility for the tax by claiming that she did not know that taxes were due on the boats. The magistrate further found that Beverly could not avoid liability by claiming that the boats were never titled in her name. The magistrate found that Beverly was aware that the boats being transferred to her were in the name of RS Motors, and thus that she was at least somewhat aware of Ray's dealings with the boats through business entities rather than personally. The magistrate found that burdening Ray with the tax debt would lessen the division of the marital estate and thwart the plain meaning of the parties' separation agreement.

{¶28} Beverly timely filed objections to the magistrate's decision and filed a transcript of the proceedings. Beverly argued, among other things, that Ray's request for reimbursement was being made with unclean hands because he had attempted to defraud the state of Ohio by creating a tax avoidance scheme. Both parties waived appearance before the trial court in its July 29, 2008 hearing on Beverly's objections.

{¶29} On August 25, 2008, the trial court issued a judgment entry reversing the decision of the magistrate. The trial court agreed that "the language of the parties' Separation Agreement provides that [Beverly] agreed to pay any tax due on the property that she acquired in the division of property." However, the trial court concluded that Ray's claims were barred by the doctrine of unclean hands. The trial court noted that Ray would regularly purchase boats using his dealer's license and possess the boats for personal use without paying taxes. The trial court found Ray's license to be suspect, and noted that Ray provided no evidence as to the existence of RS Motors. The trial court further found that there was no evidence presented that Beverly knew how RS Motors operated during the marriage. The trial court held that Ray's Motion to Show Cause was denied in its entirety, and that Beverly would not be obligated to reimburse Ray for the \$104,860.52 in taxes paid.

{¶30} Ray timely appealed the decision of the trial court. On January 12, 2009, the Estate submitted a Suggestion of Death on the Record to this court, stating that Ray had died on September 6, 2008. On February 11, 2009, this court substituted Co-

Administrators Roy Crick and David Starr as parties in place of Ray Starr in this appeal.

ASSIGNMENTS OF ERROR

{¶31} In its sole assignment of error, the Estate asserts:

{¶32} "The trial court's decision is against the manifest weight of the evidence."

{¶33} The Estate has not cited any case law to support its case, except for a general reference to the manifest weight standard of review. The Estate has presented no legal support for its contentions regarding the clean hands doctrine, tax law, or contract law, which is required for its arguments by App.R. 16(A)(7). The Estate appears to rely on the strength of the magistrate's decision rather than refute or point out the weakness of the trial court's decision. However, a claim that the trial court's decision was erroneous "must be based on the actions taken by the trial court itself, rather than the magistrate's findings or proposed decision." *State Farm Mut. Auto Ins. Co. v. Fox*, 182 Ohio App.3d 17, 2009-Ohio-1965, 911 N.E.2d 339, at ¶11. Given that the Estate has not adequately explained its argument or relied upon applicable case law to support its argument, this court could disregard its assignment of error for a lack of briefing. App.R. 12(A)(2); *State v. Watson* (1998), 126 Ohio App.3d 316, 321, 710 N.E.2d 340. However, the Estate does at least mention the clean hands doctrine in the final paragraph of its brief. Therefore, we exercise our discretion to address the merits of the Estate's claim.

{¶34} The Estate argues that the trial court's decision, which modified the magistrate's decision and denied Ray's motion on the doctrine of unclean hands, was against the manifest weight of the evidence. Beverly counters that the trial court's modification of the magistrate's decision is to be reviewed for an abuse of discretion, and that the trial court did not err by deciding the matter on equitable grounds. Beverly's brief also provides arguments against the magistrate's analysis of the terms of the Separation Agreement, which the trial court impliedly adopted in its decision. Because Beverly did not file a cross-appeal to make these challenges, this court will not address the underlying contractual analysis of the tax liability.

{¶35} The burden of proof for the moving party in a civil contempt action is clear and convincing evidence. *Brown v. Executive 200, Inc.* (1980), 64 Ohio St.2d 250, 253, 18 O.O. 3d 446, 416 N.E.2d 610. Once the moving party establishes a prima facie case of contempt by showing evidence of nonpayment according to the terms of a dissolution decree, the burden shifts to the nonmoving party to establish a defense for nonpayment. *Morford v. Morford* (1993), 85 Ohio App.3d 50, 55, 619 N.E.2d 71. The nonmoving party must then prove any defense by a preponderance of the evidence. *Jeffers v. Jeffers*, 7th Dist. No. 07 BE 36, 2008-Ohio-3339, at ¶15. The preponderance of the evidence standard "simply requires the trier of fact 'to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [judge] of the fact's existence.'" (brackets sic) *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal.* (1993), 508 U.S. 602, 622, 124 L.Ed.2d 539, 113 S.Ct. 2264, quoting *In re Winship* (1970), 397 U.S. 358, 371-372, 90 S.Ct. 1068, 25 L.Ed.2d 368.

{¶36} In a civil contempt action, a reviewing court must uphold the trial court's decision absent a showing that the trial court abused its discretion. *Jeffers* at ¶10; *State ex rel. Celebrezze v. Gibbs* (1991), 60 Ohio St.3d 69, 75, 573 N.E.2d 62. Likewise, a trial court's action upon a magistrate's decision is reviewed for abuse of discretion. *Burkart v. Burkart*, 173 Ohio App.3d 252, 2007-Ohio-3992, 878 N.E.2d 41, at ¶20, 28. An abuse of discretion involves more than an error of judgment; it implies that the court's attitude is unreasonable, unconscionable, or arbitrary. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 5 OBR 481, 450 N.E.2d 1140. A presumption of validity and deference to the trial court as an independent fact-finder are embodied in the abuse of discretion standard. *State Farm Mut. Auto Ins. Co.* at ¶11. Thus we must uphold the trial court's denial of Appellant's motion to show cause unless we find that it was an abuse of discretion for the trial court to have applied the equitable doctrine of "unclean hands," and an abuse of discretion to have made the finding that Ray had "unclean hands."

{¶37} R.C. 3105.011 states that a judge in a domestic relations action has "full equitable powers * * * appropriate to the determination of all domestic relations matters."

An equitable defense can be raised against a statutory remedy, and thus the equitable doctrine of unclean hands can be employed as a defense where appropriate in a divorce or separation action. See *Miller v. Miller* (1993), 92 Ohio App.3d 340, 346-347, 635 N.E.2d 384; *Seitz v. Kozma*, 8th Dist No. 86922, 2006-Ohio-3591.

{¶38} "The 'clean hands doctrine' of equity requires that whenever a party takes the initiative to set into motion the judicial machinery to obtain some remedy but has violated good faith by [his] prior-related conduct, the court will deny the remedy." *Bean v. Bean* (1983), 14 Ohio App.3d 358, 363-364, 14 OBR 462, 471 N.E.2d 785. A movant cannot obtain relief on a matter if he is "guilty of reprehensible conduct with respect to the subject matter of the suit." *Marinero v. Major Indoor Soccer League* (1991), 81 Ohio App.3d 42, 45, 610 N.E.2d 450. However, the movant's conduct "must constitute reprehensible, grossly inequitable, or unconscionable conduct, rather than mere negligence, ignorance, or inappropriateness." *Wiley v. Wiley*, 3d Dist. No. 9-06-34, 2007-Ohio-6423, at ¶15. In order to bar a movant's claims, the movant must be at fault in relation to the non-movant and in relation to the matter upon which the movant's claims are based. *Trott v. Trott*, 10th Dist. No. 01AP-852, 2002-Ohio-1077.

{¶39} In *Marinero*, the trial court noted that Marinero had engaged in reprehensible conduct by taking bribes to purposefully lose soccer games. *Marinero* at 45. The trial court found that Marinero's unclean hands would bar him from enjoining the soccer league from suspending him, even if the suspension had been imposed in a manner that contravened a collective bargaining agreement. *Id.* Similarly, it appears that Ray tarnished his hands by making misrepresentations to the Ohio Department of Taxation, and that the trial court had the discretion to refuse to pass the penalty for Ray's misfeasance to Beverly, even if it was within the subject matter of their separation agreement.

{¶40} As for the Estate's claim that the trial court's finding of unclean hands is somehow trumped by Beverly's understanding and obligation to the terms of the separation agreement, there does not appear to be any rule that the non-moving party must be in complete ignorance of the movant's misfeasance in order for the unclean

hands defense to be applicable. Moreover, the trial court found that Beverly did not have knowledge of Ray's tax-avoidance scheme, even though she did have knowledge of the tax consequences of the separation agreement terms.

{¶41} As an additional argument, the Estate asserts that Beverly should not be able to escape liability for the taxes due to the fact that she did not follow the letter of the separation agreement and directly transferred the boat titles to her sons rather than first into her own name. However, Ray could be accused of the same conduct: he listed the boats as personal property rather than business property in the separation agreement, he did not mention the entity RS Motors or its status in the separation agreement, and rather than transferring the titles from his own name to Beverly, he transferred the titles directly from RS motors.

{¶42} If Ray had merely neglected to pay back taxes on property prior to its transfer to Beverly, the terms of the separation agreement would require Beverly to pay the delinquent taxes and the doctrine of unclean hands would not apply. See, e.g., *Shelar v. Shelar* (May 10, 1996), 6th Dist. No. L-95-190. However, Ray's fraudulent behavior in causing the delinquent taxes could constitute the type of reprehensible conduct envisioned by the equitable doctrine. Whether Ray's tax avoidance scheme rose to the level of truly "reprehensible, grossly inequitable, or unconscionable conduct" may be a gray issue, but is ultimately a finding within the discretion of the trial court. Given this court's standard of review, and the trial court's broad discretion to fashion equitable remedies in this kind of matter, the trial court's decision was not an abuse of discretion.

{¶43} The trial court did not abuse its discretion in finding that Ray's unclean hands left him undeserving of the benefit of a contempt holding. Accordingly, the Estate's sole assignment of error is meritless, and the decision of the trial court is affirmed.

Donofrio, J., concurs.

Waite, J., concurs.