

[Cite as *In re Contempt of Saghafi*, 2019-Ohio-1363.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107173

**IN RE: CONTEMPT OF
MEHDI SAGHAFI**

In the matter styled: *Fourough Bakhtiar v. Mehdi Saghafi*

[Appeal by Mehdi Saghafi]

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-13-346931

BEFORE: Keough, J., Jones, P.J., and Sheehan, J.

RELEASED AND JOURNALIZED: April 11, 2019

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KATHLEEN ANN KEOUGH, J.:

{¶1} Defendant-appellant, Mehdi Saghafi (“Husband”), appeals from the trial court’s judgment finding husband in contempt, and ordering him to pay a fine and attorney fees. For the reasons that follow, we affirm.

{¶2} In October 2015, husband and plaintiff-appellee, Fourough Bakhtiar (“Wife”) were granted a divorce. In the divorce decree, Wife was awarded a marital portion of various retirement accounts owned by husband under the guise of “Mehdi Saghafi, M.D., Inc.” Husband appealed the divorce decree but did not challenge the division of marital property. *See Bakhtiar v. Saghafi*, 2016-Ohio-8052, 75 N.E.3d 80 (8th Dist.). This court affirmed the divorce decree. *Id.*

{¶3} In May 2016, the trial court approved qualified domestic relations orders (“QDROs”) by which a division of certain ERISA-qualified retirement accounts could be effectuated. In February 2017, Zachary Simonoff (“Simonoff”), guardian for wife, filed a motion to show cause against both Husband and “Mehdi Saghafi, M.D., Inc.” for alleged noncompliance with Simonoff’s efforts to divide the retirement accounts, specifically ERISA-qualified retirement accounts with Franklin Templeton.

{¶4} A magistrate conducted an evidentiary hearing on Simonoff’s motion, and the magistrate subsequently issued a written decision finding Husband in contempt of court and ordering him to pay Wife’s attorney fees. Both Husband and Wife filed timely objections to the magistrate’s decision. Husband contended that the magistrate erred in finding that (1) Husband owed a duty to cooperate with Wife’s efforts to divide the subject retirement accounts; (2) Simonoff sought Husband’s cooperation to divide the retirement accounts; (3) Husband was liable for attorney fees; and (4) the domestic relations court lacked personal jurisdiction over Wife. Wife also objected to the magistrate declining to impose a jail sentence on Husband for contempt.

{¶5} The trial court issued a judgment entry adopting the magistrate’s decision finding Husband in contempt and ordering him to pay attorney fees. However, the trial court modified the magistrate’s decision by also imposing a fine of \$100 per day until Husband complied with Simonoff’s efforts to divide the retirement accounts.

{¶6} Husband now appeals, raising four assignments of error that will be addressed together where appropriate.

I. Finding of Contempt

{¶7} In his first, second, and third assignments of error, Husband contends that the trial court abused its discretion in finding him in contempt. Specifically, he contends that the trial court erroneously determined that (1) Husband and “Mehdi Saghafi, M.D., Inc.” owed a duty to Wife to cooperate with her efforts to divide the subject retirement accounts; and (2) Wife sought the cooperation of Husband and “Mehdi Saghafi, M.D., Inc.” in her efforts to divide the subject retirement accounts.

{¶8} “Contempt is a disregard of, or disobedience to, an order or command of judicial authority.” *First Bank v. Mascrete, Inc.*, 125 Ohio App.3d 257, 263, 708 N.E.2d 262 (4th Dist.1998). 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). “Abuse of discretion” is a term of art, describing a judgment neither comporting with the record, nor reason. *See State v. Ferranto*, 112 Ohio St. 667, 676-678, 148 N.E. 362 (1925).

{¶9} In this case, Sections 12 and 14 of the parties’ QDROs expressly incorporate the mandatory language of Loc.R. 28(F)(2)(a) and (b) of the Court of Common Pleas of Cuyahoga County, Domestic Relations Division. Section 12 vests the domestic relations court with continuing jurisdiction to enter orders that are necessary to enforce the assignments of benefits under the QDROs “in the event that the participant fails to comply with the provisions of this order.” Additionally, Section 14 of each QDRO states that

The participant shall not take actions, affirmative or otherwise, that can circumvent the terms and provisions of the [QDRO] or Division of Property Order, or that may diminish or extinguish the rights and entitlements of the non-participant.

Accordingly, based on the language in the QDROs and Loc.R. 28, Husband, as the participant, had an absolute duty to cooperate with Simonoff’s efforts to divide the ERISA-qualified retirement accounts and transfer those benefits to Wife. *See, e.g., Ockunzzi v. Smith*, 8th Dist.

Cuyahoga No. 102347, 2015-Ohio-2708 (noting that the participant of a subject account is obligated to prepare a QDRO or cooperate with the efforts of the nonparticipant or alternate payee to obtain a QDRO).

{¶10} Additionally, the evidence supports the trial court’s decision that Husband was on notice that Simonoff sought his cooperation in transferring those ERISA-qualified funds. Simonoff testified that Franklin Templeton would not divide the ERISA-qualified funds unless the plan administrator (Husband) qualified the QDROs. He further stated that his attorney communicated this need to Husband’s attorney. Although Husband testified that he “[did] not recall” receiving a request to act on the QDROs, Husband was clearly on notice prior to the hearing that Simonoff sought Husband’s cooperation. In fact, Simonoff testified that he believed Husband would qualify the QDROs “until about 3:15 today, he changed his mind, and now we are here for hearing.” (Tr. 7-8.)

{¶11} Accordingly because Husband owed a duty to cooperate with Simonoff’s efforts to divide the retirement accounts, and Husband failed to cooperate with Simonoff when requested to do so, the trial court did not abuse its discretion in finding Husband in contempt for violating the court order. Husband’s first, second, and third assignments of error are overruled.

II. Attorney Fees

{¶12} In his fourth assignment of error, Husband contends that the trial court erroneously determined that he is liable for Wife’s attorney fees because the trial court did not receive any evidence of the parties’ incomes or expenses as mandated by Loc.R. 21.

{¶13} “Evidence of the parties’ ability to pay, however, is not required when awarding attorney’s fees incurred for bringing a contempt motion.” *Sagan v. Tobin*, 8th Dist. Cuyahoga

No. 86792, 2006-Ohio-2602, ¶ 52, citing *Villa v. Villa*, 8th Dist. Cuyahoga No. 72709, 1998 Ohio App. LEXIS 2171 (May 14, 1998).

{¶14} In *Villa*, this court explained:

Neither the common law nor R.C. 3105.18(G) require that the Wife's ability to pay be considered. * * * The attorney fees are not additional support, but a cost incurred in the contempt action. It would be unfair to require appellee to expend her own funds to enforce [a court order] when appellant wilfully failed to comply.

Id. at *5.

{¶15} In this case, the attorney fees requested were incurred as a result of Simonoff's attempt to get Husband to cooperate in the division of specific retirement accounts. When his efforts were unsuccessful, Simonoff brought the contempt action against Husband. The trial court found that the award of attorney fees was a result of Husband's "contumacious conduct." We find no abuse of discretion in this conclusion.

{¶16} Accordingly, the trial court did not err in adopting the magistrate's decision that ordered Husband to pay Wife's attorney fees incurred in the contempt action. The fourth assignment of error is overruled.

{¶17} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, JUDGE

LARRY A. JONES, SR., P.J., and
MICHELLE J. SHEEHAN, J., CONCUR