

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

DAVID KING

C.A. No. 10CA0009-M

Appellant

v.

LAURA J. KING, nka CRAIG

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE Nos. 02DR0949
 02DR0958

Appellee

DECISION AND JOURNAL ENTRY

Dated: February 7, 2011

BELFANCE, Judge.

{¶1} Appellant David C. King appeals the decision of the Medina County Court of Common Pleas, Domestic Relations Division, finding him in contempt and ordering him to serve thirty days in jail. For the reasons set forth below, we affirm.

I.

{¶2} This case has a long and voluminous procedural history, which we will only briefly summarize. Mr. King married Laura King, nka Craig in 1995. The parties had two children born of the marriage, C.K. born March 16, 1997 and E.K. born November 1, 1998. In 2002, both parties separately filed complaints for divorce, which were subsequently consolidated. A divorce decree was filed on March 9, 2004 and included a separation agreement and a plan for shared parenting. Husband was ordered to pay spousal and child support.

{¶3} Numerous post-decree motions were filed, including motions by Mr. King to terminate the shared parenting plan, allocate parental rights and responsibilities, and terminate

child and spousal support. Relevant to the current appeal, on February 20, 2008, the Medina County Child Support Enforcement Agency (“CSEA”) filed a motion pursuant to R.C. 2705.031 alleging that Mr. King should be held in contempt for failure to pay child support. The motion included language that Mr. King’s failure to appear at the hearing could result in arrest, and included possible penalties Mr. King faced if he was found in contempt. The instructions for service requested that Mr. King be served and that the clerk use the “SUMMONS ON PLAINTIFF- OBLIGOR[.]” Thereafter, on June 5, 2008, the trial court issued a summons and order to appear stating that on June 18, 2008, Mr. King was to appear “to show cause why he should not be found in contempt for failure to comply with a Court Order.” The summons included in all capital letters the notice required by R.C. 2705.031(C). The summons and notice were personally served upon Mr. King on June 5, 2008.

{¶4} On June 13, 2008, Mr. King, through his newly retained counsel, filed a motion to continue the contempt hearing, which the trial court granted. After other matters in the case were appealed to this Court and dismissed for lack of a final appealable order, in April 2009, the trial court judge recused herself. Subsequently, a visiting judge was appointed and proceedings were conducted in Wayne County. On April 29, 2009, Mr. King filed a motion for an “expedited hearing[] on all pending motions[,]” and noted that several motions had been pending “for a considerable period of time.” The trial court thereafter issued two orders indicating that a hearing on all pending motions was scheduled for September 11, 2009.

{¶5} On September 11, 2009, over objection by Mr. King’s attorney on due process grounds, a hearing on CSEA’s contempt motion was held. On January 12, 2010, the trial court issued an entry finding Mr. King in contempt and ordering him to serve thirty days in jail. There

were no purge conditions in the entry. Mr. King has appealed from this decision, raising two assignments of error for our review.

II.

ASSIGNMENT OF ERROR II

“THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY SENTENCING THE PLAINTIFF-HUSBAND TO A JAIL TERM OF THIRTY DAYS WITHOUT PROVIDING HIM WITH A MEANINGFUL OPPORTUNITY TO PURGE THE CONTEMPT.”

{¶6} In Mr. King’s second assignment of error he asserts that the trial court erred because it did not provide him the opportunity to purge the contempt. We disagree.

{¶7} Mr. King asserts that the trial court erred by not allowing him to purge the contempt finding because the contempt was civil in nature. Mr. King is correct that a finding of civil contempt is accompanied by purge conditions. See *Duffield v. Duffield* (Sept. 12, 2001), 9th Dist. No. 01CA0002, at *2 (“Punishment imposed upon an adjudication of civil contempt must afford the contemnor an opportunity to purge himself of contempt.”). However, we are not convinced that Mr. King was held in *civil* contempt.

“Although contempt proceedings are neither civil nor criminal, we must classify the sanctions ordered by the trial court as either ‘civil’ or ‘criminal’ to determine whether it provided due process. The distinction between civil and criminal contempt is based on the character and purpose of the contempt sanctions. If sanctions are primarily designed to benefit the complainant through remedial or coercive means, then the contempt proceeding is civil.” (Internal quotations and citations omitted.) *Harvey v. Harvey*, 9th Dist. Nos. 09CA0052, 09CA0054, 2010-Ohio-4170, at ¶5.

“Criminal contempt, on the other hand, is usually characterized by an unconditional prison sentence or fine. Its sanctions are punitive in nature, designed to vindicate the authority of the court.” (Internal quotations and citations omitted.) *Id.*

{¶8} Here, the trial court’s intention appears to be to *punish* Mr. King for his failure to pay child support. The trial court found that:

“[w]ith the exception of the one time negotiated payment of \$10,000.00, he has done nothing to support his children; his attitude is one of arrogance and contempt for the court. Although he has not worked for the past several years he has substantial funds from which he could make some payment of support.”

Thus, the trial court’s decision to not include purge conditions does not appear to be accidental. The purpose of the contempt sanction was clearly punitive in nature. Mr. King has failed to provide this Court with any argument addressing why the trial court could not hold him in criminal contempt or how the evidence was insufficient to establish criminal contempt. See App.R. 16(A)(7). Therefore, we overrule Mr. King’s second assignment of error.

ASSIGNMENT OF ERROR I

“THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY FAILING TO COMPLY WITH THE NOTICE REQUIREMENTS OF R.C. 2705.031(C) AND, THUS, VIOLATED THE CONSTITUTIONAL DUE PROCESS RIGHTS OF PLAINTIFF-HUSBAND BY HOLDING A CONTEMPT HEARING WHERE IT FOUND PLAINTIFF-HUSBAND TO BE IN CONTEMPT OF THE COURT’S CHILD SUPPORT ORDER AND SENTENCED HIM TO A THIRTY-DAY JAIL TERM.”

{¶9} Mr. King asserts in his first assignment of error that the trial court violated his constitutional due process rights by not complying with the notice requirements of R.C. 2705.031(C) concerning the scheduling of the hearing and the penalties he faced. Essentially, Mr. King seems to argue, that while he knew about the hearing, he did not know it would be a contempt hearing and did not know what penalties he faced.

“To be found guilty of criminal contempt, a defendant must be found guilty beyond a reasonable doubt. The finding must be based upon sworn testimony, not an informal discussion of which there is no record. In addition, he has the right to be present at the contempt hearing and to present witnesses. He also has the right to testify and to be represented by counsel. The charges against him must be proven beyond a reasonable doubt. Finally, the defendant has a right to proper notice of the hearing.” (Internal quotations and citations omitted.) *Doerfler v. Doerfler*, 9th Dist. No. 06CA0021, 2006-Ohio-6960, at ¶18.

{¶10} Mr. King only challenges that he did not receive proper notice.

{¶11} R.C. 2705.031(C) provides that:

“In any contempt action initiated pursuant to division (B) of this section, the accused shall appear upon the summons and order to appear that is issued by the court. The summons shall include all of the following:

“(1) Notice that failure to appear may result in the issuance of an order of arrest, and in cases involving alleged failure to pay support, the issuance of an order for the payment of support by withholding an amount from the personal earnings of the accused or by withholding or deducting an amount from some other asset of the accused;

“(2) Notice that the accused has a right to counsel, and that if indigent, the accused must apply for a public defender or court appointed counsel within three business days after receipt of the summons;

“(3) Notice that the court may refuse to grant a continuance at the time of the hearing for the purpose of the accused obtaining counsel, if the accused fails to make a good faith effort to retain counsel or to obtain a public defender;

“(4) Notice of the potential penalties that could be imposed upon the accused, if the accused is found guilty of contempt for failure to pay support or for a failure to comply with, or an interference with, a parenting time or visitation order or decree.”

{¶12} As noted above, Mr. King was provided with the notice required by R.C. 2705.031(C); CSEA’s show cause motion contained the requisite notice and the original trial judge’s 2008 summons also contained this notice, along with the date and time of the hearing. The summons was personally served upon Mr. King that same day. While it is true that the contempt hearing was postponed, Mr. King has not cited to any authority indicating that the trial court is required to reissue a summons containing the R.C. 2705.031(C) notice in order to be in compliance with the statute. It is thus clear that Mr. King had notice of the penalties he faced if found in contempt.

{¶13} In addition, we conclude the trial court provided Mr. King with adequate notice concerning the date and time of the hearing, as well as the anticipated content of the hearing. We

begin by noting that on April 29, 2009, Mr. King filed a motion in the trial court requesting that the court schedule an “expedited hearing[] on all pending motions.” Mr. King noted that there were “several motions which have been pending for a considerable period of time.”

{¶14} On June 18, 2009, the trial court issued an order discussing a prior status conference. The court stated that the assistant prosecuting attorney “was not present but represents [CSEA] which has pending motions.” In addition, the trial court noted there was a hearing scheduled for June 19, 2009, and a “hearing on all pending motions [] scheduled for September 11, 2009 at 9:00 A[.]M.” The trial court stated on the record at the June 19, 2009 hearing, at which Mr. King was present, that “we scheduled a final hearing on all pending motions for September 11th to take place here at the courthouse.” Finally on July 7, 2009, the trial court issued an additional order reporting on the June 19, 2009 hearing. Again, the trial court reiterated that there was “a final hearing on all pending motions on September 11, 2009.” Thus, we cannot say that Mr. King was deprived of notice of the hearing or notice of the penalties he faced if found in contempt.

{¶15} We also observe that Mr. King was present at the September 2009 hearing and was represented by counsel. It is evident from the preceding hearing in June 2009 that nonpayment of child support was a central issue. At the June hearing, there were discussions concerning Mr. King’s assets and his failure to pay child support. Furthermore, at the June hearing, the trial court expressly stated that as a result of a prior hearing in May 2009, a final hearing had been scheduled on all pending motions in September 2009.

{¶16} At the September 2009 hearing, Mr. King’s counsel was prepared to go forward on multiple matters stemming from motions he filed beginning in 2008--the same time period when the contempt summons was issued. Mr. King’s motions included his own motion for

contempt filed in January 2009. From the September 2009 transcript, it is evident that Mr. King's counsel had discussions prior to the hearing with both counsel for CSEA and with Ms. Craig's counsel. The record indicates that Mr. King's counsel and Ms. Craig's counsel agreed to stipulate that a records custodian would not be needed to authenticate the child support documents. Further, the presence of counsel for CSEA at the hearing also supports the conclusion that the parties were aware that the contempt motion was ripe for determination. Although Mr. King wished to proceed on all of his motions filed beginning in 2008, including his own contempt motion, and appeared willing to proceed with certain matters pertaining to CSEA, he objected to proceeding with CSEA's contempt motion on due process grounds. However, his counsel did not indicate any reason why he could not proceed and how Mr. King's due process rights were adversely affected by going forward with the hearing. Based on the record before us, we cannot say that the trial court erred in going forward with the hearing. In light of the above, we overrule Mr. King's first assignment of error.

III.

{¶17} In light of the foregoing, we overrule Mr. King's assignments of error and affirm the judgment of the Medina County Court of Common Pleas, Domestic Relations Division.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

EVE V. BELFANCE
FOR THE COURT

DICKINSON, P. J.
WHITMORE, J.
CONCUR

APPEARANCES:

JOSEPH F. SALZGEBER, Attorney at Law, for Appellant.

DEAN HOLMAN, Prosecuting Attorney, and DAVID V. HITSMAN, Assistant Prosecuting Attorney, for Appellee.

PETER T. CAHOON, Attorney at Law, for Appellee.