[Cite as *Slabe v. Slabe*, 2026-Ohio-3295.]

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY

KIMBERLY SLABE, Plaintiff-Appellee, - vs - BRENDAN SLABE, et al., Defendant-Appellant.	**CASE NO. 2025-L-147** Civil Appeal from the Court of Common Pleas, Domestic Relations Division Trial Court No. 2021 DR 000508

OPINION AND JUDGMENT ENTRY

Decided: August 24, 2026
Judgment: Affirmed

Joseph G. Stafford and *Kelley R. Tauring*, Stafford Cruz Law Co., L.P.A., North Point Tower, 1001 Lakeside Avenue, Suite 1300, Cleveland, OH 44114 (For Plaintiff-Appellee).

Brian A. Murray, *Larry W. Zukerman*, and *Morgan E. Helgreen*, Zukerman, Lear, Murray & Brown, Co., L.P.A., 3912 Prospect Avenue East, Cleveland, OH 44115 (For Defendant-Appellant).

MATT LYNCH, P.J.

{¶1} Appellant, Brendan Slabe ("Husband"), appeals the decisions of the Lake County Court of Common Pleas, Domestic Relations Division, finding him in contempt of court for the third, fourth, and fifth times, imposing a fine for each offense, and ordering him to pay attorney fees and litigation expenses to counsel for appellee, Kimberly Slabe ("Wife"). Finding no reversible error, we affirm the trial court's judgment.

{¶2} The underlying matter was initiated on September 9, 2021, when Wife filed a complaint for divorce after 23 years of marriage; Husband filed a counterclaim for divorce on December 7, 2021. Husband's family's business, Slabe Machine Products, LLC ("SMP"), and others were named as third-party defendants in the action.

{¶3} On March 11, 2022, the trial court's magistrate issued an order granting Wife's motions for temporary spousal support, ordering Husband to pay Wife $3,500.00 per month plus other bills and expenses, effective January 1, 2022, until further order of the court.

{¶4} On July 12, 2024, the day after a five-day divorce trial, the trial court prospectively ordered Husband to pay an increased amount of temporary spousal support, beginning August 1, 2024, in the amount of $7,000.00 per month through Lake County Child Support Enforcement Agency ("CSEA") via wage attachment or by direct payments to the state agency "[a]t any time after this support order is in effect, if obligor's wages have not yet been attached." The court also issued a contempt order, which Husband later purged, for his failure to pay certain expenses as required by the court's temporary orders.

{¶5} On October 2, 2024, in the final divorce decree, the court ordered Husband to pay spousal support in the amount of $7,500.00 per month to CSEA, effective October 1, 2024, and subject to the court's continuing jurisdiction. The court also ordered Husband to pay Wife an additional $4,000.00 per month, retroactively from April 22, 2022, through September 24, 2024, in a lump-sum judgment of $116,000.00 plus interest at the statutory rate.

{¶6} Husband and Wife each appealed the final divorce decree. On October 14, 2025, in *Slabe v. Slabe*, 2025-Ohio-4722 (11th Dist.), we issued an opinion affirming in part, reversing in part, and remanding the trial court's judgment. Relevant to the instant appeal, we remanded the trial court's final spousal support order for further consideration and findings of fact regarding Husband's sources of income, *id*. at ¶ 91, and vacated the trial court's retroactive modification of the temporary spousal support order, *id*. at ¶ 100. Prior to August 1, 2024, the enforceable amount of temporary spousal support was $3,500.00 per month; thereafter, the enforceable amount was $7,500.00 per month. *Id*.

{¶7} While these direct appeals were pending in this court, Wife filed in the trial court a Motion to Show Cause/Motion for Attorney Fees and Litigation Expenses on October 28, 2024, December 18, 2024, and January 7, 2025. Each motion requested the court to order Husband to appear and show cause why he should not be held in contempt of court for his failure to pay spousal support and his arrearages in compliance with the court's July 12, 2024 judgment entry and the October 2, 2024 final divorce decree. Wife also requested reimbursement of her attorney fees and expenses incurred in the matter.

{¶8} On January 14, 2025, Wife filed a Motion for Issuance of Orders to Appear and Show Cause and a Motion for Attorney Fees and Litigation Expenses, accompanied by her attorney's affidavit and fee statement. On January 28, 2025, Husband filed a brief in opposition to the Wife's Motion for Attorney Fees and Litigation Expenses, arguing the motion was inappropriate in light of the pending appeals. Husband claimed the trial court did not have jurisdiction to address the motion for fees because the underlying divorce decree, including issues of spousal support, was pending before this court on appeal.

{¶9} On February 10, 2025, the trial court held a trial on Wife's Motions to Show Cause. Before testimony commenced, the trial judge advised Husband of the possible fines and jail terms for multiple contempt findings and of his rights to an attorney, to question witnesses who appear against him, to compel witnesses to appear on his behalf, and to appeal any decision the court makes. The court asked if Husband wished to have a trial on the motions or if he was prepared to extinguish his arrears; Husband chose to proceed with the trial. The court indicated during trial that the burden of proof was "clear and convincing evidence."

{¶10} The parties stipulated to a certified copy of Husband's spousal support charges and payments administered through CSEA, which reflected that the last spousal support payment Husband made to Wife was on October 17, 2024, and the past unpaid spousal support balance as of the hearing date, including CSEA processing fees, was $150,790.01.

{¶11} Husband was called to testify on direct examination and as on cross-examination. His relevant testimony is summarized as follows:

> Husband has not paid any spousal support since October 17, 2024.
>
> Husband was employed by SMP when the court issued its divorce decree on October 2, 2024. He was terminated from SMP "without cause" on either October 10 or 17, 2024. His employment agreement with SMP included a noncompete clause that prevents him from working in "this exact field" for a period of 24 months following termination. He is expecting a severance package from SMP; he believes it will begin in March and will be his half salary for two years. He hired an attorney to negotiate the severance package for him.
>
> Husband does not have the ability to pay the spousal support order because he has no wage and no other sources of income. He has been looking for a job and is seeking employment. Husband does not have any

assets available to pay his spousal support arrears. Husband acknowledged "Schwab accounts" that hold the sale proceeds of SMP of around $40 million.

Husband is the trustee and beneficiary of the "Brendon Slabe 2012 Irrevocable Trust," for which his mother was the grantor, and of the "EES Irrevocable 2012 Trustee for Family of Brendon Slabe" Trust, for which his father was the grantor. Husband's understanding is that the trust assets can be spent for the benefit of the beneficiaries, which are lineal descendants of the grantors. The trusts' assets are a certain percentage of SMP stock, which is owned by Oppidum. The trusts include a spendthrift provision, which Husband understands to mean forces the trust to operate exactly to the language of the trust. The language of the trusts states that no individual trustee has the power to distribute any of the assets for the purpose of discharging any legal obligation of the trustee. Husband also identified a declaration of trust agreement for the "Brendan P. Slabe Revocable Children's Trust" dated June 1, 2012, which includes a spendthrift provision.

Wife had previously filed for divorce (and dismissed the complaint) the year before these trusts were created. Husband has never accessed the trusts. The trusts have never distributed any funds for anything other than tax purposes. He does not know how much money is in the trusts. Husband's brother handles the trusts and receives the financial statements. Husband has not reviewed any of the statements.

> Husband lives with and is the caregiver to his 83-year old father, who uses a walker and a wheelchair. In turn, his father "pays for" him. He carries his father's credit card when they go to the grocery store. Husband drives his father's Tesla and Cybertruck; the Range Rover Husband drives is owned by a trust.
>
> Husband has a girlfriend. The weekend before the trial, the couple flew commercial to France "with some business friends." The couple also recently travelled to Las Vegas, Galapagos, Florida, and Italy. Husband's trips were paid for by his father; he was not sure or did not recall who paid for his girlfriend.

{¶12} Three days after the hearing, on February 13, 2025, Husband filed a Notice Regarding Payment of Arrears, submitting that he had submitted a check directly to the state agency in the amount of $150,790.01, reflecting payment of support arrears owed to Wife pursuant to the court's final divorce decree.

{¶13} The trial court did not rule on Wife's Motions to Show Cause until December 10, 2025, which was two months after this court had issued our opinion in the underlying divorce appeals. The trial court found each motion well taken by clear and convincing evidence, as follows:

> The evidence shows the Defendant was employed throughout the divorce yet failed to timely pay monthly spousal support payments pursuant to the temporary order. As a result, this Judge finds the Plaintiff's October 28, 2024 Motion to Show Cause has been proven by clear and convincing evidence. . . .
>
> The Defendant is in contempt of the Court's order filed March 11, 2022. This is the Defendant's third contempt finding in the instant case.

> The Defendant's testimony was overwhelming that he relies on his Father to pay the Defendant's various expenses which includes significant amounts of travel. The Defendant testified he has no income at this time. The Defendant acknowledged he carries one of his Father's credit cards. Since the Defendant relies on his Father to pay the Defendant's various expenses, the Defendant can include his spousal support order as an expense his Father can pay as well.
>
> The evidence shows the Defendant is entitled to interest income from various investments and the two trusts. This Judge finds said income is a source other than employment income from which the Defendant can pay his spousal support. Accordingly, this Judge finds the Plaintiff's December 18, 2024 and January 7, 2025 Motions to Show Cause well taken by clear and convincing evidence.
>
> As a result, this Judge finds the Defendant is in contempt of this Court's Order filed October 2, 2024 as to the Plaintiff's December 18, 2024 motion to show cause and the January 7, 2025 motion to show cause. This is the Defendant's fourth and fifth findings of contempt herein.

{¶14} Citing R.C. 2705.05, the court noted that it could impose either a fine of not more than $1,000.00 or a 90-day term of imprisonment for each of these contempt findings. Taking into consideration that Husband paid his spousal support arrears following the hearing, the court imposed a fine of $1,000.00 for each contempt finding to be paid through the Lake County Clerk of Court no later than December 18, 2025.

{¶15} The trial court found that any future late spousal support payments may be subject to a 90-day jail sentence contingent on the successful prosecution of any pending motions to show cause. The court included the following admonishment:

> Substantial docket time has been allocated to the five Motions to Show Cause litigated through this date, along with attorney preparation time and trial time. Equitable principles do not sanction the games the Defendant has engaged in to deprive his former wife of timely paid spousal support.
>
> The Defendant is a millionaire many times over. Nothing prevents him from accessing one of the trusts for discretionary withdrawal of funds.

{¶16} Finally, as to Wife's request for attorney fees and litigation expenses, the trial court found "not a shred of evidence was admitted during trial" and concluded that such an award was "an impossibility herein." However, in a nunc pro tunc entry issued three hours later, the court said this paragraph was "null and void" and that it had "inadvertently omitted consideration" of Wife's January 14, 2025 Motion for Attorney Fees and Litigation Expenses for the Motions to Show Cause. Said motion was accompanied by an affidavit of Wife's attorney, who averred that the attached itemized fees were proper, reasonable, necessary, and commensurate with other attorneys who practice in Ohio with similar experience and skill. The court stated that Husband did not file a response in opposition to said motion and did not question Wife's counsel as to his statement of fees during the February 10, 2025 trial. The court added $1,000.00 for the trial time on the motions and ordered Husband to pay the sum of $3,548.50 to Wife's attorney for the successful prosecution of the three contempt motions by December 31, 2025.

{¶17} On appeal from this order, Husband assigns six errors for our review. We consider these assignments of error at times out of order and together for ease of discussion.

{¶18} Initially, Husband maintains that we review contempt findings for an abuse of discretion. While we generally review a trial court's ultimate decision on contempt for an abuse of discretion, purely legal questions are reviewed de novo. Thus, to the extent Husband's assignments of error raise distinct legal issues, we review that issue de novo, i.e., independently and without deference to the trial court's decision. To the extent he challenges the discretionary or factual basis for finding him in contempt, we review for an abuse of discretion, i.e., an "unreasonable, arbitrary, or unconscionable" decision. *See Wagoner v. Wagoner*, 2024-Ohio-1000, ¶ 27 (12th Dist.); *see also Does v. Univ. Hospitals Health Sys., Inc.*, 2023-Ohio-2120, fn. 1 (11th Dist.).

{¶19} In his first assignment of error, Husband contends the trial court erred when it applied the wrong standard of proof in finding him in contempt of court; namely, that the court applied the standard of proof for civil contempt yet imposed a criminal contempt sanction. In his fourth assignment of error, Husband argues the trial court abused its discretion in finding him guilty of indirect criminal contempt because Wife failed to prove beyond a reasonable doubt that his failure to pay his spousal support obligations was "willful" or "intentional." Wife responds that the trial court applied the correct standard of proof because the contempt proceedings were civil in nature. Alternatively, she argues that any error in this regard was harmless.

{¶20} Contempt is classified as either direct or indirect. *See Burt v. Dodge*, 65 Ohio St.3d 34, 35-36 (1992). "Direct contempt occurs 'in the presence of or so near the court or judge as to obstruct the administration of justice.' R.C. 2705.01. It may be punished summarily. *Id*." *Burt* at 35, fn. 1. "Indirect contempt occurs outside the court's presence, *In re Gonzalez*, 70 Ohio App.3d 752, 755 (8th Dist.1990), and the alleged contemnor is entitled to a hearing before he may be convicted and punished, R.C. 2705.03." *Id*.

{¶21} "In general, '[p]roceedings in contempt are sui generis in the law. They bear some resemblance to suits in equity, to criminal proceedings and to ordinary civil actions; but they are none of these.'" *Liming v. Damos*, 2012-Ohio-4783, ¶ 11, quoting *Cincinnati v. Cincinnati Dist. Council 51*, 35 Ohio St.2d 197, 201-202 (1973). "Because all contempt involves some type of sanction or punishment, the distinction between civil and criminal contempt is usually based on the purpose to be served by the sanction." *Id.* at ¶ 12, citing *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 554 (2001). "To determine the purpose of the sentencing court, the entire record must be reviewed." *Id*., citing *State v. Kilbane*, 61 Ohio St.2d 201, 206 (1980).

{¶22} "If the sanction is remedial or coercive and for the benefit of the complainant rather than the court, the contempt proceeding is usually classified as civil. Often, civil contempt is characterized by conditional sanctions, i.e., the contemnor is jailed until he or she complies with the court order." *Id*., citing *Brown v. Executive 200, Inc.*, 64 Ohio St.2d 250, 253 (1980). A sanction imposed for civil contempt must afford the contemnor an opportunity to purge the contempt. *In re D.S.S.*, 2020-Ohio-5386, ¶ 14 (11th Dist.).

{¶23} "On the other hand, criminal contempt is usually characterized by unconditional prison terms or fines. The purposes behind the sanction in criminal contempt are primarily to punish the contemnor and to vindicate the authority of the court." *Liming* at ¶ 12, citing *Brown* at 254. A sanction imposed for criminal contempt usually consists of an unconditional fine or period of incarceration as punishment for a past act of disobedience. *D.S.S.* at ¶ 14.

{¶24} There is no dispute that Husband's original contempt sanction, imposed in the July 12, 2024 judgment entry, was civil in nature. Although Husband was sentenced to 10 days in jail for failing to pay certain expenses as required by the court's temporary orders, the trial court suspended that sentence if he complied with several conditions of payment. The sentence was not punitive: Husband was given the opportunity to purge the contempt by making payments, and the payments benefited Wife.

{¶25} Husband contends that the latest contempt sanction is criminal in nature, and we agree. The trial court did not offer any means for Husband to purge the finding of contempt, acknowledged that Husband paid his spousal support arrears three days after the contempt trial, and stated that said payment would be taken into consideration as to an appropriate sentence. The court ordered Husband to pay a fine of $1,000.00 for each of the three contempt findings to the clerk of courts by a date certain. Thus, the sanction imposed on Husband was an unconditional fine, punitive in nature, and designed to vindicate the court's authority; i.e., it was a criminal contempt sanction.

{¶26} "'[T]he standard of proof required in criminal contempt proceedings is proof of guilt beyond a reasonable doubt and a contemnor cannot be given a criminal contempt sanction unless proven guilty beyond a reasonable doubt.'" *D.S.S.* at ¶ 19 (11th Dist.), quoting *Brown*, 64 Ohio St.2d at 252. "Moreover, 'in cases of criminal, indirect contempt, it must be shown that the alleged contemnor intended to defy the court.'" *Id.*, quoting *Midland Steel Prods. Co. v. U.A.W. Local 486*, 61 Ohio St.3d 121, 127 (1991). """In an effort to ascertain an alleged contemnor's intent, the court must consider the totality of the circumstances."'" *Id.*, quoting *Weisgarber v. Weisgarber*, 2016-Ohio-676, ¶ 10 (5th Dist.), quoting *In re West*, 2015-Ohio-1501, ¶ 19 (5th Dist.).

{¶27} Here, the trial court did not make a finding of guilt beyond a reasonable doubt. The court did, however, address the element of intent. This is apparent from the admonitions in the court's entry; to wit: "Equitable principles do not sanction the games the Defendant has engaged in to deprive his former wife of timely paid spousal support," and "The Defendant is a millionaire many times over. Nothing prevents him from accessing one of the trusts for discretionary withdrawal of funds." Accordingly, the court's phrasing that it found Wife's motions proven by "clear and convincing evidence" is harmless error if we determine, upon an independent review of the record, that sufficient evidence existed for the trial court to conclude beyond a reasonable doubt that Husband intentionally defied the court's spousal support order. *See, e.g., Lillo v. Lillo*, 2004-Ohio-4848, ¶ 39 (6th Dist.), citing Crim.R. 52(A) ("Although the trial court phrased its finding in terms of clear and convincing evidence, this court finds that there was sufficient evidence to conclude beyond a reasonable doubt that appellant intended to defy the court in refusing to sign the purchase agreement. Thus, the trial court's phrasing of its finding of clear and convincing evidence was harmless error."); *see also State v. Meredith*, 1986 WL 4373, *2 (6th Dist. Apr. 11, 1986) ("[W]hen the voluntariness of a confession is in issue, a reviewing court is not bound by the trial court's determination of voluntariness[.] . . . If upon an independent review of the record, this court finds that appellant's statements were voluntarily made, then the trial court's incorrect statement of the standard of proof will be considered harmless error.").

{¶28} """An appellate court, when reviewing a trial court's finding of indirect criminal contempt, must determine whether sufficient evidence existed for the trial court to reasonably conclude beyond a reasonable doubt that the contemnor purposely, willfully, or intentionally violated a prior court order."'" *D.S.S*. at ¶ 19, quoting *Weisgarber* at ¶ 10, quoting *West* at ¶ 19. The requisite intent may be proven by circumstantial evidence. *Swayngim v. Swayngim*, 2013-Ohio-2481, ¶ 28 (6th Dist.), citing *State v. Huffman*, 131 Ohio St. 27, 38-39 (1936). "This need not be malicious intent. A person is presumed to intend the natural, reasonable and probable consequences of his or her voluntary acts and intent can be determined from the surrounding facts and circumstances." *In re Sprankle v. Weyand*, 1999 WL 783980, *2 (7th Dist. Sept. 29, 1999), citing *State v. Carter*, 72 Ohio St.3d 545, 554 (1995).

{¶29} Upon our independent review of the record, including the trial transcript, we determine there was sufficient circumstantial evidence for the trial court to conclude beyond a reasonable doubt that Husband's failure to pay his spousal support obligations was intentional. We find Husband's contention to the contrary is disingenuous, given the length of these divorce proceedings, the fact that he has previously been found in contempt for failure to pay certain bills and expenses to Wife's benefit, his complete failure to pay Wife any amount of support for periods of time until threatened with contempt sanctions, and the fact that he paid the delinquent amount in full three days after the trial (and before the finding of contempt was issued) after representing to the court that he did not intend to pay the arrearage.

{¶30} Husband's first and fourth assignments of error are without merit.

{¶31} In his fifth assignment of error, Husband contends the trial court abused its discretion by finding that he failed to prove the affirmative defense of inability to pay his spousal support obligations as a result of the involuntary termination of his employment.

{¶32} "'Once the movant has met his or her burden, the burden shifts to the other party to either rebut the showing of contempt or demonstrate an affirmative defense by a preponderance of the evidence.'" *Slusser v. Supance*, 2023-Ohio-3437, ¶ 17 (10th Dist.), quoting *Wehrle v. Wehrle*, 2013-Ohio-81, ¶ 56 (10th Dist.), citing *Pugh v. Pugh*, 15 Ohio St.3d 136, 140 (1984). "'Impossibility of performance is a valid affirmative defense to a contempt charge.'" *Gauthier v. Gauthier*, 2012-Ohio-3046, ¶ 33 (12th Dist.), quoting *In re Guardianship of Hards*, 2009-Ohio-1002, ¶ 36 (11th Dist.). "Impossibility of performance occurs when an unforeseen event arises that renders a party's performance of an obligation impossible." *Id*. "The performance of the obligation must have been rendered impossible without any fault of the party asserting the defense." *Id*. "'A party must take all reasonable steps within [his or] her power to comply with the court's order and, when raising the defense of impossibility, must show "categorically and in detail" why [he or] she is unable to comply with the court's order.'" *Robinson v. Rummelhoff*, 2014-Ohio-1461, ¶ 35 (10th Dist.), quoting *Briggs v. Moelich*, 2012-Ohio-1049, ¶ 15 (8th Dist.).

{¶33} The trial court found that Husband is entitled to interest income from various investments and trusts, which is a source of income other than employment from which he can pay his spousal support. The record has long supported this finding, at least since the five-day trial was held in the underlying divorce proceedings. It is difficult for this court to believe, as it has been for the trial court, that Husband does not know how much money is in these trusts, that he has never accessed these trusts, that he cannot access these trusts, and that he has never reviewed any of the financial statements for these trusts.

{¶34} Regardless, the trial court discredited Husband's claim that he is involuntarily unemployed. The court noted that Husband was employed throughout the divorce yet failed to timely make monthly spousal support payments pursuant to the temporary order and found it "curious" that he was terminated from his employment eight days after the divorce decree was filed. The court also found that Husband's testimony that he did not know how his girlfriend paid to travel with him was "ridiculous" and "has no credibility whatsoever." We conclude that the trial court's decision regarding Husband's impossibility defense is supported by the record and we discern no abuse of discretion.

Moreover, Husband's argument is undermined by the fact that he paid the spousal support arrearages in full a mere three days after the trial.

{¶35} The fifth assignment of error is without merit.

{¶36} In his second assignment of error, Husband contends the trial court violated his due process rights by imposing criminal contempt sanctions after what appeared to be a civil contempt proceeding. Specifically, Husband maintains that the trial court failed to advise him of his right to have the contempt findings proven beyond a reasonable doubt and failed to advise him of his right against self-incrimination.

{¶37} As explained by the First District Court of Appeals:

> Where, as here, the acts or omissions occur outside the presence of the court, and where confinement is a possible sanction, an accused contemnor has "many of the significant constitutional safeguards required in criminal trials." *Brown*, 64 Ohio St.2d at 212 (1980), quoting *State v. Kilbane*, 61 Ohio St.2d 201, 205 (1980). These rights include reasonable notice before the hearing, the right to reasonable time to prepare a defense, the right to counsel, the right to subpoena and call witnesses, the right to invoke the privilege against self-incrimination (although the contemnor may be called as a witness), the right to an impartial judge, and proof of guilt beyond a reasonable doubt. See Chinnock and Painter, *The Law of Contempt in Ohio*, [34 Toledo L.Rev. 309, at 337-346 (2003)].

In re Estate of Carrier, 2003-Ohio-6919, ¶ 15 (1st Dist.).

{¶38} We have already determined that the court's failure to advise of the "beyond a reasonable doubt" burden of proof was harmless error because there was, in fact, sufficient evidence for the trial court to conclude that Husband was guilty of criminal contempt beyond a reasonable doubt. We decline to address this issue any further here.

{¶39} Alleged violations of the right against self-incrimination are also subject to harmless error review. *State v. Evans*, 2018-Ohio-2534, ¶ 44 (1st Dist.), citing *State v. Harris*, 2015-Ohio-166, ¶ 35-37, and *State v. Arnold*, 2016-Ohio-1595, ¶ 49-52. Crim.R.

52(A) ("Harmless Error") provides that "[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded." "First, it must be determined whether the defendant was prejudiced by the error, i.e., whether the error had an impact on the verdict. Second, it must be determined whether the error was not harmless beyond a reasonable doubt. Lastly, once the prejudicial evidence is excised, the remaining evidence is weighed to determine whether it establishes the defendant's guilt beyond a reasonable doubt." (Internal citations omitted.) *Harris* at ¶ 37.

{¶40} Here, even if Husband's testimony at the contempt trial was prejudicial, meaning that it had an impact on the trial court's contempt findings, the fact of his payment in full three days after the trial and his history of contempt for failure to pay during these proceedings was sufficient to establish his contumacious intent beyond a reasonable doubt. Thus, we conclude that any alleged violation of Husband's right against self-incrimination was also harmless error.

{¶41} The second assignment of error is without merit.

{¶42} In his third assignment of error, Husband argues that there was no valid underlying order or judgment upon which the contempt action could be based because this court had vacated the trial court's retroactive modification of the temporary spousal support order and remanded the trial court's final spousal support order for further consideration and findings of fact.

{¶43} In support of his argument, Husband relies on *Foley v. Foley*, 2006-Ohio-946 (10th Dist.), where the Tenth Appellate District held, "In order for a contempt action to exist, the contempt action must be based upon a valid underlying order or judgment of a court." *Id*. at ¶ 35, citing *Arthur Young & Co. v. Kelly*, 68 Ohio App.3d 287, 295 (10th

Dist.) (to show contempt, it is necessary to establish a valid court order). The *Foley* Court also explained the fate of civil and criminal contempt sanctions when the underlying order or judgment of a trial court is reversed:

> In civil contempt cases where the underlying order or judgment is reversed, the purpose of the punishment may be frustrated because the punishment can no longer operate as to coerce or encourage the contemnor to obey the prior order of the court. In contrast, the purpose of a punishment for criminal contempt would not be frustrated if the underlying order of judgment of a trial court were reversed because the punishment is intended to vindicate the authority of the trial court and punish the contemnor.

Id. *See also Slone v. Slone*, 1998 WL 191840, *2, fn. 4 (4th Dist. Mar. 31, 1998) ("in some contexts authorities hold that a civil contempt cannot survive reversal of the underlying order").

{¶44} In *Foley*, the trial court found the husband in contempt for failure to provide spousal support pursuant to the court's orders and sentenced him to 30 days in jail, suspended on the condition that he liquidate the arrearage with monthly payments and pay the wife's attorney fees. *Id*. at ¶ 10. The Tenth District determined that the contempt sanction was civil in nature. *Id*. at ¶ 34. The court ultimately reversed the divorce decree in its entirety and remanded the case to the trial court for a new trial, thereby "putting the case in a posture where no final judgment has been entered on the claim of either party." *Id*. at ¶ 36. Because the finding of civil contempt was based on the husband's failure to comply with the divorce decree, and the amount of spousal support in that decree was based upon evidence introduced during the original trial, "the purpose of the punishment for the civil contempt [could] no longer be satisfied because the determinations by the trial court with respect to the amount of spousal support may change upon the further litigation of the case on remand." *Id*. Therefore, under the circumstances of that case, the Tenth District vacated the finding of contempt.

{¶45} The case sub judice is distinguishable from *Foley*. First, we did not reverse the underlying divorce decree in its entirety or remand the matter for a new trial. Moreover, we have determined the contempt sanction imposed against Husband was criminal in nature. The purpose of the unconditional fine was to vindicate the trial court's authority for Husband's complete failure to obey its spousal support orders. This purpose is not frustrated even if the amount of spousal support Husband owes under the divorce decree is modified on appeal or on remand. Accordingly, under the circumstances of this case, it is not necessary or appropriate to vacate the findings of contempt.

{¶46} The third assignment of error is without merit.

{¶47} In his sixth and final assignment of error, Husband contends that the trial court abused its discretion and erred as a matter of law when it ordered him to pay Wife's attorney fees incurred for the successful prosecution of her motions to show cause.

{¶48} "The resolution of a request for attorney fees is vested in the sound discretion of the trial court and will not be overturned upon review absent a showing of an abuse of discretion. *Bagnola v. Bagnola*, 2004-Ohio-7286, ¶ 36 (5th Dist.). While the trial court has discretion in determining the amount of attorney fees, the court must base its decision on evidence showing the reasonableness of the time spent on the matter and the hourly rate. *Id*. Where the amount of an attorney's time and work is evident to the trier of fact, an award of attorney fees, even in the absence of specific evidence to support the amount, is not an abuse of discretion. *Hawk v. Hawk*, 2002-Ohio-4384, ¶ 28 (5th Dist.)." *Dotts v. Schaefer*, 2015-Ohio-782, ¶ 17 (5th Dist.).

{¶49} Wife submitted a motion for attorney fees and litigation expenses prior to trial. Attached to the motion was her attorney's affidavit in which he averred that the fees incurred were proper, reasonable, and necessary pursuant to R.C. 3105.73, commensurate with other attorneys with similar experience and skill practicing in the state of Ohio. Wife requested a total of $6,192.16. The court awarded $3,548.50 to be paid by Husband directly to Wife's attorney.

{¶50} Husband first argues that the trial court's statement that he did not object to Wife's underlying motion for attorney fees is "wholly untrue," as he filed a brief in opposition on January 28, 2025. However, Husband's brief in opposition solely argued that the trial court did not have jurisdiction to issue the requested award of attorney fees while the prior appeal was pending in this court. He does not raise this specific argument on appeal, and we find no prejudice as a result of the trial court's misstatement.

{¶51} Husband additionally argues that Wife failed to present any evidence regarding the fees and expenses that she incurred in connection with her motions to show cause, and the self-serving affidavit was not authenticated via her counsel's testimony or otherwise subject to cross-examination. However, the trial court was familiar with the history of this case and the issues raised in the contempt proceedings. The court reviewed the itemized fee statement and considered only those fees and litigation expenses therein which related to the three show cause motions. The court determined that $1,000.00 was a reasonable amount to add to that total for the trial time spent on the matter. We discern no abuse of discretion in this finding.

{¶52} The sixth assignment of error is without merit.

{¶53} The judgment of the Lake County Court of Common Pleas, Domestic Relations Division, is affirmed.

JOHN J. EKLUND, J.,

SCOTT LYNCH, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this court, appellant's assignments of error are without merit. It is the judgment and order of this court that the judgment of the Lake County Court of Common Pleas, Domestic Relations Division, is affirmed.

Costs to be taxed against appellant.

PRESIDING JUDGE MATT LYNCH

JUDGE JOHN J. EKLUND,
concurs

JUDGE SCOTT LYNCH,
concurs

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY

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