

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

JOHN GRAY

Appellant

v.

ANNE GRAY

Appellee

C.A. No. 24CA012169

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 03 DO 061978

DECISION AND JOURNAL ENTRY

Dated: June 30, 2025

CARR, Judge.

{¶1} Plaintiff-Appellant John Gray, D.O. appeals the decision of the Lorain County Court of Common Pleas, Domestic Relations Division. This Court affirms.

I.

{¶2} In January 2004, Dr. Gray and Defendant-Appellee Anne Gray were divorced. The divorce decree incorporated the parties’ separation agreement. The separation agreement provided that Dr. Gray would maintain a life insurance policy with a death benefit of \$1,000,000 and name Ms. Gray the sole beneficiary for 13 years from the journalization of the decree or until Dr. Gray’s support obligation was paid in full. Dr. Gray was to provide child and spousal support for 3 years. In addition, Dr. Gray was to pay directly to Ms. Gray the sum of \$4,000 per month as and for the property division for 13 years beginning January 1, 2004. The separation agreement also included a provision requiring the defaulting party to pay the expenses including attorney fees of the party seeking to enforce a provision of the agreement.

{¶3} In July 2010, Ms. Gray filed a motion seeking to hold Dr. Gray in contempt because Dr. Gray was in arrears on the \$4,000 monthly payments he was to make to Ms. Gray pursuant to the separation agreement. Dr. Gray filed a Civ.R. 60(B) motion seeking to vacate the paragraph related to the \$4,000 monthly payments to Ms. Gray.

{¶4} In December 2010, the trial court issued an entry indicating that the motion for contempt had been settled and the motion to vacate was dismissed. The settlement agreement was attached to the entry and the trial court ordered it into execution. In the settlement agreement, Dr. Gray agreed to resume paying the \$4,000 monthly sum, to make payments towards the arrears, to provide proof of compliance with the life insurance policy provision in the separation agreement, to pay money towards Ms. Gray's attorney fees, and to dismiss his Civ.R. 60(B) motion.

{¶5} In May 2022, Ms. Gray filed another motion to show cause asserting that Dr. Gray failed to continue making the \$4,000 monthly payments and failed to maintain the life insurance policy. Ms. Gray also sought to recover her attorney fees. Dr. Gray then filed another Civ.R. 60(B) motion. Ms. Gray opposed the motion. In February 2023, the trial court denied Dr. Gray's motion to vacate.

{¶6} Ms. Gray's motion to show cause was heard in February 2024, by a magistrate. The magistrate issued a decision on February 27, 2024, which was adopted by the trial court the same day, finding Dr. Gray in contempt and imposing a sentence of 15 days incarceration. Dr. Gray could purge the contempt by paying \$20,000 to Ms. Gray and making arrangements to pay all monies owed to Ms. Gray. The magistrate determined that Dr. Gray had met his obligation as to the maintenance of the insurance policy. Ms. Gray was awarded \$4,200 in attorney fees and it was determined that \$248,400 remained due and owing to Ms. Gray.

{¶7} On March 12, 2024, Dr. Gray filed objections to the magistrate’s decision. In June 2024, after the transcript was filed, Dr. Gray filed supplemental objections. Ms. Gray responded in opposition. A hearing on the objections was held September 5, 2024. On September 26, 2024, the trial court overruled the objections and entered judgment in accordance with the magistrate’s decision.

{¶8} Dr. Gray has appealed, raising three assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

PLAINTIFF JOHN GRAY CANNOT BE IN CONTEMPT OF COURT DUE TO IMPOSSIBILITY OF PERFORMANCE UNDER THE DECREE.

{¶9} Dr. Gray argues in his first assignment of error that the trial court abused its discretion in finding him in contempt as he had demonstrated the defense of impossibility of performance.

{¶10} “Generally, this Court reviews a trial court’s action with respect to a magistrate’s decision for an abuse of discretion.” *In re L.M.W.*, 2020-Ohio-6856, ¶ 9 (9th Dist.), citing *Fields v. Cloyd*, 2008-Ohio-5232, ¶ 9 (9th Dist.). However, “[i]n so doing, we consider the trial court’s action with reference to the nature of the underlying matter.” *Tabatabai v. Tabatabai*, 2009-Ohio-3139, ¶ 18 (9th Dist.).

To establish contempt, the moving party must establish a valid court order, knowledge of the order by the defendant, and a violation of the order. In civil contempt proceedings, a finding of contempt must be premised on clear and convincing evidence. Once the movant proves [a] prima facie case, the contemnor must present evidence of [an] inability to comply with the order or any other available defense. If the trial court determines that there is clear and convincing evidence of a violation, it has discretion as to whether to find the party in contempt.

(Internal quotations and citations omitted.) *Doyle v. St. Clair*, 2024-Ohio-5246, ¶ 9 (9th Dist.).

“The order of the trial court fixing the amount to be paid and a party’s failure to comply with that

order serve as prima facie evidence of contempt.” *Liming v. Damos*, 2012-Ohio-4783, ¶ 20. “A party may utilize contempt proceedings to enforce [a] property settlement provision contained in a separation agreement, which is subsequently incorporated into a divorce decree.” (Internal quotations and citations omitted.) *Romans v. Romans*, 2006-Ohio-6554, ¶ 10 (9th Dist.).

{¶11} “It has long been held that in a contempt proceeding, inability to pay is a defense and the burden of proving the inability is on the party subject to the contempt order.” *Liming* at ¶ 20. “This allocation of the burden of proof is reasonable because the defendant’s financial condition and ability to pay [are] peculiarly within his own knowledge. They could not be known with the same certainty to the complainant, nor could she easily produce evidence to maintain the proposition were the burden of proof placed upon her.” (Internal quotations omitted.) *Reisinger v. Reisinger*, 2019-Ohio-2268, ¶ 19 (9th Dist.), quoting *Liming* at ¶ 20.

{¶12} Dr. Gray does not appear to dispute that he failed to pay the money that was owed to Ms. Gray; instead, he asserts that it was impossible for him to make the payments.

{¶13} At the February 2024 hearing, both Dr. Gray and Ms. Gray testified. Additionally, numerous exhibits were admitted. One of the exhibits detailed all the payments Ms. Gray received from Dr. Gray over the years. The total amount of payments made exceeded \$335,000. Beginning in September 2022, Dr. Gray stopped making payments altogether. Prior to that time, for several years, Dr. Gray only made partial payments to Ms. Gray.

{¶14} At the time of the divorce, Dr. Gray testified that he made somewhere around \$200,000 per year. According to Dr. Gray, around 2010, Medical Mutual and another insurer refused to credential Dr. Gray, which meant he could not be hired as a physician. It also meant that Dr. Gray had to give his practice to Lorain Community Hospital without receiving any reimbursement. After the matter was resolved in his favor, Dr. Gray indicated that it was difficult

for him to find employment. He could only find employment in faraway clinics near Cincinnati and West Virginia. Dr. Gray would commute to these areas but found it impossible to keep doing so long term.

{¶15} Dr. Gray testified to having significant health problems such as stage I heart failure, pulmonary fibrosis, neurological and muscular problems, a tremor, a hernia, and colitis. Dr. Gray's physician provided a letter stating that Dr. Gray had several debilitating diagnoses which made him unemployable as a physician; that letter was admitted into evidence but is not a part of this Court's record.¹ Given all of his medical issues, Dr. Gray opted to not renew his medical license in 2022.

{¶16} In April 2019, Dr. Gray married a "Chinese dissident" who has a teenage daughter. Dr. Gray's wife has a poor understanding of English and could not be employed because of it. In October 2020, Dr. Gray purchased a house in Lorain for \$317,705. There was a mortgage of approximately \$300,000 on the property. It was sold in March 2022 for \$323,500. Dr. Gray testified the house was sold because he and his family were evicted from it because the development was an adult community and that Dr. Gray's stepdaughter could not live there. Dr. Gray maintained that he was told at the time of purchase that it would not be a problem for the stepdaughter to live there. Dr. Gray asserted he received about \$6,000 as proceeds from the sale.

{¶17} At the time of the hearing he, his wife, and his stepdaughter resided in Amherst. Dr. Gray and his wife purchased the home in October 2021 for \$219,000. They purchased it with cash and have no mortgage on the property. This house was placed in a trust in August 2022. Dr. Gray asserts that he and his wife each paid about half of the cost of the house but that his wife put

¹ The record indicates that the original exhibits are missing from the file and copy of them was filed. The copy of the exhibits this Court possesses does not contain all of the exhibits from the hearing, however.

an additional substantial sum of money into refurbishing the home. According to Dr. Gray, his wife sold holdings that she had in China to finance the purchase and refurbishment of the home.

{¶18} Dr. Gray's 2021 income tax return indicates that his income was \$183,520, with \$104,979 being a distribution from his IRA. That \$104,979 went towards the purchase of the Amherst home. Records from Dr. Gray's bank account, which was solely in his name, show a balance of \$146,756.25 as of the end of January 2022. Dr. Gray maintains that much of that money came from China and was his wife's, which he testified was supported by an exhibit; however, the exhibit is not part of this Court's record. At the time of the hearing, Dr. Gray asserted the account only had about \$4,000 in it. Dr. Gray additionally testified that his 2022 income tax return evidences that there was money transferred from China which was used for the Amherst house; however, that tax return is not in this Court's record. There was also testimony concerning a joint bank account of Dr. Gray's and his wife's; however, the records that are mentioned in that testimony are also not part of this Court's record. Additionally, Dr. Gray's 2020 and 2021 tax returns indicate that Dr. Gray and his wife made approximately \$10,000 in gifts to charity, including cash and items, each year.

{¶19} At the time of the hearing, Dr. Gray testified that he only had \$4,000 to \$5,000 in his checking account and lived off of Social Security, which was \$3,100 per month. He maintained that his only other assets were the house and a car.

{¶20} Dr. Gray testified that he paid \$10,000 in attorney fees related to this recent litigation. Ms. Gray testified that her attorney fees were \$4,200. She provided records in support of her assertion.

{¶21} Dr. Gray has failed to demonstrate that the trial court abused its discretion in finding him in contempt. Given the circumstances and the record before this Court, the trial court could

have reasonably concluded that Dr. Gray failed to make a good faith effort to comply with the provision of the separation agreement. *See Musselman v. Musselman*, 2004-Ohio-833, ¶ 22-23 (9th Dist.) (noting that a failure to pay what one is capable of paying evidences lack of a good faith effort to comply with a support order). Dr. Gray was well aware of his responsibility to pay Ms. Gray \$4,000 per month pursuant to the separation agreement. Instead of taking out a mortgage to purchase the house in Amherst, Dr. Gray drained his IRA in order to pay cash for the home. Dr. Gray also indicated that he nearly emptied his other bank account which had over \$145,000 in January 2022. The magistrate was particularly troubled by that large sum of money in Dr. Gray's bank account; money which the magistrate found could have been used to make payments required by the separation agreement. As the trial court adopted the magistrate's decision, it is clear the trial court shared that view. Thus, the record supports that Dr. Gray did in fact contribute to his inability to pay Ms. Gray. In addition, Dr. Gray paid his counsel approximately \$10,000, and he and his wife made substantial contributions to charities in 2020 and 2021. Absent the foregoing, Dr. Gray very well could have made additional payments to Ms. Gray. "[A]n obligor is only excused from making payments when his inability to pay is due to circumstances beyond his own power." (Internal quotations and citation omitted.) *State ex rel. Thurman v. Thurman*, 1999 WL 312383, *2 (9th Dist. May 12, 1999). The preceding could also have reasonably caused the magistrate, and in turn the trial court, to question Dr. Gray's credibility concerning his ability to pay in light of the record before us. *See Bohannon v. Bohannon*, 2020-Ohio-1255, ¶ 21 (9th Dist.). Dr. Gray has not demonstrated that the trial court erred in concluding Dr. Gray did not establish the defense of impossibility.

{¶22} Dr. Gray's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED BY ENTERING A PURGE ORDER FOR PLAINTIFF JOHN GRAY THAT IS IMPOSSIBLE FOR HIM TO FULFILL.

{¶23} Dr. Gray asserts in his second assignment of error that the purge conditions imposed by the trial court are unreasonable and it is not possible for him to comply with them.

{¶24} “A trial court abuses its discretion when it orders conditions for purging that are unreasonable or impossible for the contemnor to meet.” *Ward v. Smith*, 2024-Ohio-1682, ¶ 17 (5th Dist.).

{¶25} The trial court ordered that Dr. Gray could purge the contempt by paying Ms. Gray \$20,000 and making arrangements agreeable to her to pay her all the monies owed. Dr. Gray primarily asserts that the \$20,000 lump sum payment is unreasonable in light of his testimony concerning his assets and income. He also maintains that he cannot make arrangements to pay the remainder.

{¶26} Given that Dr. Gray owes Ms. Gray over \$200,000, the \$20,000 sum Dr. Gray was ordered to pay represents a small percentage of what is owed. Moreover, we are mindful that the trial court was not required to find Dr. Gray’s statements concerning the extent of his ability to pay credible. *See Bohannon*, 2020-Ohio-1255, at ¶ 21 (9th Dist.). Further, as discussed above, the trial court would not have been unreasonable in concluding that some of Dr. Gray’s inability to pay was attributable to his own behavior. *See State ex rel. Thurman*, 1999 WL 312383, at *2.

{¶27} Dr. Gray has not demonstrated that the trial court’s purge conditions were an abuse of discretion. Dr. Gray’s second assignment of error is overruled.

ASSIGNMENT OF ERROR III

THE TRIAL COURT ERRED BY AWARDING ATTORNEY FEES TO DEFENDANT ANNE GRAY.

{¶28} Dr. Gray argues that the award of attorney fees is unreasonable because it is inequitable under R.C. 3105.73(B). In addition, he asserts that it is inappropriate as he should not have been found in contempt. Dr. Gray has not argued that the amount of the fees was unreasonable.

{¶29} We note that the trial court did not specify the legal basis of the award of attorney fees in its judgment entry. However, at the hearing, Ms. Gray pointed out that the separation agreement included a provision for the payment of attorney fees.

{¶30} That provision in the separation agreement provides as follows:

If either the husband or the wife defaults in the performance of any of the obligations herein set forth, and it becomes necessary to institute legal proceedings to effectuate performance of any provisions of this agreement, then, in such case, the party found to be in default shall pay all expenses, including reasonable attorney fees incurred in connection with such enforcement proceedings.

{¶31} Dr. Gray has made no argument that the foregoing provision would not support the award of attorney fees in this matter under the circumstances of this case. *See Schneider v. Schneider*, 2020-Ohio-4326, ¶ 25-27 (2d Dist.).

{¶32} Dr. Gray's third assignment of error is overruled.

III.

{¶33} Dr. Gray's assignments of error are overruled. The judgment of the Lorain County Court of Common Pleas, Domestic Relations Division, is affirmed.

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 Lorain, 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(C). 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.

DONNA J. CARR
FOR THE COURT

FLAGG LANZINGER, P. J.
STEVENSON, J.
CONCUR.

APPEARANCES:

ANTHONY R. PECORA, Attorney at Law, for Appellant.

WAYNE R. NICOL, Attorney at Law, for Appellee.