

[Cite as *Coleman v. Coleman*, 2015-Ohio-2500.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

JAMES COLEMAN

Appellant

v.

JEANNE COLEMAN

Appellee

C.A. No. 27592

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. 2004 01 0018

DECISION AND JOURNAL ENTRY

Dated: June 24, 2015

SCHAFFER, Judge.

{¶1} Appellant, James R. Coleman, Jr., appeals from a judgment of the Summit County Court of Common Pleas, Domestic Relations Division, overruling his objections to the magistrate’s decision finding him guilty of contempt. For the reasons set forth below, we affirm.

I.

{¶2} James R. Coleman, Jr. and Appellee, Ms. Jeanna M. Coleman, were divorced on September 27, 2005 after 18 years of marriage. The parties share two daughters. The parties negotiated a separation agreement and a shared parenting plan, which the trial court incorporated into the divorce decree.

{¶3} Relevant to this appeal, Article 3.1 of the parties’ separation agreement, entitled “Property Payment,” states:

As and for other considerations, [Mr. Coleman] shall transfer to [Ms. Coleman] the sum of Fifteen Thousand Dollars (\$15,000) from his IRA account. Such transfer shall be an institution to institution rollover with no tax penalty to be incurred by [Mr. Coleman]. In the event a Qualified Domestic Relations Order

is necessary to accomplish this transfer, the parties shall cooperate to effectuate same.

Additionally, [Mr. Coleman] shall pay to [Ms. Coleman] the sum of Fifteen Thousand Dollars (\$15,000) at the time of the high school graduation¹ of their minor daughter[.]

In March of 2006, after falling delinquent in his obligation, Mr. Coleman filed a motion for modification of spousal support. Ms. Coleman responded by filing a motion for contempt, arguing that Mr. Coleman had not been paying spousal support for some time. Prior to the hearing that was scheduled on those pending motions, the parties entered into an agreement. Relevant to this appeal, as part of that agreement, Mr. Coleman agreed to pay an “additional sum of \$1,000.00 directly to [Ms. Coleman] on or before July 1, 2007.” Mr. Coleman never paid either the \$15,000 from the divorce decree, or the \$1,000 from the subsequent agreement to Ms. Coleman.

{¶4} On August 10, 2007, Mr. Coleman voluntarily filed for Chapter 7 bankruptcy in the Northern District of Ohio. In this proceeding, he listed Ms. Coleman as an unsecured creditor on Schedule F of his bankruptcy petition in the amount of \$15,000. Mr. Coleman received a standard discharge on December 20, 2007.

{¶5} On July 3, 2013, Ms. Coleman filed a motion to show cause and for attorney fees, wherein she asked the trial court to hold Mr. Coleman in contempt for failing to pay the \$15,000 from the divorce decree or the \$1,000 from the latter agreement. Mr. Coleman argued that these debts were discharged in his bankruptcy proceeding, that the doctrine of laches and unclean hands prevented Ms. Coleman from collecting the debt, and that the debt did not exist. The magistrate rejected Mr. Coleman’s arguments and determined that the debts were not dischargeable in bankruptcy because 11 U.S.C. § 523(a)(15) expressly prohibits discharging

¹ The Colemans’ minor daughter graduated from high school in 2010.

debts “to a spouse, former spouse, or child of the debtor * * * that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of the court of record[.]” The magistrate rejected Mr. Coleman’s other arguments. The magistrate also found Mr. Coleman guilty of contempt of court for failing to pay his obligations and sentenced him to ten days in the Summit County Jail, but suspended that sentence on the condition that he purge the contempt by paying the sum of \$16,000.00 within four months of the date of its order.

{¶6} Mr. Coleman objected to the magistrate’s decision, reasserting his arguments that the two debts at issue in the proceedings were discharged in his bankruptcy proceeding and, in the alternative, that Ms. Coleman’s show cause motion was barred under the doctrine of laches and/or unclean hands. Mr. Coleman did not object on the basis that the debt in question did not exist. On June 3, 2014, the trial court overruled Mr. Coleman’s objections to the magistrate’s decision and adopted the magistrate’s decision. The trial court subsequently ordered Mr. Coleman to pay an additional \$3,000.00 to Ms. Coleman for her attorney fees and included the attorney fees as part of Mr. Coleman’s purge provision, which now totaled \$19,000.00.

{¶7} Mr. Coleman appeals the trial court’s decision, raising one assignment of error for review.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN FINDING PLAINTIFF WAS IN CONTEMPT OF COURT FOR NOT PAYING AN ALLEGED DEBT TO DEFENDANT ARISING FROM A JUDGMENT ENTRY OF DIVORCE. THE ALLEGED DEBT TO WHICH DEFENDANT REFERS IN ITS MOTION SIMPLY DOES NOT EXIST.

{¶8} In his sole assignment of error, Mr. Coleman argues that the trial court erred in finding him in contempt for failing to pay \$15,000.00 to Ms. Coleman because the debt in question does not exist. Specifically, Mr. Coleman contends that the language of Article 3.1 of the Colemans' separation agreement conflicts with other provisions within the separation agreement that concern the payment of child and spousal support, as well as the equitable division of marital property. As such, according to Mr. Coleman, enforcement of Article 3.1 would "cause an inequitable division of property, and * * * should be removed" from the separation agreement. We disagree for two reasons.

{¶9} First, although Mr. Coleman raised this argument in his brief in opposition to Ms. Coleman's motion to show cause, he failed to do so in his objections to the magistrate's decision finding him to be in contempt. Failure to specifically raise an argument in an objection to a magistrate's decision results in a forfeiture of that argument on appeal. *See* Civ.R. 53(D)(3)(b)(iv); *Johns v. Johns*, 9th Dist. Summit No. 26393, 2013–Ohio–557, ¶ 17. Although Mr. Coleman has only preserved plain error, he does not argue the existence of plain error on appeal. Indeed, his appellate brief does not mention plain error. Due to this failure to raise a plain error argument, we decline to sua sponte fashion one and then address it. *See* App.R. 16(A)(7) (requiring briefs to have "[a]n argument containing the contentions of the appellant with respect to each assignment of error * * * with citations to the authorities * * * on which appellant relies."); *State v. Cross*, 9th Dist. Summit No. 25487, 2011–Ohio–3250, ¶ 41 ("While a defendant who forfeits such an argument may still argue plain error on appeal, this court will not sua sponte undertake a plain-error analysis if a defendant fails to do so."), citing *State v. Hairston*, 9th Dist. Lorain No. 05CA008768, 2006–Ohio–4925, ¶ 11 ("Accordingly, as

Appellant failed to develop his plain error argument, we do not reach the merits and decline to address this argument.”).

{¶10} Second, Mr. Coleman’s argument is barred by res judicata because he did not file a direct appeal challenging the divorce decree. Principles of res judicata apply both to issues that were actually litigated and adjudicated in a divorce action, as well as to matters that *could* have been litigated and adjudicated. *Bean v. Bean*, 14 Ohio App.3d 358, 361 (12th Dist.1983). “Res judicata applies to foreclose a party from re-litigating the division of marital assets.” *Manning v. Jusak*, 8th Dist. Cuyahoga No. 99459, 2013-Ohio-4194, ¶ 7, citing *Westhoven v. Westhoven*, 6th Dist. Ottawa No. OT-10-037, 2011-Ohio-3610, ¶ 15. Mr. Coleman was thus obligated to raise any issue relating to the division of marital assets on direct appeal. *See Bean* at 361 (“[N]o jurisdiction exists for the trial court to modify its previous decree as to personal property where the appeal time has run and an appeal had not been taken from the decree.”). Having failed to do so, he cannot now litigate the issue one decade later.

{¶11} We therefore conclude that the trial court did not err in finding that Mr. Coleman is still obligated to pay his respective spousal support obligations to Ms. Coleman. We further conclude the trial court did not err in finding Mr. Coleman guilty of contempt of court.

{¶12} Mr. Coleman’s assignment of error is overruled.

III.

{¶13} Mr. Coleman’s sole assignment of error is overruled and the judgment of the Summit County Court of Common Pleas, Domestic Relations Division, is affirmed.

Judgment affirmed.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, 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.

JULIE A. SCHAFER
FOR THE COURT

HENSAL, P. J.
MOORE, J.
CONCUR.

APPEARANCES:

JAMES R. COLEMAN, JR., pro se, Appellant.

DEAN A. COLOVAS, Attorney at Law, for Appellee.