[Cite as *Hoagland v. Hoagland*, 2015-Ohio-2426.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MIAMI COUNTY

KAREN HOAGLAND	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2014-CA-30
	:	
v.	:	T.C. NO. 11DR378
	:	
JOHN M. HOAGLAND	:	(Civil Appeal from Common Pleas
	:	Court, Domestic Relations)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the ___19th___ day of ___June___, 2015.

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FROELICH, P.J.

{¶ 1} John Michael Hoagland appeals from a judgment of the Miami County Court of Common Pleas, which found him in contempt, in two respects, of its prior judgment of divorce and ordered him to pay attorney fees to his former wife, Karen Stump. For the following reasons, the judgment of the trial court will be affirmed.

{¶ 2} The parties were divorced in July 2013. Insofar as it is pertinent to this appeal, the Final Judgment and Decree of Divorce provided that: 1) Hoagland would pay Stump $3,100 for his "financial misconduct" in titling certain real property in his son's name and 2) Hoagland would pay Stump a total of $15,175.62, in $150 monthly increments until paid in full, "for further property division arising from [Hoagland's] financial misconduct herein." The decree of divorce stated that the monthly payments would begin on January 1, 2013, although the decree was filed more than six months later, and it did not describe the "financial misconduct" to which it refers. Hoagland did not appeal from the trial court's Final Judgment and Decree of Divorce.

{¶ 3} In October 2013, Stump filed a Motion for Contempt in which she alleged, among other things, that Hoagland had failed to make the payments described above. In December 2013, the magistrate held a hearing on the motion. In January 2014, the magistrate filed a decision finding Hoagland in contempt of court, sentencing him to 30 days in jail, and permitting him to purge the contempt by paying Stump $500 within 30 days toward the unpaid monthly obligations, paying an additional $30 per month toward the arrearage, and paying $3,100 to Stump within 30 days. The magistrate also fined Hoagland $250, but stated that the fine could be "purged" if Hoagland paid Stump $100 by March 1, 2014 as reimbursement for her filing fee on the motion for contempt. Finally, the magistrate ordered Hoagland to pay Stump "nominal attorney fees" in the amount of $500 by April 1, 2014. Hoagland filed objections to the magistrate's decision. On August 1, 2014, the trial court overruled his objections and adopted the magistrate's decision.

{¶ 4} Hoagland appeals, raising two assignments of error. The first assignment

of error states:

The magistrate's decision is contrary to the manifest weight of the evidence in finding the Appellant in contempt of court.

{¶ 5} Hoagland contends that the trial court's decision was against the manifest weight of the evidence because "technical violations" of a court order do not compel a finding of contempt and because a party cannot be held in contempt for failing to pay "support"[1] if the party proves he was unable to pay. He suggests that he intends to pay Stump from a pending inheritance, but he has no "control over the swiftness of the probate court where his mother's estate is being handled." He contends that he "lacks any substantial income and is unable to meet the requirements of the court order."

{¶ 6} "A prima facie case of civil contempt is made when the moving party proves both the existence of a court order and the nonmoving party's noncompliance with the terms of that order." *Jenkins v. Jenkins,* 2012-Ohio-4182, 975 N.E.2d 1060, ¶ 12 (2d Dist.), citing *Wolf v. Wolf,* 1st Dist. Hamilton No. C-090587, 2010-Ohio-2762, ¶ 4; *Woolum v. Woolum*, 2d Dist. Greene No. 2014 CA 8, 2015-Ohio-190, ¶ 14. Clear and convincing evidence is the standard of proof in civil contempt proceedings. *Jenkins* at ¶ 12.

{¶ 7} "Impossibility to comply with a court order is a valid defense to an accusation of contempt, * * * [but] it is no defense if the accused brings the inability upon himself." *Goddard-Ebersole v. Ebersole*, 2d Dist. Montgomery No. 23493, 2009-Ohio-6581, ¶ 15, quoting *Neff v. Neff,* 2d Dist. Montgomery No. 11058, 2009 WL 13531 (Feb. 13, 1989). Unsubstantiated claims of financial difficulties do not establish

[1] We note that the amounts Hoagland was ordered to pay were in the nature of a property division, not spousal support.

an impossibility defense to a contempt charge. *Wagshul v. Wagshul*, 2d Dist. Montgomery No. 23564, 2010-Ohio-3120, ¶ 41, citing *Bishop v. Bishop*, 5th Dist. Stark. No. 2001 CA 319, 2002 WL 596825 (April 15, 2002). The burden of proof is on the party asserting the impossibility. *Goddard-Ebersole* at ¶ 15.

{¶ 8} We review the trial court's decision whether to find a party in contempt under an abuse of discretion standard. *Id.* An abuse of discretion implies that the trial court's attitude was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore,* 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 9} At the hearing, Stump testified about Hoagland's lack of payment on his obligations under the divorce decree. Hoagland testified that he had "heard" that the trial court's judgment ordered him to pay Stump $3,100 and to pay $15,175.62 in monthly payments of $150, but that he had never received a copy of the document. He stated that he "had no counsel to tell me what to do with it." He admitted that he was represented by counsel during the divorce and that he met with an attorney from the firm that represented him in the divorce approximately six months later; however, he denied that he had authorized them to engage in any negotiation over payment of the amounts owed. Hoagland repeatedly referenced his inability to hire or retain attorneys because of his inability of pay them.

{¶ 10} With respect to his employment, Hoagland testified that he "monk[eys] around" on a house on Water Street in Piqua; he did not have an agreement for payment by the owner, but he might get "a little money" when the house sells. Hoagland further testified that he was a sole heir of his mother's estate, which was then in probate. He valued the estate at approximately $60,000, but denied that there was any "cash value."

No testimony was offered about the use or value of four other properties awarded to Hoagland in the divorce. Hoagland testified that he owned a Dodge truck and a Hummer at the time of the hearing, both of which were in working order.

{¶ 11} Hoagland testified that the estate included a mortgage held by Canal LLC on property located at 804 South Union Street in Troy; this was one of the properties listed in the divorce decree and awarded to Hoagland. (The financial misconduct alleged in the divorce related, at least in part, to the Union Street property.) Hoagland stated that the title to the Union Street property was held by Canal LLC of Troy, of which he was the "sole owner," but he also asserted that he owed more on the Union Street property than it was worth. (Hoagland's assertion of ownership of Canal LLC at the hearing may have been based on his then-pending inheritance of that entity.)

{¶ 12} Hoagland was questioned about discrepancies between the schedule of estate assets filed in his mother's probate case, which he had signed, and his assertions at the contempt hearing about the value of the estate. Hoagland repeatedly stated that there was no "money" in the estate and that it had no cash value. When he was presented with a copy of the Schedule of Assets as an exhibit, he stated that he could not read it because he did not have his glasses; he stated, however, that he had no reason to think that the document presented (Exhibit 5) was not "authentic" or was not the document his lawyer had filed in the probate court.

{¶ 13} The trial court concluded that Stump had established, by clear and convincing evidence, that Hoagland was in contempt for nonpayment of his obligations under the Final Judgment and Decree of Divorce. Indeed, Hoagland did not dispute that he had failed to pay. Rather, Hoagland asserted that he should not be found in contempt

because he lacked "any substantial income," and it was therefore impossible for him to comply with the court's order. The trial court rejected this argument, concluding: "Impossibility of compliance is an affirmative defense for which the alleged contemnor has the burden of proof. Unsubstantiated claims of financial difficulties do not establish an impossibility defense to a contempt charge. The defendant failed to carry his burden to establish that it was impossible to comply with the Decree of Divorce."

{¶ 14} Hoagland presented no explanation for his failure to work or for his decision to work on a renovation for which no payment was assured. It is also apparent from the divorce decree that Hoagland was awarded five parcels of real property; he presented no assertion that these properties failed to provide income to him and no explanation why they could not or should not be liquidated or mortgaged, if necessary, to satisfy his obligation to Stump. Hoagland presented evidence about a pending inheritance from his mother's estate as a purported justification for the delay, but Hoagland's mother was alive at the time of the divorce, and it is apparent that the trial court anticipated that Hoagland's payments to Stump would be made from the assets he was awarded in the divorce, not from a future inheritance. Hoagland offered no explanation why he could not do so. The trial court did not abuse its discretion when it found Hoagland in contempt.

{¶ 15} The first assignment of error is overruled.

{¶ 16} Hoagland's second assignment of error states:

The magistrate abused its discretion by awarding attorney fees to the Plaintiff contrary to the manifest weight of the evidence.

{¶ 17} Hoagland asserts that the trial court abused its discretion in awarding

attorney fees to Stump, because there was "no evidence that attorney fees were at issue, nor was any expert testimony proffered as to the reasonableness of any legal fees."

{¶ 18} In Ohio, a trial court has the discretion to assess reasonable attorney fees as part of the costs against a defendant found guilty of civil contempt. *Planned Parenthood v. Project Jericho,* 52 Ohio St.3d 56, 67, 556 N.E.2d 157 (1990); *Woolum*, 2d Dist. Greene No. 2014 CA 8, 2015-Ohio-190, ¶ 14. We review an award of attorney fees for an abuse of discretion. *Taylor v. Taylor*, 2d Dist. Miami No. 2012 CA 21, 2015-Ohio-701, ¶ 37.

{¶ 19} In the context of attorney fees, this court has recognized there are limited circumstances in which a court is permitted to use its own knowledge in determining the reasonableness and necessity of nominal attorney fees. "On occasion, we have affirmed awards of attorney fees in small amounts, * * * without any evidence of reasonableness. Where the amount is small, and the fees pertain to services performed in the presence of the trial court, we have been willing to indulge in the assumption that the trial court properly took judicial notice of the reasonableness of the fees and their reasonable necessity." *Spencer v. Doyle,* 2d Dist. Greene No. 92-CA-46, 1993 WL 377177, fn. 4 (Sept. 22, 1993); *see also Schaefer v. Schaefer,* 2d Dist. Greene No. 03CA0085, 2004-Ohio-2956; *Stallard v. Stallard,* 2d Dist. Greene No. 93 CA 58, 1994 WL 371101, *4 (July 13, 1994) (finding that an appellate court can take judicial notice of the reasonableness of the fees if they appear to be manifestly reasonable from the appellate record). We have previously found that a trial court's characterization of an award of $500 in attorney fees on a contempt motion as "nominal" was not an abuse of discretion. *See, e.g., Schaefer* at ¶ 39; *Taylor* at ¶ 40.

{¶ 20} Hoagland states that there was "no evidence that attorney fees were at issue," but Stump's motion for contempt requested an award of attorney fees. Although no expert testimony was presented about the reasonableness of Stump's attorney fees, the trial court could award nominal fees without specific presentation of evidence, where the record established the reasonableness of the award.

{¶ 21} Stump's attorney prepared a five-branch motion for contempt, to which he attached some correspondence with Hoagland's divorce attorney about issues related to the alleged contempt. Counsel also attended and participated in the hearing and presented exhibits. The trial court did not abuse its discretion in awarding $500 in nominal attorney fees under these circumstances.

{¶ 22} The second assignment of error is overruled.

{¶ 23} The judgment of the trial court will be affirmed.

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FAIN, J. and DONOVAN, J., concur.

Copies mailed to:

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