[Cite as *Thompkinson v. Grissett*, 2022-Ohio-1458.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

TINA THOMPKINSON fka GRISSETT,

Plaintiff-Appellee,

v.

DEANGELO GRISSETT,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 21 MA 0020

Civil Appeal from the
Court of Common Pleas, Domestic Relations Division, of Mahoning County, Ohio
Case No. 18 DR 617

BEFORE:
Cheryl L. Waite, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:
Affirmed.

Atty. Melissa K. Rocci, 1570 S. Canfield Niles Road, Suite B-103, Austintown, Ohio 44515, for Plaintiff-Appellee

Atty. Rhys B. Cartwright-Jones and *Atty. Elliousa Nemer*, Rhys B. Cartwright-Jones & Assoc., 42 N. Phelps Street, Youngstown, Ohio 44503-1130, for Defendant-Appellant

Dated: March 25, 2022

WAITE, J.

{¶1} Appellant, Deangelo Grissett, appeals the February 9, 2021, judgment of the Mahoning County Court of Common Pleas, Domestic Relations Division, denying his motion for contempt against Appellee, Tina Thompkinson, fka Grissett. Based on the following, the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} The parties were married on January 16, 2003. There were no children born of the marriage. On December 19, 2018, Appellee filed a complaint for divorce. The matter proceeded to trial on April 4 and April 25, 2019. A magistrate's decision was issued on June 19, 2019. The trial court adopted the magistrate's decision, issuing a final decree of divorce on the same day.

{¶3} The instant appeal relates to the payment of the second mortgage on the marital real estate. Section 4 of the decree addresses the marital residence, reading:

> 4. **REAL ESTATE**- The parties' joint real estate located at 3057 Shalisma Drive, Youngstown, Ohio 44509 shall be immediately listed for sale with Howard Hannah as the real estate broker. The listing agent with Howard Hannah shall assist in setting the initial listing price for the sale of the real estate. Both parties shall cooperate in the sale of such property. The net proceeds from the sale of the real estate shall be used first to satisfy any costs associated with the sale of the real estate and to satisfy to the extent available any outstanding mortgage(s) on such real estate. Any balance

> remaining upon payment of the aforementioned costs shall be divided equally amongst the parties with the Plaintiff/Tina Marie Grissett entitled to receive a credit for one-half of the amount of the principal paid upon the mortgage(s) for the period when she obtains sole occupancy until the time such real estate is sold. Each party shall likewise be equally responsible for any deficiency that may result from the sale of such real estate. The Defendant/Deangelo Grissett shall be entitled to reside in the marital real estate for a period no greater than 30 days from the date of this order at which time the Plaintiff/ Tina Marie Grissett shall be granted exclusive occupancy of the marital real estate until the date such real estate is sold. The Defendant/Deangelo Grissett shall surrender the real estate to the Plaintiff/Tina Marie Grissett in fair condition without committing any damage or waste to the property. The Plaintiff/Tina Marie Grissett shall be solely responsible for the mortgage payments upon gaining exclusive occupancy of the marital real estate. Plaintiff/Tina Marie Grissett shall be responsible for any routine maintenance and upkeep to the real estate to keep it in saleable condition.

(6/19/19 J.E., p. 10.)

{¶4} On July 8, 2019, Appellant filed a *pro se* motion entitled: "Affidavit for an Appeal Decision" which the trial court construed as an objection to the magistrate's decision. Relevant to this appeal, Appellant objected to the order requiring him to surrender the marital real estate to Appellee within thirty days. Appellant argued he

needed approximately five to six months to gather his belongings and save enough money to find another residence.

{¶5} On July 30, 2019, Appellee filed a motion seeking an order to show cause for contempt of the June 19, 2019 divorce decree because Appellant failed to vacate the marital real estate within the ordered thirty-day time period. According to the motion, Appellee went to the residence on July 19, 2019, the day on which she was to take possession, and found Appellant still residing at the property. Appellee called the police to have Appellant escorted off of the property. When the police arrived, Appellant refused to open the door or communicate with the police but could be seen inside the house. The police officers informed Appellee that she needed to file an eviction notice. Appellee argued that Appellant should be found in contempt for failing to vacate the premises; failing to cooperate to have the property listed for sale; and for causing her emotional distress and financial expense related to his conduct.

{¶6} A hearing was held on Appellant's objections to the magistrate's decision on August 13, 2019. Appellee did not appear but her counsel was present. Appellant appeared *pro se*. In a judgment entry dated August 16, 2019, the trial court overruled Appellant's objections, finding that Appellant did not file a transcript with his objections and did not provide the additional evidence consisting of money orders and insurance records referenced in his objections.

{¶7} On August 30, 2019, the parties entered into an agreed judgment entry. Appellee agreed to withdraw her motion for contempt without prejudice in exchange for Appellant's agreement to vacate the marital residence no later than September 26, 2019.

The parties agreed that a law enforcement officer was to be present during the change of possession.

{¶8} On January 7, 2020, Appellant filed a motion for contempt on two grounds. First, he alleged Appellee failed to return a number of his personal items that remained in the marital residence. Second, Appellant alleged that Appellee failed to pay the mortgage while she had exclusive occupancy of the premises from July of 2019 to May of 2020, which he alleged caused "irreparable damage to [Appellant's] credit." (1/7/20 Motion for Contempt, p. 3.)

{¶9} After a number of continuances, Appellant's motion proceeded to a hearing before a magistrate on June 30, 2020. The hearing was held via videoconference because of issues relating to the pandemic including the fact that Appellant was subject to a pandemic lockdown order in the state of New York. At the hearing both parties were represented by counsel. However, Appellant has not filed a copy of a transcript of these proceedings nor the trial exhibits with this Court on appeal. Therefore, we must presume the regularity of the proceedings and that the facts were correctly interpreted. App.R. 9(B); *Foster v. Foster,* 7th. Dist. Mahoning No. 00 CA 94, 2001 WL 1665507, *3.

{¶10} According to the trial court's findings of fact, Appellant testified that Appellee was ordered in the final divorce decree to pay both the first and second mortgages on the marital residence. He testified that he was evicted from the marital residence in June of 2019 and no payments were made on the second mortgage from July of 2019 through May of 2020. Appellant testified that the amount owed for those ten months would have been $808.20. He also stated that he was not informed that the marital real estate had been listed for sale. Appellant presented a statement from Chase Bank from January,

2020, which showed a principal balance due of $11,907.88 (exhibit 1). Appellant did not produce any other statements to indicate what the balance owed was as of July, 2019. Appellant also presented a copy of a closing disclosure statement (exhibit 2). He testified that he saw the statement sometime during the first part of the year in 2020. The closing statement noted the marital residence has been sold and set a closing date of April 22, 2020. Interestingly, Appellant was seeking payment of the mortgage through May of 2020, one month after the property had been apparently sold.

{¶11} Appellant also presented a copy of his TransUnion credit report as an exhibit which listed his credit score as 532. He claimed this evidenced a severe drop in his score as a result of Appellee's nonpayment of the second mortgage.

{¶12} Appellant also presented a list of personal property that he did not receive from the marital residence which included hot wheels cars, medical records, baseball cards, football cards, basketball cards and other assorted memorabilia which he alleged were worth approximately $30,000 and that he had expended $2,100 in attorney fees trying to reclaim his property.

{¶13} On cross-examination, Appellant conceded he was ordered to make payments on the second mortgage until Appellee was given exclusive occupancy of the house. This was to commence on June 19, 2019. He stated he could not remember the exact date he actually vacated the premises. However, the record reflects Appellee obtained an *ex parte* civil protection order granting her exclusive occupancy of the real estate on July 31, 2019. Appellant testified that he made a trip to the residence with a U-Haul truck on September 14, 2019 to retrieve his personal property, but had left some items in the garage.

{¶14} Counsel for Appellee presented a copy of a settlement statement for the sale of the marital real estate (exhibit A), which sold in April of 2020. The statement indicated that the second mortgage had been paid off in April of 2020 in the amount of $11,907.88. The proceeds of the sale also paid off the primary mortgage in the amount of $92,990.77, as well as an existing lien on the property for $2,042.63 to Levy & Associates. Appellant claimed he was not aware of the purpose of the lien. According to the record, counsel for Appellee is holding the remaining proceeds of the sale, totaling $711.94, in her trust account awaiting distribution.

{¶15} Appellee testified at the hearing that Appellant did not vacate the marital property until Appellee filed the *ex parte* civil protection order requiring Appellant to vacate, on July 19, 2019. Appellee took exclusive possession of the property on August 3, 2019. Appellee testified that the parties each paid their respective portion of the mortgages during the months of June and July of 2019. She stated that she began paying the entire first mortgage beginning in August of 2019 and that, according to the divorce decree, she was entitled to credit for one-half of the principal paid on the first mortgage while she had exclusive occupancy. Appellee presented a copy of a mortgage statement from August of 2019 which showed that $2,784.30 had been paid on the first mortgage as of that date, with a principal balance remaining of $94,825.03. Appellee also presented another mortgage statement for the first mortgage dated April of 2020 which indicated the principal balance was $91,954.07. Appellee testified that her one-half of the payment on the principal for the first mortgage should have been $848.57, more than the $711.94 currently being held by her attorney in escrow. She testified that she was not aware there was a lien to Levy & Associates until the day before the real estate closing. She testified

that it was owed by Appellant. Appellee presented a document demonstrating that she had not been listed as an authorized payor on the second mortgage and stated that she was not aware she was supposed to make any payments on the second mortgage.

{¶16} Appellee also presented a copy of a credit report generated by Kredit Karma for the month of April, 2019. It listed Appellant's credit score at that time as 629. Appellee's credit score was 792.

{¶17} Lastly, regarding Appellant's personal property, Appellee testified that she placed all items Appellant had boxed up in the garage for his retrieval. Prior to his arrival, Appellee took photographs with her phone of the items, which included hot wheels cars, bobble head dolls and other sports memorabilia. Appellant backed a U-Haul into the driveway of the residence on September 14, 2019 and loaded the items from the garage into the truck and then left. Appellee had also taken pictures of Appellant loading the boxes into the truck. She testified that Appellant did not take all of the items, and left behind a weight set, baseball cards and video games. She testified that she had not removed any of Appellant's personal property from the boxes prior to his arrival.

{¶18} On rebuttal, Appellant testified that Appellee's photos did not depict all of his personal property. He claimed that some of the boxes in the garage were wet and his property was damaged. He also testified that he did not consider the items he left in the garage to be abandoned.

{¶19} At the conclusion of the hearing, counsel for the parties requested direction on distribution of the remaining proceeds being held in escrow. All of the parties' exhibits were admitted without objection.

{¶20} On September 1, 2020, the magistrate issued a decision concluding:

28. After consideration of the evidence presented in this matter, the court concludes that [Appellant] has failed to prove by clear and convincing evidence that [Appellee] is in contempt of court. The court finds it significant that [Appellant] had more than the thirty days allotted in the judgment entry to make arrangements to have his property removed from the marital residence. [Appellant] had initial and exclusive control over the location where his property was located. This was not a situation where [Appellee] had control over the location and [Appellant] had a certain period of time within which to remove his property at the outset. [Appellant] claimed that the property in question was worth approximately thirty thousand dollars and that some individual items were worth in the thousands. If the property was worth what [Appellant] claims, the court finds that a prudent person would do all they could to remove the property no later than the specified date, even if they had to sell an item to provide sufficient funds to cover the cost. When a court issues a decision, it expects the parties to follow its orders, both as to directives and time limits. Because [Appellant] did not take advantage of his initial opportunity to remove his property unhindered by [Appellee] in the beginning, he cannot now point the finger at [Appellee] and state that his failure to remove his property was solely her fault. Having considered the foregoing, the court concludes [Appellant's] motion for contempt filed on January 7, 2020 shall be denied.

29. The parties additionally requested guidance as to distribution of the funds currently being held in the trust account of [Appellee's] counsel in the

amount of $711.94. [Appellee] was entitled to receive a credit for one-half of the principal balance she paid upon the mortgage upon her return to live in the marital residence until it was sold. The first mortgage balance in August, 2019 when [Appellee] returned to the residence in question was $94,825.03 and the balance when sold was $92,990.77. Therefore, one-half of the difference on the first mortgage is $917.13 to which [Appellee] is entitled to receive a credit for payments made. However, [Appellee] did not make payments upon the second mortgage with Chase Bank. The evidence presented was conflicting as to whether [Appellee] knew or should have known of her authorization and ability to pay upon this loan. The evidence was clear that no payments were made upon the [second mortgage] for the months of August 2019 to April of 2020, a period of nine months. The [second mortgage] loan payment was $80.82 per month which would total $727.38 over a nine month period. If both parties were responsible for one-half of that loan, [Appellant] should receive credit for one-half of that amount which is $363.69 since [Appellee] made no payments on that loan. Taking the amount of $917.13 to which [Appellee] is to receive a credit on the first mortgage and offsetting the amount of [Appellant's] credit would equal $553.44 which should be owed to [Appellee]. Therefore, of the $711.94 that is being held in [Appellee counsel's] trust account, the court finds it equitable at this time to award [Appellee] the amount of $553.44 from the trust account and [Appellant] should receive the balance of $158.50.

(9/1/20 Magistrate's Decision, ¶ 28-29.)

{¶21} On September 15, 2020, Appellant filed objections to the magistrate's decision, arguing the decision was against the manifest weight of the evidence and it "incorrectly constructively overruled a motion [Appellant] filed, while the cause was pending, to re-open the proceedings." (9/15/20 Objection to Magistrate's Decision.) In the motion Appellant stated that he intended to secure a copy of the transcript and prepare specific objections once the transcript was obtained.

{¶22} On September 18, 2020, the trial court issued a decision concluding that no written objections to the magistrate's decision had been filed by either party. Additionally, the court found the magistrate's decision was well supported and incorporated the magistrate's findings of fact and conclusions of law.

{¶23} On October 21, 2020, Appellant filed a praecipe seeking to have the court reporter prepare the June 30, 2020 hearing transcript. On December 17, 2020, Appellant filed supplemental objections to the magistrate's decision. In his motion, Appellant alleged that since the magistrate concluded Appellee did not pay the second mortgage after she took possession of the property and that Appellant's credit score "fell drastically" as a result, the magistrate should have found Appellee in contempt. He complained that his credit "is forever marred" because Appellee did not pay the second mortgage, requiring Appellee to be found in contempt and for Appellant to be compensated for the damage to his credit score. (12/17/20 Supplemental Objections to Magistrate's Decision.)

{¶24} On December 22, 2020, the trial court vacated its September 18, 2020 judgment entry due to Appellant's pending objections. On January 19, 2021, Appellee filed a motion in opposition to the objections. Appellee contended that the magistrate had

concluded contempt was not warranted based on the unclean hands doctrine. Specifically, since the evidence demonstrated that Appellant had failed to timely vacate the marital residence pursuant to the final divorce decree and had failed to pay the second mortgage for the month of July 2019, but continued to reside at the property, Appellant bore some fault. Second, Appellee argued that her failure to pay the second mortgage while she had exclusive occupancy was not intentional. Relying on her hearing testimony, she argued that she was unaware she was required to pay the second mortgage, and that Chase Bank representatives informed her that they were not authorized to speak to her about the mortgage because Appellant was the sole holder of the loan. Finally, Appellee contended Appellant did not establish at hearing that he suffered an actual injury, because the credit report he admitted into evidence at the hearing showed that Appellant had a poor credit score of 629 in April of 2019, when he was still the sole occupant of the marital residence and required to pay the second mortgage. She argued Appellant failed to present any direct evidence that any reduction in his credit score at the time of the hearing was related to nonpayment of the second mortgage. (1/19/21 Motion in Opposition to Objections.)

{¶25} Due to the coronavirus pandemic, in lieu of oral arguments on the objections the trial court ordered the parties to submit briefs in the matter. On February 9, 2021, the trial court issued a judgment entry on the objections. The court noted:

> [Appellant] does not allege any objection with the magistrate failing to find [Appellee] in contempt of court as it relates to personal property. [Appellant's] initial objection filed September 15, 2020 alleges that the magistrate's decision "incorrectly constructively overruled a motion he filed,

> while the cause was pending, to re-open the proceeding." No elaboration was given for this objection and the court cannot determine what [Appellant] is referencing. The docket of this case shows no motion filed to re-open the proceedings.

(2/9/21 J.E., p. 3.)

{¶26} The trial court then adopted the magistrate's findings of fact and conclusions of law.

{¶27} Appellant filed this timely appeal.

ASSIGNMENT OF ERROR

> The trial court erred when it found that Defendant/Appellee's failure to pay the second mortgage was not an act of civil contempt.

{¶28} An appellate court will not reverse a trial court's judgment regarding contempt absent an abuse of discretion. *State ex rel. Ventrone v. Birkel,* 65 Ohio St.2d 10, 11, 417 N.E.2d 1249 (1981). An abuse of discretion connotes more than an error of judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Vaughn v. Oliver,* 7th Dist. Mahoning No. 20 MA 0080, 2021- Ohio-3595, ¶ 25, citing *Blakemore v. Blakemore,* 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶29} Contempt proceedings can be either civil or criminal in nature, although the proceedings themselves are *sui generis. Brown v. Executive 200, Inc.,* 64 Ohio St.2d 250, 253, 416 N.E.2d 610 (1980). In civil contempt, the purpose behind the punishment is to coerce the contemnor to obey a judicial order for the benefit of a third party. *Carroll v. Detty,* 113 Ohio App.3d 708, 711, 681 N.E.2d 1383 (4th Dist.1996). In civil contempt

the contemnor is said to "carry the keys of his prison in his own pocket * * * since he will be freed if he agrees to do as ordered." *Pugh v. Pugh,* 15 Ohio St.3d 136, 139, 472 N.E.2d 1085 (1984), quoting *Brown* at 253. The burden of proof for the moving party in a civil contempt action is clear and convincing evidence. *Carroll* at 711. Once the moving party establishes a prima facie case of contempt, the burden shifts to the nonmoving party to establish a defense. *Morford v. Morford,* 85 Ohio App.3d 50, 55, 619 N.E.2d 71 (4th Dist.1993). The nonmoving party must support that defense by a preponderance of the evidence. *Jeffers v. Jeffers,* 7th Dist. Belmont No. 07 BE 36, 2008-Ohio-3339, ¶ 15.

{¶30} In his objections to the magistrate's decision, Appellant complained that the trial court did not hold Appellee in contempt. Similarly, in his brief before this Court, Appellant contends the trial court erred in failing to hold Appellee in contempt despite finding that she violated the divorce decree by failing to pay the second mortgage once she gained exclusive occupancy to the marital home. Additionally, Appellant contends the trial court expressly found that his credit score dropped significantly during the time period that the second mortgage went unpaid, which also should have warranted a finding of contempt against Appellee.

{¶31} In reviewing Appellant's objections, the trial court made the following findings of fact:

> 9. [Appellant] testified that [Appellee] was required to make payments upon the first and second mortgages. He stated that he was evicted from the [marital] property in June of 2019 and no payments upon the second mortgage were made from July of 2019 through May of 2020. Therefore, he claims that the amount owed on the second mortgage to Chase Bank

that went unpaid through May, 2020 would have been $808.20 for a period of ten months. He stated that nobody reached out to him when the real estate was listed for sale. An exhibit marked as exhibit 1 was introduced as a Chase Bank second mortgage statement for the month of January 2020 that showed a principal balance due of $11,907.88 as of January 11, 2020. There was no documentary evidence produced to demonstrate the principal balance owed as of July, 2019.

10. [Appellant] testified concerning a closing disclosure statement that was marked as exhibit 2. He stated that he saw it sometime during the first of the year. That exhibit indicated that the real estate in question was sold and had a closing date of April 22, 2020. He stated that he has not seen any other listing of liens or mortgages on the property aside from this exhibit. The court notes that if the real estate sold in April of 2020 payment upon the second mortgage with Chase Bank would have been made during that month and nothing should have been owed for the month of May as claimed by [Appellant].

11. [Appellant] submitted an exhibit of his credit report with TransUnion for the month of October, 2019 which indicated a poor score of 532. He claims that his credit rating dropped as a result of non-payment of the [second] mortgage.

* * *

13. On cross examination, [Appellant] agreed that he was supposed to make the payment upon the Chase second mortgage until [Appellee] received sole occupancy of the real estate. He claims that he was forced to leave the marital real estate on June 19, 2019. He could not state the exact date of his last day he remained in the real estate. There was an ex parte civil protection order that granted [Appellee] exclusive occupancy of the real estate that was obtained on July 31, 2019. * * *

* * *

15. [Appellant] was questioned as to an exhibit marked as exhibit A which was a settlement statement on the sale of the real estate. He gave [sic] to his attorney to execute the statement on his behalf. That statement indicated that the [second mortgage] loan was paid off in April in the amount of $11,907.88. A lien in the amount of $2,042.63 was paid off as well to Levy & Associates. The first mortgage was also paid off in the amount of $92,990.77. He stated that he had no idea of the lien owed to Levy & Associates.

* * *

17. * * * [Appellee] stated that she paid the first mortgage by herself from August, 2019 until the property sold in April, 2020.

18. [Appellee] testified that [Appellant] did not vacate the real estate in accordance with the parties' divorce decree of June of 2019. Pursuant to

the divorce decree, [Appellant] was to vacate the real estate by July 19, 2019. She stated that [Appellant] did not vacate the real estate as ordered and she was forced to file a civil protection order in Case No. 19 DV 496 to have him vacated from the property on July 31, 2019. She stated that she took possession of the real estate on August 3, 2019.

19. [Appellee] testified that the parties continued to pay their portion of the mortgages during the months of June and July, 2019. She stated that she began paying the entire first mortgage in August, 2019 when she took possession of the real estate. She was to receive a credit for one-half of the principal paid upon the mortgage. A mortgage statement for August, 2019 was marked as exhibit B which indicated a principal balance of $2,784.30 paid to date for the year. That exhibit also indicated a principal balance owed at that time of $94,825.03. Exhibit C was a mortgage statement that indicated a principle balance due of $91,954.07 for the statement in April of 2020. Based upon her exhibits B and C she was of the opinion that her one-half of the principal reduction in the mortgage payment should have been $848.57 which is more than the amount of $711.94 which is currently held in escrow by her attorney.

20. [Appellee] testified that she did not know anything about the Levy & Associates lien until the day before closing in the amount of $2,042.63. She stated that such lien was owed by [Appellant]. She submitted exhibit D as evidence that she was not made an authorized payor upon the [second]

> mortgage by [Appellant] for [Appellee] to pay upon the account. She stated that she was not aware that she was supposed to pay upon the second mortgage.
>
> 21. [Appellee] testified concerning a credit report that was marked as exhibit E for the month of April, 2019. Exhibit E indicated that [Appellant] had a credit rating at that time of 629 and she had a credit rating of 792.

(2/9/21 J.E., pp. 4-6.)

{¶32} The court then issued the following conclusion regarding the parties' payment of the mortgages:

> 29. The parties additionally requested guidance as to the distribution of the funds currently being held in the trust account of [Appellee's] counsel in the amount of $711.94. [Appellee] was entitled to receive a credit for one-half of the principal balance she paid upon the mortgage upon her return to live in the marital residence until it was sold. The first mortgage balance in August, 2019 when [Appellee] returned to the residence in question was $94,825.03 and the balance when sold was $92,990.77. Therefore, one-half of the difference on the first mortgage is $917.13 to which [Appellee] is entitled to receive a credit for payments made. However, [Appellee] did not make payments upon the second mortgage with Chase Bank. The evidence presented was conflicting as to whether [Appellee] knew or should have known of her authorization and ability to pay upon this loan. The evidence was clear that no payments were made upon the [second

> mortgage] for the months of August, 2019 to April of 2020, a period of nine months. The [second mortgage] payment was $80.82 per month which would total $727.38 over a nine month period. If both parties were responsible for one-half of that loan, [Appellant] should receive a credit for one-half of that amount which is $363.69 since [Appellee] made no payments on that loan. Taking the amount of $917.13 to which [Appellee] is to receive a credit on the first mortgage and offsetting the amount of [Appellant's] credit would equal $553.44 which should be owed to [Appellee]. Therefore, of the $711.94 that is being held in [Appellee counsel's] trust account, the court finds it equitable at this time to award [Appellee] the amount of $553.44 from the trust account and [Appellant] should receive the balance of $158.50.

(2/9/21 J.E., p. 8.)

{¶33} Thus, Appellant is correct that the trial court determined Appellee did not pay on the second mortgage. However the court also specifically concluded that there was contradictory evidence presented as to whether Appellee was aware that she had authorization and ability to pay on the second mortgage based on her conversations with Chase Bank. The court concluded that Appellee met her burden of proof in her defense and should not be held in contempt for nonpayment of the second mortgage. Based on the record, the trial court did not abuse its discretion in denying Appellant's motion for contempt on this issue.

{¶34} Appellant also argues the trial court concluded that his credit score dropped due to Appellee's failure to pay the second mortgage and erred in not finding her in

contempt on this basis. Citing *Schlott v. Hines,* 5th Dist. Tuscarawas Case No. 2000AP02, 2000 WL 1174228, (Aug. 14, 2000), Appellant contends that the irreparable harm to his credit rating warranted a finding of contempt. In *Schlott,* an ex-wife failed to make payments on a mortgage pursuant to the parties' separation agreement. As a result, the ex-husband's credit score dropped and he was denied a loan he was seeking as a result. The ex-husband testified that he was denied the loan due "because of the risk" associated with the delinquent loan which had been ex-wife's responsibility. *Id.* at *2. The Fifth District concluded that the denial of the loan sought by ex-husband was sufficient evidence to demonstrate that he had been actually harmed by ex-wife's missed payments. *Id. Schlott* is factually distinguishable from the case at bar, however. Here, Appellant presented evidence that his credit score had been lowered but offered no evidence as to the reason or that his lower credit score directly impacted his ability to receive a loan. There is no evidence Appellant suffered any other actual harm resulting from his low credit score. Appellee provided a credit score report from April of 2019, while Appellant was still the exclusive occupant of the property which showed his credit score as poor at 629. Therefore, unlike in *Schlott,* Appellant did not present evidence of actual injury as a result of a lowered credit score and did not rebut Appellee's testimony indicating that it was not attributable to her.

{¶35} Appellant also cites *Roach v. Roach,* 61 Ohio App.3d 315, 572 N.E.2d 772 (8th Dist.1989) for the same proposition. In *Roach,* an ex-wife was awarded attorney fees in connection with the finding of civil contempt against her ex-husband for being in arrears on his spousal support payments. *Id.* at 318. The court concluded that sanctions were proper in connection with a finding of contempt to compensate ex-wife for losses

sustained due to the noncompliance. We conclude that Appellant's reliance on *Roach* is also misplaced. The issue in *Roach* was the award of attorney fees as a sanction in connection with a contempt finding. The ex-wife in *Roach* presented evidence of actual damages (the attorney fees associated with pursuing the show cause motion) which were the direct result of ex-husband's failure to make timely spousal support payments. *Id.* at 323. Again, Appellant in this matter made no such showing. He presented no evidence in support of any actual losses or damages sustained as a result of the nonpayment of the second mortgage. Appellant did not present evidence that he was denied credit or that he had incurred actual damages. To the contrary, Appellee offered undisputed evidence that Appellant's credit rating was poor prior to the circumstances giving rise to the contempt filing.

{¶36} It is axiomatic that the "purpose of civil contempt proceedings is to secure the dignity of the courts and the uninterrupted and unimpeded administration of justice." *Windham Bank v. Tomaszcyk,* 27 Ohio St.2d 55, 58, 271 N.E.2d 815 (1971). Where, as here, Appellant failed to present any evidence of actual damages, the trial court did not err in denying his motion for contempt. Damages cannot be awarded based on "mere speculation and conjecture." *D.A.N. Joint Venture III, L.P. v. Med-XS Solutions, Inc.,* 11th Dist. Lake No. 2011-L-056, 2012-Ohio-980, ¶ 35. This speculation is further highlighted because Appellee presented undisputed evidence that Appellant's low credit score predated the triggering event on which Appellant relies as well as documentation regarding her discussions with Chase Bank as to her ability to pay on the second mortgage.

{¶37} For the reasons stated above, Appellant's assignment of error is without merit. The judgment of the trial court is affirmed.

Donofrio, P.J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas, Domestic Relations Division, of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.