

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
MAHONING COUNTY

CYNTHIA L. RAWLINGS,

Plaintiff-Appellee,

v.

DENNIS D. DORAN,

Defendant-Appellant.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 22 MA 0001**

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Domestic Relations Appeal from the  
Court of Common Pleas of Mahoning County, Ohio  
Case No. 2016 DR 588

**BEFORE:**

Gene Donofrio, Cheryl L. Waite, David A. D'Apolito, Judges.

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**JUDGMENT:**

Affirmed.

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*Atty. Mark Lavelle*, 940 Windham Court, #7, Boardman, Ohio 44512, for Plaintiff-Appellee,  
and

*Atty. Ronald E. Knickerbocker*, 725 Boardman-Canfield Road, Unit M-3, P.O. Box 3202,  
Youngstown, Ohio 44513, for Defendant-Appellant.

Dated:  
December 21, 2022

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**Donofrio, P. J.**

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{¶1} Defendant-appellant, Dennis D. Doran, appeals from a Mahoning County Common Pleas Court judgment modifying his spousal support obligation and finding him in contempt of court for failing to comply with the court's previous spousal support orders.

{¶2} The parties were married on November 14, 1981. Appellant worked full time throughout the marriage. Appellee worked part time. They divorced on May 3, 2017. Pursuant to the divorce decree, appellant was to pay appellee \$2,750.00 in monthly spousal support. At this time, appellant was still working earning approximately \$100,000.00 annually. Appellee worked part time earning approximately \$19,000.00 annually. The court retained jurisdiction to modify the support order.

{¶3} Appellant retired in 2020. On January 24, 2020, appellant filed a motion to terminate spousal support. On April 21, 2020, appellee filed a motion to show cause alleging appellant was in contempt of court for failure to pay spousal support in March and April 2020, as ordered by the court.

{¶4} A hearing was held before a magistrate beginning on June 16, 2020. At the hearing, the magistrate found that appellee had not yet begun to receive her share of appellant's pension benefits. The parties agreed to continue the hearing to allow more time for appellee to receive her pension benefits before the court would determine whether the spousal support award order should be modified or terminated. The magistrate ordered appellant to pay appellee a \$5,000.00 lump sum to be applied to any support arrearage. The magistrate also temporarily modified appellant's monthly spousal support obligation to \$1,400.00 effective July 1, 2020. Finally, the magistrate continued the hearing until September 28, 2020.

{¶5} On September 15, 2020, appellant filed a motion to terminate interim spousal support payments.

{¶6} The magistrate reconvened the hearing on September 28, 2020. The hearing was conducted by video. The magistrate took some testimony but due to technical difficulties, he had to continue the hearing to January 15, 2021.

{¶7} In the meantime, on October 22, 2020, appellee filed a second motion to show cause alleging appellant was now in contempt of court for failure to pay spousal support in September and October 2020 as ordered by the court.

{¶8} On January 15, 2021, the magistrate finished the hearing. In his April 22, 2021 decision, the magistrate determined that a substantial change in circumstances had occurred since the divorce, namely appellant's retirement. He also noted that appellee agreed that a reduction in spousal support was warranted. The magistrate analyzed the relevant statutory factors and concluded that while a termination of support was not warranted, a reduction of support was warranted. Therefore, the magistrate reduced appellant's monthly spousal support obligation to \$700 per month retroactive to January 24, 2020, the date appellant filed the motion to terminate support.

{¶9} As to appellee's motions to show cause, the magistrate found that appellant had not complied with the spousal support order and was in contempt of court. As a sanction for contempt, the magistrate sentenced appellant to 30 days in jail. However, he suspended the sentence and gave appellant the opportunity to purge his contempt and avoid the jail term by complying with orders to: (1) pay spousal support; (2) reimburse appellee for attorney fees and court costs in the amount of \$1,000.00; and (3) pay appellee the full amount of the arrearage by June 10, 2021. The magistrate set the matter for a June 10, 2021 review hearing to determine if appellant had complied with the orders.

{¶10} Appellant filed timely objections to the magistrate's decision. The court set the matter for a non-oral hearing on the objections. The court issued its judgment on December 9, 2021, overruling appellant's objections. It then entered judgment modifying appellant's monthly spousal obligation to \$700.00, finding appellant in contempt, and putting in place the purge terms set out by the magistrate.

{¶11} Appellant filed a timely notice of appeal on January 5, 2022. He now raises two assignments of error.

{¶12} Appellant's first assignment of error states:

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FAILING TO IMPUTE INCOME TO THE PLAINTIFF/APPELLEE, AND REFUSING TO TERMINATE THE DEFENDANT/APPELLANT'S SPOUSAL SUPPORT OBLIGATION AFTER HIS RETIREMENT.

{¶13} Appellant argues the trial court should have taken into consideration the fact that appellee is not yet of retirement age, yet she refuses to work full time. He points

to appellee's testimony that it is by her choice that she only works part time and there is nothing preventing her from seeking full-time employment. Thus, appellant argues the court should have imputed income to appellee. Additionally, appellant contends the court should have taken into account the fact that the parties' two adult sons live with her and do not pay rent. He further notes that one of the sons works full time while the other does not.

{¶14} When reviewing a trial court's decision in domestic relations matters, an appellate court must uphold the decision absent an abuse of discretion. *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989). Abuse of discretion implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). The appellate court should not independently review the weight of the evidence in the majority of cases but rather should be guided by the presumption that the trial court's findings are correct. *Miller v. Miller*, 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (1988).

{¶15} R.C. 3105.18(E) governs the modification of a spousal support award. In order for a court to modify an award of spousal support set forth in a divorce decree, it must first have reserved jurisdiction to do so. *Flauto v. Flauto*, 7th Dist. Mahoning No. 05 MA 100, 2006-Ohio-4909, at ¶ 11. The trial court in this case did reserve jurisdiction to modify the spousal support award.

{¶16} Next, a court must find that a change in circumstances for either party has occurred. R.C. 3105.18(E). The burden is on the movant to establish that a substantial change in circumstances has occurred since the time of the trial court's original decision. *Flauto*, 2006-Ohio-4909, at ¶ 11, citing *Leighner v. Leighner*, 33 Ohio App.3d 214, 215, 515 N.E.2d 625 (10th Dist.1986). In this case, the parties do not dispute that appellant's retirement, and corresponding reduction in income, constituted the necessary substantial change in circumstances since the divorce decree.

{¶17} Finally, the trial court is to evaluate the appropriateness and reasonableness of the spousal support award. *Id.*, citing *Barrows v. Barrows*, 9th Dist. Summit No. 21904, 2004-Ohio-4878 at ¶ 7. Pursuant to R.C. 3105.18(C)(1).

In determining whether spousal support is appropriate and reasonable, and in determining the nature, amount, and terms of payment, and duration of

spousal support, which is payable either in gross or in installments, the court shall consider all of the following factors:

(a) The income of the parties, from all sources, including, but not limited to, income derived from property divided, disbursed, or distributed under section 3105.171 of the Revised Code;

(b) The relative earning abilities of the parties;

(c) The ages and the physical, mental, and emotional conditions of the parties;

(d) The retirement benefits of the parties;

(e) The duration of the marriage;

(f) The extent to which it would be inappropriate for a party, because that party will be custodian of a minor child of the marriage, to seek employment outside the home;

(g) The standard of living of the parties established during the marriage;

(h) The relative extent of education of the parties;

(i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;

(j) The contribution of each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party;

(k) The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is, in fact, sought;

(l) The tax consequences, for each party, of an award of spousal support;

(m) The lost income production capacity of either party that resulted from that party's marital responsibilities;

(n) Any other factor that the court expressly finds to be relevant and equitable.

**{¶18}** The trial court made findings as to each of these statutory factors. They are summarized as follows:

**{¶19}** Appellee has yearly gross income from her part-time jobs at Canfield schools of approximately \$20,000.00. She also receives \$16,876.00 annually from her share of appellant's pension. Appellant receives annual gross pension benefits of \$24,156.00. He also receives Social Security benefits in the amount of \$34,056.00. (R.C. 3105.18(C)(1)(a)).

**{¶20}** Appellee currently works 18.75 hours per week as a special needs aide at Canfield Schools. She also works as a ticket manager at the schools to earn more income. The court considered whether it should impute income to appellee since she does not work full time. But the court decided to do so would be inequitable under the circumstances since appellant did not permit appellee to work during the marriage so that she could be the primary caretaker of the parties' children. As to appellant, the court noted that while he is capable of working, it was not equitable to treat appellant as if he were working given that he is 67 years old and retired. (R.C. 3105.18(C)(1)(b)).

**{¶21}** Both parties are in good health. Appellee is 64 years old and appellant is 67 years old. (R.C. 3105.18(C)(1)(c)).

**{¶22}** Appellee has an STRS pension but she has not yet retired. When she does retire, she may be able to collect Social Security benefits. Appellee also owns an IRA with an approximate balance of \$123,000.00. And appellee was awarded one-half of appellant's FERS pension. Appellant collects both Social Security benefits and his pension. He also owns a Thrift Savings Plan with a balance of \$64,000.00. (R.C. 3105.18(C)(1)(d)).

**{¶23}** The parties were married for 35½ years. (R.C. 3105.18(C)(1)(e)).

**{¶24}** The extent to which it would be inappropriate for a party, because that party will be custodian of a minor child, to seek employment outside of the home is not applicable. (R.C. 3105.18(C)(1)(f)).

**{¶25}** The parties had a typical middle class standard of living. (R.C. 3105.18(C)(1)(g)).

**{¶26}** Neither party presented any evidence as to the relative extent of the education of the parties. (R.C. 3105.18(C)(1)(h)).

**{¶27}** Appellee owns her home, which has a mortgage balance of approximately \$65,000.00. She has a savings account with approximately \$5,000.00. And she owns an IRA and half of appellant's pension as set out above. She also has an STRS pension, which is not in "pay status" at this time. She has a debt of \$6,827.00 for siding on her house and credit card debt of approximately \$7,250.00. (R.C. 3105.18(C)(1)(i)).

**{¶28}** Appellant owns his home, which has a mortgage balance of approximately \$82,000.00. He owns checking accounts with a total balance of approximately \$8,000.00. And he owns a Thrift Savings Account as set out above. Appellant has credit card debt of \$5,000.00 and a debt for a new roof in the amount of \$29,000.00. (R.C. 3105.18(C)(1)(i)).

**{¶29}** Appellee contributed to appellant's earning ability by caring for the parties' children during the marriage. (R.C. 3105.18(C)(1)(j)).

**{¶30}** Spousal support is taxable to appellee and deductible by appellant. (R.C. 3105.18(C)(1)(l)).

**{¶31}** Appellee lost income production capacity from her marital responsibilities. (R.C. 3105.18(C)(1)(m)).

**{¶32}** The parties' monthly expenses are relevant and equitable. (R.C. 3105.18(C)(1)(n)).

**{¶33}** After making all of these findings in accordance with the statute, the trial court determined it would not be appropriate or reasonable to terminate spousal support. But the court did find a modification would be appropriate and reasonable. The court then modified appellant's monthly support obligation from \$2,750.00 to \$700.00.

**{¶34}** Appellant contends the court should have given more weight to two facts: (1) appellee only works part time and (2) two adult sons live with her and do not pay rent.

{¶35} The testimony was undisputed that during the parties' marriage, appellee stayed home to raise the parties' children at appellant's request and then worked part time.

{¶36} As to whether she might seek full-time employment, appellee testified that she has worked only part time to supplement appellant's income for the past 18 years and raised the parties' five children. (Tr. 124-125). She stated that at the beginning of their marriage, appellant did not allow her to work. (Tr. 125). Appellee testified that she is a very frugal person who lives within her means. (Tr. 130-131). She stated if her situation changed and she needed more money, she would find more work. (Tr. 131).

{¶37} Appellee further testified that while she may be entitled to Social Security benefits, she was not yet at the age to receive full benefits. (Tr. 162). She will reach that age in March 2023. (Tr. 162). And if she were to apply for Social Security benefits now, her future benefits would be reduced by approximately 30 percent. (Tr. 162-163). If she waits until March 2023, however, she will receive the full monthly benefit of \$1,296.00. (Tr. 163).

{¶38} The trial court gave careful consideration to each of the statutory spousal support factors before reaching its judgment. It clearly considered the fact that appellee only works part time. The court took this fact into consideration along with numerous other factors in fashioning its award. And it significantly reduced appellant's spousal support obligation in light of his retirement. We cannot find the trial court abused its discretion in not putting more weight on appellee's part-time employment.

{¶39} Appellee also testified that her two adult sons live with her rent-free. But there is no requirement that she charge them rent or that this can be held against her in determining spousal support. Moreover, appellant testified that he has a woman friend who lives with him on a part-time basis who does not contribute to any of his household expenses. Thus, if the court were to consider this fact against appellee, it could also consider it against appellant.

{¶40} In sum, we cannot conclude that the trial court acted unreasonably, arbitrarily or unconscionably in overruling appellant's motion to terminate spousal support.

{¶41} Accordingly, appellant's first assignment of error is without merit and is overruled.



{¶42} Appellant's second assignment of error states:

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FINDING THE DEFENDANT/APPELLANT IN CONTEMPT FOR FAILURE TO PAY HIS SPOUSAL SUPPORT WHERE, AS HERE, THE DEFENDANT/APPELLEE AFTER HIS RETIREMENT LACKED SUFFICIENT INCOME TO PAY SAID SPOUSAL SUPPORT AND ALSO MEET HIS MONTHLY OBLIGATIONS AND LIVING EXPENSES AFTER HIS RETIREMENT.

{¶43} Here appellant contends that spousal support is to be paid from the income, as opposed to the assets, of the obligor spouse. He points out that after he retired, his income was reduced by more than half. Appellant states that his monthly income after he retired is a total of \$3,739.18 (from his pension and social security). Given his monthly expenses, he claims he could not afford spousal support. In part, he blames the late disbursement of his federal pension. Initially his net payment was \$901.18 per month. This later increased to \$1,428.67 per month. Thus, he claims the court should not have found him in contempt of court for failing to make some of his support payments.

{¶44} Contempt is defined as a disregard for or disobedience of an order or command of judicial authority. *First Bank of Marietta v. Mascrote, Inc.*, 125 Ohio App.3d 257, 263, 708 N.E.2d 262 (4th Dist.1998). Failure to abide by a court order may be indirect contempt, as it occurs outside the presence of the court but demonstrates a lack of respect for the court. *Byron v. Byron*, 10th Dist. Franklin No. 03 AP 819, 2014-Ohio-2143 at ¶ 11. An appellate court reviews a trial court's finding of contempt for abuse of discretion. *State ex rel. Ventrone v. Birkel*, 65 Ohio St.2d 10, 11, 417 N.E.2d 1249 (1981).

{¶45} With regard to contempt, the trial court found that appellant admitted he had not paid spousal support as ordered. It noted that appellant paid \$5,000.00 in June as ordered by the court but that he was also ordered to pay \$1,400.00 per month effective July 1, 2020. Appellant made two payments, one in July and one in August 2020, but testified he could not afford to make any further payments. Thus, appellant made no payments at all from September 2020 through January 2021. The court noted that had

appellant made some attempt to pay some portion of his spousal support, his argument would be more persuasive. Thus, the court found appellant in contempt.

{¶46} Appellee filed her first show cause motion on April 21, 2020, alleging appellant was in contempt for failure to pay spousal support in March and April 2020. The magistrate held a hearing in June 2020, where appellant was ordered to pay a lump sum of \$5,000.00 to bring him in compliance. Appellant paid appellee that lump sum. (Tr. 250). The magistrate also lowered appellant’s monthly support obligation to \$1,400.00 effective July 1, 2020. Appellant paid the July and August 2020 payments to appellee. (Tr. 251). But he never made another monthly support payment after that. (Tr. 251).

{¶47} Appellant admitted he did not make any spousal support payments after August 2020. (Tr. 210, 214). He testified that he could not afford to make the payments. (Tr. 210). But he did testify that he had \$62,000.00 in his Thrift Savings Plan. (Tr. 211). Appellant also testified that he was unaware he was to make any payments after September 2020. (Tr. 209-210). Yet he acknowledged receiving appellee’s motion to show cause in October 2020 alerting him to the fact that he had not made his payments pursuant to the court’s order. (Tr. 213-214).

{¶48} Additionally, appellee testified that as of the last hearing date (January 15, 2021), she had not received any spousal support payments since August 2020. (Tr. 251).

{¶49} “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 v. Damos*, 133 Ohio St.3d 509, 2012-Ohio-4783, 979 N.E.2d 297, ¶ 20, citing *State ex rel. Cook v. Cook*, 66 Ohio St. 566, 570, 64 N.E. 567 (1902).

{¶50} Appellant did not meet his burden to prove his inability to pay. Appellant’s position at the hearing went back and forth between asserting he was unable to pay at all and asserting he was unaware that he had to pay after September 2020. He admitted he did not make any spousal support payments after August 2020. Even if he could not afford to make the entire \$1,400.00 payment each month, he did not make even a small, partial payment for five months. While he claimed he did not know he had to make any payment past September 2020, he admitted he did not make the September 2020 payment. Thus, based on this evidence, the trial court did not abuse its discretion in finding appellant to be in contempt of court.

{¶51} Accordingly, appellant’s second assignment of error is without merit and is overruled.

{¶52} For the reasons stated above, the trial court’s judgment is hereby affirmed.

Waite, J., concurs.

D’Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas 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.**