

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
FULTON COUNTY

Charlene M. Beck

Court of Appeals No. F-09-001

Appellee

Trial Court No. 03DV000224

v.

Randall L. Beck

DECISION AND JUDGMENT

Appellant

Decided: November 6, 2009

* * * * *

Jeffrey L. Robinson, for appellee.

Chris Dreyer, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This matter is before the court on appeal from the December 22, 2008 judgment of the Fulton County Court of Common Pleas, Domestic Relations Division, which ordered the disposition of certain personal property and ordered appellant to serve 14 days in jail following two contempt findings. For the reasons set forth herein, we reverse the trial court's judgment, in part, and remand the case for further proceedings.

{¶ 2} A recitation of the relevant facts is as follows. The divorce decree in this case was finalized on June 22, 2005. Appellee, Charlene Beck, appealed the trial court's September 19, 2007 judgment finding her in contempt. The judgment also found appellant, Randall Beck, in contempt of the court's July 13, 2006 order and ordered him to serve seven days in jail and pay \$2,600 of appellee's attorney fees. On August 8, 2008, this court reversed appellee's contempt finding and remanded this case to the trial court in order to first conduct a hearing as required under R.C. 2705.02. See *Beck v. Beck*, 6th Dist. No. F-07-021, 2008-Ohio-4027.

{¶ 3} On remand, the trial court held a pretrial conference on December 3, 2008. Thereafter, the court entered its December 22, 2008 judgment entry, wherein it listed five issues to be resolved by the court. The issues included the ownership of and lien upon the parties' Honda motorcycle and Ford Ranger, ownership and resolution of appellant's gun collection held in bailment, appellant's "remaining fourteen days of incarceration previously ordered pursuant to two prior Contempt citations," the \$2,600 attorney fee award ordered to be paid to appellee's attorney, and the \$4,600 tax liability generated by the parties' business.

{¶ 4} Resolving these issues, the court awarded appellant the proceeds from the sale of the Ford Ranger and the motorcycle and the responsibility for payment of any liens on the vehicles. The court ordered that the guns be sold at auction and that the proceeds be applied to satisfy the \$2,600 in attorney fees owed. In the event that the debt

was not satisfied by March 20, 2009, appellant was to serve "the previously ordered fourteen day jail term." Finally, appellant was ordered to assume the \$4,600 tax debt. This appeal followed.

{¶ 5} Appellant raises two assignments of error for our review:

{¶ 6} "First Assignment of Error: The Judge failed to follow the requirements of Ohio Revised Code Section 2705.01 et seq. in finding appellant in contempt and/or violated appellant's due process rights.

{¶ 7} "Second Assignment of Error: The court's finding of contempt against appellant constitutes an abuse of discretion."

{¶ 8} Appellant's assignments of error are related and will be jointly addressed. In essence, appellant argues that he was not permitted to defend against the additional contempt charge and was surprised by the "reversal" of items awarded to him in the court's September 19, 2007 judgment entry. Appellee asserts that because appellant failed to appeal his September 19, 2007 contempt finding, he waived his right to complain about the court's finding.

{¶ 9} As to the allocation of property, we note that the trial court is vested with broad power in determining the scope of property awards in divorce actions. *Berish v. Berish* (1982), 69 Ohio St.2d 318, 319. Therefore, "[a] reviewing court may modify or reverse a property division, if it finds that the trial court abused its discretion in dividing the property as it did." *Cherry v. Cherry* (1981), 66 Ohio St.2d 348, 355. An abuse of

discretion involves an unreasonable, arbitrary or unconscionable decision. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Upon review, we cannot say that the trial court's judgment relating to the sale of the guns and the ownership and lien responsibility of the vehicles was an abuse of discretion.

{¶ 10} Regarding the contempt findings, as we stated in our August 8, 2008 decision, pursuant to R.C. 2705.05(A), prior to finding an individual in contempt of court "a trial court must first conduct a hearing where the accused may present testimony and offer an argument in his or her defense." (Citations Omitted.) *Beck* at ¶ 25. Further, once found in contempt, the accused shall be afforded an opportunity to purge himself or herself of contempt.

{¶ 11} Upon careful review, this court can locate only one contempt finding in the record. On September 19, 2007, appellant was found in contempt and ordered to serve seven days in jail. The order stated that he could partially purge the contempt finding and five of the seven days of incarceration by paying \$2,600 to appellee's attorney by October 5, 2007. Accordingly, we reverse the December 22, 2008 judgment entry solely as it relates to the court's statement regarding two contempt findings and the imposition of seven days of incarceration for the contempt finding for which we can find no record. Appellant's first and second assignments of error are well-taken, in part.

{¶ 12} On consideration whereof, we find that substantial justice was not done the party complaining and the judgment of the Fulton County Court of Common Pleas,

Domestic Relations Division, is reversed, in part, and the matter is remanded to the trial court for further proceedings. Pursuant to App.R. 24, appellee is ordered to pay the costs of this appeal.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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