

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

Rodney G. Wright

Court of Appeals No. WD-09-036

Appellant

Trial Court No. 99DR240

v.

Diane E. Wright

DECISION AND JUDGMENT

Appellee

Decided: February 5, 2010

* * * * *

George R. Royer, for appellant.

Scott Coon, for appellee.

* * * * *

SINGER, J.

{¶ 1} Appellant, Rodney G. Wright, appeals the April 21, 2009 judgment of the Wood County Court of Common Pleas, Domestic Relations Division, which found him in contempt of the court's November 29, 2000 order. For the reasons that follow, we affirm the trial court's judgment.

{¶ 2} Appellant and appellee, Rodney G. and Diane E. Wright, were divorced in 2000. The divorce decree ordered appellant to pay appellee spousal support in the amount of \$300 a month for seven years. The spousal support was subject to termination upon appellant's death, appellee's remarriage or her cohabitation with another male.

{¶ 3} On September 12, 2008, appellee filed a motion to show cause alleging that appellant was \$13,350 in arrears on his spousal support. On October 7, 2008, appellant filed a motion to show cause alleging, among other things, that he had over-paid appellee spousal support and that he was owed \$6,475. On December 2, 2008, appellee filed an amended motion to show cause alleging that appellant was \$11,820 in arrears on his spousal support.

{¶ 4} A hearing commenced on January 12, 2009. Appellant testified that the amount that he allegedly owes appellee in spousal support reflects the portion of spousal support that he had paid her over the years in cash. Appellant contended that he had in fact over-paid appellee. Appellant acknowledged that he had no receipts or bank records to support his contention. He did, however, offer into evidence a ledger in which he and his current wife purportedly hand-recorded his cash payments to appellee. Appellee took the stand and unequivocally testified that she never received any spousal support payments from appellant in cash.

{¶ 5} Appellant also testified that appellee's aunt and uncle sold some of appellant's personal property he was entitled to pursuant to the divorce decree and gave the proceeds from the sale to appellee. Appellant submitted into evidence a list of his

personal belongings he believes have been wrongfully withheld from him or sold for profit. The lengthy list included two sewing machines and a number of upholstery tools. Appellant testified that he had stored these items at the house of appellee's aunt and uncle. Appellee's aunt, Lois Monroe, testified that at some point, appellant did retrieve the sewing machines from her house. When asked about the remaining items appellant claimed he had stored at Monroe's house, Monroe testified that those things were not stored at her house and that she did not sell any of appellant's personal property.

{¶ 6} Finally, appellant testified that he was entitled to be reimbursed for the period of time in which appellee cohabitated with two men. One of the men was identified as a boyfriend of appellant's and appellee's daughter who cohabitated with the parties' daughter at appellee's residence. The other man, Lanny Nelson, testified that appellee was his friend and that she moved in with him and his teenage daughter for six months. Nelson explained that his job involved a lot of traveling and he needed appellee to stay at his house when he was gone to watch his minor daughter.

{¶ 7} On February 23, 2009, the magistrate issued a decision denying appellant's motion to show cause and finding appellant in contempt. The decision included findings of fact and conclusions of law. Therein, the magistrate concluded: (1) that the evidence presented by appellant that he made cash payments to appellee was not credible; (2) that appellant failed to prove that appellee cohabitated with another male such to warrant termination of child support as appellee acted merely as a babysitter for Lanny Nelson and did not have a sexual relationship with him; (3) that appellant owes appellee \$11,820

in spousal support plus attorney fees, and (4) that appellant may purge himself of the contempt by paying appellee \$750 a month until his arrearage is paid in full.

{¶ 8} Appellant did not file objections to the magistrate's decision.¹ On April 21, 2009, the trial court adopted the magistrate's decision. Appellant now appeals setting forth the following assignments of error:

{¶ 9} "I. The court should have denied the defendant's motion to show cause of spousal support arrearage and not order plaintiff to pay spousal support arrearage.

{¶ 10} "II. The court erred in not granting plaintiff's motion to hold defendant in contempt of court for failure to give plaintiff his personal property items.

{¶ 11} "III. The court erred in refusing to admit into evidence plaintiff's exhibits 3, 4, 8 and 11.

{¶ 12} "IV. The court erred in requiring appellant (plaintiff) to pay \$750.00 per month towards the court established arrearage."

{¶ 13} If a party fails to file objections to a magistrate's decision in accordance with Civ.R. 53, such claim or objection is waived for purposes of appeal, and the party may not then challenge the court's adoption of the magistrate's factual findings on appeal. *Crites v. Crites*, 6th Dist. Nos. WD-04-034, WD-04-042, 2004-Ohio-6162, ¶ 37, citing *Aurora v. Sea Lakes, Inc.* (1995), 105 Ohio App.3d 60, 66. Civ.R. 53 imposes an affirmative duty on the parties to file timely, specific objections in the trial court,

¹On March 5, 2009, appellant filed a "motion for reconsideration and/or modification" seeking a reduction in his court ordered monthly payment of \$750. The court denied his motion.

identifying any error in the magistrate's decision. *Buford v. Singleton*, 10th Dist. No. 04AP-904, 2005-Ohio-753. "The failure to raise this matter before the trial court [deprives] the court of an opportunity to correct any errors and forfeits the right to challenge those issues on appeal." *Ilg v. Ilg*, 9th Dist. No. 23987, 2008-Ohio-6792.

{¶ 14} In that appellant failed to file objections to the magistrate's decision pursuant to Civ.R. 53, he has waived his right to argue the issues raised in his four assignments of error. Further, we have thoroughly reviewed the record in this case and find no evidence of plain error. Accordingly, appellant's four assignments of error are found not well-taken.

{¶ 15} On consideration whereof, the judgment of the Wood County Court of Common Pleas, Domestic Relations Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

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, P.J.

CONCUR.

JUDGE

<p>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: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
