[Cite as *Epitropoulos v. Epitropoulos*, 2011-Ohio-3701.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Lauri Epitropoulos [nka Wolf],	:	
Plaintiff-Appellee,	:	
		No. 10AP-877
v.	:	(C.P.C. No. 97DR-06-2649)
Ernie Epitropoulos,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on July 28, 2011

R. Chris Harbold & Associates, and *R. Chris Harbold*, for appellee.

Tyack, Blackmore & Liston Co., L.P.A., and *Thomas M. Tyack*, for appellant.

APPEAL from the Franklin County Court of Common Pleas, Division of Domestic Relations.

DORRIAN, J.

{¶1} Defendant-appellant, Ernie Epitropoulos ("appellant"), appeals from the August 18, 2010 decision of the Franklin County Court of Common Pleas, Division of Domestic Relations, regarding objections and cross-objections to the magistrate's decision on plaintiff-appellee, Lauri Epitropoulos, nka Wolf's ("appellee"), motions to modify child support, for contempt, and for attorney fees. For the following reasons, we affirm in part and reverse in part.

{¶2} The parties were married on May 26, 1984, and two children were born of their marriage: a son born on October 22, 1990, and a daughter born July 23, 1993. On June 24, 1997, the parties entered into a Shared Parenting Plan ("SPP"), filed on June 26, 1997. In the SPP, the parties agreed to exchange no child support. In addition, they agreed to pay specific costs related to the minor children for day care, healthcare-related expenses, school, extracurricular activities, and clothing as follows: 60 percent by appellant and 40 percent by appellee. The parties also agreed to a parenting schedule whereupon the minor children would spend approximately 50 percent of their time at each residence. On August 18, 1997, the parties dissolved their marriage via a Decree of Dissolution. At that time, the trial court also adopted the parties' SPP in the Shared Parenting Decree.

{¶3} According to the record, in 1999, appellee was diagnosed with multiple sclerosis ("MS"), primary progressive, and, thus, will "never have any remission." (Tr. 88.) Further, by 2002 appellee was wheelchair bound, and by 2009 appellee was unable to walk or use her arms and fingers. (Tr. 89.)

{¶4} On December 19, 2003, the parties entered into an Amended Shared Parenting Plan ("ASPP"), filed on January 30, 2004. At that time, the parties agreed that appellant would pay child support to appellee in the amount of $275 per month per minor child, plus a two-percent processing fee, which is a downward deviation from the guideline amount of $336.40 per month per child, plus a two-percent processing fee. In addition, the parties agreed to split the costs of extracurricular activities 50/50 and to divide out of pocket healthcare costs as follows: appellant to pay 75 percent and appellee to pay 25 percent. Further, appellant agreed to provide hospitalization, pharmaceutical

and medical insurance coverage. The parties also agreed to maintain a parenting schedule whereupon the minor children would spend approximately 50 percent of their time at each residence.

{¶5} Further, the ASPP included a provision stating, in relevant part, that:

> Both parties understand and agree that if at such time either party is dependent on third-party caregivers on a consistent basis to assist in their essential nutrition, grooming and daily needs, then that party shall deem it in the best interest of the [children] for them to be under the daily care of the other party.
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> * * * [T]herefore, if one party becomes dependent on third-party caregivers significantly hindering that party's ability to care for the children as set forth in above, it will be in the children's best interest for a plan to be developed to ensure the children spend appropriate time with the disabled parent as determined by the disabled parent and the children.

(See Jan. 30, 2004 Amended Agreed Shared Parenting Plan, at 19.)

{¶6} In 2006, appellee qualified for Medicaid and began receiving assistance in 2007 through the Ohio Home Care Waiver Program. (Tr. 95.) The Ohio Home Care Waiver Program provides appellant with in-home assistance for 16 hours a day, at no cost, in order to "sustain all [her] activities of daily living." (Tr. 89-90, 95.) However, in order to qualify for Medicaid, appellee divested all of her assets and formed a trust for her social security income, from which she pays her mortgage and utilities. (Tr. 96-97.) Appellee also receives disability income from ING disability insurance and social security benefits for herself and her children. (Tr. 99.)

{¶7} On May 22, 2007, appellant filed a motion to reallocate parental rights and obligations; however, he subsequently withdrew it on June 10, 2009. Appellee also filed motions, including several relevant to this appeal: (1) a motion to modify child support on

September 19, 2007, (2) a motion for contempt on July 30, 2009, and (3) a motion for attorney fees on August 12, 2009.

{¶8} On September 3 and 4, 2009, a magistrate of the trial court heard testimony regarding appellee's above-cited motions. On February 11, 2010, the magistrate issued a decision (1) modifying child support to $1,400 total per month for both minor children, effective September 16, 2007 through May 30, 2009, and $900 per month effective May 31, 2009, for one minor child, due to the parties' older child's emancipation, (2) overruling appellee's motion for contempt, and (3) awarding additional attorney fees to appellee in the amount of $7,500.

{¶9} On February 24, 2010, appellant filed objections to the magistrate's decision, and on March 8, 2010, appellee filed cross-objections to the magistrate's decision. On May 14, 2010, appellee filed a memorandum contra and transcript citations, and on May 24, 2010, appellant filed a supplemental memorandum. On May 25, 2010, the trial court heard oral arguments on the objections, and on August 18, 2010, the trial court issued its decision.

{¶10} In its decision, the trial court sustained in part and overruled in part the parties' cross-objections to the magistrate's decision, reaching "a different ultimate conclusion than the magistrate on the issues of child support modification, contempt, and awards of attorney fees." (See Aug. 18, 2010 Decision and Judgment Entry, at 23.) First, on the issue of child support modification, the trial court ordered that, effective September 19, 2007 through June 7, 2009, appellant shall pay child support in the amount of $1,400 per month, plus processing charge, for the parties' two minor children. Further, effective June 8, 2009, appellant shall pay $950 per month, plus processing

charge, for the parties' one remaining minor child. The trial court also found that, effective July 31, 2009, there is a child support arrearage of $19,954.76, which appellant shall liquidate at the rate of $500 per month, plus processing charge. (See Decision and Judgment Entry, at 23.) Second, on the issue of contempt, the trial court granted appellee's motion for contempt, finding appellant in contempt for "his use of the 'Gartmore Fund' in violation of the court orders." (See Decision and Judgment Entry, at 24.) Third, on the issue of attorney fees, the trial court held that appellee shall retain the $10,000 in interim fees and awarded her an additional $7,500.

{¶11} On September 15, 2010, appellant filed a timely notice of appeal, setting forth the following assignments of error for our consideration:

> [1.] THE TRIAL COURT ERRED IN CALCULATING THE CHILD SUPPORT LEVELS OR WHAT THE DEFENDANT IS ORDERED TO PAY BY [**A**] FAILING TO PROPERLY TAKE INTO ACCOUNT OR ALLOCATE MONIES RECEIVED BY THE PLAINTIFF FROM SOCIAL SECURITY BOTH FOR HER BENEFIT AND FOR THE BENEFIT OF THE CHILDREN [**B**] BY FAILING TO TAKE INTO ACCOUNT AND APPLY THE DEVIATION FACTORS SET IN §3119.24 OF THE REVISED CODE AS THE PARTIES' SHARED PARENTING SITUATION REMAINED UNCHANGED [**C**] FAILING TO RECOGNIZE THAT PURSUANT TO THE PARTIES' AGREED SHARED PARENTING PLAN OF 2004, THE PLAINTIFF'S TOTAL PHYSICAL DISABILITY RENDERING HER INCAPABLE OF PROVIDING CARE FOR THE CHILDREN AND RESPECTIVELY TRANSFERRED TO THE DEFENDANT THE ROLE OF PRIMARY CUSTODIAN.
>
> [2.] THE TRIAL COURT ERRED IN FINDING THE DEFENDANT GUILTY OF CONTEMPT BY UTILIZING FUNDS THAT WERE TRANSFERRED TO HIM FREE OF ANY CLAIM OF THE PLAINTIFF AS PART OF HER DIVESTITURE TO QUALIFY FOR SOCIAL SECURITY AND MEDICAID TO PAY HER THE $10,000.00 PURSUANT TO

AN ORDER ISSUED ON AN INTERIM BASIS BY THE COURT.

[3.] THE TRIAL COURT ERRED IN ORDERING THE DEFENDANT TO PAY ADDITIONAL ATTORNEY FEES.

{¶12} In his first assignment of error, appellant contends that the trial court erred, with respect to the child support calculation, for the following reasons: (1) failing to take into account and allocate monies that appellee receives from social security for herself and her children; (2) failing to consider the deviation factors set forth in R.C. 3119.24; and (3) failing to recognize that, due to appellee's disability, appellant became the minor children's sole legal custodian pursuant to the terms of the parties' ASPP.

{¶13} An appellate court reviews child support issues under an abuse-of-discretion standard. See *Pauly v. Pauly*, 80 Ohio St.3d 386, 390, 1997-Ohio-105. "An abuse of discretion exists when the trial court's decision is unreasonable, arbitrary, or unconscionable." *Guertin v. Guertin*, 10th Dist. No. 06AP-1101, 2007-Ohio-2008, ¶3, citing *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Further, "[t]here is no abuse of discretion where there is some competent, credible evidence supporting the trial court's decision." Id. citing *Ross v. Ross* (1980), 64 Ohio St.2d 203, 208.

{¶14} We begin our analysis by first discussing appellant's arguments regarding social security benefits received by appellee and her children. For purposes of the parties' child support calculations, we note that, while the parties have two minor children in common, appellee also has one minor child from another marriage, born on January 31, 1998. In his brief, appellant alleges that the trial court erred by failing to properly take into account or allocate monies received by appellee from social security, both for her own benefit and the benefit of her children. In response, appellee stated that

the trial court did, in fact, include these benefits in its child support calculation. In determining whether the trial court failed to properly take into account or allocate monies from social security that appellee received for her own benefit and the benefit of her children, we look to our decision in *Alexander v. Alexander*, 10th Dist. No. 09AP-262, 2009-Ohio-5856.

{¶15} In *Alexander*, for purposes of determining the parties' child support obligations, this court concluded that the trial court should have included social security benefits received on behalf of a child by a disabled party in the disabled parent's gross income. *Alexander* at ¶45-46. Here, the record reflects that, in 2007, appellee received social security benefits in the amount of $24,165, and each of her three minor children received social security benefits in the amount of $4,020. Therefore, in 2007, appellee's income from social security was $36,225. Further, in 2008, appellee received social security benefits in the amount of $24,720, and each of her three minor children received social security benefits in the amount of $4,116. Therefore, in 2008, appellee's income from social security was $37,068. Finally, in 2009, appellee received social security benefits in the amount of $26,148.00, and each of her two minor children received social security benefits in the amount of $6,538.80. Therefore, in 2009, appellee's income from social security was $39, 225.60.

{¶16} Here, following *Alexander*, both appellee's social security benefits and appellee's minor children's social security benefits must be included in her gross income for purposes of calculating child support. The child support worksheet, attached as Exhibit B to the trial court's decision, indicates that the trial court included appellee's own social security income in the amount of $24,165 on line 5 of the worksheet. In addition, on line

6b, the trial court included the social security income of the parties' two minor children in the amount of $8,344. However, the trial court did not include the social security income of appellee's minor child from another marriage in the calculation of her gross income. Although appellee's third minor child's social security income was not included in the calculation, the trial court adjusted appellee's income in the amount of $3,650, for the "other child" credit on line 8 of the worksheet.

{¶17} Further, the child support worksheet, attached as Exhibit D to the trial court's decision, also included appellee's own social security income in the amount of $26,148 on line 5 of the worksheet. In addition, on line 6b, the trial court included the social security income of the parties' one remaining minor child in the amount of $6,539. Once again, the trial court did not include the social security income of appellee's minor child from another marriage in the calculation of her gross income. However, line 8 reflected the same adjustment to appellee's income in the amount of $3,650, for the "other child" credit.

{¶18} In her brief, appellee concedes that, based upon the foregoing, the trial court calculated appellant's child support guideline amount without including the social security benefits of appellee's minor child from another marriage. Further, appellee suggests that the trial court remedy this error by deleting the "other child" adjustment from line 8 of the worksheet, which would increase appellee's income by $3,650. (See appellee's brief, 11-12.)

{¶19} Based upon *Alexander*, we agree that the trial court erred by not including the social security income from all of appellee's minor children in the calculation of her gross income. We remand this issue back to the trial court to recalculate guideline child

support, following our conclusion in *Alexander*, by including the social security benefits of appellee's minor child from another marriage in appellee's gross income.

{¶20} Second, we discuss appellant's argument regarding the deviation factors set forth in R.C. 3119.24. In his brief, appellant contends that the trial court erred in making "no findings or discussions of the 'extraordinary circumstances' whatsoever," as set forth in R.C. 3119.24. (See appellant's brief, 10.) In response, appellee asserted that the trial court specifically considered the factors required by R.C. 3119.24 and, further, that appellant is "not entitled to any automatic set off due to time spent with his children." (See appellee's brief, 13.)

{¶21} R.C. 3119.24(A)(1) states:

> A court that issues a shared parenting order in accordance with section 3109.04 of the Revised Code shall order an amount of child support to be paid under the child support order that is calculated in accordance with the schedule and with the worksheet set forth in section 3119.022 of the Revised Code, through the line establishing the actual annual obligation, except that, if that amount would be unjust or inappropriate to the children or either parent and would not be in the best interest of the child because of the extraordinary circumstances of the parents or because of any other factors or criteria set forth in section 3119.23 of the Revised Code, the court may deviate from that amount.

Further, R.C. 3119.24(A)(2) states:

> The court shall consider extraordinary circumstances and other factors or criteria if it deviates from the amount described in division (A)(1) of this section and shall enter in the journal the amount described in division (A)(1) of this section its determination that the amount would be unjust or inappropriate and would not be in the best interest of the child, and findings of fact supporting its determination.

In addition, R.C. 3119.24(B) states:

> For the purposes of this section, 'extraordinary circumstances of the parents' includes all of the following:
>
> (1) The amount of time the children spend with each parent;
>
> (2) The ability of each parent to maintain adequate housing for the children;
>
> (3) Each parent's expenses, including child care expenses, school tuition, medical expenses, dental expenses, and any other expenses the court considers relevant;
>
> (4) Any other circumstances the court considers relevant.

{¶22} Here, the record indicates that the parties are currently under a shared parenting order in which the minor children spend approximately 50 percent of their time at each parties' residence. Further, the record establishes that the trial court specifically addressed each of the "extraordinary circumstances" set forth above in determining that appellant shall pay child support in the amount of $1,400.00 per month, effective September 19, 2007 through June 7, 2009, and $950.00 per month, effective June 8, 2009, which constitutes a slight upward deviation from the guideline amount of $1,370.44 per month, and $948.34 per month, respectively. (Decision and Judgment Entry, at 9.)

{¶23} In addressing R.C. 3119.24(B)(1), the amount of time the children spend with each parent, the trial court found that "[t]he shared parenting plan entered into by the parties in 2003 * * * remains in full force and effect. This plan calls for an equal division of parenting time with a weekly exchange." (See Decision and Judgment Entry, at 14.) Further, the trial court stated that "[t]he children spend a substantial amount of time with each of their parents." (See Decision and Judgment Entry, at 14.) According to the record, appellant testified that, since December of 2003, the parties have been "[a]lternating weeks, summer split five weeks with each child." (Tr. 22.) Appellee also

testified that "we've always split the time half and half. Most recently it's been one week on and one week off." (Tr. 94.)

{¶24} In addressing R.C. 3119.24(B)(2), the ability of each parent to maintain adequate housing for the children, the trial court found that "[each] parent provides food, housing and other support for the children at their respective residences," and that appellee has "lived at 4061 Ritamarie Drive for the past nine years." (Decision and Judgment Entry, at 14, 16.)

{¶25} In addressing R.C. 3119.24(B)(3), each parent's expenses (including child care expenses, school tuition, medical expenses, dental expenses, and any other expenses the court considers relevant) the trial court stated that the parties divide extraordinary health insurance costs 75/25 and that each party is billed separately for the minor children's orthodontic expenses. Further, the trial court considered that appellant "pays more of the children's expenses: specifically his household provides for their health insurance cost, 75% of extraordinary medical expenses for these fairly healthy children, the cost of the children's transportation for necessary health related appointments, and he pays for the majority of the children's clothing, their cell phone bill and [their son's] auto insurance." (See Decision and Judgment Entry, at 17.) In addition, the trial court also indicated that the parties share the cost of extracurricular activities and that appellee usually purchases the children's school supplies. (See Decision and Judgment Entry, at 14-15.) However, the trial court also found that "there is a vast difference between [appellant's and appellee's] respective financial resources and incomes," and that "[t]he standard of living at [appellant's] * * * residence is a much higher standard of living than [appellee's] much more modest existence." (See Decision and Judgment Entry, at 17.)

{¶26} Finally, in addressing R.C. 3119.24(B)(4), "any other circumstances the court considers relevant," the trial court addressed several issues, including: (1) appellant and his current spouse share living expenses 60/40 (Decision and Judgment Entry, at 15); (2) appellant's credit card statements "reflect a comfortable upper middle class pattern of living expenses, including a Royal Caribbean Cruise for the entire family, frequent dining out at relatively inexpensive restaurants, an annual golf membership to the OSU golf course, and purchase of OSU sporting event tickets" (Decision and Judgment Entry, at 15); (3) appellee's diagnosis with MS and deteriorating health prevent her from working (Decision and Judgment Entry, at 16); and (4) appellee's need to divest assets in order to qualify for Medicaid (Decision and Judgment Entry, at 16).

{¶27} In *Pauly*, the Supreme Court of Ohio held that the trial court did not abuse its discretion in "refusing to deviate from the amount of child support calculated under the standard worksheet," because former R.C. 3113.215(B)(6)[1] does not "provide for an automatic credit in child support obligations under a shared parenting order." Id. at syllabus. Consistent with *Pauly*, in *Sexton v. Sexton*, 10th Dist. No. 07AP-396, 2007-Ohio-6539, ¶13, this court held that "no automatic credit in the support order * * * is warranted, but, rather, the trial court should balance all the factors in what is now R.C. 3119.24 when a shared parenting plan is involved."

{¶28} In the present matter, the trial court explicitly considered the 50/50 time allocation between the parties, as well as the other factors set forth in R.C. 3119.24(B). Therefore, based upon the evidence in the record, we find that the trial court did not fail to

[1] Former R.C. 3113.215 related to calculation of amount of child support obligation. See now R.C. 3110.01; 3119.02; 3119.021; 3119.022; 3119.023; 3119.024; 3119.03; 3119.04; 3119.05; 3119.06; 3119.07; 3119.08; 3119.09; 3119.22; 3119.23; 3119.24; 3119.79 for provisions analogous to former R.C. 3113.215.

take into account and apply the deviation factors set forth in R.C. 3119.24, and, in so doing, did not abuse its discretion.

{¶29} Third, we discuss appellant's argument regarding the alleged self-executing language set forth in the parties' ASPP. In his brief, appellant argues that the trial court erred in refusing to recognize that "the transfer of the responsibility to [appellant] would occur if, in fact, [appellee] became so disabled she was unable to physically meet the needs of her children." (See appellant's brief, at 11.) In response, appellee contends that because appellant withdrew his motion to reallocate parental rights and obligations prior to the hearing, there "was no basis for the court to modify the parenting time." (See appellee's brief, at 14.)

{¶30} We first note that the trial court did consider the alleged self-executing language in the ASPP and determined "there is nothing in the record to show that such a plan had been developed or implemented by the parties or that the parenting time arrangement has been altered from the weekly exchange provided in the plan." (Decision and Judgment Entry, at 14.) The trial court also stated "[e]ach parent provides food, housing and other support for the children at their respective residences." (Decision and Judgment Entry, at 14.) Further, we note that appellant withdrew his motion to reallocate parental rights and obligations on June 10, 2009, prior to the hearing on this matter. At the time of the hearing, the only remaining motions pending before the trial court were (1) appellee's motion to modify child support, (2) appellee's motion for contempt, and (3) appellee's motion for attorney fees. As such, if appellant truly wished to pursue this argument, he could have filed a motion for contempt to enforce the terms of the ASPP and/or continued to litigate his motion to reallocate parental rights and responsibilities.

Therefore, based upon the record, we find that the trial court, although not required, did consider the alleged "self-executing" language set forth in the parties' ASPP, determined it has not yet been implemented, and did not abuse its discretion.

{¶31} Appellant's first assignment of error is sustained in part and overruled in part.

{¶32} In his second assignment of error, appellant contends that the trial court erred in finding him guilty of contempt for using proceeds out of the Gartmore Fund to pay court-ordered attorney fees. We disagree.

{¶33} "Contempt is a disregard of, or disobedience to, an order or command of judicial authority." *Wesley v. Wesley*, 10th Dist. No. 07AP-206, 2007-Ohio-7006, ¶10, citing *Sansom v. Sansom*, 10th Dist. No. 05AP-645, 2006-Ohio-3909. In a case of civil contempt, "[t]he purpose of sanctions, including punishment, is not for the purpose of punishment, but rather for the purpose of encouraging or coercing a party in violation of the decree to comply with the violated provision of the decree for the benefit of the other party." *Williamson v. Cooke*, 10th Dist. No. 05AP-936, 2007-Ohio-493, ¶11, citing *Pugh v. Pugh* (1984), 15 Ohio St.3d 136, 139. "Moreover, a sanction for civil contempt must allow the contemptnor [sic] the opportunity to purge himself of the contempt *prior to* imposition of any punishment." *Williamson*, citing *O'Brien v. O'Brien*, 5th Dist. No. 2003CA12069, 2004-Ohio-581. (Emphasis added.) Therefore, so long as the contemnor obeys the trial court's order, "prison sentences are conditional." See *Brown v. Executive 200, Inc.* (1980), 64 Ohio St.2d 250, 253.

{¶34} Further, "an appeal from a contempt charge is moot when a defendant has made payment or otherwise purged the contempt." *Farley v. Farley*, 10th Dist. No. 02AP-

1046, 2003-Ohio-3185, ¶62; see also *Bank One Trust Co., N.A. v. Scherer*, 10th Dist. No. 06AP-70, 2006-Ohio-5097.

{¶35} In the present matter, the record indicates that on December 10, 2008, the magistrate ordered appellant to pay $10,000 in attorney fees by January 30, 2009. On December 19, 2008, appellant filed a motion to set aside the magistrate's order. Subsequently, by agreed entry, appellant consented to pay $10,000 on or before February 15, 2009. The record reflects that, in February of 2009, appellant wrote a check for $10,000 out of his Nationwide Money Market Prime Shares Account ("Nationwide Securities"). (Tr. 57-58.) Appellant testified that Nationwide Securities was formerly known as the Gartmore Fund prior to Nationwide's internal reorganization. (Tr. 52-53.)

{¶36} According to the ASPP, the Gartmore Fund can be used for (1) college tuition, fees and expenses, and (2) the purchase of one automobile for each minor child during or after high school. (See Amended Shared Parenting Agreement, at 24.) Further, at the discretion of *both* parties, the Gartmore Fund may also be used for the minor childrens' alternative educational interests and "other child-related expenses." (See Amended Shared Parenting Agreement, at 24.)

{¶37} Prior to 2006, the Gartmore Fund was in both parties' names with mutual rights of survivorship, should one party pre-decease the other. In addition, the parties agreed that "it is their mutual intent and commitment that at such time as one party survives the other, the surviving party shall honor the parties' agreements as detailed for the disbursement of said assets and that such agreements shall supersede any outstanding Will or other legal document." (See Amended Shared Parenting Agreement, at 25.) However, due to appellee's need to divest her assets in order to qualify for

Medicaid benefits, appellant became the sole owner of the Gartmore Fund. Notwithstanding this change in ownership, the record indicates that the parties did not modify the terms set forth in the ASPP regarding the use of the Gartmore Fund.

{¶38} On July 30, 2009, appellee filed a motion for contempt against appellant for using monies from the Gartmore Fund to pay her attorney fees. Based upon the "clear and unambiguous" language in the parties' ASPP, the trial court found appellant in contempt for violating the terms of the ASPP by withdrawing $10,000 from the Gartmore Fund, for an unauthorized purpose, without appellee's prior consent or approval. (Decision and Judgment Entry, at 20.) The trial court sentenced appellant to:

> [T]en days in jail, suspended upon his compliance with the following purge order. [Appellant] shall repay the sum of $10,000.00, plus interest at the 2010 statutory rate of 4% which shall accrue from February 18, 2009, through the date of repayment to the Nationwide money market account (1987). This reimbursement shall occur within thirty (30) days of the journalization of this entry. * * * Further, [appellant] shall pay [appellee] attorney fees and expenses relating to the contempt motion in the amount of $2,000.00 within thirty (30) days of the journalization of this entry.

(Decision and Judgment Entry, at 24.)

{¶39} According to the record, appellant stated that he "already paid the attorney fees and therefore does not seek a stay to voluntarily replace the money that was taken from the account to pay the attorney fees of the wife." (See appellant's May 11, 2011 Motion for Stay, at 2.) Further, appellee confirmed that appellant "did recently tender * * * the sum of $2000.00, incident to an underlying Contempt action." (See appellee's May 23, 2011 Memorandum Contra Motion for Stay, at 2.) Therefore, by replacing the $10,000 and paying an additional $2,000 in attorney fees, appellant purged his contempt.

{¶40} Because appellant voluntarily purged his contempt, we find appellant's second assignment of error moot.

{¶41} In his third assignment of error, appellant contends that the trial court erred in ordering him to pay additional attorney fees in the amount of $7,500, for a total of $17,500. In his brief, appellant specifically argues that the trial court abused its discretion in awarding appellee attorney fees because appellant "totally complied" with paying child support in the amount of $550 per month per the ASPP, and continued to do so even after the parties' oldest child became emancipated in June 2009. (See appellant's brief, at 11.) We disagree.

{¶42} R.C. 3105.73(B) states that "[i]n any post-decree motion or proceeding that arises out of an action for divorce, dissolution, legal separation, or annulment of marriage or an appeal of that motion or proceeding, the court may award all or part of reasonable attorney's fees and litigation expenses to either party if the court finds the award equitable." Further, "[i]n determining whether the award is equitable, the court may consider the parties' income, the conduct of the parties, and any other relevant factors the court deems appropriate, but it may not consider the parties' assets." R.C. 3105.73(B). Again, "[a]n award of attorney fees is generally within the sound discretion of the trial court and not to be overturned absent an abuse of discretion." *Wagenbrenner v. Wagenbrenner*, 10th Dist. No. 10AP-933, 2011-Ohio-2811, ¶19, citing *Shirvani v. Momeni*, 10th Dist. No. 09AP-791, 2010-Ohio-2975, ¶22.

{¶43} Here, the record indicates that this litigation commenced on May 22, 2007, with the filing of appellant's motion for reallocation of parental rights and obligations, which was subsequently withdrawn on June 10, 2009. As of September 4, 2009,

appellee incurred attorney fees "approaching $30,000." (Tr. 197.) In its decision, the trial court noted that the "billing records do not include the trial time for two days of trial, preparation of written closing arguments nor any time required for cross-objections, transcript preparation, review of the transcript, other post trial memoranda or the objections hearing." (Decision and Judgment Entry, at 21.)

{¶44} In determining the award of attorney fees in this matter, the trial court found that appellant's "income is substantially greater than [appellee's]." (Decision and Judgment Entry, at 22.)

{¶45} Further, the trial court considered that appellant increased appellee's litigation expenses through a "plethora of discovery issues" that required "motions to compel, motions for contempt, motions to quash and subpoenas to record keepers to obtain records directly that should have been freely produced in discovery." (Decision and Judgment Entry, at 22.) Appellee's counsel also testified that he had "significant problems * * * with getting discovery." (Tr. 197.) Specifically, appellee's counsel testified that appellant (1) failed to answer interrogatories, (2) failed to produce documents requiring appellee to file a motion to compel, and (3) failed to adhere to the trial court's order regarding the production of documents requiring appellee to file a motion for contempt and subpoenas. (Tr. 197-98.)

{¶46} Finally, the trial court stated that the "fees and litigation expenses incurred by [appellee] are reasonable and necessary in relation to this litigation and that the hourly rates charged by [appellee's counsel] are both reasonable and customary rate within the community, particularly for an attorney with [appellee's counsel's] level of expertise and experience." (Decision and Judgment Entry, at 22.)

{¶47} Therefore, upon review of the record, we cannot discern that, pursuant to R.C. 3105.73(B), the trial court abused its discretion in awarding appellee a total of $17,500 in attorney fees with respect to this litigation.

{¶48} Appellant's third assignment of error is overruled.

{¶49} For the foregoing reasons, appellant's first assignment of error is sustained in part and overruled in part, his second assignment of error is moot, and his third assignment of error is overruled. The judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is affirmed in part and reversed in part, and this cause is remanded to that court for further proceedings in accordance with law and consistent with this decision.

Judgment affirmed in part, reversed in part, and cause remanded.

BROWN and SADLER, JJ., concur.

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