ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

DIVISION IV

CA07-881

May 14, 2008

PATRICK POWERS
APPELLANT

v.

KATHRYN POWERS
APPELLEE

AN APPEAL FROM WASHINGTON COUNTY CIRCUIT COURT
[NO. DR03-1955]

HON. MARK LINDSAY,
JUDGE

AFFIRMED

In this divorce case, appellant appeals from post-decree rulings that denied his motions for continuance and recusal, held him in contempt, and refused to hold appellee in contempt. We affirm.

The parties' divorce decree divided their property and awarded child support and alimony to appellee. We upheld those awards and the trial court's refusal to modify them. *Powers v. Powers*, CA04-941 (Apr. 6, 2005) (not designated for publication); *Powers v. Powers*, CA04-641 (Feb. 2, 2005) (not designated for publication). Thereafter, each party asked the trial court to hold the other in contempt. Appellee claimed that appellant failed to pay alimony (she withdrew her claim for back child support), and appellant claimed, among other things, that appellee had not returned certain property to him. The trial court held appellant

in contempt but not appellee. The court also refused to continue the case or recuse. Appellant brings this pro se appeal.

Appellant argues first that the trial court erred in not continuing the contempt hearing. He told the court he lacked time to prepare because he was working on his other pro se lawsuits and that he had been "denied discovery." The court stated that no motion to compel was shown on the docket and asked appellant to produce such a motion if he had one. Appellant did not do so.

We see no abuse of discretion. *See Looney v. Raby*, 100 Ark. App. 326, ___ S.W.3d ___ (2007). Appellant argues that he was "waiting for the outcome on his motions for compelling discovery." However, the court stated that the docket contained no motion to compel, and appellant could not show that he had filed one. Nor did appellant demonstrate how additional discovery would have altered the outcome of the case. *See O'Neal v. O'Neal*, 55 Ark. App. 57, 929 S.W.2d 725 (1996). Appellant also contends that he was busy with his other lawsuits and thought he could present his "major arguments" at a jury trial, which the court mistakenly scheduled for June 27.[1] However, appellant received more than a month's notice of the hearing, ample time to prepare or seek a continuance in advance. He also did not inform the court, in seeking a continuance, that he was confused about the jury trial, and we see no basis for his claim that the court "intended to mislead" him.[2]

[1] Appellant was informed of the mistake prior to the hearing.

[2] Appellant was not, as he argues, entitled to a jury trial in this civil contempt hearing. *See generally Watson v. City of Fayetteville*, 322 Ark. 324, 909 S.W.2d 637 (1995).

Appellant argues next that the trial judge erred in failing to recuse. We reject this argument for the reasons set forth in *Powers v. Powers*, CA07-880, which we also decide today. Appellant's motion for recusal in this case was the same in all material respects as the recusal motion there. The trial court held one hearing on both motions and made the same ruling on each.

Appellant's related argument that the trial court denied him the opportunity to present his case does not merit reversal. Our review of the record reveals no judicial impediments to appellant's case, other than those occasioned by his own conduct or his lack of familiarity with legal proceedings. Pro se litigants are held to the same requirements as attorneys. *Collins v. St. Vincent Doctors*, 98 Ark. App. 190, ___ S.W.3d ___ (2007).

Next, appellant contends that appellee should have been held in contempt for retaining his personal property after the divorce. Appellee testified that appellant's personal property was returned to him, and the trial judge was entitled to believe her. *See Schueck v. Burris*, 330 Ark 780, 957 S.W.2d 702 (1997). Moreover, appellant, despite being prodded by the judge, could not demonstrate that appellee had withheld any particular item that the divorce decree required her to return. Appellant's remaining allegations under this point, such as his accusations of fraud, perjury, and the like, do not convince us that the trial court's ruling was clearly against the preponderance of the evidence. *See Aswell v. Aswell*, 88 Ark. App. 115, 195 S.W.3d 365 (2004) (applying that standard).

Appellant's final argument is that the trial court erred when it held him in contempt for failing to pay alimony. Appellant contends that he did not have the financial means to pay.

Civil contempt may not be exercised where the alleged contemnor is without the ability to comply. *Aswell*, *supra*.

This issue is very likely moot. Appellant tendered $11,000 as ordered by the court and presented a plan to pay the remaining arrearage. Where an appellant purges himself of the contempt by paying delinquent support money, the question of whether the trial court erred in holding him in contempt is moot. *See Minge v. Minge*, 226 Ark. 262, 289 S.W.2d 189 (1956) (involving child support). In any event, the trial court found that appellant had the ability to pay because he had received money from the sale of a house and a time share; had expended large sums pursuing his pro se lawsuits; and could seek help from his parents, as he did when he needed bail money in a criminal case.

Appellant's other arguments that appear throughout his brief, including his claim that this court should order an investigation into perjury allegations, state no basis for reversal.

Affirmed.

BIRD and VAUGHT, JJ., agree.