

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2016-CA-000408-MR

DOUGLAS RANDALL BIGGS, SR.

APPELLANT

v. APPEAL FROM TAYLOR CIRCUIT COURT  
HONORABLE PHIL PATTON, SPECIAL JUDGE  
ACTION NO. 05-CI-00255

MARY ELLEN BIGGS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: JONES, J. LAMBERT, AND MAZE, JUDGES.

MAZE, JUDGE: Douglas Randall Biggs, Sr. (Douglas) appeals from an order of the Taylor Circuit Court holding him in contempt for failure to make maintenance payments to Mary Ellen Biggs (Mary Ellen) as required by their dissolution decree. He argues that the trial court failed to consider his right to set off his maintenance arrearage against a default judgment entered against Mary Ellen in a separate

action. We agree with the trial court that Douglas failed to establish that he has an enforceable judgment against Mary Ellen which would satisfy the arrearage owed in this case. Hence, we affirm the order of contempt.

On July 25, 2005, Mary Ellen filed a petition for dissolution of marriage to Douglas. Ultimately, the parties entered into a settlement agreement, which was incorporated into the decree of dissolution entered on April 4, 2006. In pertinent part, the settlement agreement required Douglas to pay Mary Ellen lifetime maintenance in the amount of \$100 per week.

Around the same time, Douglas and Mary Ellen were co-defendants in a separate action brought by James and Marvelle Beard. The Beards sought to collect a debt which they alleged that Douglas and Mary Ellen jointly owed. Douglas filed a cross-claim against Mary Ellen for indemnification against any amounts for which he was found liable. Mary Ellen was unrepresented at trial and did not file an answer to the cross claim.

Ultimately, the jury found for the Beards on their claim. The trial court entered a default judgment against Mary Ellen for the entire \$56,000 judgment. But on appeal, this Court concluded that the Beards' counsel had a conflict of interest because he had previously represented Mary Ellen in the dissolution proceeding. In addition, the Court noted that Mary Ellen was disabled at the time of trial, and she believed that the Beards' counsel was still representing her. Since both Douglas and Mary Ellen were prejudiced by the conflict of interest, this Court set aside the judgment and remanded the matter for a new trial.

*Biggs. v. Beard*, No. 2010-CA-001529-MR, 2011 WL 4633746 (Ky. App. 2011).

The Beards' action was later dismissed for lack of prosecution.

On March 24, 2011, Mary Ellen filed a motion in the dissolution action, seeking to hold Douglas in contempt for his failure to pay maintenance as required in the decree. In response, Douglas argued that he was entitled to offset the \$56,000 default judgment against any maintenance arrearage. He also moved to terminate maintenance.

On February 1, 2013, the trial court entered an order holding Douglas in contempt and sentenced him to 179 days incarceration or a \$8,500 bond. Douglas paid the \$8,500, which was paid into escrow and was eventually applied toward his maintenance obligation. Douglas attempted to appeal the court's order releasing the escrowed funds to Mary Ellen. However, this Court dismissed his appeal, finding that it was untimely filed. *Biggs v. Biggs*, No. 2013-CA-000540-MR, 2014 WL 3796211 (Ky. App. 2014).

On May 7, 2015, Mary Ellen filed a new motion to hold Douglas in contempt for his continued failure to pay maintenance. Douglas again asserted that he was entitled to set off the default judgment against his maintenance obligation. The trial court again disagreed, holding Douglas in civil contempt for a maintenance arrearage of \$43,600. Douglas now appeals from this order.

On appeal, Douglas argues that the trial court abused its discretion by holding him in contempt without considering whether he had a right to set off the amounts owed under the default judgment against his maintenance arrearage. Trial

courts are afforded wide latitude in the use of their contempt powers to enforce their judgments. *Akers v. Stephenson*, 469 S.W.2d 704, 706 (Ky. 1970). We will not disturb the trial court's exercise of its contempt powers absent an abuse of that broad discretion. *Lanham v. Lanham*, 336 S.W.3d 123, 129 (Ky. App. 2011)

In this case, the trial court held Douglas in civil contempt to compel him to comply with the prior maintenance order. *See Commonwealth v. Burge*, 947 S.W.2d 805, 808 (Ky. 1996). Douglas does not dispute that he failed to make payments under the maintenance order or the amount of the arrearage owed. Rather, he only argues that any amounts owed should be deemed satisfied through an offset of any amounts owed under the 2010 default judgment against Mary Ellen.

We disagree. A party's failure to comply with a provision of a decree or order of the court does not excuse the other party's maintenance obligation under the decree. KRS<sup>1</sup> 403.240(1). Since Douglas clearly owed an arrearage, he had the obligation to show that it had been satisfied or that he was entitled to an offset which would satisfy the arrearage. Douglas failed to make that showing in this case.

We note that the trial court specifically rejected this argument prior to Douglas's first appeal. Thus, the issue is likely *res judicata* as to these parties. *Yeoman v. Commonwealth, Health Policy Board*, 983 S.W.2d 459, 464-65 (Ky. 1998). Moreover, the default judgment merely required Mary Ellen to indemnify

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<sup>1</sup> Kentucky Revised Statutes.

Douglas for any judgment awarded against them both as a result of the Beards' action. This court set aside the underlying judgment and that action was later dismissed. Although the default judgment was never formally set aside, it remains subject to the validity of the underlying judgment. As a result, there is no enforceable judgment to offset against the maintenance arrearage. Therefore, the trial court did not abuse its discretion by holding Douglas in contempt for that arrearage.

Accordingly, we affirm the contempt order of the Taylor Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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