

RENDERED: FEBRUARY 1, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000973-MR

LAURA M. HOPKINS

APPELLANT

APPEAL FROM WARREN CIRCUIT COURT
FAMILY DIVISION
v. HONORABLE CATHERINE R. HOLDERFIELD, JUDGE
ACTION NO. 13-CI-01375

CHARLES EDWARD HOPKINS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, GOODWINE, AND L. THOMPSON, JUDGES.

GOODWINE, JUDGE: The sole issue in this appeal is whether the Warren Family Court erred in awarding Appellee, Charles Hopkins, a monetary offset in a contempt proceeding stemming from a dissolution of marriage action. Having reviewed the record in light of applicable authority, we affirm.

BACKGROUND

Incorporated into the June 2015 decree dissolving the parties' marriage is a mediation agreement which includes the following terms pertinent to this appeal:

- 1) [Charles] shall be awarded the marital home, and all kitchen appliances, located at 219 Jade Street, Smiths Grove, KY and he shall be solely responsible for the indebtedness owed thereon and he shall indemnify and hold Laura harmless therefrom. [Charles] shall remove Laura's name from said debts within 60 days at which time Laura shall sign a QuitClaim Deed; and
- 2) [Charles] shall pay Laura a lump sum of \$150,000, within 60 days, as property settlement. [Charles] shall continue to pay maintenance at the rate of \$1,000 per month until such time as he pays said lump sum payment.

In March 2016, Laura moved to enforce the dissolution decree and mediation agreement based on Charles' failure to pay the entire property settlement payment and for his failure to continue paying monthly maintenance until the property settlement payment was complete. Charles thereafter moved to hold Laura in contempt for failing to sign a quitclaim deed for the marital home after he removed her name from the debts as required by the agreement.

On May 31, 2016, the family court conducted a hearing on the contempt motions and heard testimony that the marital home had been under contract for sale. After Laura had explicitly refused to execute a quitclaim deed

due to concerns over receiving payments from Charles, the sale could not be completed. There was also testimony that the property settlement payments would have been completed in March 2016, but Laura refused to accept payment and that Charles did not make the required monthly maintenance payments from July 2015 to July 2016.

The family court thereafter entered a July 8, 2016 order concluding that, under the terms of the mediation agreement, payment of the property settlement and maintenance provisions was not a prerequisite to execution of the quitclaim deed and holding that Laura was not permitted to withhold the execution of the quitclaim deed until such payments had been completed. The family court also found Laura in contempt for causing the sale of the marital home to fall through and required her to provide a quitclaim deed within three days of any future request from a bank or loan company preparing closing documents. Laura was also sentenced to 30 days' incarceration, held in abeyance so long as she complied with all court orders from that point forward.

In addition, the family court found that Charles owed a total of \$12,570.58, which included nine months of temporary maintenance he should have paid from July 2015 to March 2016. On October 13, 2016, the family court denied Laura's motion to reinstate maintenance but entered a *nunc pro tunc* judgment against Charles for \$8,913.66 with an interest rate of 12% per annum.

In January 2017, Laura moved to hold Charles in contempt for his failure to pay the remaining \$9,448.47 (the October amount plus interest) owed to her. At the April 2017 hearing on that motion, Charles claimed entitlement to a \$5,500 offset against the amount Laura claimed to be owed. As a defense to the amount Laura claimed was due, Charles argued that, as had been demonstrated at the May 2016 hearing, the marital home was under a contract for sale for \$193,000.00 when Laura refused to execute a quitclaim deed to the property and that her failure to provide the quitclaim deed caused that sale to fall through. Because the marital home eventually sold for \$187,500.00, which was less than the original contract price, Charles claimed to have suffered a \$5,500 loss as a direct result of Laura's contemptuous conduct.

Following the April 2017 hearing, the family court entered an order finding Charles in contempt for failing to pay Laura in accordance with its October 13, 2016 order and requiring him to pay her the sum of \$9,804.56, including interest. However, the court also offset \$5,500.00 from that amount based upon Laura's prior contempt in refusing to sign the quitclaim deed and thereby causing Charles to suffer a loss on the sale of the property. The entry of that offset forms the sole basis for Laura's appeal.

STANDARD OF REVIEW

Trial courts have broad authority to enforce orders, including the conduct of contempt proceedings when necessary. *Com., Cabinet for Health and Family Services v. Ivy*, 353 S.W.3d 324, 332 (Ky. 2011) (citing *Lewis v. Lewis*, 875 S.W.2d 862 (Ky. 1993)). The standard of review concerning a trial court's use of its contempt powers is abuse of discretion and the clear error standard is applied to findings of fact. *Id.* Factual findings “shall not be set aside unless clearly erroneous[.]” Kentucky Rules of Civil Procedure (CR) 52.01. “Findings of fact are not clearly erroneous if supported by substantial evidence.” *Janakakis-Kostun v. Janakakis*, 6 S.W.3d 843, 852 (Ky. App. 1999).

ANALYSIS

To begin, we reiterate well-established caselaw regarding citations for contempt:

A trial court has inherent power to punish individuals for contempt, *Newsome v. Commonwealth*, 35 S.W.3d 836, 839 (Ky. App. 2001), and **nearly unfettered discretion** in issuing contempt citations. *Smith v. City of Loyall*, 702 S.W.2d 838, 839 (Ky. App. 1986). We will reverse a finding of contempt only if the trial court abused its discretion in imposing the sentence. *Meyers v. Petrie*, 233 S.W.3d 212, 215 (Ky. App. 2007). Abuse of discretion is defined as conduct by a court that is “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky.1999) (citing 5 Am. Jur. 2d Appellate Review § 695 (1995))[.]

Crowder v. Rearden, 296 S.W.3d 445, 450 (Ky. App. 2009) (emphasis added).

The essence of Laura's argument is that in ruling on her motion to hold Charles in contempt, the family court was limited to consideration of that motion alone and could not consider Charles' defense to the *amount* she claimed was due her by asking for a setoff to compensate him for money lost due to Laura's failure to timely execute the quitclaim deed. However, rather than offering supporting authority for that proposition, Laura focuses her complaint on an alleged lack of evidence supporting the family court's finding that the sum of \$5,500 was lost due to conduct the family court had previously found to be contemptuous. Not only are we convinced that the family court's authority is not so limited, we find ample substantial evidence supporting its decision.

At the hearing on Laura's contempt motion, Charles offered evidence that he incurred a loss on the sale of the marital residence due to Laura's conduct. That evidence consisted of the testimony from the realtor, Sheri Eubank, and bank representative, Shawn Sanders, from the May 2016 hearing and the testimony of two witnesses at the April 2017 hearing. At the May 2016 hearing, Eubank testified that the house was under a contract for sale for \$193,000.00 with closing set to occur in March 2016; Sanders testified that the closing never occurred due to Laura's refusal to sign the quitclaim deed. At the April 2017 contempt hearing, Eubank and Charles' power-of-attorney, Jennifer Arbogast, testified that the house

was finally sold in November 2016 for \$187,500.00. Thus, a \$5,500 differential in the sales price is supported by substantial evidence in the record. Further, there can be no dispute that the loss was the direct result of Laura's actions because the family court previously found her in contempt for causing the March 2016 closing to be cancelled. As Charles's counsel argued at the hearing, evidence as to monetary loss occasioned by Laura's conduct could not have been presented at the previous contempt hearing because the second sale had not yet occurred at that point in the proceedings.

Finally, we are not persuaded by Laura's arguments that there was no evidence presented as to whether other offers had been made on the home and what efforts were made to ensure there was not a monetary loss on the sale of the property. Laura and her counsel were present at the April 2017 hearing and had ample opportunity to cross-examine both of Charles' witnesses on these precise issues. We thus find no deprivation of due process in the family court's consideration of Charles' evidence in support of the requested set-off or in ordering him to pay \$9,804.56 on Laura's contempt motion, less \$5,500, which is the difference between the contractual sale price in March 2016 and the actual sale price. Again, Laura points us to no authority to support her contention that the family court erred in considering Charles' mitigation evidence and our independent research has disclosed none.

In sum, nothing in this record suggests that the decision of the family court is arbitrary, unreasonable, unfair, or unsupported by sound legal principles. Substantial evidence supported the family court's imposition of sanctions for conduct which resulted in a monetary loss to both parties. Absent a clear demonstration that the family court abused its wide discretion in the exercise of its contempt power, we may not disturb its decision to impose the sanctions at issue in this appeal. *Lanham v. Lanham*, 336 S.W.3d 123, 129 (Ky. App. 2011).

CONCLUSION

For the foregoing reasons, we affirm the Warren Family Court's order of May 8, 2017, awarding Charles a monetary offset.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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