

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO**

WILLIAM DILLEY,	:	O P I N I O N
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2014-G-3227
TATIANA DILLEY,	:	
Defendant-Appellee.	:	

Civil Appeal from the Geauga County Court of Common Pleas.
Case No. 08 DC 000591.

Judgment: Affirmed.

William Dilley, pro se, 11720 Regent Park Drive, Chardon, OH 44024 (Plaintiff-Appellant).

Heidi M. Cisan, Thrasher, Dinsmore & Dolan Co., L.P.A., 100 Seventh Avenue, Suite 150, Chardon, OH 44024-1079 (For Defendant-Appellee).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, William Dilley, appeals the judgment of the Geauga County Court of Common Pleas finding him in contempt for his failure to pay spousal support, denying his motion to modify spousal support, denying his motion to show cause, and adopting the magistrate’s findings of fact and conclusions of law. Based on the following, we affirm.

{¶2} The trial court entered its final judgment of divorce on March 10, 2010.¹ After entry of the final judgment of divorce, the parties have had a remarkably litigious history. See *Dilley v. Dilley*, 11th Dist. Geauga No. 2012-G-3091, 2013-Ohio-994; *Dilley v. Dilley*, 11th Dist. Geauga No. 2012-G-3109, 2013-Ohio-4095; *Dilley v. Dilley*, 11th Dist. Geauga No. 2011-G-3030, 2011-Ohio-5863.

{¶3} The current appeal emanates from the trial court's order of September 24, 2014, affirming a magistrate's decision related to several pending motions. The parties and magistrate clarified the substance of the magistrate's hearing as follows: (1) appellee's motion to show cause, for attorney fees and further equitable relief, (2) appellant's motion to show cause, including request for reimbursement of expenses incurred by appellant for appellee's alleged delay in signing a quit-claim deed for the former marital residence, and (3) appellant's motion to modify spousal support.

{¶4} In her decision, the magistrate noted that appellant attempted to argue that the previous magistrate's decision should be reversed and has objected to and appealed from the trial court's judgments on numerous occasions.

{¶5} The magistrate recommended, and the trial court adopted the recommendation, to dismiss appellant's show cause motion and motion to modify spousal support. The trial court also adopted the magistrate's recommendation that appellant be adjudged guilty of contempt of court for his non-payment of spousal support.

{¶6} Appellant filed a timely notice of appeal and, as his first assignment of error, alleges:

1. For a complete factual history, see this court's opinion in *Dilley v. Dilley*, 11th Dist. Geauga No. 2010-G-2957, 2011-Ohio-2093.

{¶7} “The trial court erred and abused its discretion in failing to find appellee in contempt of court.”

{¶8} Appellant maintains the trial court erred in denying his motion to show cause. In his motion, appellant argued he incurred unnecessary expenses as a result of appellee’s failure to promptly execute a quitclaim deed to their marital home. Appellant argued that, as a result of appellee’s delay, he was ineligible for a modification of his mortgage. Appellant, however, failed to introduce any evidence of any expenses he may have incurred.

{¶9} On June 8, 2012, the trial court issued an order, which stated appellee “shall execute a quit-claim deed with regard to the real estate on or before July 1, 2012.” The record indicates that appellant prepared a quitclaim deed and delivered it to appellee’s attorney sometime in 2012, although an exact date is unknown. This deed apparently included extraneous language that was not part of the trial court’s order, and consequently, a second deed was prepared by appellant and delivered to appellee’s attorney. Appellee’s attorney, on April 25, 2013, sent appellee a copy of the deed, which she executed on May 7, 2013. The magistrate noted that once appellee was provided with a deed that complied with the trial court’s order, she promptly executed it. We cannot say the trial court abused its discretion in failing to find appellee in contempt. Appellant cannot utilize his failure to follow a trial court’s order for the reason as to why appellee should be held in contempt. Once appellee was provided with the second version of the quitclaim deed, free of the additional language, she executed it in a timely fashion.

{¶10} Appellant’s first assignment of error is without merit.

{¶11} Appellant's second assignment of error alleges:

The trial court erred and abused its discretion by not granting appellant's Relief from Judgment of the court's March 10, 2010, July 25, 2011, September 19, 2012, and other Judgment Entries after appellant invoked Civ. R. 60(B)(5) and pursuant to evidence of the appellee's fraud upon the court, perjury, filing false affidavits, concealment of evidence, violations of R.C. 3119.05(I)(1), and Plain Errors by the trial court in those decisions. The trial court committed a prejudicial error in invoking the doctrine of res judicata which does not suffice where fraud upon the court, perjury, and concealment of evidence took place which is subject to violation of Civ. R. 60(B)(5).

{¶12} Under this assigned error, appellant argues the trial court erred in not granting him relief from the operation of previous judgments, specifically March 10, 2010; July 25, 2011; August 15, 2011; and September 19, 2012. Appellant, however, is raising issues that have already been decided by the trial court and either not appealed or affirmed on appeal. See *Dilley* opinions, *supra*. Appellant's arguments as to these judgment entries are barred by the doctrine of res judicata. Under the doctrine of res judicata, "[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Twp.*, 73 Ohio St.3d 379 (1995), syllabus. The doctrine of res judicata applies to motions made pursuant to Civil Rule 60(B). *Coulson v. Coulson*, 5 Ohio St.3d 12, 17 (1983). The trial court did not abuse its discretion by failing to grant appellant's motion.

{¶13} Appellant's second assignment of error is without merit.

{¶14} Because appellant's third and fifth assignment of error relate to the trial court's finding of contempt, we address them in a consolidated analysis. As his third and fifth assignments of error, appellant alleges:

[3.] The trial court erred and abused its discretion in finding appellant in contempt, sentencing him to jail, ordering him to pay attorneys fees and issuing purge orders despite evidence that the appellant had paid the spousal during the period in question. The trial court erred in its issue of a QDRO order. The trial court erred and abused its discretion by ignoring that the appellant does not have the ability to pay.

[5.] The trial court erred and abused its discretion in finding the appellant in contempt for failure to pay spousal support.

{¶15} Appellant argues the trial court erred in finding him guilty of contempt for failure to pay spousal support and that his purge conditions ordered by the trial court were unreasonable due to his inability to pay.

{¶16} The magistrate found, and the trial court adopted, the following:

Mr. Dilley should be adjudged guilty of contempt of court for his non-payment of spousal support. He should be ordered to pay a fine of \$250 and sentenced to 30 days in jail with this sentence suspended provided that he purge his contempt by timely paying his regular monthly payments plus an additional 10% towards any arrearage until said arrearage is satisfied in full commencing the first full month after the court issues a Judgment Entry in this matter.

Mr. Dilley should be ordered to pay Ms. Dilley \$1,302.00 for her attorney's fees incurred as a result of his contempt. This amount should be incorporated into the QDRO as set forth below.

{¶17} At the outset, we recognize that “[c]ontempt is a disregard of, or disobedience to, an order or command of judicial authority.” *First Bank of Marietta v. Mascrote, Inc.*, 125 Ohio App.3d 257, 263 (4th Dist. 1998). The contempt process was created “to uphold and ensure the effective administration of justice[,] * * * to secure the dignity of the court[,] and to affirm the supremacy of law.” *Cramer v. Petrie*, 70 Ohio St.3d 131, 133 (1994).

{¶18} “[T]he burden of proof for civil contempt is clear and convincing evidence.” *Delawder v. Dodson*, 4th Dist. Lawrence No. 02CA27, 2003-Ohio-2092, ¶10 (citation omitted). Before the imposition of a sentence for civil contempt, the trial court must afford the contemnor an opportunity to purge himself of the contempt. *Id.* (citation omitted). “The contemnor is said to carry the keys of his prison in his own pocket since he will be freed if he agrees to do as ordered.” *Brown v. Executive 200, Inc.*, 64 Ohio St.2d 250, 253 (1980) (citation omitted). Failure to pay court-ordered child support and alimony constitutes civil contempt. R.C. 2705.031; *Herold v. Herold*, 10th Dist. Franklin No. 04AP-206, 2004-Ohio-6727, ¶25.

{¶19} An individual charged with contempt for the violation of a court order may defend by proving that it was not in his power to obey the order. *State ex rel. v. Cook*, 66 Ohio St. 566 (1902). In *Cook*, the Ohio Supreme Court held: “In a proceeding in contempt against a party who has refused to comply with a money decree for alimony, it is not essential that the complaint allege that the party is able to pay the money. The decree imports a finding of the court that he is able to pay, and the burden is on him, by allegation and proof, to establish his inability.” *Id.* at paragraph one of the syllabus.

{¶20} An appellate court will not overturn a trial court’s finding of contempt absent an abuse of discretion. *State ex rel. Ventrone v. Birkel*, 65 Ohio St.2d 10, 11 (1981). An abuse of discretion is the trial court’s “failure to exercise sound, reasonable, and legal decision-making.” *State v. Beechler*, 2d Dist. Clark No. 09-CA-54, 2010-Ohio-1900, ¶62, quoting *Black’s Law Dictionary* 11 (8th Ed.2004).

{¶21} Here, appellant stipulated to the exhibit of the Geauga County Child Support Enforcement Division, dated November 8, 2013, demonstrating he had a

spousal support arrearage of more than \$66,000 as of October 31, 2013. Appellant has continually failed to comply with the court's order to pay support. See *Dilley*, 2013-Ohio-4095, ¶13 ("During that time, despite his monthly income from Social Security and Veteran's Disability, appellant failed to pay his obligation of spousal support. The court also observed that even if appellant could not make the entire monthly payment, he could have made a good faith effort by paying a lesser sum."). Although appellant maintains he should not be held in contempt because of his inability to pay, the record demonstrates that his financial circumstances have actually improved since spousal support was initially ordered, as discussed under his sixth assignment of error. The record demonstrates the only payments made to appellee were withholdings from appellant's social security benefits. Additionally, the record indicates that appellant received a lump sum payment from his retirement account in the amount of \$35,925.74 in May 2012 but failed to use any of these funds to pay his spousal support obligation, his spousal support arrearage, or the attorney's fees he was previously ordered to pay appellee due to his previous contempt actions. See *Dilley v. Dilley*, 2013-Ohio-4095 and 2011-Ohio-5863.

{¶22} We do not find the trial court abused its discretion in finding appellant in contempt for failure to pay spousal support.

{¶23} Appellant also argues that he is unable to comply with the purge requirement due to his inability to pay. To reiterate, appellant has continuously asserted his lack of financial stability as the reason for his failure to pay spousal support. See *generally Dilley*, 2013-Ohio-4095. Yet, the record demonstrates that appellant's financial circumstances have actually improved since spousal support was initially

ordered. Further, with respect to the award of appellee's attorney fees, this court has upheld the imposition of attorney fees as a condition of purging contempt. *Brandenburg v. Brandenburg*, 11th Dist. Lake No. 2004-L-085, 2005-Ohio-6417, ¶10-11 ("If it is permissible to make the payment of attorney fees a condition of the purge, then it logically follows that failure to pay the attorney fees must result in imposition of the contempt penalty, even if that includes a jail sentence."). See also R.C. 3105.18(G) (requiring "the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt").

{¶24} We cannot say the trial court abused its discretion in finding that appellant failed to meet his burden of proof to establish his inability to pay.

{¶25} Appellant's third and fifth assignments of error are without merit.

{¶26} Appellant's fourth assignment of error alleges:

{¶27} "The trial court erred and abused its discretion by not excluding appellant's premarital and exempted by law V.A. disability income in determination of spousal support."

{¶28} Under this assigned error, appellant maintains the trial court erred in considering his veteran's disability benefits in the determination of his income for purposes of spousal support. As this court recognized in *Dilley*, 2011-Ohio-2093, although "disability payments are not subject to division * * *, the trial court did not attempt to divide the benefits, but merely considered appellant's income from all sources as required by R.C. 3105.18(C)(1)(a)." *Id.* at ¶62.

{¶29} Appellant's fourth assignment of error is without merit.

{¶30} Appellant's sixth assignment of error alleges:

{¶31} “The trial court erred and abused its discretion by not vacating or modifying spousal support and vacating awarded attorney’s fees. The trial court committed prejudicial error in its findings of fact and not granting appellant’s motion.”

{¶32} Preliminarily, we note appellant’s motion for modification/termination of spousal support was properly before the court for consideration because the trial court specifically retained jurisdiction to modify or terminate the spousal support amount. See R.C. 3105.18(E)(1).

{¶33} The trial court engages in a two-step analysis when determining whether to modify an award of spousal support. First, the court must determine whether the circumstances of either party have changed, which includes, inter alia, “any increase or involuntary decrease in the party’s wages, salary, bonuses, living expenses, or medical expenses.” R.C. 3105.18(F). Second, if the trial court finds a change of circumstances, it must determine whether the existing spousal support should be modified. *Kucmanic v. Kucmanic*, 119 Ohio App.3d 609, 613 (8th Dist. 1997).

{¶34} The trial court is granted broad discretion concerning awards of spousal support. Its orders will not be disturbed on appeal absent an abuse of that discretion.

{¶35} Here, in finding no change of circumstances, the trial court noted that appellant, in 2012, had filed a motion for change of circumstances under R.C. 3015.18(F) to obtain a change in his obligation. The trial court adopted the findings of fact and conclusions of law in a September 19, 2012 judgment, which was affirmed by this court. See *Dilley*, 2013-Ohio-4095, ¶10-14.

{¶36} Appellant filed another motion to modify support on July 2, 2013, which is at issue in this appeal. The trial court recognized that appellant was required to prove a

change of circumstances. At the hearing, appellant presented evidence that he was receiving full disability benefits from the Department of Veterans Affairs, although he was evasive as to the amount as he believed it was separate property. Appellant also received disability benefits for one dependent child. After being asked several times, appellant testified that he is currently receiving \$2,800 per month in disability benefits. Furthermore, appellant receives \$2,352 from social security, of which \$1,411.20 is paid toward his spousal support obligation. The trial court found that appellant's income was actually higher than it was at both the final divorce hearing and the hearing on the previous motion to modify spousal support.

{¶37} Appellant's sixth assignment of error is without merit. The trial court did not abuse its discretion in failing to modify the spousal support obligation.

{¶38} As his seventh assignment of error, appellant alleges:

The trial court erred and abused its discretion by not allowing into evidence the Geauga Metropolitan Housing Authority lease of the appellee and the restraining order affidavit of the appellee into the trial record. The trial court erred and abused its discretion by not ruling on the violations associated with this withholding of evidence by the appellee.

{¶39} Appellant argues the trial court erred in refusing to permit the introduction of various pieces of evidence relating to his previously filed Civ.R. 60(B) motions; namely, that appellee entered into a lease agreement with the Geauga Metropolitan Housing Authority in March 2010. This was not, however, an issue before the trial court in the most recent proceeding. Further, appellant could have raised this argument prior to this appeal, and as such, it is barred by the doctrine of res judicata.

{¶40} Appellant's seventh assignment of error is without merit.

{¶41} Appellant's eight assignment of error alleges:

{¶42} “The trial court erred and abused its discretion by not ordering Thrasher, Dinsmore & Dolan to return the appellant’s separate funds to the escrow account.”

{¶43} Appellant’s eighth assignment of error relates to a judgment entry dated March 10, 2010. Specifically, appellant argues the trial court, in its March 10, 2010 judgment, erred in awarding attorney fees from appellant in the amount of \$30,000. This award of attorney fees has been affirmed by this court in *Dilley*, 2011-Ohio-2093.

{¶44} Appellant’s eighth assignment of error is without merit.

{¶45} Based on the opinion of this court, the judgment of the Geauga County Court of Common Pleas is hereby affirmed.

DIANE V. GRENDELL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.