[Cite as *Hagan v. Hagan*, 2010-Ohio-540.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CHARLES HAGAN

Plaintiff-Appellee

-vs-

MICHELLE HAGAN

Defendant-Appellant

JUDGES:
Hon. Sheila G. Farmer, P. J.
Hon. W. Scott Gwin, J.
Hon. John W. Wise, J.

Case No. 2009 CA 00148

O P I N I O N

CHARACTER OF PROCEEDING: Civil Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. 1996 DR 00441

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: January 4, 2010

APPEARANCES:

For Plaintiff-Appellee

KIMBERLY HOPWOOD
STARK COUNTY DJFS
Post Office Box 21337
Canton, Ohio 44701

For Defendant-Appellant

VERNON M. INFANTINO
SCHNARS, BACA & INFANTINO
610 Market Avenue North
Canton, Ohio 44702

Wise, J.

{¶1} Appellant Michelle Hagan appeals the decision of the Stark County Court of Common Pleas, Domestic Relations Division, which found her in contempt and imposed a thirty-day jail sentence for failure to comply with child support orders. The relevant facts leading to this appeal are as follows.

{¶2} Appellant Michelle Hagan, aka Walker, and Appellee Charles Hagan were married in 1991. Three children, E.H., C.H., and M.H., were born of the marriage. All three were minors as of the most recent proceedings in the trial court.

{¶3} On November 3, 1997, the parties' decree of divorce was finalized. Among other things, appellee was named the residential parent of the three children. Appellant was ordered to pay child support of $61.00 per month per child.

{¶4} On November 25, 2008, the Stark County Child Support Enforcement Agency filed a motion to show cause against appellant.

{¶5} On March 10, 2009, following a hearing, a family court magistrate found appellant in willful contempt, recommended a thirty-day jail sentence, and set the case for imposition before the assigned trial court judge on May 18, 2009. On March 18, 2009, appellant filed an objection to the magistrate's decision, which was thereupon set for hearing on the same date and time as the aforesaid imposition hearing.

{¶6} On May 18, 2009, appellant failed to appear for the imposition and objection hearing, although her counsel was present. The trial court thereupon ordered the thirty-day sentence imposed, and issued an arrest warrant.

{¶7} On May 19, 2009, appellant voluntarily appeared before the trial court. Following a hearing, the court again imposed the thirty-day jail sentence, to begin immediately.

{¶8} Appellant filed a notice of appeal on June 15, 2009, and herein raises the following two Assignments of Error:

{¶9} "I. THE DECISION OF THE MAGISTRATE TO FIND THE APPELLANT IN CONTEMPT AND SUBSEQUENT ADOPTION OF THAT DECISION BY THE JUDGE WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶10} "II. THE TRIAL COURT ABUSED IT'S (SIC) DISCRETION IN FAILING TO PROVIDE THE APPELLANT THE RIGHT TO PURGE HERSELF OF THE CONTEMPT."

I.

{¶11} In her First Assignment of Error, appellant challenges the finding of the trial court that she was in contempt for failure to pay child support.

{¶12} Contempt has been defined as the disregard for judicial authority. *State v. Flinn* (1982), 7 Ohio App.3d 294, 455 N.E.2d 691. "It is conduct which brings the administration of justice into disrespect, or which tends to embarrass, impede or obstruct a court in the performance of its functions." *Windham Bank v. Tomaszczyk* (1971), 27 Ohio St.2d 55, 271 N.E.2d 815, paragraph one of the syllabus. Our standard of review regarding a finding of contempt is limited to a determination of whether the trial court abused its discretion. *In re Mittas* (Aug. 6, 1994), Stark App.No. 1994CA00053. In order to find an abuse of discretion, we must determine that the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error

of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

{¶13} The record in this matter reveals that appellant's chief response to the show cause motion was that she has had unspecified medical problems stemming from several miscarriages. However, we note that on cross-examination, she conceded that she did not have verification from a physician that she was medically unable to work for the entire period of 1997 to 2009. Appellant also asserted that she lacks a driver's license and this has hampered her job opportunities. Appellant, who has two children in her custody from a subsequent relationship, also claimed that she cannot afford day care services. However, she indicated that she has attempted obtaining work via a temporary agency for a number of years.

{¶14} The testimony of the CSEA records custodian indicates that appellant was first ordered to provide child support for E.H., C.H., and M.H. under temporary orders effective May 1, 1996. An arrearage from the temporary orders of more than $4,000.00 was brought forward into the final divorce decree in 1997. By the time of the final decree in November 1997, the support obligation had been modified to $61.00 per month per child. Appellant was further put under "seek work" orders in 1997 and 2001. Appellant paid nothing toward her support obligations in 1997 (subsequent to the modification in September of that year), 1998, 1999, and 2000. In 2002, 2005, and 2006 appellant actually slightly overpaid her annual obligation. However, in 2001, 2003, 2004, 2007, 2008, appellant made only partial payments. It was uncontroverted that appellant had built up an arrearage of more than $17,300.00, plus unpaid processing fees, through February 28, 2009. See Tr., Magistrate's Hearing, at 6-12.

{¶15} Upon review of the record in this case, we are unable to conclude the trial court's contempt finding against appellant constituted an abuse of discretion, and we decline to alter the determinations reached by the magistrate and trial judge.

{¶16} Appellant's First Assignment of Error is overruled.

II.

{¶17} In her Second Assignment of Error, appellant contends the trial court erred in failing to provide her the opportunity to purge the contempt finding against her. We disagree.

{¶18} This Court has recognized that a sanction for civil contempt must allow the contemnor the opportunity to purge him or herself of contempt. See *O'Brien v. O'Brien,* Delaware App.No. 2003-CA-F12069, 2004-Ohio-5881, ¶ 68, citing *Burchett v. Miller* (1997), 123 Ohio App.3d 550, 552, 704 N.E.2d 636 (additional citations omitted). But in the case of criminal contempt, there is no requirement that the person charged be permitted to purge him or herself of the contempt. See *Brown v. Executive 200, Inc.* (1980), 64 Ohio St.2d 250, 416 N.E.2d 610.

{¶19} Civ.R. 53(D)(3)(b)(iv) provides that "[a] party shall not assign as error on appeal the court's adoption of any factual findings or legal conclusion * * * unless the party has objected to that finding or conclusion * * *." See, e.g., *Stamatakis v. Robinson* (January 27, 1997), Stark App.No. 96CA303; *Kademenos v. Mercedes-Benz of North America, Inc.* (March 3, 1999), Stark App.No. 98CA50. A review of appellant's written objection to the decision of the magistrate and the statements of counsel before the judge at the imposition/objection hearings reveal no mention of the presently-framed "purge" issue. Certainly, authority exists in Ohio law for the proposition that an

appellant's failure to specifically object to a magistrate's decision does not bar appellate review of "plain error." See, e.g., *Tormaschy v. Weiss* (July 6, 2000), Richland App .No. 00 CA 01, citing *R.G. Real Estate Holding, Inc. v. Wagner* (April 24, 1998), Montgomery App. No. 16737. However, as appellee suggests in his brief, the trial court's finding of "willful" contempt in this matter is indicative that the trial court intended to hold appellant in criminal contempt for her history of obduracy toward her support obligations for most of the thirteen-year period of the order. As such, we are not inclined to invoke the plain error doctrine in order to further analyze the question of whether a purge provision was required in this case.

{¶20} Appellant's Second Assignment of Error is therefore overruled.

{¶21} For the foregoing reasons, the judgment of the Court of Common Pleas, Domestic Relations Division, Stark County, Ohio, is hereby affirmed.

By: Wise, J.

Farmer, P. J., and

Gwin, J., concur.

/S/ JOHN W. WISE_____

/S/ SHEILA G. FARMER_____

/S/ W. SCOTT GWIN_____

JUDGES

JWW/d 1223

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CHARLES HAGAN	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
MICHELLE HAGAN	:	
	:	
Defendant-Appellant	:	Case No. 2009 CA 00148

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Domestic Relations Division, Stark County, Ohio, is affirmed.

Costs assessed to appellant.

/S/ JOHN W. WISE_____

/S/ SHEILA G. FARMER_____

/S/ W. SCOTT GWIN_____

JUDGES