[Cite as *Miller v. Miller*, 2010-Ohio-1251.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF WAYNE	)	

PATRICIA A. MILLER	C. A. No. 09CA0025
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
DOUGLAS M. MILLER	COURT OF COMMON PLEAS COUNTY OF WAYNE, OHIO
Appellee	CASE No. 04-DR-0557

DECISION AND JOURNAL ENTRY

Dated: March 29, 2010

MOORE, Judge.

{¶1} Appellant, Patricia Miller, appeals from the decision of the Wayne County Domestic Relations Court. This Court affirms in part, reverses in part, and remands for proceedings consistent with this opinion.

I.

{¶2} Patricia and Douglas Miller married in Wayne County in 1984. For several years, the Millers lived in Rhode Island. Appellant, Wife, and the children moved back to Ohio in 2003, but Appellee, Husband, remained in Rhode Island. In November of 2004, Wife filed for divorce in Wayne County, Ohio. On April 11, 2006, the magistrate issued his Report and Proposed Decision. Also on April 11, 2006, the trial court filed a Judgment Decree of Divorce, adopting the magistrate's proposed decision. Both parties filed objections, but on February 15, 2007, the trial court overruled them and adhered to its previous decision. Husband and Wife timely appealed from this decision. This Court affirmed "most of the trial court's judgment, but

reverse[d] in part because it incorrectly included the parties' children's custodial accounts in its division of marital property." *Miller v. Miller*, 9th Dist. No. 07CA0061, 2008-Ohio-4297, at ¶1.

{¶3} While the initial appeal of this case was pending, the parties filed several new motions with the trial court. These motions, and the issue remanded from this Court, were scheduled for a hearing. The trial court heard evidence on Husband's motion for contempt regarding Wife's relocation to Texas, and Husband's motion for contempt regarding the fact that Wife claimed the children for tax purposes. On November 21, 2008, the magistrate issued his decision addressing the remand and other motions. Also on November 21, 2008, the trial court adopted the magistrate's decision. Both parties filed objections, and on March 23, 2009, the trial court overruled the objections.

{¶4} While the objections to the November 21, 2008 magistrate's decision were pending, Husband filed a motion for contempt regarding visitation over the 2008 Thanksgiving vacation. On January 15, 2009, the magistrate issued his decision on the contempt motion, and on the same day, the trial court adopted the decision. Wife filed objections, which were overruled by the trial court on March 10, 2009.

{¶5} Wife timely appealed from the trial court's judgments overruling her objections to the November 21, 2008 and January 15, 2009 magistrate's decisions. She has asserted six assignments of error for our review. We have rearranged some assigned errors for ease of review.

II.

ASSIGNMENT OF ERROR I

"THE TRIAL COURT ERRED AS A MATTER OF LAW BY ESTABLISHING THE EFFECTIVE DATE FOR THE ACCRUAL OF INTEREST ON THE DIVISION OF PROPERTY AWARD AS BEING FEBRUARY 15, 2007, AS

> THE CORRECT EFFECTIVE DATE FOR ALL OBLIGATIONS UNDER THE INITIAL DECISION OF THE MAGISTRATE IS APRIL 11, 2006."

{¶6} In her first assignment of error, Wife contends that, on remand from this Court, the trial court erred by establishing the effective date for the accrual of interest on the division of property award as February 15, 2007. She further contends that the correct effective date for all obligations under the initial decision of the magistrate was April 11, 2006.

{¶7} Wife contends that the trial court made a mistake when it determined the date of the original property division. Specifically, she notes the magistrate's decision from November 21, 2008, which stated:

> "Considering the arguments submitted, the Magistrate finds the interest runs from the date of the divorce and the original judgment for property division. Therefore, interest would run from February 15, 2007 at the rate of 5% per annum."

{¶8} Wife argues that the effective date of the original property division was April 11, 2006. On April 11, 2006, the magistrate filed his decision regarding the property division. The trial court adopted the decision the same day. Civ.R. 53(D)(4)(b). However, Civ.R. 53(D)(4)(d) requires the trial court to act on any timely filed objections. The timely filing of objections "shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered." Civ.R. 53(D)(4)(e)(i). On April 24, 2006, Wife filed her preliminary objections to the magistrate's decision. On May 1, 2006, Husband filed objections to the magistrate's decision. Accordingly, the trial court's judgment entered on April 11, 2006 was stayed until the trial court ruled on the objections. On February 15, 2007, the trial court overruled the objections to the magistrate's decision and adhered to its April 11, 2006 decision. Wife argues that the trial court's February 15, 2007 judgment "relates back" to the date of the April 11, 2006 decision. However, she has presented no authority for this contention. App.R. 16(A)(7).

{¶9} We note that the trial court's order of April 11, 2006 would not constitute a final, appealable order. "Once objections have been filed, the court is then obligated to rule upon the objections raised. It is only after the court has ruled upon the objections and issued a final disposition of the case that the order becomes final." (Internal citations omitted.) *Daugherty v. Daugherty* (Oct. 6, 1999), 9th Dist. No. 98CA0050, at *1; *Drummond v. Drummond*, 10th Dist. No. 02AP-700, 2003-Ohio-587, at ¶13; *McCown v. McCown* (2001), 145 Ohio App.3d 170, 172. We noted this fact in Wife's initial appeal, stating that although the trial court adopted the magistrate's decision on April 11, 2006, the objections to the magistrate's decision were not overruled until February 15, 2007. Accordingly, the divorce decree was not final until February 15, 2007. Therefore, the trial court did not abuse its discretion when it adopted the magistrate's decision regarding the date of the initial property settlement.

{¶10} Husband contends that the interest on the settlement should have begun to run on November 21, 2008, because that was the date the trial court adjusted the amount owed. However, this argument is not properly before us. Husband seeks to reverse the judgment of the trial court without properly filing a cross-appeal pursuant to App.R. 3(C)(1). Accordingly, we disregard this argument.

{¶11} Wife's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

> "THE TRIAL COURT ERRED AS A MATTER OF LAW BY IMPOSING INTEREST AT 5% PER ANNUM ON THE DIVISION OF PROPERTY ORDER DISTRIBUTING MARITAL ASSETS FROM [HUSBAND] TO [WIFE]."

{¶12} In her second assignment of error, Wife contends that the trial court erred by imposing interest at 5% per annum on the division of property order distributing marital assets

from Husband to Wife. We conclude that the law of the case doctrine precludes our review of this assigned error.

> "[T]he doctrine [of law of the case] provides that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels. *** [T]he rule is necessary to ensure consistency of results in a case, to avoid endless litigation by settling the issues, and to preserve the structure of superior and inferior courts as designed by the Ohio Constitution." (Citations omitted.) *Nolan v. Nolan* (1984), 11 Ohio St.3d 1, 3-4.

{¶13} In its initial property division, the trial court held that "[b]y way of property division, [Husband] shall pay to [Wife] the sum of $113,952[.] *** Said amount shall accumulate with interest at the rate of 5% per annum until paid in full." Wife timely appealed from the trial court's February 15, 2007 entry overruling her objections to the magistrate's decision. *Miller*, supra. Wife raised ten assignments of error, but does not appear to have raised any issue with regard to the interest rate. As the interest rate initially appeared in the original property division, any concern regarding the rate should have been raised in Wife's initial appeal. In our disposition of this appeal, we affirmed "most of the trial court's judgment, but reverse[d] in part because it incorrectly included the parties' children's custodial accounts in its division of marital property." Id. at ¶1. Because we affirmed the judgment of the trial court, insofar as it instituted a 5% interest rate, we conclude that our consideration of this issue is barred on this appeal by the law of the case doctrine.

{¶14} Wife's second assignment of error is overruled.

ASSIGNMENT OF ERROR III

> "THE TRIAL COURT ERRED AS A MATTER OF LAW BY DENYING [WIFE'S] REQUEST TO DISMISS THE CONTEMPT MOTIONS FILED BY [HUSBAND], AS THE RECORD DEMONSTRATES THAT [WIFE] WAS NOT SERVED WITH THE CONTEMPT MOTIONS AND WAS NOT PROVIDED WITH THE REQUIRED NOTICE, INCLUDING THE

> STATUTORY PENALTIES, DISCLOSING HER CONSTITUTIONAL RIGHTS AND OTHER REMEDIES."

{¶15} In her third assignment of error, Wife contends that the trial court erred as a matter of law by denying her request to dismiss the contempt motions filed by Husband as the record demonstrates that she was not provided with the required notice, including the statutory penalties, disclosing her constitutional rights and other remedies.

{¶16} Although the trial court determined that Husband properly served Wife his motion for contempt, the trial court ultimately did not find Wife in contempt. "The Court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." Civ.R. 61. Accordingly, any error in the trial court's determination that Wife was properly served was harmless. Id. Wife's third assignment of error is overruled.

ASSIGNMENT OF ERROR IV

> "THE TRIAL COURT ERRED AS A MATTER OF LAW BY REQUIRING [WIFE] TO REIMBURSE [HUSBAND] THE SUM OF $650 FOR THE COST OF AN AIRPLANE TICKET AND $500 IN ATTORNEY FEES AS A RESULT OF AN ORAL ORDER OF THE TRIAL AND BASED UPON ALLEGED MISCONDUCT OF [WIFE]."

{¶17} In her fourth assignment of error, Wife contends that the trial court erred by requiring her to reimburse Husband $650 for the cost of an airplane ticket and $500 in attorney fees as a result of an oral order of the trial court and based upon Wife's alleged misconduct. We agree.

{¶18} Wife argues that

> "[t]here is no case law supporting contempt or an attorney fee award on the basis of a verbal order. Further, the decision itself indicates that the contempt motion could not be sustained because the order was not received by the parties until after the Thanksgiving visitation commenced. Further, there was no request for attorney fees set forth in the motion filed by [Husband]. In addition there was no

> request for reimbursement for transportation costs. Lastly, there was no request for an award of attorney fees pursuant to R.C. 3105.73(B)."

{¶19} In response, Husband contends that the trial court's decision to require Wife to pay Husband the cost of the airplane ticket and attorney fees was not punitive nor a criminal sanction, rather, it was a "post-decree adjustment of the equities designed to ensure [Husband] would be protected in his access to the children."

{¶20} The evidence at the hearing on Husband's motion for contempt revealed that the parties agreed at a hearing on November 19, 2008, that due to the children's extended Thanksgiving break from school, Husband would exercise visitation from the Friday before Thanksgiving to the Wednesday before Thanksgiving. However, due to the short span of time between the hearing and the anticipated visit, the magistrate called the parties' attorneys to inform them that he would order Wife to allow Husband the agreed upon visitation over the Thanksgiving break. The magistrate noted that this call was necessary because the written order would not have been prepared in time for travel arrangements to have been made.

{¶21} At the contempt hearing, Wife acknowledged receiving the verbal information. She further testified that she had previously explained to the Court that she intended to travel from Texas to Ohio to spend Thanksgiving with family. As a result, Husband and Wife agreed that Husband would purchase a ticket for daughter to travel from Texas to Rhode Island. In turn, Wife would purchase daughter a ticket to travel from Rhode Island to Cleveland, where she would meet with Mother to celebrate Thanksgiving. Wife stated that on the Friday before Thanksgiving she took the child to the airport to travel from Texas to Rhode Island. She explained that the child would not get on the plane and that she did not feel that there was anything she could do to force her. Wife explained that she then drove herself and her daughters from Texas to Ohio. She stated that she was unaware of the written visitation order until the

Monday of the week of Thanksgiving. She did not attempt to send her daughter to Rhode Island at that time.

{¶22} In his entry, the Magistrate noted that

> "The parties do not communicate. It is clear [Wife] still holds resentment against [Husband] and this has interfered with her ability to participate in the parenting time. [Wife] cannot sit idly by and allow the parenting time issues to be between [Husband] and the child. [Wife] needs to take a much more active role in seeing that [Husband] receives his parenting time. The reason the Magistrate's office called both attorneys was to avoid this situation. [Wife] has deeply frustrated this Court and the Magistrate feels she has at least ignored the verbal order from this Court and has shown a lack of respect for this Court's authority. But, for a finding of contempt, the Magistrate would recommend no contempt because the written order was received by the parties after the Friday before Thanksgiving. But because of [Wife's] failure to comply with a verbal directive from this Court and her failure to attempt to make up the parenting time after she received a copy of the order, the Magistrate feels she should be responsible for the transportation and attorney fees for the contempt motion."

Transportation Reimbursement

{¶23} In Husband and Wife's initial divorce decree, which remained unchanged by this Court's initial remand, Husband was responsible for transportation costs from Wife's home to his home. Wife was responsible for transportation costs from Husband's home to her home. Upon agreement by the parties, this provision could be modified.

{¶24} Although Husband contends that requiring Wife to pay the transportation cost and his attorney fees is simply a "post-decree adjustment of the equities[,]" the trial court's order clearly explains that it was attempting to punish Wife for her failure to follow its verbal order and her "lack of respect for this Court's authority." In fact, in its judgment entry, the trial court listed these sanctions under the heading of "Parenting Time Contempt." Notably, the trial court stated that the order to pay transportation costs and attorney's fees was "based upon [Wife's] behavior[.]" While the trial court maintains the authority to balance the equities, this Court does not read the magistrate's decision as a determination of the equities. Instead, we conclude that

the magistrate, and subsequently the trial court, was attempting to punish Wife for what it perceived to be contempt, without actually finding her in contempt. Having classified the reimbursement requirement as a sanction, our decision does not diminish any authority the domestic court may have to modify or "adjust the equities" as Husband contends. We merely conclude that the facts in the instant case do not support a conclusion that the trial court was attempting to balance the equities. Instead, we conclude that Wife was being punished for failure to put the child on the plane to visit Husband, as ordered by the court.

{¶25} "The decision to impose sanctions is left to the discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. *State ex rel. Fant v. Sykes* (1987), 29 Ohio St.3d 65. An abuse of discretion occurs when a decision is unreasonable, arbitrary, or unconscionable. *State ex rel. Worrell v. Ohio Police & Fire Pension Fund*, 112 Ohio St.3d 116, 2006-Ohio-6513, at ¶10 (citation omitted)." *Anthony v. Andrews*, 11th Dist. No. 2008-P-0091, 2009 -Ohio- 6378, ¶10.

{¶26} Initially, we note that the December 15, 2008 hearing was held, in part, to determine the merits of Husband's November 26, 2008 motion in contempt. That motion stated, in pertinent part, that Husband "moves the Court for an order finding Patricia Miller in contempt of Court for failing to provide Doug Miller with visitation with his daughter as was ordered by this Court, for the Thanksgiving holiday 2008." Husband attached a "notice to person accused of contempt of court," pursuant to R.C. 2705.031. This statute provides the potential penalties one might face if found guilty of contempt, including fines, imprisonment, and assessment of costs and reasonable attorney fees. Therefore, in the absence of contempt, the statute does not provide a basis for sanctions.

{¶27} In this case, the trial court concluded that it could not find Wife in contempt. Accordingly, the trial court was not permitted to sanction Wife pursuant to R.C. 2705.031. Further, Husband did not request reimbursement of the plane ticket or attorney's fees pursuant to any other statute. We recognize that in addition to R.C. 2705.031, the trial court had *inherent authority* to punish disobedience of its orders through contempt proceedings. *Denovchek v. Bd. of Trumbull Cty. Commrs.* (1988), 36 Ohio St.3d 14, 15. In the instant case, however, the trial court did not utilize this power. Instead, the trial court skipped the step of finding Mother in contempt before sanctioning her conduct. See *Boston Hts. v. Cerny*, 9th Dist. No. 23331, 2007-Ohio-2886, at ¶22 ("[a] finding of contempt is the first part of the punishment; the trial court must also impose a sanction.").

{¶28} "A decision is unreasonable if there is no sound reasoning process that would support that decision. It is not enough that the reviewing court, were it deciding the issue *de novo*, would not have found that reasoning process to be persuasive, perhaps in view of countervailing reasoning processes that would support a contrary result." *AAAA Ents. Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161. In the absence of a legal basis to do so, we conclude that the trial court's decision to require Wife to reimburse Husband was unreasonable and therefore, an abuse of discretion.

Attorney's Fees

{¶29} R.C. 3105.73(B) governs the awarding of attorney's fees in domestic relations cases. The statute states, in pertinent part:

> "In any post-decree motion or proceeding that arises out of an action for divorce, dissolution, legal separation, or annulment of marriage or an appeal of that motion or proceeding, the court may award all or part of reasonable attorney's fees and litigation expenses to either party if the court finds the award equitable. In determining whether an award is equitable, the court may consider the parties'

> income, the conduct of the parties, and any other relevant factors the court deems appropriate, but it may not consider the parties' assets."

{¶30} "[Section] 3105.73 gives the court broad discretion in determining attorney fees. Its award will not be disturbed on appeal absent a showing of a clear abuse of discretion by the court." (Internal citations and quotations omitted.) *Miller v. Miller*, 9th Dist. No. 07CA0061, 2008-Ohio-4297, at ¶71.

{¶31} Husband did not seek attorney's fees in his contempt motion. While R.C. 3105.73(B) may permit sua sponte awards of attorney's fees, the general rule is that attorney's fees should be borne by each respective party in litigation. *Barto v. Barto*, 3d Dist. No. 5-08-14, 2008-Ohio-5538, at ¶40. Awarding attorney's fees to the nonprevailing party is generally disfavored. Id. at ¶36.

{¶32} "[A] party is not entitled to attorney's fees; rather, the trial court decides on a case-by-case basis whether attorney's fees would be equitable." *Cryder v. Cryder*, 10th Dist. No. 07AP-546, 2008-Ohio-26, at ¶34. Further, the trial court must determine the reasonableness of the time spent on the matter and the reasonableness of the hourly rate. *Bagnola v. Bagnola*, 5th Dist. No.2004CA00151, 2004-Ohio-7286, at ¶36.

{¶33} At the contempt hearing, regarding attorney's fees, Husband testified on direct examination as follows:

> "Q. And Doug, can you, can you tell the Court what you've paid just for the motion to prosecute the contempt?
>
> "A. I guess it's hard to say exactly what it is since there's all sorts of other stuff going on but I'd say it's at least three or $500 bucks. Not much happens for anything less than that.
>
> "Q. You receive statements from me showing time expended on a monthly basis, correct?
>
> "A. Correct.

"Q. Are you asking to be reimbursed for that?

"A. Absolutely."

On cross examination, Husband testified as follows:

> "Q. I believe you testified on your contempt motion, you have two motion[s], motion to clarify the temporary support arrearage and your contempt motion. We've seen no fees and expenses or exhibits or affidavits, I believe your testimony is it's hard to tell what belongs to what, is that what you said?
>
> "***
>
> "Q. Do you recall testifying it's hard to tell how much of your legal fees uh, apply to the contempt and how much applied to the other issues?
>
> "A. It's not hard once I get an itemized bill from my attorney.
>
> "Q: Okay do you have that itemized bill today?
>
> "A. No he hasn't issued one yet.
>
> "Q. Okay so we don't know what those fees are?
>
> "A. No but you can count on it being three or 500 bucks[.]
>
> "***
>
> "Q. What is the hourly rate you're paying?
>
> "A. Mr. Vinion? I don't even remember. Uh, two…
>
> "***
>
> "A. Yeah I think it's 220, 225 250, I don't remember.
>
> "Q. So you're saying $300 to $500 but you don't know the hourly rate, you don't know how many hours he's spent?
>
> "A. Sorry I can't recall the exact, the hourly rate."

Husband further indicated that he did not have his monthly bill at the hearing. On re-direct examination, Husband verified that his attorney's hourly rate was over $200 per hour.

{¶34} From the record before us, there is no indication that the trial court determined how much time was spent on the contempt motion, what the hourly rate was, or whether the

amount of attorney's fees was reasonable. This Court concludes that there is nothing from the above testimony that would have allowed the trial court to make a determination regarding the reasonableness of the time spent on the contempt motion or on the reasonableness of the hourly rate. *Bagnola*, supra. Accordingly, we conclude that the trial court abused its discretion.

{¶35} Wife's fourth assignment of error is sustained.

ASSIGNMENT OF ERROR VI

> "THE TRIAL COURT ERRED WHEN IT FOUND THAT [HUSBAND] WAS CURRENT IN HIS CHILD SUPPORT OBLIGATION AS OF DECEMBER 31, 2007, AND WHEN THE MAGISTRATE FURTHER AWARDED [HUSBAND] THE EXEMPTION FOR TAX YEAR 2007 AND DIRECTED [WIFE] TO AMEND HER TAX RETURN."

{¶36} In her sixth assignment of error, Wife contends that the trial court erred when it found that Husband was current in his child support obligation as of December 31, 2007, and when the magistrate further awarded Husband the tax exemption for tax year 2007 and directed Wife to amend her tax return. We do not agree.

{¶37} Wife has attempted to argue her fifth and sixth assignments of error together, and in the process, has failed to fully support either argument. App.R. 16(A)(7); App.R. 12(A)(2). It is difficult for this Court to tease out the specific arguments that support Wife's individual assigned errors. For instance, Wife contends that because she was not properly served, her due process rights were violated. This argument, however, specifically mentions Husband's motion for contempt regarding Wife's relocation to Texas. Thus, although she has attempted to argue two assignments of error together, we conclude that she has not made a service argument with regard to Husband's motion for contempt regarding the tax exemption. Even if Wife's service argument could be extended to Husband's tax contempt motion, we conclude that she has forfeited this argument by failing to raise the issue below.

{¶38} In the instant case, Husband filed a motion for contempt asserting that Wife violated the divorce decree by claiming the parties' minor children for tax purposes. The original divorce decree awarded the tax deduction to Husband, unless he failed to pay child support. Wife contends that because Husband failed to pay child support, she was entitled to the deduction.

{¶39} At issue is who bore the burden of proof. Wife contends that because it was Husband's contempt motion, he bore the burden to show that he was timely with his child support payments. Husband, on the other hand, contends that it was Wife's obligation to show that he was behind in his child support payments, thus entitling her to the tax deduction. Although both parties refer to the burden of proof in this case, neither party cited this Court to any case law to support their argument. App.R. 16(A)(7).

{¶40} Husband bore the burden to prove that Wife was in contempt of the divorce decree. *Crick v. Starr*, 7th Dist. No. 08 MA 173, 2009-Ohio-6754, at ¶35. Husband was required to show by clear and convincing evidence that Wife violated the divorce decree. Id. citing *Brown v. Executive 200, Inc*. (1980), 64 Ohio St.2d 250, 253. Once this burden was satisfied, the burden shifted to Wife to establish a defense. Id. citing *Morford v. Morford* (1993), 85 Ohio App.3d 50, 55. The defense must be proved by a preponderance of the evidence. Id. In a civil contempt action, a reviewing court must uphold the trial court's decision absent a showing that the trial court abused its discretion. *State ex rel. Celebrezze v. Gibbs* (1991), 60 Ohio St.3d 69, 75.

{¶41} Wife concedes that she took the child tax exemption. It is clear that this was in violation of the divorce decree, which awarded the exemption to Husband. Accordingly, Husband satisfied his burden to show that Wife violated a lawful order of the court. *Windham*

Bank v. Tomaszczyk (1971), 27 Ohio St.2d 55, at paragraph three of the syllabus. It was then Wife's burden to show that Husband's child support payments were in arrears. *Crick*, supra, at ¶35, citing *Morford*, supra. The trial court explained that the testimony of a representative of the Child Support Enforcement Agency was that based upon her records, Husband was current in his child support obligation for 2006 and 2007. The trial court noted that the representative expressed confusion on whether the audit used the February 15, 2007 date of the divorce decree. Thus, the court determined that "[u]nless this representative can testify for sure that the accounting is not accurate, her testimony is that for 2006 and 2007, Husband would [sic] current in his support obligation." Therefore, the court concluded that the evidence did not support Wife's contention that Husband was in arrears. Our review of the testimony supports this conclusion. Accordingly, the trial court did not abuse its discretion when it concluded that Husband was not in arrears. However, the magistrate determined that Wife's reliance upon representations made to her by her father, an attorney, that Husband was in arrears, was reasonable, and therefore did not find her in contempt.

{¶42} Although the trial court did not find Wife in contempt, it determined that because Husband was not in arrears, that Wife was required to either reimburse Husband for the loss suffered by claiming the children or she needed to amend her tax return. In other words, the trial court was simply requiring Wife to abide by the terms of the divorce decree. We conclude that this was not an abuse of discretion.

{¶43} Accordingly, Wife's sixth assignment of error is overruled.

ASSIGNMENT OF ERROR V

"THE TRIAL COURT ERRED WHEN IT IMPOSED A FINANCIAL OBLIGATION ON [WIFE] TO PAY 75% OF ALL TRANSPORTATION COSTS FOR COMPANIONSHIP AND VISITATION WHEN THE ONLY EVIDENCE PRESENTED INDICATED THAT [WIFE] IS NOW, AND HAS

> BEEN SINCE THE TIME OF THE DIVORCE, OPERATING UNDER A NEGATIVE MONTHLY BUDGET, AND [HUSBAND'S] INCOME IS $174,383 PER YEAR OR HIGHER."

{¶44} In her fifth assignment of error, Wife contends that the trial court erred when it imposed a financial obligation on Wife to pay 75% of all transportation costs for companionship and visitation. She contends that the evidence presented showed that she was operating under a negative monthly budget and Husband's income was $174,383 per year or higher.

{¶45} Initially, Wife contends that she was not properly served with Husband's contempt motion with regard to her relocation to Texas. However, the trial court denied Husband's motion. Therefore, any error with service of this motion would be harmless error. Civ.R. 61.

{¶46} Next, Wife contends that the trial court erred when it modified the parties' visitation transportation obligations. Wife has failed to cite this Court to any law to support her assigned error. App.R. 16(A)(7). Although Wife does cite to some of the record to support her contentions, she does not point this Court to Husband's motion for contempt, the magistrate's decision, objections to the magistrate's decision or to the trial court's adoption of the decision. Upon review, it is noted that the magistrate's decision and trial court's adoption of the decision are located in the lengthy appendix. However, with such a voluminous appendix and docket, and with each motion and trial court order addressing several different issues, it is the responsibility of the parties to notify this Court of which documents they are contesting. These briefing omissions aside, we conclude that Wife's fifth assignment of error is without merit.

{¶47} Wife supports her contention by stating that she cannot afford the transportation cost because Husband is not paying child support, spousal support, or division of property payments. However, Wife does not assign error to any issue regarding spousal support or

division of property payments. App.R. 16(A). Nor does she cite to anything in the record that would support such a statement. Id. Thus, the sole argument before this Court on this assigned error is that Wife cannot pay the increased transportation fee because Husband was not paying child support. Because we determined in our disposition of Wife's sixth assignment of error that the trial court did not err in concluding that Husband paid the child support, Wife's fifth assignment of error is overruled.

III.

{¶48} Wife's first, second, third, fifth, and sixth assignments of error are overruled. Her fourth assignment of error is sustained. The judgment of the Wayne County Domestic Relations Court is affirmed in part, reversed in part, and cause remanded for proceedings consistent with this opinion.

Judgment affirmed in part,
reversed in part,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed equally to both parties.

CARLA MOORE
FOR THE COURT

WHITMORE, J.
CONCURS

DICKINSON, P. J.
CONCURS, SAYING:

{¶49} I concur with the majority's judgment and most of its opinion. In regard to Ms. Miller's fourth assignment of error, however, the trial court did not "abuse its discretion." Rather, it made a mistake of law by requiring Ms. Miller to reimburse Mr. Miller for a plane ticket and attorney fees without a legal basis for doing so, and its calculation of those attorney fees was not supported by sufficient evidence.

APPEARANCES:

JAMES M. RICHARD, Attorney at Law, for Appellant.

LON R. VINION, Attorney at Law, for Appellee.