

[Cite as *Ahmad v. Ahmad*, 2010-Ohio-5635.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

KRISTIN M. AHMAD (HORNSBY)	:	
Plaintiff-Appellant	:	C.A. CASE NO. 23740
v.	:	T.C. NO. 2002DR01899
SHAFIK AHMAD, M.D.	:	(Civil appeal from Common
Relations)	:	Pleas Court, Domestic
Defendant-Appellee	:	
	:	

OPINION

Rendered on the 19th day of November, 2010.

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FROELICH, J.

{¶ 1} Kristin M. Ahmad (n.k.a. Hornsby) appeals from a judgment of the Montgomery County Court of Common Pleas, Domestic Relations Division, which found her in contempt of court for repeatedly refusing to sign an amended joint federal tax return

for 2002, as she had agreed to do in an agreement that was incorporated into her 2005 Final Judgment and Decree of Divorce. The trial court ordered Hornsby to pay \$16,386 to her former husband, Shafik Ahmad, within thirty days of its judgment to purge the contempt; in the alternative, she was sentenced to thirty days in jail and fined \$250. She was also ordered to pay \$350 in attorney fees. Hornsby appeals from the finding of contempt. For the following reasons, the judgment of the trial court will be affirmed.

I

{¶ 2} On April 13, 2005, Hornsby and Ahmad were granted a Final Judgment and Decree of Divorce. The decree incorporated an agreement reached by the parties, which was read into the record on March 2, 2005. The Final Judgment and Decree of Divorce provided, in part:

{¶ 3} “8. **DEBTS.** IT IS THEREFORE ORDERED that *** [t]he Defendant [Ahmad] shall be responsible for the following debts: *** (3) IRS debt associated with the 2002 tax return. Regarding the 2002 tax return, the Plaintiff [Hornsby] *** shall cooperate in filing an amended 2002 tax return so as to cause the parties to file married filing joint. The Defendant shall be solely responsible for any and all costs associated with the preparation of said return. The Defendant shall remain solely responsible for the 2002 IRS tax debt.”

{¶ 4} The parties had originally filed their 2002 tax returns separately.

{¶ 5} On December 8, 2005, Ahmad filed a Motion for Contempt based on Hornsby’s refusal to sign the amended 2002 tax return. While this motion was pending, in February 2006, Hornsby filed a Civ.R. 60(B) Motion for Relief from Judgment. The trial

court conducted a hearing on the motion. The trial court summarized the evidence and arguments presented at the hearing as follows:

{¶ 6} “On December 8, 2005, the plaintiff [Hornsby] admits that she was presented with an amended tax return. She did not sign it and has refused to sign it since that time. The amended tax return was presented to the plaintiff while in a court proceeding. According to the plaintiff, the magistrate suggested to the plaintiff that [she] have the tax return reviewed by her accountant. The plaintiff claims that for the first time, when reviewing the tax return with her accountant, she realized the extent of the defendant’s tax liability on his medical practice. The plaintiff was also made aware of the tax code which indicates that one may be held jointly and individually responsible for tax, interest and penalties due on a joint return before a divorce. The responsibility may apply even if a divorce decree allocates the responsibility to only one party. The plaintiff claims that having been made aware of this tax information is ‘newly discovered evidence,’ upon which she bases her claim for relief.” (Emphasis sic.)

{¶ 7} On August 10, 2006, the trial court denied Hornsby’s motion for relief from judgment. It concluded that she had been fully aware of her responsibility to file a joint tax return for 2002 when the parties’ agreement was read into the record, as well as the protections that the decree afforded. The trial court further concluded that relieving Hornsby of the requirement that she file a joint tax return “provide[d] her no greater protection than she [was] already provided under the various provisions of the decree wherein all responsibility for the tax indebtedness for 2002 [was] assigned to the defendant.”

{¶ 8} When the trial court overruled Hornsby's motion for relief from judgment, Ahmad's December 2005 motion for contempt was still pending. The parties filed five additional motions for contempt against one another between April 2006 and October 2007, based on various parenting and visitation issues. The magistrate held hearings on these motions in May, July, and December 2007 and issued a decision in March 2008. With respect to Hornsby's refusal to sign the 2002 tax return, the magistrate found Hornsby in contempt. The magistrate made the following finding, however, with respect to the reason for the contempt: "The plaintiff did not sign the tax return because each time the defendant presented the return there was a different amount due; she never received a copy of the information provided to the IRS; she did not want to be responsible for the penalties and interest; and, she does not trust the defendant."¹ Ahmad was found to be in contempt on other issues. The magistrate did not sentence either party to jail, but stated that the next contempt would result in a jail sentence.

{¶ 9} Ahmad filed an objection to the denial of "any part" of his December 2005 motion for contempt.² On July 23, 2008, the trial court overruled this objection and adopted the magistrate's decision based on its conclusion that the objection lacked the specificity

¹Ahmad's December 2005 motion for contempt presented only one issue, Hornsby's refusal to sign the 2002 tax return, although he requested attorney fees and costs in addition to a finding of contempt. In her decision, the magistrate stated that "Branch one *** is granted and branch two is overruled," and that the motion was "granted in part and overruled in part." Insofar as no attorney fees were awarded, we interpret these statements to mean that the request for a finding of contempt was granted and that the request for attorney fees was overruled.

²Ahmad filed other objections as well, but they are not pertinent to this appeal.

required by Civ.R. 53(D)(3)(b)(ii).

{¶ 10} On September 12, 2008, Ahmad filed a Motion to Show Cause why Hornsby should not be held in contempt, citing several reasons, including her refusal to sign the joint tax return for 2002, as previously ordered by the court. Ahmad asked that Hornsby be ordered to pay him an amount of money sufficient to compensate him for the adverse tax consequences resulting from their failure to file a joint return. Ahmad also requested attorney fees and permission to file a joint return for 2002 without Hornsby's signature.

{¶ 11} In January 2009, the magistrate held a hearing on the Motion to Show Cause. After that hearing, that magistrate found that, in 2002, Hornsby had worked as a receptionist for Ahmad and earned \$7,648. She filed a federal income tax return claiming only herself and electing "married filing separately," and she received a tax refund of \$217. That same year, Ahmad earned \$175,414, from which \$13,893 was withheld or paid in estimated taxes. Ahmad filed a tax return in which he used the standard deduction, and his tax liability was \$63,058.³ On his proposed amended return, to be filed jointly with Hornsby with three claimed exemptions and itemized deductions, Ahmad's total tax liability would have been reduced to \$46,743, for a tax savings of \$16,315.

{¶ 12} The magistrate found that Ahmad's "requests *** [we]re inequitable." The magistrate apparently credited Hornsby's claims that Ahmad never provided documentation for the tax returns that he asked her to sign, that she did not trust him, and that she feared

³The magistrate did not expressly state that this return was filed "married filing separately," but we presume that it was because Hornsby's tax return for that year had been filed in that manner. The magistrate also does not state how many exemptions Ahmad claimed on the original return.

being held responsible for penalties and interest. The magistrate also observed that Ahmad had not paid the appropriate amount of estimated taxes in 2002 and that the proposed income tax return presented to the court did not include all of the attachments related to his income and expenses. The magistrate concluded that Ahmad had “made a prima facie case” that Hornsby should be found in contempt, but that he had “unclean hands” because he “should have paid more estimated taxes to the IRS” in 2002. The magistrate also concluded that it would be inequitable to hold “a person that earns only \$7,648.00 at the time of the divorce *** jointly liable” on a large sum owed under a joint tax return. Thus, the magistrate overruled Ahmad’s motion to find Hornsby in contempt, as well as his requests for compensation and for attorney fees related to her refusal to sign the tax return.

{¶ 13} Ahmad filed objections to the magistrate’s Decision and Permanent Order. After reviewing these objections, the trial court rejected the magistrate’s findings, stating: “[T]he court finds that the magistrate decision and permanent order is without merit and the objections as to the contempt for failure to cooperate in the filing of the 2002 amended joint tax return are well taken. In the four years since the final judgment and decree of divorce has been filed, [Hornsby] has been using one excuse after another to not sign the joint tax return which she was clearly ordered to do and has been unsuccessful in setting aside that provision through a Civil Rule 60(B) action. Now [Hornsby] has created a situation wherein the time has expired for filing the amended return and equity does not favor [Hornsby], it rather favors [Ahmad] in this matter.”

{¶ 14} The court found Hornsby in contempt and ordered her to pay Ahmad \$16,386 – the difference between the amount owed on Ahmad’s actual “married filing separately”

2002 return and the proposed amended “married filing jointly” 2002 return – within thirty days in order to purge the contempt.⁴ The court did not assess interest or penalties to Hornsby. In the alternative, it sentenced Hornsby to thirty days in jail and imposed a \$250 fine. The court also ordered Hornsby to pay Ahmad \$350 in attorney fees.⁵

{¶ 15} Hornsby appeals from the trial court’s judgment, raising three assignments of error.

II

{¶ 16} Hornsby’s first assignment of error states:

{¶ 17} “TRIAL COURT ERRED IN ORDERING THE PARTIES IN DIVORCE ACTION TO FILE A JOINT FEDERAL TAX RETURN IN VIOLATION OF US CONSTITUTION AND TITLE 26 OF USC (INTERNAL REVENUE SERVICE CODE).”

{¶ 18} Hornsby contends that the trial court lacked the authority to order the parties to file a joint federal tax return in crafting an equitable division of property because federal tax code provisions give married individuals a “right of election” with respect to joint filing. She argues that “a state trial court cannot alter those provisions” by requiring her to file jointly, and thereby exposing her to “joint and several liability for any fraudulent or erroneous aspect of the return.” Hornsby relies on *Leftwich v. Leftwich* (D.C. App., 1982), 442 A.2d 139, 144. Ahmad argues that Hornsby agreed to the provision of the decree that

⁴The trial court’s numbers differ slightly from those used by the magistrate, but they are supported by the tax returns filed as exhibits, and neither party argues on appeal that the calculations were incorrect.

⁵As noted in the trial court’s decision, the three-year limitations period for amending the 2002 returns with the IRS had passed. Internal Revenue Code §6511(B)(2) [Section 6511(b)(2), Title 26, U.S. Code].

required her to sign the amended joint return, that she did not appeal from the decree or the denial of her Civ.R. 60(B) motion for relief from that judgment, and that res judicata precludes her from challenging the terms of the divorce decree in a contempt proceeding.

{¶ 19} In Ohio, this court and others have held that a trial court has the authority to order the filing of a joint tax return pursuant to its power to implement the equitable division of property in a divorce. *Bean v. Bean* (Oct. 28, 1986), Montgomery App. No. 9571, citing *Neeley v. Neeley* (Nov. 14, 1984), Hamilton App. No. C-820928. See, also, *Ferrick v. Ferrick* (April 1, 1998), Summit App. No. 18486; *Cherry v. Cherry* (Dec. 31, 1998), Ottawa App. No. OT-98-011. But, see, *Madry v. Madry* (Sept. 23, 1982), Franklin App. No. 82AP-351. Hornsby's argument under this assignment of error challenges these conclusions. For several reasons, however, we conclude that, in this case, we need not revisit these rulings that a trial court has the authority to order the filing of a joint tax return in a divorce decree. Foremost among these reasons is the fact that Hornsby *agreed* to file an amended joint return for 2002 when she negotiated the terms of the property distribution with Ahmad. "Parties cannot repudiate a settlement agreement when, in hindsight, they find that they no longer agree with the terms." *Michaels v. Michaels*, Medina App. No. 09CA0047-M, 2010-Ohio-963, ¶12. A settlement agreement entered into in the presence of the court constitutes a binding contract. *Brilla v. Mulhearn*, 168 Ohio App.3d 223, 2006-Ohio-3816, ¶15. To permit a party "to unilaterally repudiate a settlement agreement would render the entire settlement proceedings a nullity, even though *** the agreement is of binding force." *Spercel v. Sterling Industries, Inc.* (1972), 31 Ohio St.2d 36, 40. See, also, *Poole v. Becker Motor Sales, Inc.* (Nov. 9, 2000), Montgomery App. No. 18407.

{¶ 20} Moreover, Hornsby’s agreement to this provision in the divorce decree distinguishes her case from *Leftwich*, upon which she relies. In *Leftwich*, the trial court “expressly conditioned” the wife’s receipt of a car, attorney fees, half of a credit union account, and her share of the proceeds from the sale of a house on her cooperation with filing an amended joint tax return for 1978 and the timely filing of a joint tax return in 1979.

The appellate court characterized this portion of the trial court’s order as “unquestionably coercive.” It also found that this provision “exceed[ed] both the mandate of the Internal Revenue Code provisions governing joint returns *and the bounds of the trial court’s equitable powers.*” (Emphasis added.) The appellate court concluded that, in its search for an equitable resolution of the dispute, the trial court should have explored alternative forms of relief and chosen the least intrusive option. “[T]he trial court well could have remedied any perceived tax disadvantage to the husband by altering the disposition of the marital property.” *Id.*, 442 A.2d at 146.

{¶ 21} In Hornsby’s case, the trial court did not “coerce” her into filing a joint return; she agreed to do so. In light of this agreement, there was no reason for the court to explore other equitable ways in which to divide the marital assets. In this respect, the facts of *Leftwich* are distinguishable.

{¶ 22} Hornsby’s argument is also barred by res judicata. Res judicata “prevent[s] relitigation of issues already decided by a court or matters that should have been brought as part of a previous action. ‘[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.’” *Machnics v. Sloe*, Geauga App. No.

2007-G-2784, 2008-Ohio-1133, ¶68, citing *Grava v. Parkman Twp. Bd. of Zoning Appeals* (1995), 73 Ohio St.3d 379, 382.

{¶ 23} Hornsby did not appeal from the trial court’s judgment incorporating the parties’ agreement with respect to amending the 2002 tax return. She attempted to obtain relief from the judgment, but when that relief was denied, she likewise did not appeal from that judgment. As “a matter of common sense, common law, and common justice,” one cannot attack a final and valid judgment by raising, in a contempt proceeding, the question of the trial court’s authority to make the original order. *Thiessen v. Moore* (1922), 105 Ohio St. 401, 430. Moreover, even if there were a legitimate question as to whether the trial court could have compelled the parties to file a joint tax return in the absence of their agreement on this point, such a question would have rendered the final judgment and decree of divorce voidable, but not void. “A voidable order is one that is defective or irregular; whereas, a void order is one entered by a court without the jurisdiction to enter it. *City of Parma v. Hudgeons* (1979), 61 Ohio App.2d 148, 153, ***. An order that is merely voidable is not subject to a collateral attack, such as an appeal from contempt of that order. It has the same efficacy as a valid order until overturned by direct attack. [*State v.*] *Sandlin*, [(1983), 11 Ohio App.3d 84, 88, fn.3].” *State v. Loudon* (Oct. 24, 1997), Champaign App. No. 97-CA-05.

{¶ 24} Hornsby’s attempt to challenge the final judgment and decree of divorce on appeal from a finding of contempt is barred by her agreement to the provision and by res judicata. The first assignment of error is overruled.

{¶ 25} Hornsby's second and third assignments of error state:

{¶ 26} "TRIAL COURT ERRED BY ABUSING ITS DISCRETION IN FINDING APPELLANT IN CONTEMPT FOR FAILING TO FILE AN AMENDED JOINT FEDERAL TAX RETURN FOR 2002."

{¶ 27} "TRIAL COURT ERRED IN FAILING TO TAKE INTO CONSIDERATION EQUITABLE MITIGATING FACTORS IN FINDING APPELLANT IN CONTEMPT."

{¶ 28} Hornsby claims that the trial court abused its discretion in finding her in contempt, because there were "no legal grounds" for the order requiring her to file a joint tax return. We addressed Hornsby's argument that the trial court lacked the authority to order her to file a joint return under the first assignment of error. Because Hornsby agreed to the provision, the trial court had the authority to enforce it.

{¶ 29} Hornsby also contends under these assignments of error that the trial court did not give sufficient weight to her reasons for refusing to sign the tax return and to Ahmad's "unclean hands." Thus, she claims that the trial court abused its discretion when it found her in contempt.

{¶ 30} The essential element of a contempt proceeding is that the person facing contempt charges has obstructed the administration of justice in some manner. *Martin v. Martin*, 179 Ohio App.3d 805, 2008-Ohio-6336, ¶20, citing *State v. Kimbler* (1986), 31 Ohio App.3d 147, 151. "A prima facie case of contempt is made by establishing a prior court order and a violation of its terms. *Nielsen v. Meeker* (1996), 112 Ohio App.3d 448, ***. A court's contempt finding must be supported by clear and convincing evidence.

Dozer v. Dozer (1993), 88 Ohio App.3d 296, 302, ***.” *Martin* at ¶24.

{¶ 31} “If a trial court has the power and discretion to punish for contempt, it must also have the power to determine what type of conduct will constitute contempt.” *Donese v. Donese* (Sept. 29, 2000), Greene App. No. 2000-CA-17; *Schoenfelt v. Schoenfelt*, Montgomery App. No. 23497, 2009-Ohio-6594, ¶18. Therefore, an appellate court may only reverse the trial court’s findings in a contempt proceeding when there has been an abuse of discretion. *Donese*, supra, citing *State ex rel. Ventrone v. Birkel* (1981), 65 Ohio St.2d 10, 11, and *Zavakos v. Zavakos Enterprises, Inc.* (1989), 63 Ohio App.3d 100, 106.

{¶ 32} The parties agree that Hornsby never signed an amended 2002 tax return. At the hearing before the magistrate, she claimed that she refused to sign because Ahmad never attached documentation to the tax return and because the numbers on the returns presented to her kept changing; she was concerned about the accuracy of the amended return. She also claimed that the IRS advised her not to sign anything. Other than Hornsby’s testimony, she did not document her claim that returns had been presented with differing numbers. She relied, in part, on deposition testimony from 2004 about the amount of tax liability to support her claim that the numbers had fluctuated over time.

{¶ 33} Ahmad testified that he only presented one amended return for Hornsby’s signature, but he presented it to her on multiple occasions in an attempt to get her to sign. That return was prepared and signed by an accountant. He also testified that he had incurred substantial interest and penalties, as well as a lien on his house, due to unpaid taxes from 2002. (He acknowledged that there

were unpaid taxes more recently as well, but he attributed this situation to his inability to get loans due to liens on his properties.)

{¶ 34} The trial court did not abuse its discretion in concluding that Hornsby was not justified in refusing to sign the amended return or in rejecting the magistrate's conclusion that it would be "inequitable" to require Hornsby to reimburse Ahmad for the taxes that resulted from their failure to amend the 2002 return. Hornsby clearly did not comply with the terms of the decree, to which she had agreed. There was no direct evidence that the 2002 amended return, which was prepared and signed by Ahmad's accountant, misrepresented his income or the taxes owed. Although Ahmad acknowledged that he had not paid all of his estimated taxes in 2002 and still owed taxes for other years at the time of the hearing, the trial court could have reasonably concluded that these factors did not show "unclean hands" with respect to the 2002 amended return. The resolution of this dispute turned on the credibility of the parties, and an appellate court affords a trial court great discretion with regard to findings of fact and issues of witness credibility. *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80; *Weatherspoon v. Weatherspoon*, Montgomery App. No. 23393, 2010-Ohio-3248, ¶74. We cannot conclude that the trial court abused its discretion in finding that Hornsby was not justified in refusing to sign the amended return or in holding her in contempt.

{¶ 35} The second and third assignments of error are overruled.

IV

{¶ 36} The judgment of the trial court will be affirmed.

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GRADY, J. and WAITE, J., concur.

(Hon. Cheryl L. Waite, Seventh District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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