

{¶ 1} Plaintiff-appellant Robert Williams appeals from a decision of the Montgomery County Court of Common Pleas, Domestic Relations Division, finding him in contempt for failure to pay temporary spousal support to defendant-appellee Ginger Williams. Mr. Williams contends that the contempt finding is not supported by the record because Ms. Williams was not truthful on her affidavit of expenses and because he substantially complied with the support order. He further contends that it was error to find him in contempt when a prior executed separation agreement addressed the issue of support.

{¶ 2} We conclude that the record supports the trial court's judgment. Mr. Williams's own testimony demonstrates that he failed to comply with the terms of the support order. Further, we find no evidence that Ms. Williams's affidavit regarding expenses was fraudulent, and, further, any inaccuracy did not affect the court's contempt finding. Finally, we find that the issue of the application of the separation agreement was waived for appeal. Accordingly, the judgment of the trial court is affirmed.

I. Facts and Procedural History

{¶ 3} The parties were married in 1979. In June 2017, Mr. Williams filed a complaint for divorce. Ms. Williams filed an answer and counterclaim. On August 7, 2017, the trial court entered a temporary order regarding spousal support. That order states, in pertinent part:

IT IS FURTHER ORDERED that plaintiff shall pay to defendant by way of temporary spousal support, the sum of \$500.00 per month, commencing

08/15/2017.

* * *

IT IS FURTHER ORDERED that plaintiff shall pay to defendant by way of temporary spousal support, the sum of \$792.00 per month beginning 08/01/2017. If defendant is residing in the marital residence, plaintiff shall have the right, option and privilege of discharging this monthly spousal support by paying the mortgage/rent (including taxes and insurance) and basic utilities at the marital residence. If defendant is not residing in the marital residence, plaintiff shall pay the monthly spousal support directly to the Defendant.

{¶ 4} On August 17, 2017, Mr. Williams filed an objection to the temporary support order. On October 3, 2017, Ms. Williams filed a motion to show cause seeking to hold Mr. Williams in contempt for failing to comply with the terms of the temporary support order. Mr. Williams withdrew his objection to the temporary order on October 18. On October 25, 2017, Mr. Williams filed an amended complaint for divorce seeking to incorporate a Separation Agreement executed by the parties.

{¶ 5} A hearing on the contempt issue was conducted in November, following which the magistrate issued a decision finding Mr. Williams in contempt. The magistrate found that Mr. Williams had failed to pay the entirety of the \$792 per month owed to Ms. Williams. Mr. Williams filed objections, which were overruled by the trial court.

{¶ 6} Mr. Williams appeals.

II. Separation Agreement

{¶ 7} Mr. Williams's first assignment of error states as follows:

THE TRIAL COURT ERRED IN FINDING THE APPELLANT IN CONTEMPT FOR VIOLATION A [SIC] TEMPORARY ORDER ON SPOUSAL SUPPORT WHERE THE PARTIES HAD ENTERED INTO A SEPARATION AGREEMENT THAT INCLUDED PROVISIONS FOR SPOUSAL SUPPORT AND HOUSING COSTS AND THE TRIAL COURT HAS YET TO RULE ON THE VALIDITY OF THAT AGREEMENT.

{¶ 8} Mr. Williams contends that the issue of spousal support was addressed by a separation agreement executed by the parties. Specifically, he claims that the separation agreement provides that both parties waive spousal support. Thus, he argues the trial court abused its discretion by finding him in contempt because such a finding is inappropriate until the trial court determines whether the separation agreement is binding upon the parties.

{¶ 9} We begin by noting that the record before us contains two separation agreements. The first, dated August 2016, is attached to Mr. Williams's motion to amend his complaint. The second, dated September 2016 and labeled as Plaintiff's Exhibit 1, is included as an exhibit to Ms. Williams's deposition. Both agreements purport to be signed by the parties. However, we note that Ms. Williams's signature on both instruments is on a separate page with nothing identifying it as a signature that is connected to a separation agreement. The record also indicates that the validity of the separation agreements is a contested matter that had not, at the time of the filing of this appeal, been determined.

{¶ 10} In his appellate brief, Mr. Williams cites to, and relies upon, the September

2016 agreement labeled as Plaintiff's Exhibit 1. But a review of both separation agreements discounts Mr. Williams's claim that the parties waived spousal support. Instead, Exhibit 1 provides that Mr. Williams will pay to Ms. Williams \$1,200 per month as spousal support for a period of two years beginning on the date of the filing of the final judgment and decree of divorce. The agreement also provides that after the expiration of two years, Mr. Williams will continue to pay support in the sum of \$250 per month for an additional eight years. Additionally, the agreement states that its terms "shall be deemed effective and binding upon the parties commencing upon the date of execution by both parties and may be used as an Order of the Court, with respect to the granting of a Final Judgment of Divorce." Likewise, the earlier separation agreement attached to the motion to amend provides that Mr. Williams will pay spousal support in the amount of \$500 per month for a period of five years.

{¶ 11} Mr. Williams did not raise either separation agreement as a defense to the contempt issue. He did not make this argument before the magistrate, nor did he include the issue in his objections to the magistrate's decision. Thus, he has waived appellate review of this issue. Even had the matter been properly raised at the trial court level, the September 2016 separation agreement, relied upon by Mr. Williams in his appellate brief, specifically states that the support contemplated by the agreement begins on the date a final judgment and decree of divorce is entered. It does not purport to address the issue of temporary support during the pendency of the action. The agreement does not provide for, nor prohibit, an order of temporary support. Additionally, the trial court cannot be found to have abused its discretion in ordering temporary support as that matter is not addressed by the contested September 2016 separation agreement.

{¶ 12} We conclude that Mr. Williams’s argument regarding the application of the separation agreement as a bar to a finding of contempt lacks merit. Accordingly, the first assignment of error is overruled.

III. Reasonable Compliance

{¶ 13} The second assignment of error asserted by Mr. Williams is as follows:

THE TRIAL COURT ERRED WHEN IT FOUND THE APPELLANT IN CONTEMPT FOR VIOLATING THE COURTS [SIC] TEMPORARY ORDER EVEN THOUGH APPELLANT WAS PAYING THE ALTERNATIVE ORDER BY ALL OF THE APPELLEE’S HOUSING EXPENSES WHERE SHE WAS RESIDING IN A CONDO DEEDED IN THE APPELLANT’S NAME AND JOINTLY PURCHASED BY THE PARTIES.

{¶ 14} Mr. Williams contends that the trial court erred by finding him in contempt for failing to comply with the temporary support order. In support, he argues that the order is ambiguous and that he, therefore, reasonably complied with its terms by paying monies directly to third parties.

{¶ 15} “Contempt is defined in general terms as disobedience of a court order.” *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 554, 740 N.E.2d 265 (2001). “The power of contempt is inherent in a court, such power being necessary to the exercise of judicial functions.” (Citations omitted.) *Denovchek v. Bd. of Trumbull Cty. Commrs.*, 36 Ohio St.3d 14, 15, 520 N.E.2d 1362 (1988). “A prima facie case of civil contempt is made when the moving party proves both the existence of a court order and the nonmoving party’s noncompliance with the terms of that order.” *Jenkins v. Jenkins*, 2012-Ohio-

4182, 975 N.E.2d 1060, ¶ 12 (2d Dist.), quoting *Wolf v. Wolf*, 1st Dist. Hamilton No. C-090587, 2010-Ohio-2762, ¶ 4. The movant must establish the existence of the order and the noncompliance therewith by clear and convincing evidence. *Id.*, citing *Flowers v. Flowers*, 10th Dist. Franklin No. 10AP1176, 2011-Ohio-5972. A trial court's finding of contempt will not be disturbed on appeal absent an abuse of discretion. *Id.*, citing *Wolf* at ¶ 4. An abuse of discretion has been defined as an attitude that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 16} Our reading of the trial court's temporary order makes it clear that Mr. Williams, in addition to the \$500 support payment, was also required to pay the monthly sum of \$792. If Ms. Williams was residing in the marital residence, Mr. Williams merely had the right to elect to pay the "this monthly spousal support," referring to the \$792 payment, directly to third parties rather than pay it directly to Ms. Williams. The order did not purport to absolve him, as he appears to argue, from paying any remainder of the \$792 after costs and expenses were paid to third parties. If we adopted his interpretation of the order, then the remainder of the order requiring him to pay the support directly to her if she was not in the marital home would be rendered superfluous.

{¶ 17} The record in this case, including Mr. Williams's own testimony, demonstrates that he only paid a portion of the additional \$792 per month ordered by the trial court. While he did make payments of approximately \$544 directly to third parties, he did not pay the entire sum of \$792, nor did he pay the remainder of the \$792 to Ms. Williams. Thus, we cannot say that the trial court abused its discretion in its finding of contempt.

{¶ 18} The second assignment of error is overruled.

IV. Inaccurate Financial Affidavit

{¶ 19} The third assignment of error asserted by Mr. Williams states the following:

THE TRIAL COURT ERRED BY FINDING THE APPELLANT IN CONTEMPT BASED UPON FACTUAL REPRESENTATIONS OF THE APPELLEE WHICH THE APPELLANT ACKNOWLEDGED WAS UNTRUTHFUL.

{¶ 20} Mr. Williams contends that Ms. Williams's financial affidavit does not set forth a true and accurate statement regarding her monthly expenses. Specifically, he notes that the affidavit indicates that Ms. Williams had a monthly expense of \$521 for mortgage expenses including taxes and insurance on the condominium where she is residing. Mr. Williams notes that there is no mortgage on the residence in which Ms. Williams resides and that he pays the monthly condominium fees associated with the residence. Thus, he contends that he should not be held in contempt for failing to pay monies for expenses that she does not incur.

{¶ 21} The affidavit, which was filed in July 2017, indicated that Ms. Williams's expenses included the sum of \$521 per month as rent or mortgage payments including real estate taxes and insurance. When questioned at the hearing, Ms. Williams indicated that she was not making a monthly payment on the condominium at the time of the hearing in November 2017. She testified that Mr. Williams had made the payments associated with the condo, but that he ceased making such payments once he filed for divorce. She further testified that while she did not make a monthly payment, she had

paid at least \$7,500 toward the purchase price of the condominium even though it was titled solely in Mr. Williams's name. Further, Mr. Williams's own testimony indicates that the costs for the condominium fees, taxes and insurance total \$341 per month. Given that the condo was titled solely in Mr. Williams's name, and that the bills for the fees and costs associated with the condo appeared to have been provided to him rather than to Ms. Williams, we cannot say that Ms. Williams's estimate of the monthly expenses associated with the condominium were untruthful. Further, any inaccuracy in the financial affidavit did not affect the trial court's conclusion that Mr. Williams was in contempt because he failed, either by direct payment to Ms. Williams or by payment to third parties, to pay the full temporary support obligation.

{¶ 22} Accordingly, the third assignment of error is overruled.

V. Conclusion

{¶ 23} All of Mr. Williams's assignments of error being overruled, the judgment of the trial court is affirmed.

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DONOVAN, J. and FROELICH, J., concur.

Copies mailed to:

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