

[Cite as *Rouzzo v. Rouzzo*, 2017-Ohio-9411.]

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

T. R.,)	
)	
PETITIONER-APPELLEE,)	
)	CASE NO. 17 MA 0112
V.)	
)	OPINION
J. R.,)	
)	
RESPONDENT-APPELLANT.)	

CHARACTER OF PROCEEDINGS: Civil Appeal from Court of Common Pleas, Domestic Relations Division of Mahoning County, Ohio
Case Nos. 03DR721, 13 DV 709

JUDGMENT: Affirmed

APPEARANCES:
For Petitioner-Appellee No brief filed

For Respondent-Appellant Attorney John A. Ams
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JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: December 20, 2017

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DONOFRIO, J.

{¶1} Respondent-appellant, J.R., appeals from a Mahoning County Common Pleas Court judgment ordering him to serve his 60-day jail sentence for failure to purge his contempt of court.

{¶2} On November 5, 2013, petitioner-appellee, T.R., filed a petition for a domestic violence protection order against appellant (case number 13 DV 709). While the case was pending, appellant was ordered to pay child support for the parties' three children in the amount of \$395.65 per month. This order was effective November 5, 2013. The order was agreed to in a January 23, 2014 consent agreement. The child support order continued until a July 9, 2014 judgment was entered terminating child support as of June 30, 2014. All arrearages were preserved and were not merged into the parties' divorce action (case number 03 DR 721).

{¶3} On July 18, 2016, the trial court found appellant in contempt of court for failure to pay his child support arrearage in both the domestic violence case and the divorce case. The court sentenced him to 60 days in jail in each case, to be served concurrently. The court also provided appellant with the opportunity to purge the contempt. To purge the contempt in 03 DR 721, the court ordered appellant to continue to pay child support of \$251.97 per month and to pay \$50.39 per month toward his arrearage for a total of \$308.41 per month. To purge the contempt in 13 DV 709, the court ordered appellant to pay \$100 per month toward his arrearage. Additionally, in both cases the court ordered appellant to immediately begin keeping a log of the work he performed each day, including the name of his employer, the number of hours worked on the job that day, how much he is paid for that work, and whether he was paid by cash or check.

{¶4} The matter proceeded to a compliance hearing on October 25, 2016, before a magistrate. The magistrate listened to evidence from appellant and appellee and heard arguments by appellant's counsel and counsel for the Child Support Enforcement Agency (CSEA). The magistrate found appellant did not purge his contempt. He found that appellant did not make any child support payments from

August 12, 2016 through September 23, 2016. The magistrate noted appellant was unable to work for medical reasons from August 4 to August 11, 2016, and from September 21 to September 30, 2016. The magistrate found there was no evidence as to why appellant made no payments from August 12, 2016 through September 23, 2016. The magistrate ordered appellant to serve his 60-day jail sentence.

{¶15} Appellant filed objections to the magistrate's decision. He argued the magistrate failed to consider evidence of his payments from September 30, 2016 through the hearing date of October 25, 2016. Additionally, he asserted that he presented evidence that he has applied for disability due to a back injury.

{¶16} The trial court sustained appellant's objections. The court based its decision on incomplete records provided by the CSEA and confusion regarding the separate support orders in this case. The court questioned whether sufficient evidence was presented from which the magistrate could make an accurate determination as to whether appellant complied with the court's orders. Thus, the court remanded the case to the magistrate for additional evidence.

{¶17} On March 16, 2017, the magistrate held a hearing pursuant to the trial court's remand order. The magistrate heard testimony from a CSEA audit specialist and appellant. The magistrate noted that appellant had three outstanding child support orders and arrearages totaling a monthly obligation of \$464.91. The magistrate found that since the contempt finding on July 18, 2016, appellant has paid \$214 in July 2016; \$107 in August 2016; \$107 in September 2016; \$535 in October 2016; \$107 in November 2016; and \$107 in December 2016. The magistrate noted that the CSEA applied appellant's payments proportionately to each of his three outstanding orders/arrearages. The magistrate found appellant made no further payments from December 3, 2016 through the date of the hearing, March 16, 2017. Based on these findings, the magistrate found appellant did not purge the previous finding of contempt and ordered him to serve the 60-day jail sentence.

{¶18} Again, appellant filed objections to the magistrate's decision. He asserted (1) the magistrate improperly considered dates beyond the scope of the

original order granting his previous objections, (2) that the magistrate failed to consider evidence regarding appellant's health conditions that hindered his ability to work for a portion of the purge period, and (3) he substantially complied with the purge conditions.

{¶9} This time the trial court overruled appellant's objections. As to appellant's first objection, the court found that the issue in this matter was appellant's compliance. The court found that appellant's compliance was not limited to a certain period of time, other than the start date when the court found him in contempt on July 18, 2016. The court noted that its remand order was for a "further hearing." The court stated that this remand order contemplated additional evidence being presented up until the date of the hearing. As to appellant's second objection, the trial court found that appellant never requested to modify the purge conditions due to any inability to work. The court found that simply because appellant was off from work, this did not mean he was free to disregard the court's purge conditions. Moreover, the court questioned appellant's reason for missing work in September 2016, because the doctor's excuse referenced a motor vehicle accident as the reason for appellant's injury and appellant admitted the accident resulted in him being cited for driving under the influence. Finally, as to appellant's third objection, the trial court found that appellant never made his full monthly payments, even during the months he made payments. The court also found that appellant did not keep an employment log meeting the requirement set out by the court. Therefore, the court found appellant did not substantially comply with the purge conditions. The trial court subsequently adopted the magistrate's decision and ordered appellant to serve his 60-day jail sentence.

{¶10} Appellant filed a timely notice of appeal on July 10, 2017. On appellant's motion, this court stayed appellant's sentence pending this appeal.

{¶11} Appellant raises a single assignment of error.

{¶12} Appellant's sole assignment of error states:

THE TRIAL COURT ERRED IN FINDING THAT APPELLANT

HAD NOT SUBSTANTIALLY COMPLIED WITH THE PURGE CONDITIONS.

{¶13} An appellate court's standard of review of a trial court's contempt finding is abuse of discretion. *State ex rel. Celebrezze v. Gibbs*, 60 Ohio St.3d 69, 75, 573 N.E.2d 62 (1991). An abuse of discretion exists if the trial court's decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983).

{¶14} In a civil contempt case, such as the one at bar, the purpose of the punishment is to coerce the contemnor to obey a judicial order for the benefit of a third party. *Nichol v. Nichol*, 7th Dist. No. 97-CA-143, 2000 WL 652537 (May 8, 2000), citing *Carroll v. Detty*, 113 Ohio App.3d 708, 711, 681 N.E.2d 1383 (1996). Further, 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.” *Pugh v. Pugh*, 15 Ohio St.3d 136, 139, 472 N.E.2d 1085 (1984), quoting *Brown v. Executive 200, Inc.*, 64 Ohio St.2d 250, 253, 416 N.E.2d 610 (1980). Civil-contempt sanctions, such as a jail sentence, are merely conditional. Therefore, the trial court is obligated to provide the contemnor with a means to purge his contempt. *Nichol*, supra, citing *State v. Kilbane*, 61 Ohio St.2d 201, 206-207, 400 N.E.2d 386 (1980).

{¶15} Appellant first argues the trial court abused its discretion in finding he had not substantially complied with the purge conditions. He claims the evidence was undisputed that he was paying \$107 per weekly pay, which totaled \$428 per month and was in excess of the purge condition of \$410.41 per month. Appellant claims the only time period he did not make these payments was when he was excused by a doctor for an infection and a subsequent injury. He also states that he submitted his work log as required by his purge conditions and supplemented this with his paystubs on remand.

{¶16} Substantial compliance with a court order can be a defense to a charge of contempt. *McCree v. McCree*, 7th Dist. No. 08 MA 109, 2009-Ohio-2639, ¶ 27.

{¶17} The evidence as to appellant's payments was as follows.

{¶18} In case 03 DR 721, in the judgment entry finding appellant in contempt and setting the purge conditions, the trial court ordered appellant to pay \$251.97 in child support and an additional \$50.39 per month towards his arrearage, for a total of \$308.41 per month as a purge condition.

{¶19} In case 03 DR 721, appellant made payments of \$71.17 on each of the following dates in 2016: August 1; August 3; August 9; September 28; October 5; October 11; October 19; October 27; November 4; November 7; and December 8. (Tr. 12-13). There were no further payments up to and including the day of the hearing, March 16, 2017. Thus, appellant's total monthly payments were \$213.51 in August; \$ 71.17 in September; \$284.68 in October 2016; \$142.34 in November 2016; and \$71.17 in December 2016.

{¶20} In case 13 DV 709, in the judgment entry finding appellant in contempt and setting the purge conditions, the trial court ordered appellant to pay \$100 per month on his arrearage as a purge condition.

{¶21} In case 13 DV 709, appellant made payments of \$23.25 on each of the same dates listed above. (Tr. 13). There were no further payments up to and including the day of the hearing. Thus, appellant's total monthly payments were \$69.75 in August 2016; \$23.35 in September 2016; \$93.00 in October 2016; \$46.50 in November; and \$23.25 in December 2016.

{¶22} From this evidence, we cannot conclude that the trial court abused its discretion in concluding that appellant did not substantially comply with its purge conditions. Even in October 2016, when appellant made four payments, he did not pay the full amount ordered in either case.

{¶23} Second, appellant argues the trial court erred in failing to acknowledge that appellant was medically unable to work and excused by a doctor for a portion of the purge period. He claims that the court's unwillingness to consider his medical excuses demonstrate the court's unreasonable, arbitrary, and capricious attitude toward him.

{¶24} At the hearing, appellant presented two doctor's excuses.

{¶25} First, appellant submitted a doctor's excuse from work from August 4, 2016 through August 11, 2016, to treat an "MRSA" infection in his left arm. (Tr. 29-30). No questions were raised regarding the infection or the week off of work required to treat it.

{¶26} Second, appellant submitted a doctor's excuse from work from September 21, 2016 through September 30, 2016. (Tr. 30). The reason given on the doctor's excuse was "right shoulder sprain, status post MVA [motor vehicle accident] injury." (Tr. 30). Appellant testified that even though his doctor wrote that the injury resulted from a motor vehicle accident, the real cause of his injury was that a garage door fell and hit him in the shoulder. (Tr. 32-33). On cross-examination, appellant admitted that the motor vehicle accident referenced in the doctor's note resulted in him being cited for driving under the influence. (Tr. 37). And he admitted that his driver's license was suspended as a result so he had no way to get to and from work. (Tr. 40-41).

{¶27} The record indicates that the trial court did consider appellant's medical excuses.

{¶28} In addressing appellant's objection on this point, the trial court noted that pursuant to Civ.R. 53(D)(3)(a)(ii), a magistrate's decision may be general unless a party timely requests findings of fact and conclusions of law. Therefore, the court noted that the magistrate was not required to set forth all of the defenses or factors brought forth by the parties in issuing its decision.

{¶29} Additionally, the court noted that it reviewed the transcript of the magistrate's hearing. It noted that appellant never requested that the court modify the purge conditions due to his illness or injury. It found that appellant was not free to simply disregard the purge conditions because he was off from work. Moreover, the court questioned appellant's reason for missing work in September 2016, where the doctor's excuse clearly referenced a motor vehicle accident and appellant admitted to getting an OVI. Therefore, the court did not find appellant's defenses to be credible reasons for not complying with its purge conditions.

{¶30} Thus, contrary to appellant's assertion, the trial court did consider appellant's medical excuses from work.

{¶31} Finally, appellant argues the trial court impermissibly considered a time period beyond the scope of the original order and remand. He contends the trial court exceeded the scope of its own remand and held him in contempt for acts that had not occurred at the time of the original purge hearing. Appellant claims, on remand, the magistrate improperly considered whether he had made payments beyond October 26, 2016, in determining if he had purged the contempt. This error was affirmed by the trial court, appellant argues, when it stated that it had authorized the expanded scope by setting the matter for further hearing on remand.

{¶32} In its remand order, the trial court stated in part:

The Court finds that equity dictates that this case be remanded to the magistrate for additional evidence. The Mahoning County Child Support Enforcement Agency will be ordered to complete manual audits of the support obligations in this case and the divorce action as well as bring records of support payments from the juvenile case, as further set forth below.

* * * [T]his matter is remanded to the magistrate for further hearing.

(January 23, 2017 Judgment Entry).

{¶33} Based on the above language, we cannot conclude that the magistrate exceeded the scope of the trial court's remand by considering appellant's payments, or lack thereof, up until the date of the new hearing. The trial court stated the matter was remanded for a "further hearing" and that "additional evidence", including "complete manual audits" was required. Thus, the magistrate complied with the trial court's remand order. Moreover, it was within the trial court's discretion to set the scope of the remand. And as seen from the discussion earlier in this opinion, the evidence demonstrates that appellant was not in substantial compliance with the purge order from July 18, 2016 through the October 25, 2016 purge hearing. So

even if the magistrate should not have considered evidence after that date, any error in doing so would be harmless.

{¶34} Accordingly, appellant's sole assignment of error is without merit and is overruled.

{¶35} For the reasons stated above, the trial court's judgment is hereby affirmed.

Waite, J., concurs.

DeGenaro, J., concurs.