

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

DONNA L. BROCK,	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-02-010
- vs -	:	<u>OPINION</u>
	:	12/12/2011
EWELL BROCK, JR.,	:	
Defendant-Appellant.	:	

APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. 1994 DM 1281

Donna L. Brock, 1336 Gibson Road, Loveland, Ohio 45140, plaintiff-appellee, pro se

James R. Hartke, 917 Main Street, Suite 400, Cincinnati, Ohio 45202, for defendant-appellant

RINGLAND, J.

{¶1} Defendant-appellant, Ewell Brock, Jr., appeals from the decision of the Clermont County Court of Common Pleas, Domestic Relations Division, granting summary judgment to plaintiff-appellee, Donna Brock, his former spouse, in an action seeking to hold her in contempt for allegedly forcing the dissolution of their two jointly owned businesses contrary to the terms of their divorce decree. For the reasons outlined below, we affirm in part, reverse in part, and remand for further proceedings.

{¶2} On January 27, 1995, after nearly 20 years of marriage during which time the couple jointly owned and operated J.R. Brock's Auto Works II, Inc. (Auto Works), Ewell and Donna were divorced. As part of their separation agreement, which the trial court later incorporated into its divorce decree, the couple agreed to "continue to operate the business jointly each acknowledging that the business operates successfully because of both parties' contributions." The couple also agreed that "[n]either party shall liquidate the business assets or make major decisions affecting the operations of the business without the consent of the other party."

{¶3} The record is unclear on many aspects of what occurred following their divorce and appears to contain only a portion of the relevant materials. However, despite the lack of a more detailed record, it is clear that Ewell and Donna were involved in extensive protracted litigation regarding the dissolution of Auto Works and Auto House, LLC (Auto House), a company they formed in 1998 that was not subject to their divorce decree, that took place in the Hamilton County Court of Common Pleas and the First District Court of Appeals. The parties' legal wrangling ultimately resulted in the appointment of a receiver to conduct an appraisal and accounting of the two businesses before they were dissolved.

{¶4} On April 30, 2007, Ewell filed a motion for contempt against Donna claiming she violated the terms of their divorce decree "by taking unauthorized and illegal control of [Auto Works] in violation of Ohio law and liquidated its business without the consent of [Ewell] as required by this Court's Order." After several continuances, Ewell filed an amended motion for contempt to include the same essential claims regarding Auto House. Ewell also requested the trial court to order Donna to return the two dissolved companies' business records to him.

{¶5} On April 9, 2010, Donna, acting pro se, moved to dismiss Ewell's motion for contempt. Thereafter, the trial court, in accordance with Ewell's request, filed an entry

notifying the parties' that Donna's motion to dismiss would be construed as a motion for summary judgment. After Ewell filed his own motion for summary judgment, and upon still further delays, the trial court granted summary judgment in Donna's favor. In so holding, the trial court found Donna could not "be held in contempt for dissolving the companies when the dissolution was done by agreement." The trial court also denied Ewell's request to compel Donna to return all of the two dissolved companies' business records to him.

{¶6} Ewell now appeals from the trial court's decision, raising two assignments of error for review.

{¶7} Assignment of Error No. 1:

{¶8} "THE CLERMONT TRIAL COURT ERRS TO THE PREJUDICE OF [EWELL] BY DENYING HIS MOTION FOR SUMMARY JUDGMENT ON THE AMENDED MOTION FOR CONTEMPT WHERE [EWELL] SHOWS BY DOCUMENTARY EVIDENCE IN COMPLIANCE WITH CIV.R. 56 HE IS ENTITLED TO JUDGMENT AS A MATTER OF LAW AS THERE IS NO GENUINE ISSUE OF MATERIAL FACT REMAINS [sic] TO BE LITIGATED."¹

{¶9} In his first assignment of error, although not particularly clear, Ewell argues that the trial court erred by granting summary judgment to Donna on his contempt claim because she allegedly dissolved both of their jointly owned companies "without [his] agreement." According to Ewell, because a genuine issue of material fact remains as to whether he actually agreed to dissolve both companies, the trial court's decision granting summary judgment to Donna was improper. We agree.

1. Although Ewell claims the trial court erred by "denying his motion for summary judgment," we construe this assignment of error as a challenge to the trial court's decision granting Donna's competing motion for summary judgment. As the trial court's judgment entry states, "[Donna's] Motion for Summary Judgment on [Ewell's] Motion for Contempt is granted. [Ewell's] Motion for Summary Judgment on that same Motion is denied." The trial court's decision, therefore, is a final appealable order. See, e.g., *Ford Homes, Inc. v. Bobie*, Butler App. No. CA2008-09-220, 2009-Ohio-677, fn. 2.

{¶10} Summary judgment is a procedural device used to terminate litigation when there are no issues in a case requiring a formal trial. *Forste v. Oakview Const., Inc.*, Warren App. No. CA2009-05-054, 2009-Ohio-5516, ¶7. A trial court may grant summary judgment only when: (1) there is no genuine issue of any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) the evidence submitted can only lead reasonable minds to a conclusion which is adverse to the nonmoving party. See Civ.R. 56(C); *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. The party moving for summary judgment bears the initial burden of demonstrating no genuine issue of material fact exists. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 1996-Ohio-107. Once this burden is met, the nonmoving party must then present evidence to show that there is some issue of material fact yet remaining for the trial court to resolve. *Smedley v. Discount Drug Mart, Inc.*, Fayette App. No. CA2010-05-010, 2010-Ohio-5665, ¶11. In determining whether a genuine issue of material fact exists, the evidence must be construed in the nonmoving party's favor. *Walters v. Middletown Properties Co.*, Butler App. No. CA2001-10-249, 2002-Ohio-3730, ¶10.

{¶11} Contempt of court is defined as "disobedience of an order of a court * * * which brings the administration of justice into disrespect, or which tends to embarrass, impede or obstruct a court in the performance of its functions." *Hueber v. Hueber*, Clermont App. Nos. CA2006-01-004, CA2006-02-019, CA2006-02-020, 2007-Ohio-913, ¶16, citing *Windham Bank v. Tomaszczyk* (1971), 27 Ohio St.2d 55, paragraph one of the syllabus. To support a contempt finding, the moving party must establish by clear and convincing evidence that a valid court order exists, that the offending party had knowledge of the order, and that the offending party violated such order. *Underleider v. Underleider*, Clermont App. Nos. CA2010-09-069, CA2010-09-074, 2011-Ohio-2600, ¶36; *Arthur Young & Co. v. Kelly* (1990), 68 Ohio App.3d 287, 295. A finding of contempt, however, "does not require proof of purposeful, willing, or intentional violation of a trial court's prior order." *Townsend v.*

Townsend, Lawrence App. No. 08CA9, 2008-Ohio-6701, ¶27, citing *Pugh v. Pugh* (1984), 15 Ohio St.3d 136, 140.

{¶12} At the outset, we find it necessary to note that although Ewell seeks to hold Donna in contempt for allegedly dissolving both Auto Works and Auto House "without [his] agreement," only Auto Works is subject to the terms of their divorce decree. Therefore, because the parties' divorce decree only addresses their obligations as it relates to Auto Works, Donna may not be held in contempt under the facts of this case for any claims regarding Auto House.

{¶13} That said, while it may be true that their divorce decree prohibited either party from liquidating Auto Works' business assets or from making "major decisions" affecting the business' operations "without the consent of the other party," based on the record before us, which is very sparse as it relates to the material facts affecting this case, we find a genuine issue of material fact remains as to whether Ewell actually agreed to dissolve Auto Works. Without the benefit of a more complete record, and considering both parties provided contradictory affidavits, we find the trial court erred by finding Donna was entitled to judgment as a matter of law. In turn, without making any judgment as it pertains to the ultimate outcome of this matter, we find the trial court erred by granting summary judgment in Donna's favor for the issue whether she can be found in contempt for dissolving Auto Works is ultimately for the trier of fact to decide. Therefore, because a genuine issue of material fact remains, Ewell's first assignment of error is sustained and this matter is remanded to the trial court for further proceedings.

{¶14} Assignment of Error No. 2:

{¶15} "THE CLERMONT TRIAL COURT ERRS TO THE PREJUDICE OF [EWELL] BY DENYING THE RETURN OF THE CORPORATE RECORDS FROM DONNA AS THE FORMER OFFICER OF AUTO WORKS AND FORMER MEMBER OF AUTO HOUSE

STATING THE ISSUE IS NOT BEFORE THE TRIAL COURT."

{¶16} In his second assignment of error, Ewell argues that the trial court erred by denying his request to compel Donna to return the business records of both Auto Works and Auto House to him. However, the trial court found, and we agree, that any claim Ewell may have regarding the business records of these two dissolved companies "should have been addressed in the Hamilton County action." The trial court, therefore, having only limited jurisdiction over the parties, did not err by denying Ewell's request. Accordingly, Ewell's second assignment of error is overruled.

{¶17} Judgment affirmed in part, reversed in part, and remanded for further proceedings.

POWELL, P.J., and HENDRICKSON, J., concur.