[Cite as *Stychno v. Stychno*, 2009-Ohio-6858.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

NESTOR A. STYCHNO,	:	**O P I N I O N**
Plaintiff-Appellant,	:	**CASE NO. 2008-T-0117**
- vs -	:	
MARGARET M. STYCHNO,	:	
Defendant-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. 43924.

Judgment: Affirmed.

Thomas E. Schubert, 138 East Market Street, Warren, OH 44481 (For Plaintiff-Appellant).

Frank E. Platenak, Jr., 724 Youngstown-Warren Road, Suite 21-A, P.O. Box 267, Niles, OH 44446 (For Defendant-Appellee).

TIMOTHY P. CANNON, J.

{¶1} Appellant, Nestor A. Stychno, appeals the judgment entered by the Trumbull County Court of Common Pleas, Domestic Relations Division, finding him in contempt and sentencing him to 30 days in jail for the failure to pay alimony arrearages.[1]

1. The trial court's October 2008 judgment entry held appellant in contempt; however, the trial court subsequently held a purge hearing of appellant's sentence. As a result, the trial court's October judgment entry was not a final, appealable order. Following the purge hearing, the trial court issued a judgment entry on January 7, 2009, wherein it ordered appellant to serve the 30 days in jail. However, we will treat appellant's November 5, 2008 notice of appeal as a premature appeal, pursuant to App.R. 4(C), as of January 7, 2009.

{¶2} Recognized by both parties in their briefs and by the trial court, this case has a lengthy history, as the original complaint for divorce was filed in July 1987. Since then, there have been numerous motions, hearings, and appeals. This court conducted a complete history of the background in *Stychno v. Stychno* (Aug. 14, 1998), 11th Dist. Nos. 97-T-0003 and 96-T-5620, 1998 Ohio App. LEXIS 3749. In the 1998 opinion, this court entered judgment in favor of appellee for $328,761. Id. at *17. Of this judgment, $176,370 was for past due support, and the remainder was unpaid equity as a result of the division of the marital assets. Id.

{¶3} This court issued a subsequent opinion in 2003 affirming the trial court's decision to assess statutory interest on the judgment of $176,370. *Stychno v. Stychno*, 11th Dist. No. 2002-T-0083, 2003-Ohio-3064, at ¶36.

{¶4} Subsequently, appellant filed a motion to suppress further interest, and appellee filed a motion to enforce prior orders. The trial court denied appellant's motion to suppress interest on arrearages and determined that appellant's balance due and owning was $160,831, plus interest from July 2005 to the date appellant paid the arrearages. Said funds were not deposited.

{¶5} On March 2, 2006, the trial court set a hearing on appellee's motion to show cause. At the hearing, the parties reached the following agreement: arrearages were liquidated at $162,439.75; appellant was to make $5,000 payments to appellee in April and May of 2006; appellant was to secure a commercial loan adequate to pay appellee $16,000 per month; and appellant was to pay appellee in full, including interest, within 15 months. Appellant failed to make the court-ordered payments, paying only $35,000 in 2006, $26,050 in 2007, and $15,910 in 2008.

{¶6} On July 24, 2008, appellee filed a motion to show cause as to why appellant should not be held in contempt, and a hearing was held on September 19, 2008. At the hearing, appellant testified that he had applied for two commercial loans in order to pay the monthly sum of $16,000; however, he was denied both times. Further, appellant stated that his chiropractic business has declined; he has fallen behind in his withholding taxes and is indebted to the Internal Revenue Service (IRS) for approximately $71,744.59; he suffered a heart attack and has been ordered on "light duty" by the doctor; and he currently is the only chiropractor working in his office. Appellant also notified the court that, in the last two years, he has paid appellee approximately $86,000. Appellant also testified that while he is not currently receiving any income from his chiropractic business, he receives a monthly Social Security check in the amount of $2,000.

{¶7} After the hearing, the trial court found appellant in contempt "of the prior Orders of the Court" and sentenced appellant to 30 days in the Trumbull County Jail. In its order, the trial court noted that appellant "may purge this Sentence and finding of Contempt by December 31, 2008, if he pays [appellee] all past due arrearages prior" to that date. Appellant was also ordered to pay $1,500 per month beginning August 1, 2008. A purge hearing was set for January 6, 2009.

{¶8} Upon completion of the purge hearing, the trial court issued an order on January 7, 2009, stating, in part: (1) appellant was given the opportunity to purge his sentence if he paid appellee all past arrearages prior to December 31, 2008, (2) appellant receives approximately $2,100 per month from Social Security, (3) prior to the hearing in September 2008, appellant was recovering from surgery and was only

working part-time; he is now working full-time and stated his business grossed over $600,000 last year, (4) as of January 1, 2009, appellant owes appellee $142,221, (5) appellant has never submitted documentation or a complete accounting of the money he claimed he owed to the IRS, and (6) the court did not find appellant's testimony or the documents he submitted to be reliable or credible with respect to his denial of two bank loans. Appellant was sentenced to 30 days in the Trumbull County Jail. The trial court indicated that this sentence would be suspended if appellant paid appellee a lump sum of $25,000 on or before January 9, 2009. The trial court also modified appellee's monthly obligation from $16,000 to $2,500 until all arrearages are paid in full.

{¶9} This court issued a temporary stay of appellant's contempt sentence, as imposed in the trial court's judgment entry of January 7, 2009. This court noted that the stay is not applicable to the trial court's order concerning the new monthly payment of $2,500, beginning January 6, 2009. Furthermore, this court stated the "continuing effectiveness of the temporary stay shall be conditioned upon [appellant's] ongoing compliance with the trial court's 'monthly payment' order." Appellant was also required to post a bond.

{¶10} Appellant filed a timely appeal and, as his first assignment of error, states:

{¶11} "The court committed error in admitting hearsay evidence composed of CSEA records contrary to Evidence Rule 1005, Civil Rule 44."

{¶12} On appeal, appellant cites to Civ.R. 44 and Evid.R. 1005, which requires copies of public records to be authenticated by the officer having legal custody of the record, or his official deputy, in support of his claim that the copies of the Child Support

Enforcement Agency (CSEA) calculations were not properly certified. Further, appellant claims these records were relied upon by the trial court in finding him guilty of contempt.

{¶13} With regards to copies of public documents:

{¶14} "The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902, Civ.R. 44, Crim.R. 27 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given." Evid.R. 1005.

{¶15} Civ.R. 44, proof of official record, states, in part:

{¶16} "(A)(1) An official record, or an entry therein, kept within a state or within the United States or within a territory or other jurisdiction of the United States, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record in which the record is kept or may be made by any public officer having a seal of office and having official duties in the political subdivision in which the record is kept, authenticated by the seal of his office."

{¶17} At the September 19, 2008 hearing, appellee, acting pro se, introduced two copies of documents from the CSEA. The copies illustrated payments appellant had made to appellee in 2006, 2007, and 2008. In addition, the copies demonstrated that appellant, at the time of the hearing, was still in arrears. At the hearing, the trial

court admitted the CSEA copies which, in the instant case, were the best evidence. The trial court stated:

{¶18} "I am going to overrule [the objection to the copies being introduced]. I'll tell you why I'm going to overrule it. These people [at CSEA] wouldn't even come into our Hearing the last time they were Ordered to come in, and CSEA didn't comply the last time, and there is no way I'm going to Rule these out just because they aren't here today. I think they should have been here. Unfortunately, they are not, but the history is they were not at all helpful during this proceeding."

{¶19} Furthermore, a review of the record reveals that both parties testified regarding appellant's payments during 2006, 2007, and 2008. In fact, appellant testified the total amount paid to appellee was $86,210, the same amount reflected on the CSEA documents. Additionally, the trial court, without objection, noted that appellant still owed appellee the amount of $76,000. We further note that at the purge hearing on January 6, 2009, two employees of CSEA were present and testified to the monies paid by appellant in 2006, 2007, and 2008. Therefore, even if the copies of the CSEA documents were erroneously admitted, a review of the record demonstrates the error was harmless. Appellant's first assignment of error is without merit.

{¶20} In his second, third, and sixth assignments of error, appellant alleges:

{¶21} "[2.] [The] trial court abused its discretion in finding appellant in contempt without clear and convincing evidence that he was able to comply and before he was permitted to testify.

{¶22} "[3.] The trial court's sentencing of appellant to jail violates the Ohio Constitution Section 15, Article 1, which prohibits an individual from being imprisoned for debt in any civil action unless it is a case of fraud.

{¶23} "[6.] The trial court's orders of 10/09/08 and 01/09/09 finding appellant in contempt which require him, as a condition to suspension of his jail sentence to make future monthly installments toward his arrearages do not permit him to purge himself and are therefore void."

{¶24} Since appellant's second, third, and sixth assignments of error are interrelated, we address them in a consolidated fashion. In his second assignment of error, appellant argues the trial court abused its discretion when it found him in contempt of court without clear and convincing evidence. Appellant further maintains the trial court found him in contempt of court before hearing testimony regarding his inability to pay the arrearages. In his third assignment of error, appellant argues the trial court erred in imposing a jail sentence for his arrearages of child support and alimony. In his sixth assignment of error, appellant argues that the contempt order is void, as the trial court is attempting to regulate his future conduct. For ease of discussion, we address appellant's second, third, and sixth assignments of error out of numerical sequence.

{¶25} "Contempt is a disregard of, or disobedience to, an order or command of judicial authority." *First Bank of Marietta v. Mascrete, Inc.* (1998), 125 Ohio App.3d 257, 263. (Citation omitted.) The contempt process was created "to uphold and ensure the effective administration of justice[,] *** to secure the dignity of the court[,] and to affirm the supremacy of law." *Cramer v. Petrie* (1994), 70 Ohio St.3d 131, 133.

{¶26} "[T]he burden of proof for civil contempt is clear and convincing evidence." *Delawder v. Dodson*, 4th Dist. No. 02CA27, 2003-Ohio-2092, at ¶10. (Citation omitted.) Before the imposition of a sentence for civil contempt, the trial court must afford the contemnor an opportunity to purge himself of the contempt. Id. (Citation omitted.) "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 so ordered." *Brown v. Executive 200, Inc.* (1980), 64 Ohio St.2d 250, 253. (Internal citation omitted.) Failure to pay court-ordered child support and alimony constitutes civil contempt. R.C. 2705.031; *Herold v. Herold*, 10th Dist. No. 04AP-206, 2004-Ohio-6727, at ¶25.

{¶27} An appellate court will not overturn a trial court's finding of contempt absent an abuse of discretion. *State ex rel. Ventrone v. Birkel* (1981), 65 Ohio St.2d 10, 11. An abuse of discretion connotes more than an error of law or judgment; it implies an attitude that is "unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. (Citations omitted.)

{¶28} Under the third assignment of error, appellant argues that his arrearages have been reduced to a lump sum judgment and therefore sentencing him to jail violates Section 15, Article I of the Ohio Constitution, as his children were emancipated as of November 19, 1996 and his alimony obligation ceased as of January 31, 2001. Section 15, Article I of the Ohio Constitution states, "[n]o person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud."

{¶29} Appellant supports his argument by citing to the Tenth Appellate District in *Bauer v. Bauer* (1987), 39 Ohio App.3d 39 and *Martin v. Martin* (1992), 76 Ohio App.3d 638. In *Bauer*, the court of appeals held that it was unconstitutional for a trial court to

order imprisonment for contempt for the failure to pay a lump-sum money judgment, even if the judgment originated with a child-support order. *Bauer v. Bauer*, 39 Ohio App.3d at 41. The *Bauer* court reasoned that this obligation became a debt and imprisonment for that debt is precluded under Section 15, Article I of the Ohio Constitution. Id. In *Martin*, the court of appeals reasoned that once a child has become emancipated, a contempt action is not the proper action for enforcing payment of arrearages. *Martin v. Martin*, 76 Ohio App.3d at 642.

{¶30} However, we recognize that the Third Appellate District rendered an opinion, *In re Cramer* (Apr. 13, 1993), 3d Dist. No. 5-92-47, 1993 Ohio App. LEXIS 2246, that directly conflicted with the reasoning employed by the Tenth Appellate District in *Bauer* and *Martin*. Consequently, *In re Cramer*, supra, was certified to the Supreme Court of Ohio for review and final determination. As a result, the Supreme Court of Ohio, in *Cramer v. Petrie* (1994), 70 Ohio St.3d 131, 135, determined whether child support arrearages after emancipation of a child is considered a "debt" within Section 15, Article I of the Ohio Constitution. The *Cramer* Court held:

{¶31} "We do not view an obligation to pay child support as such a debt. An obligation to pay child support arises by operation of law and is a personal duty owed to the former spouse, the child, and society in general. *** It does not arise out of any business transaction or contractual agreement, as does an ordinary debt. Thus, we have consistently held that support obligations are not debts in the ordinary sense of that word." Id. (Footnote omitted.)

{¶32} In *Cramer*, the Supreme Court of Ohio further discussed whether an alimony decree is a debt within the context of Section 15, Article I of the Ohio Constitution, stating:

{¶33} "[W]e have specifically held in previous cases that support obligations are not 'debts' within the meaning of that word in Section 15, Article I of the Ohio Constitution. *In our earliest case addressing the issue, we held that a decree for alimony is not a debt within the purview of that provision of the Constitution*. *State ex rel. Cook v. Cook* (1902), 66 Ohio St. 566. *** The obligation to pay alimony 'arises from a duty which the husband owes as well to the public as to the wife,' and, as such, 'it is not a debt in the sense of a pecuniary obligation ***.' Id. at 572." Id. at 136. (Emphasis added.)

{¶34} Furthermore, we recognize that "[t]he purpose of contempt proceedings is to secure the dignity of the courts and the uninterrupted and unimpeded administration of justice." *Windham Bank v. Tomaszczyk* (1971), 27 Ohio St.2d 55, paragraph two of the syllabus. The present case is a perfect example wherein an individual has continuously failed to comply with the court's directives. In fact, in 2003, this court stated:

{¶35} "The complaint for divorce in this case was filed in 1987. For the past sixteen years, the parties have gone through their fair share of legal proceedings. Numerous attorneys and judges have worked on this matter. Eight hundred eighty-three documents have been filed in this action. Since the beginning of this case, [Mr. Stychno] has been ordered to pay child and/or spousal support; a task that [he] has seldom performed on a consistent basis, even though he continues to enjoy a lavish

lifestyle. *** Five years ago, in an effort to conclude this long overdue matter, this court calculated the past due arrearages owed by appellant. He has failed to pay this amount and has subsequently failed to remain current with his support payments." *Stychno v. Stychno*, 2003-Ohio-3064, at ¶33.

{¶36} Appellant's third assignment of error is without merit.

{¶37} Under his second assignment of error, appellant acknowledges that he bore the burden of alleging and proving an inability to comply with the court order. Appellant maintains, however, that the trial court found him in contempt of court before he was given an opportunity to present evidence of his inability to pay the arrearages.

{¶38} We emphasize that, "[i]n a civil contempt proceeding for failure to pay child support, the movant must demonstrate, by clear and convincing evidence, that the defendant violated the court order." *Jones v. Jones*, 3d Dist. No. 14-06-44, 2007-Ohio-5492, at ¶12. (Citation omitted.) "It is well established in the law of Ohio *** that a person charged with contempt for the violation of a court order may defend by proving that it was not in his power to obey the order." *Courtney v. Courtney* (1984), 16 Ohio App.3d 329, 334. (Citation omitted.) Once a person seeking contempt has demonstrated a defendant's failure to pay child support, the burden of proof shifts to the defendant to prove his or her inability to pay. *Rinehart v. Rinehart* (1993), 87 Ohio App.3d 325, 328.

{¶39} At the September 19, 2008 hearing, appellee proceeded pro se. After appellee completed the questioning of appellant, the trial court indicated that appellant violated the order and noted he was in contempt. Thereafter, appellant's counsel stated that he needed "to put [appellant on the stand] so we can establish he did try to obtain

that loan." Appellant's counsel then questioned appellant regarding his inability to pay the arrearages. As demonstrated by the record, appellant was afforded an opportunity to meet his burden of proving his inability to comply with the court order.

{¶40} After the hearing, the trial court issued an order dated October 2, 2008, finding appellant in contempt of the prior orders of the court. Said order reflects that the court considered all testimonial evidence presented on September 19, 2008. Consequently, this argument is not well-taken.

{¶41} Appellant further maintains the trial court erred in finding him in contempt since he offered evidence of his inability to satisfy the arrearages. Appellant testified to his debts to the IRS, diminution of his chiropractic business, and his inability to procure two commercial loans in order to pay the court-ordered $16,000 per month. Appellant also presented testimony that he earned $2,000 a month from Social Security, he suffered a heart attack in 2008, and he paid nearly 50% of the outstanding balance since 2006.

{¶42} While appellant testified to the above factors, he failed to present any documentation to support his inability to pay the arrearages, such as IRS liens, income tax returns, or corporate balance sheets. We cannot say the trial court acted arbitrarily when it determined that appellant was in contempt. Although the court recognized some of the difficulties encountered by appellant, the October 2, 2008 order stated:

{¶43} "[Appellant] stated he is unable to pay himself wages, but gets $2,087 a month from United States Treasury as his Social Security payment. [Appellant] stated he owed IRS as past due taxes, $71,744.59, and he pays a monthly amount to IRS. *** This IRS obligation came after his promise to pay [appellee]. He has remarried and his

present wife, who in the past made executive wages, is now working at Delphi and she pays for most of their living expenses. When in Youngstown, he lives with his father, but he and his wife live in Michigan and Florida. While he stated they filed a joint tax return last year, he did not know what he or his wife claimed as income on their tax returns. The Court did not find his statement to be credible!"

{¶44} Accordingly, we find that the trial court did not abuse its discretion in finding appellant guilty of civil contempt. Appellant's second assignment of error is without merit.

{¶45} Under appellant's sixth assignment of error, he claims the conditions imposed by the trial court in its October 9, 2008 order are void "for reason they condition suspension of his jail sentenced upon timely future payments toward his monthly support obligation."

{¶46} The October 9, 2008 order stated, in pertinent part:

{¶47} "[Appellant] is sentenced to thirty days in the Trumbull County Jail.

{¶48} "[Appellant] may purge this Sentence and finding of Contempt by December 31, 2008, if he pays [appellee] all past due arrearages prior to that date.

{¶49} "In addition, beginning August 1, 2008 and for each consecutive month until he pays the lump sum balance, he shall pay [appellee] $1,500 a month. He shall be credited with these payments, and interest shall accrue until he has paid [appellee] all the dollars he owes her."

{¶50} Appellant contends this purge order is invalid under *Tucker v. Tucker* (1983), 10 Ohio App.3d 251 and *Marden v. Marden* (1996), 108 Ohio App.3d 568, as an

attempt to regulate future conduct. Appellant's reliance on *Tucker* and *Marden* is misplaced.

{¶51} In *Marden*, the court of appeals determined a contempt order, which specifically stated it would be stayed contingent upon making future payments "'on the current [spousal support] each and every month,'" did not permit an individual an opportunity to purge. *Marden v. Marden*, 108 Ohio App.3d at 571. In *Tucker*, the appellant failed to make his court-ordered child support payments and was found in contempt of court. *Tucker v. Tucker*, 10 Ohio App.3d. at 251. The appellant paid said arrearages before the judgment entry finding him in contempt was filed, but the order additionally required the appellant to "'[keep] future child support payments current and on time.'" Id. The court of appeals held that the appellant was not given an opportunity to purge his sentence since his punishment was conditioned on him making future payments. Id. at 252.

{¶52} Appellant's arguments were addressed by the Tenth Appellate District in *Leuvoy v. Leuvoy* (June 26, 2001), 10th Dist. No. 00AP-1378, 2001 Ohio App. LEXIS 2940, at *6, where the court distinguished *Marden* and *Tucker*, stating:

{¶53} "In *Marden*, the order specifically stated that it was contingent upon making future payments, and in this case the order permitted appellant to purge by making monthly payments on the arrearage amount. In *Tucker*, the arrearage had been paid and did not exist at the time the judgment in contempt was entered and the order was directed only to future conduct, and in this case the arrearage was not paid before the judgment entry was filed."

{¶54} In the case sub judice, the evidence demonstrates that, as of August 2008, appellant owed appellee arrearages in the amount of $76,228.92. Furthermore, at the contempt hearing, appellant testified that he had not paid appellee the spousal support arrearages as agreed in the order of May 2006. Consequently, the trial court ordered appellant to pay $1,500 a month toward the arrearages, beginning August 1, 2008. The trial court's order was not an attempt to regulate future conduct, as in *Marden*, since the ordered monthly payment to appellee was based solely on arrearages owed.

{¶55} In addition, the purge hearing of January 6, 2009, further exemplified appellant's noncompliance with the trial court's payment schedule. In the January 7, 2009 order, the trial court noted the accounting of CSEA records reveals that appellant owed more than was revealed at the last hearing. In fact, as of January 1, 2009, appellant owed appellee $142,221. Nonetheless, appellant failed to pay appellee the $1,500 ordered each month from August 2008 through December 2008. Therefore, since appellant failed to satisfy the required payment schedule, the trial court did not err in enforcing appellant's jail sentence.

{¶56} Based on the foregoing, appellant's sixth assignment of error is without merit.

{¶57} As his fourth assignment of error, appellant alleges the following:

{¶58} "The trial court abused its discretion in accepting the CSEA's method of calculating interest on arrears and in adding $12,929.00 for the year 2008 to the judgment."

{¶59} At the purge hearing, Viola Tomassi, a CSEA specialist, testified regarding the calculation of appellant's arrearages. Ms. Tomassi indicated that, at the end of each year, 10% interest was added to the balance of appellant's arrearage. Appellant argues that it was error to assess him a 10% interest rate. Initially, we note that appellant failed to file a motion at the trial court level regarding the appropriate interest rate, as recognized by the trial court at the purge hearing. Therefore, the trial court was not given an opportunity to rule on such motion, and this matter is not properly before this court.

{¶60} Nevertheless, as previously noted, this court affirmed the trial court's award of interest, pursuant to R.C. 3123.17, for the willful nonpayment of a support order. *Stychno v. Stychno*, 2003-Ohio-3064, at ¶33. This court stated:

{¶61} "A review of the transcript of the December 12, 2001 hearing, including portions of which the trial court relied on, reveals there was sufficient evidence to support the trial court's finding that appellant's failure to pay support was willful. In addition, the trial court did not abuse its discretion by finding that appellant's failure to pay support was willful." Id. at ¶34.

{¶62} Thereafter, on June 9, 2006, the trial court issued a judgment entry memorializing an agreement between the parties regarding appellant's non-payment of spousal support and interest attached to spousal support. The agreement states, in pertinent part:

{¶63} "[T]here exists $162,439.75 as *outstanding spousal support/interest* owed to Margaret Stychno.

{¶64} "***

{¶65} "Trumbull County CSEA will monitor and account for all payments *as interest will continue to accrue* on the outstanding amount of $162,439.75 until it is paid in full.

{¶66} "***

{¶67} "It was agreed between the parties that it will take no longer than 15 months for Plaintiff Nestor Stychno to pay Defendant Margaret Stychno in full, *including interest*." (Emphasis added.)

{¶68} This agreement indicates that the interest will continue to accrue on the arrearages. The parties were informed of the rate of interest, as it was previously ordered by the trial court and then confirmed by this court. *Stychno v. Stychno*, 2003-Ohio-3064, at ¶33. The June 9, 2006 agreement does not reflect any change in the amount of interest nor the means of calculating it. Therefore, appellant's argument is without merit.

{¶69} Appellant also alleges CSEA incorrectly compounded the interest on a monthly basis, as it continually applied interest to the year-end balance, in effect "charging [him] interest on top of interest." However, the exhibits admitted into evidence indicate that CSEA credited appellant with the payments he made toward the arrearages from 2006-2008. CSEA, utilizing a separate worksheet, applied 10% interest to the year-end balance for years 2006-2008. As such, appellant's argument is without merit, and the fourth assignment of error is not well-taken.

{¶70} As his fifth assignment of error, appellant states:

{¶71} "The trial court's order of January [7], 2009[,] requiring appellant to pay appellee all remaining arrearages out of sale of his practice constitutes error."

{¶72} Appellant claims the trial court erred in including the following language in the January 7, 2009 order: "[w]hen and if [appellant] sells his business/practice, he shall pay to [appellee] all remaining arrearages." Appellant maintains the motion for contempt did not contain allegations regarding the sale of his chiropractic practice and, therefore, this issue was not properly before the trial court for its consideration. We disagree.

{¶73} A review of the record reveals that, at the purge hearing, appellant was questioned by the trial court regarding his solution to pay all past arrearages. During this hearing, the following colloquy occurred, without objection:

{¶74} "The Court: We're here as to why or why not Mr. Stychno should or should not serve thirty days in Jail. Now, that's why we're here this morning, and I have yet to hear of a solution as to what can be done. I would like to know if there is any more testimony on that issue?

{¶75} "[Appellant]: Your Honor?

{¶76} "The Court: Yes?

{¶77} "[Appellant]: I am negotiating right now for the sale of part of the practice to a Medical Doctor that works with me, and I will pledge all of the monies that I can gather from that sale in one lump sum – whatever – and I pledge it towards the arrearages on this case, in this case. I am right now negotiating with the Doctor on that issue and *** Attorney Schubert can attest to that."

{¶78} As demonstrated above, appellant voluntarily pledged the proceeds of his chiropractic practice, if it were sold, in order to satisfy a portion or all of the arrearages.

Therefore, it was not error for the trial court to incorporate this agreement into its order of January 7, 2009. Appellant's fifth assignment of error is without merit.

{¶79} For the foregoing reasons, appellant's assignments of error are without merit. The judgment of the Trumbull County Court of Common Pleas, Domestic Relations Division, is hereby affirmed.

MARY JANE TRAPP, P.J., concurs,

COLLEEN MARY O'TOOLE, J., concurs in judgment only.