

[Cite as *Bing v. Bing*, 2009-Ohio-3512.]

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

JENNIFER BING	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2008 CA 52
v.	:	T.C. NO. 05 DR 0099
RONALD BING	:	(Civil appeal from Common Pleas Court, Domestic Relations)
Defendant-Appellant	:	

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**OPINION**

Rendered on the 17<sup>th</sup> day of July, 2009.

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JENNIFER E. BING, 3054 Patsie Drive, Beavercreek, Ohio 45434  
Plaintiff-Appellee

DAVID M. McNAMEE, Atty. Reg. No. 0068582, 42 Woodcroft Trail, Suite D, Beavercreek,  
Ohio 45430  
Attorney for Defendant-Appellant

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FROELICH, J.

{¶ 1} Ronald Bing appeals from a judgment of the Greene County Court of Common Pleas, Domestic Relations Division, which denied his request to terminate spousal support, found him in contempt of court for failing to pay his portion of his children’s uninsured medical expenses, and ordered him to pay attorney fees to his former wife, Jennifer Bing.

{¶ 2} Based on its finding that Mr. Bing was voluntarily unemployed, the trial court properly refused to terminate spousal support. The evidence supported the trial court's conclusion that Mr. Bing was in contempt for failure to pay his share of his children's medical expenses. The trial court's order that Mr. Bing pay Mrs. Bing's attorney fees related to the contempt proceedings and to a deposition at which he failed to appear was reasonable, but the evidence failed to establish the amount of those fees. The judgment of the trial court will be affirmed in part, reversed in part, and remanded for further consideration of the appropriate amount of attorney fees.

## I

{¶ 3} Mr. and Mrs. Bing were divorced in 2005. They have three minor children, one of whom suffers from a serious blood disorder. At the time of the divorce, Mr. Bing worked as an electrical engineer at Wright Patterson Air Force Base. Mrs. Bing had stayed home with the parties' children for several years, but she returned to work around the time of the divorce. In the Final Judgment and Decree of Divorce and subsequent proceedings, Mr. Bing was ordered to pay spousal support for seven years in the amount of \$416.64 per month. Mr. Bing was also ordered to maintain health insurance for the children. For expenses not covered by health insurance, Mrs. Bing was ordered to pay the first \$100 per year per child, and the parties were ordered to split any additional balance in proportion to their percentage of total income. Under this calculation, Mr. Bing was responsible for approximately sixty percent of these costs, and Mrs. Bing was responsible for approximately forty percent.

{¶ 4} On August 9, 2007, Mr. Bing filed a pro se "Motion for Removal of Spousal Support Determination Payment," arguing that Mrs. Bing's income had increased substantially

since the time of the divorce and that she no longer needed spousal support to maintain the standard of living that they had had while they were married. On October 3, 2007, Mrs. Bing filed a Motion to Show Cause why Mr. Bing should not be held in contempt for failing to pay the children's medical expenses as provided in the divorce decree. She also requested attorney fees. On October 8, 2007, the trial court issued an order to Mr. Bing to show cause why he should not be held in contempt. On November 28, 2007, Mrs. Bing filed a Motion to Compel Discovery and Request for Sanctions, including attorney fees, because Mr. Bing had failed to appear at a scheduled deposition and to produce requested documents. On May 21, 2008, the trial court held a hearing on all of the pending issues in the case. At the end of the hearing, Mrs. Bing was ordered to provide documentation of the unpaid medical bills by May 30, 2008. Based on the letter Ms. Bing's attorney sent to the court with the requested documentation of the medical expenses, it appears that the receipts and insurance reports were sent to the court on June 12, 2008.

{¶ 5} On June 26, 2008, the trial court entered a Judgment denying Mr. Bing's request for termination of spousal support and finding him in contempt for failure to pay his share of the children's uninsured medical expenses. The judgment also ordered Mr. Bing to pay attorney fees to Mrs. Bing in the amount of \$1,800, necessitated by his failure to pay the medical expenses and to attend a deposition after proper notification. The trial court sentenced Mr. Bing to jail for sixty days on the contempt, but it gave him an opportunity to purge the contempt by paying \$1,672.18 in medical expenses by July 18, 2008.

{¶ 6} Mr. Bing, who is now represented by counsel, raises three assignments of error on appeal.

## II

{¶ 7} Mr. Bing’s first assignment of error states:

{¶ 8} “THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN DENYING THE APPELLANT’S MOTION TO MODIFY SPOUSAL SUPPORT.”

{¶ 9} Mr. Bing asserts that circumstances had changed, warranting a modification<sup>1</sup> of spousal support, because there had been an involuntary decrease in his own income and an increase in Mrs. Bing’s income. He challenges the trial court’s conclusion that he was voluntarily unemployed, claiming that his receipt of unemployment compensation proves that he “either quit for cause or was fired without just cause” and is inconsistent with the trial court’s conclusion that he was voluntarily unemployed. He also contends that the trial court improperly relied on the “clean hands doctrine” in denying his motion to modify spousal support.

{¶ 10} The change of circumstances required for a modification of spousal support must be substantial and must not have been contemplated at the time of the original decree. *Mandelbaum v. Mandelbaum*, 121 Ohio St.3d 433, 2009-Ohio-1222, at ¶31. The trial court’s decision on a motion to modify spousal support is reviewed for an abuse of discretion. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 218. We should not substitute our judgment for that of the trial court. *Id.* at 219. However, if a decision is unreasonable, arbitrary or unconscionable, it must be reversed as an abuse of discretion. *Id.*

{¶ 11} At the hearing, Mr. Bing testified that he was terminated from his job as an

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<sup>1</sup>We note that Mr. Bing’s appellate counsel refers to the motion Mr. Bing filed in the trial court as a motion to modify spousal support, although it was actually styled as a motion to terminate spousal support. For purposes of our discussion, this distinction is not significant.

engineer at WPAFB because of “inadequate work performance.” He stated that his performance was “not at the bar where it used to be” and that the loss of his job was not a “job force reduction” by the employer. He stated that, before his termination, a psychiatrist recommended that he take some time off of work due to his depression, and he had expressed to his supervisor a desire to leave his employment. Mr. Bing acknowledged that his loss of employment resulted in a loss of health insurance coverage for his children, which he had been ordered to provide in the Final Judgment and Decree of Divorce, and he had thereafter been unable to provide health insurance coverage.

{¶ 12} Mr. Bing stated at the hearing that he had looked for a new job at online sites, but that he had not actually applied for any positions since his departure from WPAFB.<sup>2</sup> When asked how he had been supporting himself, Mr. Bing stated that, in December 2007, he had withdrawn a “one-time lump sum out of [his] 401” in the amount of \$80,000. He acknowledged that none of this money was used for child support or spousal support. Mr. Bing used some of the money to cover his living expenses and credit card debts, and he claimed that some was used to cover the penalty for early withdrawal from the 401(k) account. On cross-examination, Mr. Bing admitted that a substantial amount of the money had been spent on gambling in Ohio and Michigan. Many of the bank account withdrawals that Mr. Bing attributed to gambling were in the range of \$200 to \$300, but one withdrawal was for \$25,000. Approximately \$200 was used to buy baseball cards.

{¶ 13} At the time of the hearing, Mr. Bing was receiving unemployment compensation,

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<sup>2</sup>In his brief, Mr. Bing states that he “submitted applications” for employment, but his testimony does not support this assertion.

half of which was garnished to apply toward his child support obligation. It is unclear from the record when Mr. Bing began to receive unemployment compensation, but Mrs. Bing began receiving the child support that was garnished from his unemployment compensation at the end of March 2008.

{¶ 14} With respect to Mrs. Bing's income, Mr. Bing inferred that her income had increased because she is a federal employee and her GS level had increased, but he did not present any evidence of her actual income. At the time of the divorce, her income was \$42,198. Mrs. Bing testified that her income was \$59,195 at the time of the hearing.

{¶ 15} The trial court refused to modify Mr. Bing's spousal support obligation, finding that he was voluntarily unemployed and that his motion "fails under the clean hands doctrine." The court observed that Mr. Bing had filed his motion to terminate spousal support before he lost his job, after telling his supervisor that he wanted to leave the job. The court also found that Mr. Bing had not used any of the \$80,000 withdrawn from his retirement account for the benefit of the children and had not attempted to find other employment. The court recognized that Mrs. Bing's income had increased, but it concluded that Mr. Bing's "admission that he has assets the support could have been paid from and his testimony that his own actions caused his dismissal do not justify a modification at this time."

{¶ 16} The trial court did not abuse its discretion in concluding that Mr. Bing was not entitled to a modification of his spousal support obligation. The trial court could have reasonably concluded that Mrs. Bing's increased earnings over a period of several years did not constitute a substantial change of circumstances not contemplated at the time of the divorce. See *Mandelbaum*, 121 Ohio St.3d 433, at ¶31. More importantly, Mr. Bing admitted at the

hearing that he left his employment voluntarily, and this fact weighed heavily in the trial court's decision. The trial court obviously concluded that Mr. Bing's failure to give any consideration to the loss of medical benefits for his children – including a daughter with a serious, chronic medical condition – when he chose to leave his employment, coupled with his inability to pay any spousal support or child support in the months thereafter, demonstrated a disregard for his family obligations. Under the circumstances presented, we cannot conclude that the trial court abused its discretion in refusing to reduce his spousal support obligation.

{¶ 17} Notably, Mr. Bing did not argue in the trial court, as he does on appeal, that his receipt of unemployment benefits showed that his separation from his employment had not been voluntary. As we discussed above, he did not contest the voluntariness of his actions at the hearing. In fact, the trial court expressed surprise that Mr. Bing had been awarded unemployment benefits under the circumstances presented, stating: “Somebody at the old job did you a favor there. Normally when someone's terminated for what's called cause you don't get unemployment.” Mr. Bing responded that he had “no idea” about any issues related to his eligibility for unemployment compensation. In light of Mr. Bing's failure to actively engage in seeking other employment, however, the trial court could have concluded that he was voluntarily unemployed notwithstanding his receipt of unemployment benefits.

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

### III

{¶ 19} Mr. Bing's second assignment of error states:

{¶ 20} “THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FINDING THE APPELLANT IN CONTEMPT FOR FAILURE TO REIMBURSE THE

APPELLEE \$1,672.18 IN UNINSURED MEDICAL EXPENSES.”

{¶ 21} Mr. Bing contends that the trial court erred in finding him in contempt of court for his failure to pay his share of the children’s uninsured medical expenses. He asserts that Mrs. Bing submitted only a summary of medical expenses, “nothing more than numbers on a page without any substantiation.” He also infers that Mrs. Bing never submitted documentation of her medical expenses to him before the hearing because it took her three weeks after the hearing to submit those documents to the court.

{¶ 22} Mrs. Bing’s submission of documentation of medical expenses to the court three weeks after the hearing does not compel the conclusion that she had never submitted those documents to Mr. Bing, as he suggests. The trial court did not abuse its discretion in refusing to draw such a conclusion. Mrs. Bing testified that she had sent medical bills to Mr. Bing by certified mail and that they came back unclaimed. The trial court acted within its discretion in crediting this testimony.

{¶ 23} The trial court only attached the summary of the unpaid medical expenses to its judgment, but Mrs. Bing did submit documentation to support the numbers contained on her summary of expenses. These documents are in the record. We have carefully reviewed the receipts and insurance records provided by Mrs. Bing, and these documents substantiate the trial court’s finding that Mr. Bing owed \$1,672.41.

{¶ 24} Mr. Bing’s suggestion that Mrs. Bing had not sent the medical bills to him and his argument that the trial court erred in concluding that he owed \$1,672.41 are without merit.

The second assignment of is overruled.

{¶ 25} Mr. Bing's third assignment of error states:

{¶ 26} "THE TRIAL COURT ERRED AND ABUSED IT DISCRETION BY ORDERING THE APPELLANT TO PAY \$1,800 IN ATTORNEY FEES."

{¶ 27} Mr. Bing contends that the trial court abused its discretion in ordering him to pay \$1,800 to Mrs. Bing to cover her attorney fees for the deposition at which he failed to appear and for the contempt proceedings related to his failure to pay his share of the children's medical expenses without evidence to support such an award.

{¶ 28} Although we agree with the trial court that an award of attorney fees was appropriate, Mr. Bing correctly points out that Mrs. Bing did not present "documentary evidence and/or expert testimony as to the amount of time and work expended" by her attorney. She simply testified that she had paid her attorney \$1,800 to "defend" her case, including the pursuit of her motion for contempt and the attorney's appearance at the deposition at which Mr. Bing did not appear. Based on her testimony, however, it appears that \$1,800 represented the total amount that Mrs. Bing paid to her attorney, including the fees attributable to Mr. Bing's request for a modification of spousal support. Neither Mrs. Bing nor her attorney provided any evidence to show what proportion of the attorney's time was spent on the various aspects of the case.

{¶ 29} The trial court's award of \$1,800 in attorney fees to Mrs. Bing did not specify whether the fees were awarded as sanctions pursuant to Civ.R. 37 for failure to comply with discovery or were related to its finding of contempt. Indeed, the trial court had no evidence from which to determine the portions of Mrs. Bing's fees attributable to the contempt proceedings and the discovery violations. We must conclude that the trial court abused its

discretion in awarding attorney fees without additional evidence and findings in support of such an award. As such, we will remand this matter to the trial court for Mrs. Bing to present more specific evidence as to her attorney fees and for the trial court to make the appropriate findings regarding the basis for any fees it awards.

{¶ 30} The third assignment of error is sustained.

V

{¶ 31} The judgment of the trial court will be affirmed in part, reversed in part, and remanded for further proceedings on the attorney fee award.

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BROGAN, J. and FAIN, J., concur.

Copies mailed to:

Jennifer E. Bing  
David M. McNamee  
Hon. Steven L. Hurley