

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

ANNIE Z. MCGRADY, :
 :
 Plaintiff-Appellee, :
 : No. 113502
 v. :
 :
 AMADOU CAMARA, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: October 10, 2024

Civil Appeal from the Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-06-313690

Appearances:

Baker & Hostetler LLP, Daniel M. Kavouras, Lauren T. Stuy, and Andrew J. Thompson, *for appellee*.

L. Bryan Carr, *for appellant*.

EMANUELLA D. GROVES, J.:

{¶ 1} Defendant-appellant, Amadou Camara (“Husband”), appeals the decision of the trial court finding him in contempt of court for failing to execute a division of property order (“DOPO”) assigning 50 percent of his state pension as of May 18, 2007, to plaintiff-appellee, Annie Z. McGrady (“Wife”), as required in their

first divorce decree. For the reasons that follow, we affirm the decision of the trial court.

{¶ 2} The facts of this case are straightforward. On May 17, 2007, Husband and Wife finalized their divorce after 15 years of marriage. *McGrady v. Camara*, Cuyahoga C.P. No. DR 06-313690 (the “2006 Divorce”). The 2006 Divorce decree included a division of property that called for Wife to quitclaim the deed to the marital home, for which she was the sole owner, to Husband after Husband refinanced the mortgage in his name only. Additionally, the decree ordered the parties to prepare a DOPO splitting Husband’s pension 50/50 between them and submitting the DOPO to Husband’s employer within 60 days of the date the journal entry was filed. The pension was to be valued as of May 18, 2007. Thereafter, Husband refinanced the mortgage, and Wife quitclaimed the property to Husband; however, the DOPO was not executed and filed with Husband’s employer as per the final decree.

{¶ 3} On January 28, 2008, the parties remarried for practical reasons. Wife was diagnosed with cancer and needed assistance with health insurance. Approximately seven years later the parties filed for divorce again. *McGrady v. Camara*, Cuyahoga C.P. No. DR 15-357883 (the “2015 Divorce”). The final decree incorporated a separation agreement (the “2015 Separation Agreement”) that provided for spousal support to Wife, but did not include any division of property. The house, which had been granted to Husband in the 2006 Divorce decree, was

designated premarital property owned by Husband. Husband's pension was not mentioned in the 2015 Divorce decree or the 2015 Separation Agreement.

{¶ 4} In April 2021, Wife received a letter from the Ohio Public Retirement System (OPERS) informing her that Husband had applied for retirement and asking Wife to submit a certified copy of the 2006 Divorce decree. Wife attempted to have Husband sign a DOPO but he refused to do so. On January 6, 2022, Wife filed a motion to show cause why Husband should not be held in contempt for nonpayment of support in the 2006 Divorce case and referenced "50 percent." The trial court treated the motion as a motion to show cause for failure to comply with the order to prepare a DOPO. On July 22, 2022, Husband filed a trial brief in opposition, setting forth both contractual and legal arguments that the terms of the 2006 Divorce decree were superseded by the couple's remarriage and the 2015 Divorce decree and Separation Agreement.

{¶ 5} On March 20, 2023, the magistrate issued a decision granting Wife's motion to show cause, finding that Husband had failed to comply with the trial court's previous order. The court held Husband in civil contempt for failing to execute the DOPO and imposed a sentence of two days in jail, which could be purged by complying with the original order. On April 3, 2023, Husband filed timely objections to the decision of the magistrate, with notice that supplemental objections would be filed once the transcript was prepared. Husband filed supplemental objections on June 7, 2023. On July 21, 2023, the trial court issued its decision, analyzing and overruling Husband's objections, and adopted the

magistrate's final disposition. Husband appealed; however, this court dismissed the appeal for lack of a final, appealable order. The trial court issued a nunc pro tunc entry, independently issuing its disposition.

{¶ 6} Husband appeals assigning the following sole assignment of error:

Assignment of Error

The trial court erred in granting appellee's motion to show cause as the parties' 2015 Separation Agreement and Agreed Judgment Entry superseded and/or abrogated the executory portions of the parties' 2007 Agreed Judgment Entry; no motion or other filing was initiated in the parties' 2015 proceeding. The appellee is not entitled to any portion of appellant's pension.

Law and Analysis

Standard of Review

{¶ 7} A trial court is tasked with reviewing its magistrate's decision by taking an independent review of the matters objected to and thus applies a de novo review. *McCarthy v. Johnson*, 2020-Ohio-3429, ¶ 10 (10th Dist.). An appeal of that decision is generally reviewed for an abuse of discretion. *Kmet v. Kmet*, 2019-Ohio-2443, ¶ 11 (8th Dist.). Therefore, we will not disturb the opinion of the trial court unless it is arbitrary, unreasonable, or unconscionable. *LawW. v. A.B.*, 2024-Ohio-3109, ¶ 5 (8th Dist.), citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, (1983). Similarly, we review a finding of contempt of court for an abuse of discretion. *Schneider v. Schneider*, 2021-Ohio-1058, ¶ 51 (11th Dist.).

{¶ 8} The issue therefore is whether the trial court abused its discretion when it adopted the magistrate’s decision finding Husband in contempt of court for failing to comply with the terms of the 2006 Divorce decree.

Contempt of Court

{¶ 9} It is undisputed in this case that Husband violated the terms of the 2006 Divorce decree by failing to sign the DOPO. He argues that subsequent circumstances released him from that obligation. “To establish a prima facie case of contempt of court, the moving party must establish, by clear and convincing evidence, the existence of a court order, the nonmoving party’s knowledge of that order, and that the nonmoving party violated it.” *S.R. v. S.R.*, 2023-Ohio-531, ¶ 15 (8th Dist.), citing *In re K.B.*, 2012-Ohio-5507, ¶ 11. Evidence is “clear and convincing” when it produces in the mind of the trier of fact “a firm belief or conviction as to the allegations sought to be established.” *Morgan v. Morgan*, 2024-Ohio-2067, ¶ 43 (8th Dist.), quoting *Cross v. Ledford*, 161 Ohio St. 469, 477 (1954). If the moving party establishes a prima facie case for contempt, the burden shifts to the nonmoving party to rebut the showing by a preponderance of the evidence. *Id.*, citing *K.M.M. v. A.J.T.*, 2021-Ohio-2452, ¶ 24 (8th Dist.).

{¶ 10} As Husband did not comply with the terms of the 2006 Divorce decree, the burden shifts to him to rebut the prima facie showing of contempt by a preponderance of the evidence. Husband argues that Wife released him from the obligation to split the pension based on the provisions of the 2015 Divorce decree.

He also argues that their reconciliation, even though it was in name only, waived Wife's right to the property division created in the 2006 Divorce decree.

Retirement Benefits

{¶ 11} The 2006 Divorce decree provided as follows:

It is further ordered, adjudged and decreed that a Qualified Domestic Relations Order or Division of Property Order be prepared by the parties and submitted to the employer of the Husband within sixty days of journalization of this divorce to divide the Husband's pension between the parties. The pension should be divided on a 50/50 basis as of May 18, 2007 between the parties. The cost of preparing the order by Pension Evaluators shall be divided equally by the parties. The Wife has no pension.

{¶ 12} "Retirement benefits accrued during marriage are marital assets subject to equitable division upon divorce." *Shaw v. Shaw*, 2024-Ohio-3231, ¶ 14 (12th Dist.). A division of property in a divorce decree "is not subject to future modification by the court except upon the express written consent or agreement to the modification by both spouses." R.C. 3105.171(I).

{¶ 13} Husband argues that when the parties remarried in 2008, any provisions of the 2006 Divorce decree that were executory were nullified by the remarriage. In support he cites a Florida case, *Cox v. Cox*, 659 So.2d 1051 (Fla. 1995). *Cox* addresses facts similar to these in that the parties were married, got divorced, and then reconciled. That court ultimately found that a reconciliation or remarriage abrogates the executory provision of a prior marital separation agreement unless the parties explicitly state that they intended the executory

provisions to remain. *Id.* at 1054. However, executed provisions are not affected by remarriage or reconciliation. *Id.*

{¶ 14} This issue does not appear to have been extensively litigated in Ohio courts, but there is case law that touches on the effect of reconciliation after a divorce decree. In *Fields v. Fields*, 39 Ohio App.3d 187 (2d Dist. 1987), the Second District Court of Appeals addressed a couple who reconciled for a brief period after divorce. In that case, the parties divorced after a marriage of 25 years. As part of the original divorce decree, the parties' extensive property holdings were divided. As part of that order, the husband was to pay the wife \$150,000 in three installments. The husband paid one installment of \$50,000. The parties subsequently reconciled, although they did not remarry, for a period of six months. After the parties separated again, the wife filed a motion to show cause for husband's failure to make additional payments. The husband argued that the reconciliation voided the remaining terms of the original divorce and separation agreement. The court noted that its prior precedent had established that a property division in a divorce is considered executed and is not affected by a subsequent reconciliation, unless the parties express an intent to revoke it by clear agreement and intention. *Id.* at 190, citing *Lucas v. Lucas*, 26 Ohio Law Abs. 664 (2d App. 1938). However, *Lucas* held that executory provisions were voided by a reconciliation and resumption of the marital relationship. *Fields* at 190-191. The Second District in *Fields* ultimately modified its former ruling on the effect of reconciliation and cohabitation on executory provisions, finding they would be void and unenforceable only if the party seeking

that relief seeks a declaration from the trial court to ratify that position. *Id.* at 192-193.

{¶ 15} In any event, neither *Fields* nor *Cox* supports Husband's position because the division of property in the 2006 Divorce decree was an executed provision not an executory provision. Husband argues that the order dividing the pension was executory because the DOPO was not completed prior to the remarriage. We disagree. The Ohio Supreme Court addressed a similar situation when discussing a Qualified Domestic Relations Order ("QDRO") applicable to federal pensions. The court found that the QDRO is not a separate order. "[T]he QDRO merely implements the divorce decree." *Wilson v. Wilson*, 116 Ohio St.3d 268, ¶ 15 (2007). See *Rice v. Rice*, 2011-Ohio-1366, ¶ 7 (8th Dist.) (observing that DOPOs function in the same manner as QDROs).

{¶ 16} The 2006 Divorce decree was a final, appealable order regardless of whether a QDRO has been issued. *Id.* Here, the trial court's order determined the division of property giving Wife 50 percent of Husband's pension as of May 18, 2007. The DOPO was merely the method by which that order was to be accomplished, i.e., as this court has noted with respect to a QDRO, it "is not an independent judgment entry but rather an enforcement mechanism pertaining to the trial court's previous judgment entry of divorce." *E.O.W. v. L.M.W.*, 2021-Ohio-2040, ¶ 35 (8th Dist.), citing *Ballinger v. Ballinger*, 2017-Ohio-7077, ¶ 6 (8th Dist.).

{¶ 17} Based on the foregoing, the parties' remarriage did not void the provision that awarded 50 percent of Husband's pension to Wife as of May 18, 2007.

The 2006 Divorce decree determined the parties' interests in the pension even though the DOPO had not been submitted. The trial court recognized that it would be inequitable to modify a portion of the 2006 Divorce decree in favor of the Husband and yet allow Husband to retain the marital home as well. Furthermore, pursuant to statute, once the trial court divided the property, it could not be modified absent the express consent or agreement of the parties. *See* R.C. 3105.171(I). The parties' remarriage did not void the 2006 Divorce decree.

{¶ 18} Nevertheless, Husband argues that the terms of the 2015 Divorce decree and Separation Agreement modified the 2006 Divorce decree such that Wife was no longer entitled to 50 percent of his pension as of May 17, 2007. We disagree. Preliminarily, we note that contract law applies when parties to a divorce enter into an agreed separation agreement. *Vail v. String*, 2019-Ohio-984, ¶ 26 (8th Dist.) (“[T]he same rules of construction apply to separation agreements and settlement agreements as to any other contract.”). Furthermore, the parties' remarriage did not change the property divisions created by the 2006 Divorce decree as just discussed.

{¶ 19} A review of the 2015 Separation Agreement shows that neither party, either by consent or agreement, modified Wife's 50 percent share of Husband's pension. That document defines the marriage as including the second marriage only and does not explicitly address the property divisions created by the 2006 Divorce decree. Rather, the 2015 Separation Agreement acknowledges the earlier judgment by referring to the home Husband acquired during the first divorce as premarital property. Additionally, neither the 2015 Divorce decree nor the Separation

Agreement mention Husband's pension or Wife's 50 percent share. A trial court may not change a previous property division unless it has obtained the consent or agreement of both spouses. R.C. 3105.171(I). Because the 2006 Divorce decree gave Wife a share in the pension, the parties would have had to agree in writing to modify the 2006 Decree to change the division of property. Absent express language indicating her intent to transfer ownership of her share of the pension, Wife retains her share of the pension. There is no language in the 2015 Separation Agreement that would allow this court to find that Wife relinquished her share of the pension.

{¶ 20} Finally, Husband challenges the trial court's finding on equity grounds. To the extent that Husband argues that the property division in the 2006 Divorce is inequitable, he has waived that argument. The 2006 Divorce was finalized in 2007. Husband's remedy at that time would have been a direct appeal. We recognize that the trial court did raise equity when considering its ruling. However, the trial court considered the equity of implementing Husband's resolution finding that Husband was entitled to retain the home Wife transferred to him in 2007 but Wife, by virtue of the remarriage, lost 50 percent of Husband's pension. The trial court found, and we agree, that such a result would be inequitable.

{¶ 21} Based on the foregoing, Husband failed to comply with the trial court's order in the 2006 Divorce decree that required him to cooperate in creating a DOPO splitting his pension equally with Wife as of May 17, 2007, and submitting it to his employer. Accordingly, the trial court did not abuse its discretion in holding Husband in contempt of court. Husband's sole assignment of error is overruled.

{¶ 22} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EMANUELLA D. GROVES, JUDGE

KATHLEEN ANN KEOUGH, A.J., and
ANITA LASTER MAYS, J., CONCUR