

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

EMA	,	:	
	Plaintiff	:	
		:	DOCKET NO. 02-21225
	vs.	:	CIVIL ACTION – LAW
		:	
JBA	,	:	
	Defendant	:	

OPINION
Issued Pursuant to Pa.R.A.P. 1925(a)

This appeal arises from this Court’s denial of a contempt petition, as it relates to child support, in the above-captioned matter. A brief history of the matter is as follows. A divorce decree was entered in this matter by the Honorable William Kieser on January 6, 2003. In that decree, that Court noted “that all other issues between the parties have been resolved by the attached Property Settlement Agreement.” Divorce Decree, 06/06/2003. The Property Settlement agreement provided that “no child support shall be required pursuant to this Agreement. Child support shall be arranged as the parties agree.” Property Settlement Agreement, 4. Legal counsel represented both Plaintiff and Defendant at the time of the agreement, as evidenced in the agreement itself.¹

On June 1, 2006, the parties signed a custody agreement that granted Plaintiff legal and primary physical custody of both of the parties’ children. Defendant was granted visitation, as agreed upon by the parties; Defendant also agreed to pay Plaintiff \$400.00 per month in child support. At that time, the agreement was not made an Order of Court. However, on October 16, 2008, Plaintiff’s attorney² filed a Motion to Modify Custody and Support. In this motion,

¹ Plaintiff was represented by Scott T. Williams, Esquire, and Defendant was represented by Richard J. Callahan, Esquire. Property Settlement Agreement, 13-14.

² At the time of the filing of the Motion to Modify Custody and Support, Plaintiff’s attorney was Jason F. Poplaski, Esquire.

Plaintiff requested the Court to modify the January 6, 2003 Order because “[t]he parties reached a custody and support modification agreement....” *See* Pl.’s Motion to Modify Custody and Support, 10/16/2008.³ By an order dated November 4, 2008, the Court made the parties’ prior agreement an Order of Court to resolve Plaintiff’s pending Motion to Modify Custody and Support.⁴

Plaintiff filed a Petition for Enforcement of the Agreement/Contempt of the Order (petition/contempt) on August 11, 2011.⁵ In this petition/contempt, Plaintiff alleged that Defendant owes child support arrearages totaling \$22,110.00. These arrearages include \$8,250.00 for 2006-07 and \$13,860.00 for 2008-11.

On September 26, 2011, the parties appeared before this Court at the time schedule for an evidentiary hearing on Plaintiff’s petition/contempt. By Order dated September 28, 2011 and signed September 29, 2011, this Court dismissed in part and granted in part Plaintiff’s petition/contempt. On September 29, 2011, Plaintiff filed a Petition for Special Relief/Motion to Reopen the Record (petition/motion). On September 29, 2011, Plaintiff filed a Motion for Reconsideration. On October 3, 2011, this Court denied Plaintiff’s Motion for Reconsideration. In that order, this Court held that it did not find Plaintiff’s testimony at the September 26, 2011 hearing to be credible. On October 10, 2011, the Honorable Joy Reynolds McCoy dismissed Plaintiff’s Petition for Special Relief/Motion to Reopen the Record based upon this Court’s October 3, 2011 Order.

On October 31, 2011, Plaintiff filed her Notice of Appeal. In her Concise Statement of Matters Complained of on Appeal, Plaintiff raises the following issues:

³ This support modification agreement was the June 1, 2006 custody agreement that the parties signed.

⁴ That Order was filed on November 5, 2008.

⁵ At the time of the filing of the Petition, Plaintiff was represented by Janice Ramin Yaw, Esquire.

1. The Trial Court erred in reversing the burden of proof. Defendant should have proved compliance.
2. The Trial Court erred in not requiring Defendant to comply with the Order due to passage of time.
3. The Trial Court erred in requiring Plaintiff to prove a negative.
4. The Trial Court erred in its determination of credibility.
5. The Trial Court erred in not allowing mother to reopen the record for testimony of her father.

This Court believes that Plaintiff's first and third issues are the same issue and will address them as pertaining to the burden of proof in contempt proceedings.

Burden of Proof in Contempt Proceedings

After the September 26, 2011 proceeding, this Court held that Plaintiff did not satisfy her burden of proof regarding the contempt proceeding, i.e. Plaintiff failed to prove Defendant's noncompliance with the support order by a preponderance of the evidence. When reviewing contempt determinations by a trial court, the Superior Court has held:

[o]ur standard of review when considering an appeal from an order holding a party in contempt of court is narrow: We will reverse only upon a showing of an abuse of discretion. The court abuses its discretion if it misapplies the law or exercises its discretion in a manner lacking reason. "This court must place great reliance on the sound discretion of the trial judge when reviewing an order of contempt."

Godfrey v. Godfrey, 894 A.2d 776, 780 (Pa. Super. Ct. 2006) (citing *Rhoads v. Pryce*, 874 A.2d 148, 153 (Pa. Super. Ct. 2005); *see also Hopkins v. Byes*, 954 A.2d 654 (Pa. Super. Ct. 2008).

In this instance, Plaintiff did not meet the burden of proof during her hearing on her petition/contempt. Trial courts may adjudicate an individual in contempt for failure to comply with a child support order. 23 Pa.C.S. § 4345; *see Hyle v. Hyle*, 868 A.2d 601, 604 (Pa. Super. Ct. 2005).⁶ However, in order to be held in civil contempt, the complaining party must prove

⁶ This adjudication would be civil, rather than criminal, because the "dominant purpose of the contempt proceeding is to aid a private litigant or interest rather than to vindicate the authority of the court or to protect the public interest." *Barrett v. Barrett*, 368 A.2d 616, 619 (Pa. 1977).

noncompliance with a court order by a preponderance of the evidence. *See* 868 A.2d at 604; *see also Barrett v. Barrett*, 368 A.2d 616, 621 (Pa. 1977). Thus, in this proceeding, the burden of proof fell upon Plaintiff, i.e. the complaining party.

This Court did not abuse its discretion in its determination that Plaintiff failed to prove, beyond a preponderance of the evidence, that Defendant failed to pay his child support payments. During the proceeding, the only evidence that Plaintiff presented of Defendant's noncompliance was her own oral testimony and her petition/contempt. This Court did not find Plaintiff's testimony to be credible, particularly that she alleged to have prepared records of Defendant's payments which were not brought to court. Transcript of Hearing at 13, 15, 17, 21. Additionally, it should be noted that Defendant clearly expressed his belief that he was up to date in his child support payments Transcript of Hearing at 7, 8, 9, 39. Particularly, Defendant testified that he made cash payments to Plaintiff. This Court did not find Plaintiff's testimony to be credible, and, therefore, since Plaintiff's own oral testimony was the only evidence that she provided in to support her alleged arrearage amount during the hearing, this Court found that Plaintiff failed to prove her case by a preponderance of the evidence.

Passage of Time

Plaintiff alleges that this Court erred when it did not require Defendant to comply with the November 2008 Order due to the passage of time. This Court did not hold that Defendant did not have to comply with the parties' Order. This Court's September 28, 2011 Order states "AND NOW, this 28th day of September, 2011, after hearing, given the lapse of time, the Court finds that Mother failed to meet her burden of proof to establish back payment of or unpaid support." Order, 09/28/011. This Court did not hold that Defendant need not comply with the

January 3, 2008 Order of Court. This Court held that Plaintiff did not meet her burden of proof during the evidentiary hearing, in light of the fact that she was alleging such a large arrearage for a period of approximately five years which was supported only by oral testimony. Additionally, this large passage of time was another factor that this Court took into consideration when determining the credibility of Plaintiff's statements.

Credibility Determination

Additionally, this Court did not err in finding Plaintiff an incredible witness. The Supreme Court has long held:

questions of credibility and conflicts in the evidence presented are for the trial court to resolve, not our appellate courts.... As long as sufficient evidence exists in the record which is adequate to support the finding found by the trial court, as factfinder, we are precluded from overturning that finding and must affirm, thereby paying the proper deference due to the factfinder who heard the witnesses testify and was in the sole position to observe the demeanor of the witnesses and assess their credibility.

Commonwealth v. O'Connell, 555 A.2d 873, 875 (Pa. 1989) (citations omitted); *see also Commonwealth v. Meyers*, 722 A.2d 649, 651-52 (Pa. 1988). This rule of law is "rooted in concepts of fairness, common sense and judicial economy." 555 A.2d at 875. Thus, if the reviewing court can find evidence in the record to support the trial court's credibility determinations, these determinations should be upheld. *Id.*

Initially, this Court notes that it could not rely on Plaintiff's petition/contempt on its face because the support calculations on that filing were inaccurate. The petition/contempt alleges that Defendant owed back support for the years of 2006-07 in the amount of \$9,600.00. Defendant's support amount totals \$400.00 per month. Therefore, according to the petition/contempt, Defendant owed 24 months worth of support payments for the years of 2006-

07.⁷ Thus, Plaintiff alleged that Defendant owed support for each month of 2006 and 2007. However, the record reflects a different story. The custody agreement that the parties signed was dated June 1, 2006.⁸ Therefore, at most, the support payment that Plaintiff should have alleged due from Defendant from 2006 would be seven months worth of payments, or \$2,800.00.⁹ Plaintiff alleged in her pleading that Defendant owed her \$2,000.00 more than this amount.¹⁰

In addition to finding the pleading not credible, this Court found that Plaintiff's testimony was not credible. This Court did not believe Plaintiff's personal recollection of the support payments that she received from Defendant. While testifying, Plaintiff asserted that she kept records of the support payments that she received from Defendant. Transcript of Hearing at 13, 15, 17, 21. However, Plaintiff did not provide this Court with any of these records. The only evidence regarding support payments that Plaintiff provided to this Court was the petition/contempt pleading itself and Plaintiff's own oral testimony.¹¹ In short, this Court believes that Plaintiff could have provided this Court with her own personal ledgers to support her allegation that Defendant failed to pay child support. This omission was among one of the many factors that this Court took into consideration when finding that Plaintiff's testimony was not credible, including the long delay in seeking enforcement.

⁷ $\$9,600.00 / \$400 = 24$ payments.

⁸ This Court notes that the agreement dated June 1, 2006, was the first support agreement between the parties.

⁹ $\$400 \times 7$ months = \$2,800.00.

¹⁰ $\$400 \times 12$ months = \$4,800.00. $\$4,800.00 - \$2,800.00 = \$2,000.00$.

¹¹ This Court notes that in her petition/contempt filed on August 11, 2011, Plaintiff requested that Defendant pay orthodontic expenses incurred by the parties' children. Plaintiff provided this Court with ledgers of the children's dental work by attaching the ledgers to the petition/contempt. The parties' Property Settlement Agreement (section 11(A)) provides that the parties shall contribute to orthodontic expenses pro-rata on the basis of their relative income. Property Settlement Agreement, 11. Plaintiff testified that she paid these orthodontic bills that were not covered by medical insurance. Defendant testified that he had not paid any amount towards these orthodontic expenses. This Court awarded orthodontic expenses to Plaintiff based upon the parties' clearest testimony of their respective earnings.

Denial of Plaintiff's Petition for Special Relief/Motion to Reopen the Record

Lastly, the Trial Court did not err when it denied Plaintiff's Petition for Special Relief/Motion to Reopen the Record (petition/motion), which requested this Court to reopen the record for testimony from Plaintiff's father. The Superior Court has stated:

[w]e exercise an abuse of discretion standard of review in an appeal from the denial of a petition for special relief under the Domestic Relations Code. An abuse of discretion has been explained by the appellate courts of this Commonwealth as more than an error in judgment; we may find an abuse of discretion only on clear and convincing evidence that the trial court misapplied the law or overrode it or that the judgment reached was manifestly unreasonable, or based on bias, ill-will, or partiality.

Johnson v. Johnson, 908 A.2d 290, 295 (Pa. Super. Ct. 2006) (citations omitted). Similarly, the Supreme Court has opined:

a court may, in its discretion, reopen the case after a party has closed for the taking of additional testimony, but such matters are peculiarly within the sound discretion of the trial court, and a denial of [an] opportunity for a rehearing for the purpose of introducing additional evidence will not ordinarily be disturbed.

In re J.E.F., 409 A.2d 1165, 1166 (Pa. 1979) (citing *Commonwealth v. Deitch Co.*, 295 A.2d 834 (Pa. 1972)). Particularly, a "trial court, for the purpose of receiving further evidence, may reopen a case after the parties have rested, though it should never do so except for good reasons and on a proper showing." *Seaboard Container Corp. v. Rothschild*, 58 A.2d 800, 802 (Pa. 1948). A trial court's denial to reopen the record is reviewed using an abuse of discretion standard. *Id.*

In this instance, the Trial Court did not abuse its discretion in denying Plaintiff's petition/motion because Plaintiff did not provide a good reason and a proper showing as to why the record should be reopened. In this case, Plaintiff alleges that the Court erred in denying her motion to reopen the case for the purpose of receiving testimony of Plaintiff's father. Plaintiff asserted that her father would provide rebuttal testimony, against those assertions provided by

Defendant during the September hearing. Plaintiff had the opportunity to present testimony from her father at the time set for an evidentiary hearing on Plaintiff's petition/contempt. At the time of that proceeding, the only evidence that Plaintiff presented was her own oral testimony. After this Court's September 28, 2011 Order was received by Plaintiff, she filed a Petition for Special Relief/Motion to Reopen the Record. In that petition/motion, Plaintiff alleged that, if the record was reopened, her father would provide rebuttal testimony. However, the Honorable Joy Reynolds McCoy dismissed Plaintiff's petition/motion based on this Court's October 3, 2011 Order that denied Plaintiff's Motion for Reconsideration. This decision was within the sound discretion of the trial court and was based upon this Court's prior determination of Plaintiff's credibility.

This Court notes that this scenario is exactly why 23 Pa.C.S. § 4325 should be fully complied with in support matters.¹² However, in light of these arguments, this Court respectfully requests that its September 29, 2011 Order be upheld.

BY THE COURT,

Date

Richard A. Gray, J.

cc: Janice R. Yaw, Esquire
Richard J. Callahan, Esquire
Gary L. Weber, Esquire

¹² 23 Pa.C.S. § 4325 requires an order of support to direct payment to be made payable or payment made to the domestic relations section for transmission to the obligee.