

STATE OF MICHIGAN
COURT OF APPEALS

CHERYL RAY,

Plaintiff-Appellee,

v

WILLIAM RAY, JR,

Defendant-Appellant.

UNPUBLISHED
December 8, 2009

No. 287243
Ionia Circuit Court
LC No. 01-021322-DO

Before: Talbot, P.J., and O’Connell and Davis, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted the trial court’s August 1, 2008, order requiring him to continue paying spousal support after finding defendant in contempt for his failure to satisfy an earlier property award in favor of plaintiff in the parties’ divorce proceedings. We reverse and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The parties were divorced pursuant to a judgment entered July 11, 2002. The judgment awarded plaintiff spousal support in the amount of \$150.00 a week “until defendant attains the age of 60 or retires from State of Michigan employment whichever shall later occur, or until further order of the Court.” Spousal support was deemed to be modifiable upon plaintiff’s “motion . . . for the extension of spousal support before defendant attains the age of 60, or upon being notified of defendant’s intention to retirement, whichever shall last occur.” To support a modification of spousal support there must be demonstrated “extraordinary medical expense of Plaintiff or an extraordinary change in the earnings of the parties.” As part of the property settlement, plaintiff was also awarded \$75,462.00 to equalize the parties’ assets. This money was to be paid by an immediate transfer from defendant’s 457 account, with any additional funds necessary to reach this amount to be given to plaintiff in cash no later than July 1, 2002.

On October 1, 2002, the trial court entered an order granting plaintiff’s motion to enforce the judgment of divorce, by requiring defendant’s 457 plan administrator to transfer \$37,500 to plaintiff, and enjoining the plan administrator from transferring any other funds without the written agreement of both parties or an order of the court. Subsequently, a qualified domestic

relations order (QDRO) was entered effectuating the \$37,500 assignment to plaintiff. Defendant appealed the judgment and contested the provisions requiring him to transfer the 457 plan assets and to pay plaintiff \$800 in attorney fees. This Court affirmed the trial court's decision.¹

Defendant failed to notify plaintiff when he retired several months before his 60th birthday on February 3, 2004. Plaintiff stopped receiving support payments in November or December 2003, and sought to hold defendant in contempt. After testifying concerning her degenerative kidney disease and other ailments, plaintiff also sought additional relief, including continuation of spousal support and a release of the frozen deferred compensation monies. Defendant was not present at this hearing

On April 12, 2004, the trial court found defendant "in contempt of the Court's Order contained in the Judgment dated November 26, 2002." The trial court ordered the continuation of spousal support "at the current rate." The order also set aside the previously court-imposed freeze on the remainder of defendant's 457 account to permit plaintiff to seek the remainder of the monies owed to her in the property settlement of the divorce judgment. The order specified that defendant could purge himself of contempt by "compliance with the court's order."

Defendant subsequently sought to modify spousal support. In the interim, plaintiff learned that defendant had withdrawn \$2,925.90 from his 457 account on January 2, 2004, which was in addition to the \$50,000 defendant withdrew from this account in 2002. Further, defendant had not paid the court-ordered attorney fees awarded in the April 2004 order. Plaintiff filed a motion to again find defendant in contempt. Defendant asserted that he believed that the spousal support payments ordered in 2004 were intended to pay off the obligation under the judgment, and claimed that, by this point, he had paid plaintiff over \$35,000. Defendant admitted that the account had been frozen when he withdrew \$50,000 sometime in 2002, and that he did not pay anything out of that check to satisfy the judgment. He stated that he violated the court's order because he believed that the money belonged to him, and he thought that plaintiff was going to give the money to her son, who would waste it. The trial court acknowledged the lack of clarity in its previous order regarding the continuation of spousal support, indicating that the award of spousal support was intended as a means to secure payment of the outstanding balance owed to plaintiff pursuant to the judgment of divorce and was not, impliedly, an extension or modification of defendant's spousal support obligation. In other words, the trial court was imposing the continuation of spousal support due to defendant's failure to comply with the property settlement provisions of the judgment of divorce and to purge defendant's contempt.

Defendant filed another motion to modify support, which was denied by the Friend of the Court on June 28, 2006. This Court subsequently granted defendant's application for leave to appeal.²

¹ *Ray v Ray*, unpublished per curiam opinion of the Court of Appeals, issued February 10, 2004 (Docket No. 242901).

² *Ray v Ray*, unpublished order of the Court of Appeals, entered January 5, 2009 (Docket No. 287243).

“A trial court’s issuance of a contempt order is . . . reviewed for an abuse of discretion, but to the extent that the review requires [this Court] to address questions of law, our review is de novo.” *Johnson v White*, 261 Mich App 332, 345; 682 NW2d 505 (2004). At the outset, we would note that this Court cannot address any alleged errors by the trial court involving its previous orders in 2004 or 2006, as these matters were not timely appealed. Consequently, any monies, which may have been remitted or received by plaintiff pursuant to these orders, are not subject to this Court’s review. In addition, this matter has been unduly complicated by the lack of clarity in the trial court’s ruling to delineate the means selected to address plaintiff’s claims for additional spousal support and to collect on the outstanding monies owed on the property settlement, along with the imposition of sanctions for defendant’s blatant contempt of the trial court’s previous orders.

Defendant is correct in his assertion that, as a general rule, “property settlement provisions of a judgment of divorce are not enforceable by contempt proceedings.” *Hagen v Hagen*, 202 Mich App 254, 258; 508 NW2d 196 (1993). Thus, when the judgment requires only the payment of money as part of the property settlement of a divorce, the trial court is without authority to use its contempt powers to force compliance with this portion of the judgment of divorce. Instead, the party seeking relief “must pursue the traditional means of collecting a money judgment.” *Guynn v Guynn*, 194 Mich App 1, 3-4; 486 NW2d 81 (1992). Concomitantly, a trial court maintains “the inherent right to punish all contempts of court,” *Johnson, supra* at 345, and specifically has the power to punish as contempt a party’s disobedience of a court order, MCL 600.1701(g); *Kirby v Michigan High School Ath Ass’n*, 459 Mich 23, 32 n 8; 585 NW2d 290 (1998). In this instance, because the trial judge had more than adequate evidence available to find defendant had routinely and purposefully violated its previous orders, we conclude that the trial court acted within its discretion in imposing contempt sanctions on this defendant.

We concur with the trial court’s finding of contempt, but remand to the trial court for clarification of its ruling regarding how plaintiff is to separately enforce payment on the outstanding balance owed to her on the property settlement as distinguished from its imposition of continuing spousal support as a contempt sanction.³ In addition, the trial court should clarify whether the ongoing award of spousal support was intended, in any part or amount, to be an extension of defendant’s prior obligation based on plaintiff’s demonstrated need⁴ or strictly the means by which the trial court elected to sanction defendant for his blatant contempt of its

³ As noted by the trial court, the option remains available to defendant to pay plaintiff the balance of the property settlement awarded through other funds or sources if they should become available to permit defendant to “purge his contempt.” In addition, we would note that the means elected to enforce the property settlement should not result in a taxable event for plaintiff.

⁴ We would note that we are unable to discern from the lower court record whether plaintiff has been compensated for any deficiency in the original spousal support payments owed as a result of defendant’s early retirement.

previous orders. Any additional hearings regarding the extension or modification of spousal support should be conducted as deemed necessary.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Alton T. Davis