DOCKET NO: HHD-FA-20-6124213-S	:	SUPERIOR COURT
JOSEPH S. BRINKMAN	:	JUDICIAL DISTRICT OF HARTFORD
V.	:	AT HARTFORD
CASEY L. BRINKMAN	:	APRIL 15, 2024

cc: Casey L. Brinkman 4/15/24 CJNero

MEMORANDUM OF DECISION (RE: DEFENDANT'S MOTION FOR CONTEMPT, POST JUDGMENT #349.00)

On January 3, 2024, and March 28, 2024, hearings were held regarding the defendant's Motion for Contempt, Post Judgment, dated September 15, 2023 (#349.00). The plaintiff appeared and was represented by counsel. The defendant appeared and was self-represented. The court received testimony, exhibits, and argument from both parties. The court has fully considered the rules of practice, full exhibits, testimony from the parties, the demeanor and credibility of the parties as witnesses, applicable case law, and all relevant statutory criteria set forth in the General Statutes, in reaching the decisions reflected herein. The court also reviewed the parties' financial affidavits, proposed orders, and other filings made with the court.

RELEVANT CASE LAW

Trial Court's Role

"It is well established that [i]n a case tried before a court, the trial judge is the sole arbiter of the credibility of the witnesses and the weight to be given specific testimony.... The credibility and the weight of expert testimony is judged by the same standard, and the trial court is privileged to adopt whatever testimony [it] reasonably believes to be credible." (Internal quotation marks omitted.) *Caciopoli* v. *Lebowitz*, 131 Conn. App. 306, 327, 26 A.3d 136 (2011), aff'd, 309 Conn. 62, 68 A.3d 1150 (2013). "Nothing in our law is more elementary than that the trier is the final judge of the credibility of witnesses and of the weight to be accorded their testimony." *Morande*

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v. *Newman Lincoln-Mercury, Inc.*, 5 Conn. App. 423, 423, 499 A.2d 78 (1985), citing *Morgan* v. *Hill*, 139 Conn. 159, 161, 90 A.2d 641 (1952).

"The factfinding function is vested in the trial court with its unique opportunity to view the evidence presented in a totality of circumstances, i.e., including its observations of the demeanor and conduct of the witnesses and parties, which is not fully reflected in the cold, printed record which is available to [appellate courts]." *Lupien* v. *Lupien*, 192 Conn. 443, 445, 472 A.2d 18 (1984).

Contempt Proceedings

According to our Appellate Court, the following are the relevant legal principles and standards of review in such matters: "'Contempt is a disobedience to the rules and orders of a court which has power to punish for such an offense. ... [C]ivil contempt is committed when a person violates an order of court which requires that person in specific and definite language to do or refrain from doing an act or series of acts. ... In part because the contempt remedy is particularly harsh ... such punishment should not rest upon implication or conjecture, [and] the language [of the court order] declaring ... rights should be clear, or imposing burdens [should be] specific and unequivocal, so that the parties may not be misled thereby. ... To constitute contempt, it is not enough that a party has merely violated a court order; the violation must be wilful. ... It is the burden of the party seeking an order of contempt to prove, by clear and convincing evidence, both a clear and unambiguous directive to the alleged contemnor and the alleged contemnor's wilful noncompliance with that directive. ... The question of whether the underlying order is clear and unambiguous is a legal inquiry subject to de novo review. ... If we answer that question affirmatively, we then review the trial court's determination that the violation was wilful under the abuse of discretion standard.' (Internal quotation marks omitted.)"

Wethington v. Wethington, 223 Conn. App. 715, 723, 309 A.3d 356 (2023), *quoting Scott v. Scott*, 215 Conn. App. 24, 38-39, 282 A.3d 470 (2022).

"Even in the absence of a finding of contempt, a trial court has broad discretion to make whole any party who has suffered as a result of another party's failure to comply with a court order." *Nelson v. Nelson*, 13 Conn. App. 355, 367 (1988); *see also Fitzgerald v. Fitzgerald*, 16 Conn. App. 548, 553 (1988).

Practice Book Section 25-27 provides as follows: "(a) Each motion for contempt must state (1) the date and specific language of the order of the judicial authority on which the motion is based; (2) the specific acts alleged to constitute the contempt of that order, including the amount of any arrears claimed due as of the date of the motion or a date specifically identified in the motion; (3) the movant's claims for relief for the contempt. (b) Each motion for contempt must clearly state in the caption of the motion whether it is a pendente lite or a postjudgment motion, and the subject matter and the type of order alleged to have been violated."

As to the automatic orders, they ". . . shall remain in place during the pendency of the action, . . ."; Practice Book Section 25-5; as a means to enjoin both parties from dissipating or encumbering marital assets prior to dissolution. In this instance, judgment of dissolution entered by Memorandum of Decision, dated April 26, 2023 (#320.00). Corrected Memoranda were issued on May 4, 2023 (#322.00), and May 31, 2023 (#327.00). As of the date of this Memorandum, the case detail contains entries up to #420.00.

DISCUSSION

Generally, the subject Motion does not comply with the provisions of Practice Book Section 25-27. The Motion provides as follows: "Defendant mother respectfully moves the court to find the Plaintiff in Contempt of the judgment rendered by the court on April 26, 2023 and

modified on May 4, 2023 and order issued on June 29, 2023 pursuant to CGS of Connecticut Practice Book § 46b-87." The defendant's Motion sets forth ten (10) allegations of contempt by the plaintiff in a series of separately lettered paragraphs (A.-J.). The defendant also includes twenty (20) requests for relief, some of which do not relate to the allegations contained in the subject Motion. The court will address each allegation of contempt in the order raised within the subject motion.

A. Childcare Expenses

The defendant alleges as follows: "The Plaintiff has repeatedly refused to pay the back child care expense ordered by Judge Nguyen O'Dowd upon receiving the Defendant's receipts of payment, as outlined in her final memorandum. The Defendant promptly provided all the required documentation in compliance with court order." As to work-related childcare expenses, the judgment of dissolution provides as follows: "a. Within thirty (30) days of this judgment, the defendant shall provide the plaintiff with written receipts/documentation and proof of payment for any unreimbursed work-related childcare expenses and unreimbursed medical expenses. b. If there is no dispute as to the arrearage amount and rate of repayment, then the parties shall file a stipulated agreement with terms therein. If the parties are unable to come to an agreement, then they may file a motion for order to the court." The defendant did not promptly provide all the required documentation in compliance with the trial court's order as alleged. Rather, she provided the plaintiff with redacted CashApp and Venmo statements that simply include payments made in different amounts, on different days, and with her designation as being for childcare. The documentation provided does not include the daycare provider(s), the dates of service, or any receipts. The defendant does not use a traditional daycare facility, but rather individuals she refers to as nannies. Apparently, at the request of the nannies, their names were

redacted from the CashApp and Venmo statements. The defendant was subsequently ordered to provide her work schedule, through discovery, so that the plaintiff could attempt to match the payments with the defendant's days of work. However, the defendant unilaterally redacted the work schedule by removing all the corresponding work dates, rendering the documents useless. The defendant indicated that she was advised to do so by others over concerns for her safety. No substantive discussions between the parties have occurred, including a rate of repayment. While the defendant chose to file a motion for contempt regarding this issue, the court will treat this portion of the subject Motion as the specified motion for order. As such, a finding of contempt is not necessary.

The defendant claims that the plaintiff owes $4,187.15 as his share of work-related childcare expenses through March 23, 2024. The court found the defendant's testimony regarding this issue, including the amounts incurred/owed, to be credible. As such, the court hereby orders the plaintiff to reimburse the defendant for work-related childcare expenses totaling $4,187.15 through March 23, 2024. The plaintiff shall continue to make additional quarterly payments of $1,000 (after the previously ordered quarterly payments are complete) to the defendant until such time as the childcare arrearage of $4,187.15 is paid in full. However, there are provisions regarding the reimbursement of work-related childcare expenses set forth in the judgment as the parties move forward. The parties cannot return to court every month to address such expenses. Hereafter, work-related childcare expenses shall be addressed and resolved by the parties pursuant to the provisions set forth in Section D.4. (page 47) of the judgment of dissolution.

B. Unreimbursed Medical Expenses

The defendant also raised at hearing the issue of unreimbursed medical expenses, which she claimed dated as far back as 2020. The defendant alleged as follows: ". . . the Plaintiff has

persistently declined to reimburse the Defendant for healthcare expenses, despite receiving receipts and evidence throughout the trial, as well as on financial affidavits." Once again, the defendant did not comply with the aforesaid provisions of the trial court's order (see Section A. above). As such, the court will once again treat this portion of the subject Motion as the specified motion for order. Therefore, a finding of contempt is not necessary.

The defendant presented two (2) medical bills at hearing, which she maintained resulted in an arrearage of $171.83 owed by the plaintiff for his corresponding portion or share. The court found the defendant's testimony regarding the minor children's treatment and past due amounts to be credible. As such, the court hereby orders the plaintiff to reimburse the defendant in the amount of $171.83 within thirty (30) days of the date of this order. Hereafter, unreimbursed medical expenses shall be addressed and resolved by the parties pursuant to the provisions set forth in Section D.4. (page 47) of the judgment of dissolution.

C. Quarterly Payments

The defendant alleges that ". . . the Plaintiff is unwilling to fulfill the quarterly payments as ordered by Judge Nguyen O'Dowd in her final memorandum due on the first of the month in March, June, September, December." More specifically, on April 26, 2023, the trial court entered the following order with respect to quarterly payments: "The plaintiff shall pay the defendant a one-time property distribution in the amount of $10,000. The plaintiff shall make quarterly installments of $1000 starting on June 1, 2023, and continuing thereafter on September 1, December 1, and March 1 until said amount is paid in full." The parties acknowledge that the plaintiff made one such payment through Support Enforcement Services ("SES"). While the defendant received the funds, SES applied the amount of the payment to the plaintiff's child support arrearage. The plaintiff was unable to cancel or retract the payment once he learned that

SES would be applying the payment to the arrearage. He claims to have made the quarterly payment through SES given the defendant's lack of acknowledgement of previous Venmo payments. In any event, the defendant received the funds, and the plaintiff acknowledged on the record under oath that the child support arrearage is $1,000 higher than the balance maintained by SES. As such, the defendant has not proven, by clear and convincing evidence, that the plaintiff willfully failed to comply with a clear and unambiguous order of the court. Therefore, the defendant's Motion is denied as to this issue.

D. Electric Bill

This issue and portion of the defendant's Motion was withdrawn, abandoned, or not otherwise pursued by the defendant.

E. Oil Bill

This issue and portion of the defendant's Motion was withdrawn, abandoned, or not otherwise pursued by the defendant.

F. Electronic Access

The defendant alleges that the ". . . Plaintiff continues to fail to provide or share court-ordered electronic access to the mortgage loan, including the necessary login and password." More specifically, on April 26, 2023, the trial court entered the following order with respect to the mortgage loan: "[w]ithin five (5) days of this judgment, the plaintiff shall provide the defendant with the lender information, mortgage account number, and electronic access to the account so that the defendant can make the mortgage payments as ordered herein." With respect to the mortgage payments, the trial court ordered that the ". . . defendant shall be solely liable for the payment of the mortgage, . . . beginning with the next mortgage statement following the date of judgment." The parties acknowledged that the plaintiff provided the defendant with the lender information,

mortgage account number, and lender telephone number within the specified time. The plaintiff also provided to the mortgage lender written authorization to communicate directly with the defendant given that he was solely on the mortgage account/loan. Thereafter, the defendant was able to make the May mortgage payment on June 2, 2023, and the June mortgage payment on June 15, 2023. This dispute centers around the term "electronic access." Apparently, the plaintiff had the ability to access the account information through a website by utilizing a username and password. As there was only one name on the account, there could only be one username and password, which was established by the plaintiff. While the parties indicated that the court ordered the plaintiff to provide the defendant with his username and password on September 14, 2023, the court cannot locate any such order. In any event, the parties acknowledge that the plaintiff provided the defendant with this information (in accordance with this so-called order) and she has had complete access to all the account information since. As such, the defendant has not proven, by clear and convincing evidence, that the plaintiff has willfully failed to comply with a clear and unambiguous order of the court. Therefore, the defendant's Motion is denied as to this issue.

G. Mortgage Foreclosure

This issue was also addressed during the hearing regarding the plaintiff's Motion for Contempt, dated June 1, 2023 (#329.00). The court's decision regarding said Motion was issued on January 8, 2024 (#329.10). As to the mortgage secured by the marital home, the defendant alleges that the ". . . Plaintiff also allowed the Marital residence mortgage loan to go into foreclosure a second time, to which the Defendant had to recover the loan. The Plaintiff, Joseph Brinkman, is legally responsible to reimburse (which he has refused to do) the Defendant mother for any and all expenses incurred in restoring the mortgage to good standing." The defendant paid nearly $10,000 to the mortgage lender to apparently reinstate the mortgage. The mortgage was in

default and most of these past due amounts accrued before the entry of judgment. Despite these facts, the defendant does not reference any court order upon which she relies in support of her allegations. In fact, the judgment of dissolution of April 26, 2023, provides as follows: "[t]he defendant shall retain the [marital home]. The defendant shall be solely liable for the payment of the mortgage, . . . beginning with the next mortgage statement following the date of judgment. The defendant shall indemnify and hold harmless the plaintiff from all liability therefrom." The plaintiff was solely on the mortgage and attempting to keep it current in the hope that he would be awarded the marital home as part of the dissolution proceedings. While the defendant apparently had exclusive use and possession of the marital home during the pendency of the dissolution action, there were no corresponding orders that required either party to make the mortgage payments and keep the mortgage current (except, perhaps, the automatic orders, to which the defendant does not refer or rely upon in this instance). The plaintiff acknowledged, during the hearing, that: the mortgage went into default; the defendant was required to pay $9,987.05 to reinstate it; and he owed her those monies. In this instance, there is not an applicable order for the court to enforce. As such, the defendant has not proven, by clear and convincing evidence, that the plaintiff has failed to comply with a clear and unambiguous order of the court. However, given the plaintiff's admissions, and the remedial authority of the court, the plaintiff is ordered to reimburse the defendant her costs to reinstate the mortgage totaling $9,987.05. The plaintiff shall continue to make additional quarterly payments of $1,000 (after the previously ordered quarterly payments are complete) to the defendant until such time as the amount of $9,987.05 is paid in full.

H. Increased Debt

This issue was also addressed during the hearing regarding the plaintiff's Motion for Contempt, dated June 1, 2023 (#329.00). The court's decision regarding said Motion was issued

on January 8, 2024 (#329.10). In this instance, the defendant alleges that ". . . the Plaintiff violated the automatic orders from February 2020, which increased the debt of the marital home, an asset shared by both parties, without the consent or signature of the defendant." Much time was spent on this issue during the hearings. The defendant asserts that the plaintiff entered into a mortgage modification during the pendency of this action. The defendant has used the terms "fraudulent" and "criminal" to describe the plaintiff's actions in this regard. However, the defendant relies on the "automatic orders" in support of her post-judgment motion for contempt. Unfortunately, the defendant's reliance is misplaced in this instance, as the judgment of dissolution was entered by the trial court on April 26, 2023. In her own Motion, the defendant acknowledges that the alleged actions were ". . . only discovered post judgment." As previously noted, the automatic orders shall remain in place during the pendency of the action as a means to enjoin both parties from dissipating or encumbering assets prior to dissolution. The defendant may not now rely upon the automatic orders after the judgment of dissolution. As such, the defendant has not proven, by clear and convincing evidence, that the plaintiff has failed to comply with a clear and unambiguous order of the court. Therefore, the defendant's Motion is denied as to this issue.

I. Unemployment Information

This issue, amongst many others, was addressed by the trial court in its 54-page Memorandum of Decision, dated April 26, 2023 (pp. 8-9) (#320.00). This issue was also addressed during hearings regarding defendant's Motion for Modification (re: child support), dated June 1, 2023 (#330.00). On June 29, 2023, the court entered the following interim order (#330.10): "[t]he plaintiff shall provide a copy of any documents reflecting receipt of unemployment benefits to the defendant no longer than 2 weeks from today's date." Thereafter, the court issued its decision regarding said Motion on January 8, 2024 (#330.20). The defendant now alleges that ". . . the

Plaintiff has not supplied documentation of their unemployment information, as repeatedly requested and as ordered by his honorable Judge Klau on June 29th, 2023. Furthermore, the Plaintiff has not supplied documentation of their unemployment information, as repeatedly requested. The issue being the numbers the Plaintiff provided do not add up." In addition to the plaintiff's testimony during the various hearings, on January 3, 2024, the plaintiff introduced a "Claim Summary" of his unemployment benefits as a full exhibit (Ex. 8; Hrg.: 1/3/2024). The defendant's Motion appears to acknowledge receipt of unemployment information but takes issue with the figures claiming they "do not add up." In any event, the issue of the plaintiff's unemployment and corresponding benefits have been previously considered and addressed by the court in its orders. As such, the defendant has not proven, by clear and convincing evidence, that the plaintiff has failed to comply with a clear and unambiguous order of the court. Therefore, the defendant's Motion is denied as to this issue.

J. Children's Medical Needs

Pursuant to the judgment of dissolution, the parties share joint legal custody of the minor children. As to decision-making, the judgment of dissolution provides as follows: "[t]he parties shall consult with each other regarding all major decisions in the children's lives, including, but not limited to, medical, . . .matters. If the parties are unable to come to an agreement on these matters after a reasonable period of discussion—at least one (1) week—then they shall first attend at least three coparenting sessions in an attempt to resolve the disagreement before any motion is filed with the court." In this instance, the parties failed to comply with the foregoing provisions as no coparenting sessions were ever pursued. This issue relates to a minor child's need for occupational therapy, as ordered by his pediatrician, to address issues with toileting and fine motor skills. The plaintiff has not provided his consent for such treatment indicating that reunification

therapy must take a priority over the minor child's receipt of this treatment. There is no current court order that requires the plaintiff to consent to this treatment, or that the minor child receive same. As such, the court cannot find the plaintiff in contempt in this instance. However, the court finds that the plaintiff is unreasonably withholding his consent to this medically necessary and appropriate treatment, all to the detriment of the minor child, Hardy. Therefore, pursuant to the court's remedial authority, it is hereby ordered that Hardy receive and engage in the prescribed occupational therapy with the appropriate health care provider, CCMC. Hereafter, the parties shall comply with the provisions of the judgment of dissolution regarding decision-making as it relates to the minor children.

SO ORDERED.

BY THE COURT,

CHADWICK, J.