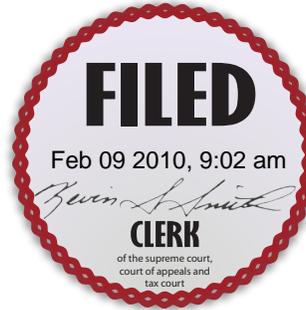


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

LINDA K. CECIL,

Appellant-Respondent,

vs.

REX W. CECIL,

Appellee-Petitioner.

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No. 07A01-0905-CV-253

APPEAL FROM THE BROWN CIRCUIT COURT
The Honorable Judith A. Stewart, Judge
Cause No. 07C01-0606-DR-285

February 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Linda K. Cecil (“Linda”) appeals the trial court’s order denying her petition to hold her ex-husband, Rex W. Cecil (“Rex”), in contempt and raises the following issue: whether the trial court erred when it concluded that Rex was not in contempt for failing to timely refinance certain real estate in accordance with the court-ordered deadline.

We affirm.

FACTS AND PROCEDURAL HISTORY

On June 29, 2006, Rex filed a petition to dissolve his marriage to Linda. As part of the dissolution proceedings, Rex and Linda voluntarily entered into a Property Settlement Agreement (“Settlement Agreement”), which was approved by the trial court and incorporated into a Summary Decree of Dissolution of Marriage on October 23, 2007. *Appellant’s App.* at 25. Paragraph 4(a)(ii) of the Settlement Agreement, pertaining to the division of real property, provided:

The parties are the owners of 20.64 acres of undeveloped property located [on] Sweetwater Trail in Nineveh, IN 46164 (“Acreage”). The Husband [Rex] shall become the owner of the Acreage without right or claim of Wife [Linda] and shall hold Wife harmless on the debt thereto. Husband shall refinance the mortgage on the Acreage within six (6) months of the Court’s approval of this Agreement, subject to his ability to obtain financing. Wife shall sign a Quitclaim Deed prepared by Husband’s attorney to transfer the Acreage at the time Husband refinances the debt thereon.

Id. at 20. Under these terms, Rex’s deadline for refinancing the mortgage on the Ninevah acreage (“Acreage”) was April 23, 2008.

Hoping to avoid the refinancing costs, Rex listed the Acreage for sale within two weeks of the October 2007 approval of the Settlement Agreement. Due to a change of realtors, however, a new listing agreement began on January 18, 2008 and was set to

expire on April 18, 2008. The Acreage finally sold in October 2008.

On May 27, 2008, Linda filed a Petition for Rule to Show Cause and Contempt Citation in response to Rex's failure to meet the six-month deadline to refinance the mortgage on the Acreage. *Id.* at 27. Linda amended her petition twice—once on June 13, 2008 and again on February 4, 2009. The trial court held a hearing on the final amended petition on April 17, 2009. Thereafter, on April 23, 2009, the trial court issued an order finding that Rex was not in contempt for failing to timely refinance the Acreage in accordance with the court-ordered deadline. Linda now appeals.¹

DISCUSSION AND DECISION

Linda contends that the trial court erred when it concluded that Rex was not in contempt for failing to refinance the Acreage by the court-ordered deadline. Indiana Code section 34-47-3-1 provides in relevant part: “A person who is guilty of any willful disobedience of any process, or any order lawfully issued . . . by any court of record . . . is guilty of an indirect contempt of the court that issued the process or order.” “Consistent with this statutory provision, our courts have long held that ‘[i]ndirect contempt is the willful disobedience of any lawfully entered court order of which the offender has notice.’” *Swadner v. Swadner*, 897 N.E.2d 966, 972 (Ind. Ct. App. 2008) (quoting *City of Gary v. Major*, 822 N.E.2d 165, 169 (Ind. 2005) (citations omitted)). “[C]ontempt of court involves disobedience of a court which undermines the court’s authority, justice, and dignity.” *Id.* (quoting *Major*, 822 N.E.2d at 169).

¹ Linda also petitioned the trial court to find Rex in contempt for failing to timely pay a balance due on the parties’ credit card. *Appellant’s App.* at 32. While the trial court referenced the credit card issue in its Order on Contempt Citation, *id.* at 35, that issue is not addressed in this appeal.

Civil contempt, which is at issue here, is “for the benefit of the party who has been injured or damaged by the failure of another to conform to a court order issued for the private benefit of the aggrieved party.” *Marion County Auditor v. Revival Temple Apostolic Church*, 898 N.E.2d 437, 442 (Ind. Ct. App. 2008), *trans. denied* (2009); *Mitchell v. Mitchell*, 871 N.E.2d 390, 394 (Ind. Ct. App. 2007). Unlike criminal indirect contempt, the primary objective of a civil contempt proceeding is not to punish the contemnor but to coerce action for the benefit of the aggrieved party. *In re Paternity of M.P.M.W.*, 908 N.E.2d 1205, 1209 (Ind. Ct. App. 2009); *Thompson v. Thompson*, 811 N.E.2d 888, 905 (Ind. Ct. App. 2004), *trans. denied* (2005).

The trial court enjoys discretion in determining whether a party is in contempt of court, and its decision will be reversed only for an abuse of that discretion. *Williamson v. Creamer*, 722 N.E.2d 863, 865 (Ind. Ct. App. 2000). A court will be deemed to have abused its discretion when its decision is against the logic and effect of the facts and circumstances before the court or is contrary to law. *Mitchell*, 871 N.E.2d at 394. As with other sufficiency matters, we will neither reweigh evidence nor judge witness credibility when we review a trial court’s determination on contempt matters. *Id.* We will affirm unless, after a review of the entire record, we have a firm and definite belief that a mistake has been made by the trial court. *Id.*

During the April 17, 2009 contempt hearing, the trial court heard the testimony of Linda, her expert financial witness, and Rex. Thereafter, the trial court determined that Rex was not in contempt and made the following pertinent findings:

2. Under the terms of the Decree, [Linda] was awarded the marital residence, and [Rex] was awarded certain undeveloped acreage owned by the parties. The parties' agreement obligated each party to refinance the real property awarded to that party within six (6) months of approval of the parties' settlement agreement, which would have been April 23, 2008, and quitclaim deeds would then be executed by the other party. Each party's obligation to refinance was contingent upon his or her ability to obtain refinancing.
3. [Linda] refinanced the marital home within six months. [Rex] was not able to refinance the acreage within six (6) months, and [Linda's] name was not removed from the acreage and its attendant debt until October 2008 when the property was sold, one year after the parties' settlement agreement was approved.
4. Within two (2) weeks of approval of the settlement agreement, [Rex] had listed the acreage for sale. [Rex] hoped to avoid the costs associated with refinancing by selling the lot prior to the expiration of the six month deadline. With a few exceptions, including a period of time during which there was an accepted offer on the property that subsequently fell through, the property remained listed for sale.
5. In mid April 2008, with the refinance deadline approaching and the property still unsold, [Rex] attempted to refinance the property. The refinance application was declined after a consideration of [Rex's] income and other debts, as was a second attempt to refinance with a different creditor in late April or May.
6. [Linda] presented testimony of an expert witness that [Rex] would have been able to refinance the acreage but for the fact that he had incurred additional debt by purchasing a new home jointly with his new wife in February 2008. Consequently, [Linda] asserts that even though [Rex] did not have the ability to refinance in April of 2008, he had the ability prior to purchasing the new home and his subsequent inability was caused by his own voluntary actions.
7. [Rex] asserts that [Linda] received the marital residence in the divorce leaving him without a residence, that he was entitled to purchase his own residence, and that nothing in the terms of the decree prohibited him from purchasing a residence or incurring necessary debt.

8. A person is guilty of indirect contempt when he willfully disobeys a court order or process. I.C. 34-47-3-1. “Disobedience that undermines the court’s authority, justice, and dignity is an act in contempt of court. . . . To be held in contempt for failing to follow a court order, a party must willfully disobey the court’s order. . . . The determination whether a party willfully disobeyed an order is left to the sound discretion of the trial court.” *Heagy v. Kean*, 864 N.E.2d 383, 385 (Ind. Ct. App. 2007) (citing *City of Gary v. Major*, 822 N.E.2d 165, 169 (Ind. 2005)).
9. The court recognizes that [Rex] could have refinanced the property prior to purchasing his new home. Moreover, it was [Rex’s] choice to attempt to sell the property to save costs rather than refinancing it immediately after the divorce and then attempting to sell. He voluntarily entered into the parties’ agreement that called for him to refinance, not sell, the property within six months.
10. Nonetheless, the parties’ agreement, also voluntarily entered into by [Linda], specifically conditioned the obligation to refinance on [Rex’s] ability to obtain the refinancing, and contained no limitation on [Rex’s] ability to purchase a new home or incur other reasonable debt and living expenses.
11. [Linda] was awarded the marital residence in the divorce, and there was no evidence presented at the contempt hearing as to [Rex’s] options for living arrangements had he not purchased his own home after the divorce. [Rex] did not delay in beginning his efforts to sell the undeveloped acreage, and believed the acreage would sell within the six month deadline. [Rex] made reasonable adjustments in the purchase price to encourage sale. When it did not sell in six months, he did attempt to obtain refinancing.
12. The court finds that [Rex’s] choice to purchase the home in February 2008 and his actions in attempting to sell the property prior to refinancing were not motivated by a desire to defeat his ability to obtain refinancing on the acreage or to otherwise disobey the court’s decree. While his choices may have been negligent or careless in causing the inability to timely refinance, the court does not find proof of a willful disobedience of the court’s order.
13. Absent a finding of contempt, the court will not award attorney fees, and each party shall bear his or her own attorney fees.

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Appellant's App. at 19-21.

To hold Rex in contempt, the trial court was required to find that Rex's failure to refinance the Acreage was in "willful disobedience" of its orders. *See Swadner*, 897 N.E.2d at 973. Based on the testimony of three witnesses—testimony that was substantial enough to require a 107-page transcript—the trial court understood that Rex made choices regarding the refinancing of the Acreage. Rex initially attempted to sell the Acreage instead of refinancing it, and he purchased a home in February 2008, which impacted his financial eligibility to obtain a refinanced loan for the Acreage. Additionally, the trial court understood that Rex's application for refinancing, albeit last-minute, was denied. The trial court recognized that while Rex's choices may have negligently or carelessly caused his inability to timely refinance, his choices did not reveal proof of a willful disobedience of the trial court's order to refinance. In determining that Rex did not act with contempt toward the court, the trial court weighed the evidence and judged the credibility of the witnesses—determinations that we may not revisit. *Mitchell*, 871 N.E.2d at 394. The record before us reveals sufficient evidence from which the trial court could have concluded that Rex's failure to refinance the Acreage was not in willful disobedience of its orders.

Affirmed.

DARDEN, J., and MAY, J., concur.