

STATEMENT OF THE CASE

Mark Stearns (“Husband”) appeals the dissolution court’s Order Granting Motion to Strike and Order Granting Petition for Contempt Citation in post-dissolution proceedings with Amy Taylor-Stearns (“Wife). Husband presents four issues for review, which we consolidate and restate as:

1. Whether the dissolution court abused its discretion when it granted Wife’s motion to strike the motions Husband had filed after the court-ordered deadline.
2. Whether the dissolution court abused its discretion when it found Husband in contempt and sanctioned him for willful breach of the Settlement Agreement.

We affirm.

FACTS AND PROCEDURAL HISTORY

Wife filed a petition for dissolution of marriage on April 3, 2007. Following that filing, Husband and Wife were represented by counsel, who negotiated the terms of a Property Settlement Agreement (“Settlement Agreement”). The Settlement Agreement provided, in relevant part:

4. Because the parties recognize that all of the assets of the marriage are herein stated above, each by their signatures below[] waives execution and delivery of the mandatory financial declaration form.

* * *

6. As and for distribution of the marital estate, the parties hereby agree to the following:

- a. The parties’ marital residence located at 6729 West 113rd Avenue, Cedar Lake, Indiana, complete with approximately 21 acres thereto shall be sold according to a written offer agreed upon by the parties and said proceeds after payment of all encumbrances, and the costs of sale shall

be divided by the parties equally. Pending the sale of this real estate the parties stipulate that [Husband] will reside in the marital residence and maintain the premises in an effort to obtain the highest sales price. Moreover the parties agree to share the payment of the mortgage equally until the property is sold, but all other expenses (i.e. utilities and the like even if they should be in [Wife's] name) shall be paid by [Husband].

* * *

8. Each party shall hold the other party harmless as to any and all debts held solely in his or her name and shall indemnify and hold the other party harmless with regard to any and all medical expenses and legal fees incurred by that party after separation.

Appellee's App. at 4, 6. On June 4, the parties filed a waiver of final hearing and proposed Decree of Dissolution ("Decree"), which incorporated the Settlement Agreement. The magistrate recommended approval of the proposed Decree and Settlement Agreement, and the court adopted that recommendation and entered the Decree on June 13.

Disagreements arose following entry of the Decree. Both parties filed petitions for rule to show cause why the other should not be found in contempt. On July 15 and 18, 2008, the court held a hearing on the contempt petitions and other pending motions. On August 25, the court entered an order finding both parties in contempt and awarding both parties money judgments.

Following the dissolution, the parties were also actively marketing the former marital residence with the assistance of commercial realtor Aaron McDermott. In July 2008, the parties received an offer to purchase part of the acreage on which the former marital residence is located. In preparation for the closing of that transaction, the parties obtained a second title insurance policy on the parcel that was to be sold. That policy

disclosed federal tax liens totaling \$28,876.66, which were not listed on the parties' previously obtained title insurance policy.¹ The liens were recorded in 2005 and 2008 to secure taxes owed solely by Husband.

According to McDermott, Husband initially agreed to have the tax lien total deducted from his share of the sale proceeds, but later Husband insisted that Wife contribute fifty percent of the tax lien total from her sale proceeds. As a result, on the closing date Wife initially refused to participate. Husband did not attend the closing. But the purchaser threatened either to sue the parties or not to complete the sale. To avoid either of these possibilities, Wife agreed to have fifty percent of the tax liens deducted from her proceeds from the sale, or \$14,438.33, and the closing proceeded accordingly.

On September 22, 2008, Wife filed her Verified Petition for Contempt Citation in which she alleged that Husband had breached the Settlement Agreement by requiring her to pay half of the tax debt secured by the liens against the real estate sold in July. She further alleged that his breach was willful and wanton, and she requested attorney's fees. The court scheduled a pre-trial conference for January 21, 2009.

On January 15, 2009, Husband's counsel requested leave to withdraw his appearance. At the pretrial conference on January 21, Wife appeared with counsel, and Husband appeared pro se. Following the conference, the court granted Husband's attorney leave to withdraw his appearance and entered an order requiring the parties to participate in mediation. The order also set Wife's contempt petition for hearing on June

¹ The parties do not indicate when they obtained the first title insurance policy.

16, 2009, and gave Husband “30 days to file any motion(s) to be consolidated for [that] hearing” Appellee’s App. at 14.

On May 4, 2009, Husband filed pro se the following motions by mail:

Emergency Motion to Delay Mediation and Brief in Support with Memorandum of Contract Law as Relating to Dissolution, Respondent’s Verified Motion to Strike Petitioner’s Verified Petition for Contempt Citation, Mark Stearns’ Verified Affidavit of Truth Demonstrating Perjury by the Petitioner on this Court, . . . Verified Affidavit of Truth of Mark Stearns Concerning Income Taxes and Marital Assets, Mark Stearns’ Verified Affidavit of Truth In [R]esponse to Section 1B of Petitioner’s Verified Petition for Contempt Citation with exhibit attached, and Motion for Order to Show Cause Why Petitioner Should Not be Held in Contempt for Perjury and Contempt of Court.^[2]

Appellant’s App. at 6. On May 7, the parties appeared for mediation but did not resolve their disputes. Following mediation, on May 11, the court entered an order that denied Husband’s Emergency Motion to Delay Mediation. And on May 13, Wife filed a Verified Motion to Strike Mark’s Pleadings.³

On June 16, Wife appeared with counsel and Husband appeared pro se for the hearing. Following argument by Husband and Wife’s counsel, the magistrate orally granted Wife’s motion to strike Husband’s untimely filed motions and Wife’s petition for contempt citation. The magistrate further ordered Wife’s counsel to prepare a draft order. On July 13, the court approved the magistrate’s recommendation and entered the following order:

Arguments are first heard on Petitioner’s Motion to Strike. The Court finds that all motions filed by [Husband] after February 21, 2009, are untimely and are ordered stricken. After hearing evidence and arguments

² The copies of these pleadings included in Appellant’s Appendix are not file-stamped, but the Chronological Case Summary indicates that they were filed by mail.

³ The parties have not included a copy of Wife’s motion to strike in the record on appeal.

of the parties and counsel, this Court hereby grants [Wife's] Petition for Contempt Citation and finds that the parties' Property Settlement Agreement shall be enforced as requested therein. There exists no ambiguity in the parties' Property Settlement Agreement and [the] same is enforceable as a contract between these parties and an order of this Court. The federal tax lien against Respondent Mark Stearns is solely in his name, has become a debt and lien after the date of the Property Settlement Agreement and is his sole responsibility. Whereby, this Court enters judgment for and on behalf of [Wife] and against [Husband] in the sum of Fourteen Thousand Four Hundred Thirty-Eight and 33/100 Dollars (\$14,438.33). [Wife's] request for prejudgment interest is denied; however, judgment interest shall accrue beginning June 16, 2009.

Further, this Court finds that [Husband] is in willful breach of this Court's orders. Therefore, [Husband] shall pay all of [Wife's] fees incurred in the prosecution of her Verified Petition for Contempt Citation filed on September 22, 2008 in the sum of Three Thousand Five Hundred Eighty-Seven and 50/100 Dollars (\$3,587.50). Judgment accordingly.

Appellant's App. 3-4. Husband now appeals.⁴

DISCUSSION AND DECISION

Issue One: Motion to Strike

Husband first contends that the dissolution court abused its discretion when it granted Wife's motion to strike the motions Husband had filed after the thirty-day deadline.⁵ The trial court has broad discretion in managing its docket and enforcing deadlines. Storey v. Leonas, 904 N.E.2d 229, 239 n.5 (Ind. Ct. App. 2009), trans. denied. Thus, we review the dissolution court's order granting the motion to strike for an abuse of that discretion. See id.

⁴ Husband filed his first notice of appeal on August 13, 2009. The Record on Appeal shows that Husband also filed a pro se motion to correct error in the trial court on September 15, another notice of appeal, and yet another pro se motion to correct error. The subsequent notice of appeal appears to be an attempt to remedy deficiencies in Husband's original notice of appeal.

⁵ On May 11, the trial court denied Husband's Motion to Delay Mediation and Brief in Support with Memorandum of Contract Law as Relating to Dissolution. Because the trial court did not strike that motion, we do not consider Husband's arguments with regard to the court's order on that motion.

At the January 21 pretrial conference, the court ordered Husband to file within thirty days any motions to be consolidated for hearing on June 16. Husband filed numerous motions on May 4, seventy days after the deadline.⁶ At the June 16 hearing, Husband explained his late filing as follows:

When I came in here for pretrial, I fired my lawyer. And I had no idea what I was doing, and I asked the Court if we could put this pretrial off until I hire[d] new counsel. And I was pushed by counsel to go ahead with the pretrial, not knowing what I was doing. I had no idea at the time what I was doing. And, you know, I don't understand why I was ever backed into a corner and had my hands tied so I couldn't motion [sic] the Court, when the other side could motion [sic] the Court, and I couldn't motion [sic] the Court because of those motions [sic]. It doesn't make any sense to me. It seems unfair.

Transcript at 192. Following a response by Wife's counsel, the court stated:

Deadlines must be adhered to. And sir, I acknowledge the fact that you are not a lawyer, but this was not a type of a deadline that you would not be able to understand without a Black's Law Dictionary or something like that. Respondent [Husband] has thirty days to file any motions to be consolidated for hearing set forth above. So I am going to strike the pleadings that were filed[.]

Id. at 194 (emphasis added).

On appeal, Husband again argues that he missed the deadline because he was “unable to find competent counsel” within the thirty-day time period and therefore had to prepare the motions himself. Appellant's Brief at 22. But other than his statement that he was unable to find an attorney, Husband has not shown what efforts he made to find competent counsel. And Husband missed the deadline by a significant amount of time and had not applied to the court for an extension of time. Further, although Husband was

⁶ On January 21, 2010, the court ordered Husband to file any motions to be consolidated for the July 16 hearing within thirty days. Saturday, February 20 is thirty days from the date of the order. Because the deadline fell on a weekend, under Trial Rule 6(A) the deadline became Monday, February 22.

attempting to pursue the matter pro se, again, pro se litigants are held to the standards of licensed attorneys. See Goosen v. Goosens, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005). That standard includes abiding by court-ordered deadlines. On these facts we cannot say that the dissolution court abused its discretion when it granted Wife’s motion to strike Husband’s untimely filed motions.

Still, Husband contends that the dissolution court order striking his motions constitutes an abuse of discretion. Specifically, he argues that his motions should have been considered on the merits out of a sense of “justice and equity[.]” Id. at 25. And he asserts that his motions attempted to show that Wife had “made many serious and untrue statements[.]” Appellant’s Brief at 21; that the deadline unfairly applied only to him; and that the court had a “ministerial duty” to hear at a minimum his motion for order to show cause, id. at 27.

Regarding Wife’s alleged misrepresentations, Husband does not support this argument with citations to the record or cogent analysis. Indiana Appellate Rule 46(A)(8)(a) requires litigants to support their arguments with cogent reasoning and citations to authorities, statutes, and the Appendix or parts of the Record on Appeal relied on. Because Husband has not provided citations or cogent analysis, the argument is waived. See App. R. 46(A)(8)(a). Waiver notwithstanding, we briefly consider the argument.

To the extent Husband is referring to allegations Wife made in her September 22 Verified Petition for Contempt Citation, Husband had the opportunity to argue and present evidence in that regard at the June 16 hearing on Wife’s petition. To the extent

Husband was referring to other misrepresentations, Husband has not explained in his brief what misrepresentations he wished to address. And, as we have already stated, he has not shown that the court abused its discretion in refusing to consider his late-filed motions. Husband's argument that the court should have considered his motion on Wife's alleged misrepresentations must fail.

Husband also argues that the deadline applied only to him, apparently implying some unfairness in the order. But the pretrial conference order did not prohibit Husband from filing any motions. Instead, that order merely required him to file within thirty days any motions to be consolidated for hearing on June 16. The order did not prevent Husband from filing any motion and requesting a separate hearing for such motion. Moreover, Husband has not shown that Wife took advantage of the one-sided deadline by filing a motion and having it consolidated for hearing on June 16, except for her motion to strike. And Husband does not contend that the trial court erred by hearing Wife's motion to strike at the June 16 hearing. In other words, Husband has not alleged that any prejudice resulted from the order. Thus, Husband's contention on this point is without merit.

Finally, Husband maintains that the dissolution court had a ministerial duty to hear his motion for rule to show cause. But Husband has not cited any authority in support of his contention that the court had such a duty. As such, the argument is waived. App. R. 46(A)(8)(a). In sum, Husband has not shown that the dissolution court should have entertained his untimely filed motions out of a sense of justice and equity or that the striking of those motions constitutes an abuse of discretion.

Issue Two: Contempt

Husband next contends that the dissolution court abused its discretion by finding him in contempt following the June 16 hearing. Specifically, Husband argues that the evidence does not support a finding of contempt, that he did not receive adequate process regarding the sanctions imposed, and that the sanctions imposed constitute an abuse of discretion. Before addressing each of these issues in turn, we consider Husband's comments on the nature of contempt.

Husband first questions whether the dissolution court found him in direct or indirect contempt of court. The record is clear that the court made a finding of indirect contempt based on Husband's breach of the terms of the Settlement Agreement. The Settlement Agreement had become a court order upon its incorporation by reference into the Decree. Therefore, by his breach Husband failed to abide by a court order.

Husband also questions whether all contempt is penal in nature and "should not be enlarged by implication or extended by inference." Appellant's Brief at 28. He ignores that our legislature has provided for findings of indirect contempt. See Ind. Code § 34-47-3-1. However, the authority of a court to sanction a party for contempt is not a matter of legislative grace. City of Gary v. Major, 822 N.E.2d 165, 169 (Ind. 2005). Rather, among the inherent powers of a court is that of maintaining its dignity, securing obedience to its process and rules, rebuking interference with the conduct of business, and punishing unseemly behavior. Id. (citing State v. Shumaker, 200 Ind. 623, 157 N.E. 769, 775, 163 N.E. 272 (1927)). Viewed in this light, the statutory definition of indirect contempt is merely a legislative recognition of our courts' inherent power to cite and

punish for contempt. Id. Husband's suggestion that all contempt is penal in nature must fail.

Indirect contempt is the willful disobedience of any lawfully entered court order of which the offender had notice. Conrail v. Estate of Martin, 720 N.E.2d 1261, 1264 (Ind. Ct. App. 1999). See also Ind. Code § 34-47-3-1. Whether a person is in contempt of a court order is a matter left to the trial court's discretion. Id. Upon review, we will reverse the court's determination only where an abuse of discretion has been shown. Id. An abuse of discretion occurs only when the trial court's decision is against the logic and effect of the facts and circumstances before it. Id.

Husband contends that the dissolution court's finding of contempt resulted in an improper modification of the Settlement Agreement. In particular, he argues that the court should not have considered "encumbrances" as used in paragraph 6(a) of the Settlement Agreement to be the equivalent to "debts" as used in paragraph 8 of that agreement. As a result, Husband reasons, the court's "overly simplistic reasoning" resulted in the modification of the Settlement Agreement so as to require Husband to pay the entirety of the tax liens upon the sale of former marital real estate. Appellant's Brief at 18. We cannot agree.

In preparing for the sale of part of the acreage underlying the former marital residence, Wife learned of two federal tax liens against the property totaling \$28,876.66. Husband does not deny that the liens, recorded in 2005 and 2008, secured unpaid federal tax debt that was solely Husband's. Still, Husband contends that liability for liens was to be equally divided between the parties and that the court's order requiring him to

reimburse Wife for the amount of the total liens charged against her share of proceeds at closing improperly modified the agreement to make him solely responsible for the payment of encumbrances upon the sale of the property. Husband misunderstands the nature of debts and liens.

Again, in paragraph 6.a. of the Settlement Agreement, the parties agreed to divide equally the proceeds from the sale of real estate “after payment of all encumbrances[.]” Appellee’s App. at 4. And in paragraph 8 Husband and Wife agreed that “[e]ach party shall hold the other party harmless as to any and all debts held solely in his or her name” Id. at 6. Husband’s unpaid taxes constitute a debt for which he was solely responsible under paragraph 8 of the Settlement Agreement. The federal tax liens that encumbered the property were not in and of themselves debts. A lien is “[a] legal right or interest that a creditor has in another’s property, lasting usu[ally] until a debt or duty that it secures is satisfied.” Black’s Law Dictionary 933 (7th ed. 1999). Thus, the liens constituted a means to assure payment of the debts, but they were not debts themselves.

In sum, Husband had agreed to pay debts held solely in his name. His tax liabilities were such debts. The tax liens against the marital real estate were not debts, but they were the means employed to secure payment of Husband’s tax debts. By insisting that one-half of the tax liens be charged against Wife’s proceeds from the real estate sale, Husband required Wife to pay one-half of his tax debt. In so doing, Husband breached the Settlement Agreement and violated the Decree, which incorporated that agreement. Thus, the dissolution court did not modify the Settlement Agreement when it found Husband in contempt for requiring Wife to allow one-half of the liens to be

charged against her share of proceeds from the sale of the marital residence. Husband's argument that the dissolution court erroneously construed the Settlement Agreement must fail.

Husband also challenges the court's finding that he was in contempt of the Settlement Agreement. In that regard, he argues that Wife was required to prove four elements of contempt: "the existence of a lawful order, the contemnor's knowledge of the order, the contemnor's ability to comply and the contemnor's failure to comply." Appellant's Brief at 29. But Husband has not provided a cogent analysis to support this contention. Therefore, the argument is waived. See App. R. 46(A)(8)(a). In any event, we have already shown above that the evidence supports a finding that Husband breached the Settlement Agreement incorporated into the Decree.

Husband next alleges that Wife did not show that his violation of the Settlement Agreement was willful and wanton. His argument on this issue was, in its entirety:

While [Wife] generally described [Husband's conduct] as "willful and wanton[," t]he record is to the contrary.

Beginning at approximately page 285 of the transcript,

[Husband]: Which is about the lien and –

[Wife's Counsel]: Yes, and payment of attorney's fees, if I might add.

[Husband]: And they're saying that I'm willful and wanton?

[Wife's Counsel]: Yes.

Without fault in this instant contractual matter, he is guilty of living up to his agreements.

Appellant's Brief at 12. Husband's argument above is not cogent and is therefore waived. App. R. 46(A)(8)(a).

Husband also argues that Wife violated the Settlement Agreement, too, but was not sanctioned. Again, the only matter before the court at the June 16 hearing was Wife's Verified Petition for Contempt Citation, which alleged Husband's breach of the Settlement Agreement. Whether Wife was in contempt of court at any point in the dissolution or post-dissolution proceedings was not before the dissolution court and, therefore, is not properly before us on appeal.

With regard to the sanction imposed by the dissolution court, Husband contends that the sanctions also constitute an abuse of the dissolution court's discretion. First, he argues:

When a trial court imposes a penal, rather than remedial, sanction in an indirect contempt proceeding, federal due process protections, in addition to state statutory and constitutional protections, attach. Those rights include the right to a jury trial, which may be waived only upon a clear showing of knowing and competent waiver, and the requirement of proof beyond a reasonable doubt, of which Mark did not receive.

Appellant's Brief at 29. To the extent Husband is arguing that the sanctions imposed in this case were penal, he is incorrect. The court ordered Husband to be responsible for the payment of debts held solely in his name, namely, the federal tax debts. That order merely enforced the Settlement Agreement and was not penal in nature. The court also ordered Husband to pay the attorney's fees Wife had accrued as a result of Husband's breach. Such an award was remedial, not penal, in that it compensated Wife for fees incurred as a result of Husband's breach. Husband's argument that he was denied due process protections is without merit.

Finally, Husband maintains that the award of attorney's fees to Wife constitutes an abuse of discretion. In support, he cites the American Rule regarding the payment of attorney's fees and paragraph 9 of the Settlement Agreement. In paragraph 9, the parties agreed to pay their own attorney's fees. Husband confuses the parties' agreement with the court's inherent authority to compensate one party for the indirect contempt of the other party. Here, the court ordered Husband to pay attorney's fees incurred by Wife as a result of his breach of the Settlement Agreement. Such an award is remedial in nature and within the dissolution court's discretion. See City of Gary, 822 N.E.2d at 169.

Alternatively, Indiana Code Section 31-15-10-1 authorizes the dissolution court to

order a party to pay a reasonable amount for the cost to the other party for maintaining or defending any proceeding under [the Dissolution of Marriage Act] and for attorney's fees . . . including amounts for legal services provided and costs incurred before the commencement of the proceedings or after entry of judgment.

Thus, the court also had statutory authority under Indiana Code Section 31-15-10-1 to order Husband to pay Wife's attorney fees.

Affirmed.

VAIDIK, J., and BROWN, J., concur.