

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

SHAWN ROBERT SPARKS,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-10-096
- vs -	:	<u>OPINION</u>
	:	11/7/2011
CHRISTINE COLLEEN SPARKS,	:	
Defendant-Appellant.	:	

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. 07 DR 31588

John D. Smith Co., LPA, John D. Smith, Andrew P. Meier, 140 North Main Street, Suite B, Springboro, Ohio 45066, for plaintiff-appellee

Christine Colleen Sparks, P.O. Box 181642, Fairfield, Ohio 45018-1642, defendant-appellant, pro se

PIPER, J.

{¶1} Defendant-appellant, Christine Colleen Sparks ("Wife"), appeals the judgment of the Warren County Court of Common Pleas, Domestic Relations Division, finding her in contempt of court and imposing a 30-day jail sentence.

{¶2} The relevant facts of the case are as follows. Wife and plaintiff-appellee, Shawn Robert Sparks ("Husband"), were divorced on December 8, 2008 pursuant to a final

judgment entry and decree of divorce. By agreement of the parties, Wife was to pay Husband \$7,000 for his share of the equity in the marital residence ("equity provision"). The decree also ordered Wife to refinance the parties' mortgage, or to otherwise remove Husband as an obligor, within six months of the decree ("refinance provision"). Lastly, the decree ordered the parties to split the cost of their water bill as of November 30, 2007, and made Wife responsible for all charges incurred thereafter ("water provision").

{¶3} Between April 2009 and May 2010, Husband filed numerous post-decree motions, including four motions to show cause, a motion to list the marital residence for sale, a motion for attorney fees, and a motion to restrict or suspend parenting time. In these motions, Husband argued Wife continually violated multiple sections of the divorce decree, including the equity, refinance, and water provisions.

{¶4} A Warren County magistrate held hearings on Husband's various motions on May 11, 2010 and again on June 15, 2010. On May 11, Husband testified Wife failed to pay her share of the water bill, totaling \$993.74. Husband also testified Wife had not made any effort to pay the \$7,000 debt or refinance the marital residence, despite his willingness to provide a quit claim deed to expedite the process. On June 15, Wife did not deny Husband's allegations, except for providing a meager explanation for her failure to obtain refinancing.

{¶5} On August 10, 2010, the magistrate found Wife in contempt for failing to: (1) refinance the marital residence; (2) pay monthly installments toward Husband's \$7,000 equity share in the home; and (3) pay her share of the water bill in the amount of \$993.74. The magistrate recommended Wife be sentenced to 30 days in jail, but found Wife could purge the contempt by: (1) refinancing the marital residence by September 13, 2010; (2) immediately paying \$1,200 toward the \$7,000 debt and timely paying installments thereafter; (3) paying the water bill; and (4) paying \$350 for Husband's attorney fees.

{¶6} On August 25, 2010, Wife filed objections to the magistrate's decision, which

the trial court dismissed based on her failure to file within 14 days. Civ.R. 53(D)(3)(b)(i). The next day, the trial court adopted the magistrate's decision in full.

{¶7} On September 14, 2010, a final sentencing and purge hearing was held, at which time the trial court found Wife had failed to purge herself of the contempt. The trial court sentenced Wife to 30 days in jail, but stayed the sentence on the condition that Wife wore a GPS monitor for 60 days, paid court costs, and complied with all prior orders of the court. The trial court set the matter for a review hearing on November 12, 2010 to determine whether Wife had complied with the purge conditions.

{¶8} During the November 12 review hearing, Wife admitted she failed to comply with the court's orders, save her alleged frustrated efforts to obtain refinancing. The trial court found no justifiable excuse for Wife's noncompliance and sentenced her to serve 30 days in jail, with work release.

{¶9} Wife timely appealed the September 14, 2010 judgment,¹ however, it appears she has failed to articulate any specific assignments of error, as mandated by App.R. 12(A) and App.R. 16(A). Closer scrutiny of Wife's brief reveals her argument centers upon the contempt findings and the resulting jail sentence. As discussed below, all other arguments are not properly before this court

Contempt

{¶10} While somewhat unclear, Wife appears to argue she is not guilty of contempt and that her sentence was an abuse of the trial court's authority and discretion.

{¶11} Contempt of court is defined as "disobedience of an order of a court * * * which

1. Wife filed her notice of appeal on October 14, 2010. On March 7, 2011, Wife moved to amend her appeal, arguing the trial court lacked jurisdiction to hold the November 12, 2010 review hearing during the pendency of her appeal. In an accelerated entry, this court denied Wife's motion upon finding the November 12, 2010 entry reflected enforcement of the September 14, 2010 judgment, which the trial court had jurisdiction to do, absent the grant of a stay pending appeal. The trial court had not granted a stay.

brings the administration of justice into disrespect, or which tends to embarrass, impede or obstruct a court in the performance of its functions." *Hueber v. Hueber*, Clermont App. Nos. CA2006-01-004, CA2006-02-019, CA2006-02-020, 2007-Ohio-913, ¶16, quoting *Windham Bank v. Tomaszczyk* (1971), 27 Ohio St.2d 55, paragraph one of the syllabus. To support a contempt finding, the moving party must establish by clear and convincing evidence that a valid court order exists, that the offending party had knowledge of the order, and that the offending party violated such order. *Ossai-Charles v. Charles*, Warren App. Nos. CA2010-12-129, CA2011-01-007, 2011-Ohio-3766, ¶30. A finding of contempt, however, "does not require proof of purposeful, willing, or intentional violation of a trial court's prior order." *Townsend v. Townsend*, Lawrence App. No. 08CA9, 2008-Ohio-6701, ¶27, citing *Pugh v. Pugh* (1984), 15 Ohio St.3d 136, 140.

{¶12} "An appellate court will not reverse a trial court's decision in a contempt proceeding absent a showing of an abuse of discretion." *Willis v. Willis*, 149 Ohio App.3d 50, 2002-Ohio-3716, ¶59; *Castanias v. Castanias*, Warren App. No. CA2009-04-036, 2009-Ohio-6171, ¶11. An abuse of discretion is more than error of law or judgment; it requires a finding that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶13} After a thorough review of the record, we find ample clear and convincing evidence supports the trial court's conclusion that Wife failed to comply with any and all of its prior orders. In fact, during the final review hearing, Wife admitted she failed to pay her debts to Husband, but claimed she encountered multiple "mishaps" with her vehicle and was attempting to stay current on her own bills. However, the trial court found, and we agree, that there was no justifiable excuse for Wife's failure to pay, particularly where Wife made \$30 per hour as a nurse. We further agree with the court's finding that Wife made no suitable effort to refinance the mortgage, where she failed to communicate with Husband, despite his

willingness to expedite the process.

{¶14} Because the record clearly indicates Wife knowingly, and admittedly, disobeyed the court's orders, we also find no abuse of discretion in the court's decision finding Wife in contempt of court and imposing a 30-day jail sentence. First, the jail sentence was within the permissible statutory range for a first-time offender. R.C. 2705.05. Moreover, Wife had roughly two years since the divorce to comply with the court's orders and, unfortunately, a jail sentence appears to be the only means left to coerce her into compliance. We also note that Wife was given not one, but two opportunities to avoid the jail sentence, and to purge her contempt, through future compliance with the court's orders. See *Purolo*, 73 Ohio App.3d at 312. Lastly, we find the conditions for purging the contempt were not unreasonable, where Wife was ordered to pay the precise amounts agreed to in the divorce decree. See, e.g., *Mackowiak v. Mackowiak*, Fayette App. No. CA2010-04-009, 2011-Ohio-3013, ¶51 ("[a] trial court abuses its discretion when it orders conditions for purging that are unreasonable or impossible for the contemnor to meet").

{¶15} Accordingly, we reject Wife's arguments as they relate to the propriety of the court's contempt findings and the resulting jail sentence.

Remaining Arguments

{¶16} The remainder of Wife's allegations relate to: (1) judicial "bias"; (2) the court's failure to admit evidence of Husband's perjury; (3) the magistrate's "untimely" finding of contempt; (4) the magistrate's misconduct; and (5) a conflict of interest in the attorney-client relationship.

{¶17} With regard to these claims, Wife's brief contains suggestions and innuendoes, not articulable facts nor legal authority. The burden of affirmatively demonstrating error on appeal rests with the party asserting error. See, e.g., *Prater v. Dashkovsky*, Franklin App.

No. 07AP-389, 2007-Ohio-6785, ¶8. App.R. 9; App.R. 16(A). An appellant must present his or her contentions with respect to each assignment of error and the reasons supporting those contentions, including citations to legal authorities and parts of the record upon which the appellant relies. *Id.* "It is not the function of this court to construct a foundation for [an appellant's] claims; failure to comply with the rules governing practice in the appellate courts is a tactic which is ordinarily fatal." *Kremer v. Cox* (1996), 114 Ohio App.3d 41, 60. See App.R. 12(A)(2). Even if we were to disregard the obvious flaw in the presentation of these claims, they would not be subject to our review.

{¶18} First, the record indicates Wife failed to bring any of the aforementioned errors to the attention of the trial court, by timely objection or otherwise. As a result, Wife has waived, or forfeited, these issues on appeal. See *In re K.A.G.-M.*, Warren App. No. CA2009-04-040, 2009-Ohio-6239, ¶18.

{¶19} Moreover, even if Wife's arguments were not waived, she requests remedies beyond the scope of appellate authority. For example, to the extent Wife believes the trial judge harbored bias or prejudice, her exclusive remedy lay in filing an affidavit of bias and prejudice with the Chief Justice of the Supreme Court of Ohio pursuant to R.C. 2701.03. See, e.g., *Williams v. Williams* (Dec. 16, 1996), Butler App. No. CA96-01-015, 1996 WL 723531. Similarly, Wife's allegations regarding Husband's perjury are not properly before this court, as this is a civil lawsuit. Like most jurisdictions, Ohio does not permit civil actions against persons who give false testimony in judicial proceedings. See, e.g., *Costell v. Toledo Hosp.* (1988), 38 Ohio St.3d 221, 223-224; *Schmidt v. State Aerial Farm Statistics, Inc.* (1978), 62 Ohio App.2d 48, 51. As to the alleged conflict of interest, the record indicates that at the time she was represented by counsel, Wife never moved to disqualify counsel at the trial level. Because said motion was among the most appropriate remedies for the situation, we reject Wife's allegations on appeal. See *155 N. High, Ltd. v. Cincinnati Ins. Co.*, 72 Ohio

St.3d 423, 426, 1995-Ohio-85.

{¶20} As to her remaining claims, we find Wife has failed to sufficiently articulate the basis for these allegations, and as a result, we are unable to engage in a meaningful review thereof.

{¶21} In sum, the only issues properly before this court relate to the trial court's contempt findings and the resulting jail sentence. The nonreviewable nature of Wife's remaining arguments clearly stems from her limited knowledge of the law. However, litigants who choose to proceed pro se are presumed to know the law and correct procedure, and are held to the same standards as other litigants. See App.R. 16(A). See, also, *January Invests., L.L.C. v. Ingram*, Warren App. No. CA2009-09-127, 2010-Ohio-1937, ¶18. Litigants proceeding pro se cannot expect or demand special treatment from the court, and we are under no obligation to treat Wife any differently than a litigant who retained counsel. *Id.*

{¶22} For the foregoing reasons, we find Wife's arguments to be without merit.

{¶23} Judgment affirmed.

HENDRICKSON, P.J., and RINGLAND, J., concur.