

**COURT OF APPEALS  
LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT**

<b>EDITH A. McFARLAND</b>	:	<b>JUDGES:</b>
	:	Hon. W. Scott Gwin, P.J.
<b>Plaintiff-Appellee</b>	:	Hon. William B. Hoffman, J.
	:	Hon. Sheila G. Farmer, J.
<b>-vs-</b>	:	
	:	
<b>JAMES A. McFARLAND</b>	:	<b>Case No. 01CA00021</b>
	:	
<b>Defendant-Appellee</b>	:	<b><u>OPINION</u></b>

**CHARACTER OF PROCEEDING:**                   **Appeal from the Court of Common Pleas,  
Domestic Relations Division, Case No.**

**JUDGMENT:**                                   **October 10, 2001**

**DATE OF JUDGMENT ENTRY:**

**APPEARANCES:**

**For Plaintiff-Appellee**

**CINDY RIPKO  
35 South Park Place, Suite 201  
Newark, OH 43055**

**For Defendant-Appellant**

**JAMES A. McFARLAND, *PRO SE*  
92 E. North Street  
Newark, OH 43055**

I

THE TRIAL COURT'S FINDING THAT APPELLANT WAS IN CONTEMPT OF COURT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

II

THE TRIAL COURT ABUSED ITS DISCRETION IN NOT PERMITTING APPELLANT TO SEEK MEDICAL CARE AND TREATMENT FOR THE CHILDREN.

III

THE TRIAL COURT ABUSED ITS DISCRETION IN LIMITING ALL COMMUNICATIONS BETWEEN THE PARTIES TO WRITTEN FORM.

IV

THE TRIAL COURT ABUSED ITS DISCRETION IN ORDERING APPELLANT TO PAY COURT COSTS.

V

THE TRIAL COURT ABUSED ITS DISCRETION IN ORDERING APPELLANT TO PAY ATTORNEY FEES ASSOCIATED WITH APPELLEE'S FILING AND PROSECUTION OF THE CONTEMPT MOTION.

VI

APPELLANT OBJECTS TO VARIOUS FINDINGS AND STATEMENTS IN THE TRIAL COURT' JUDGMENT ENTRY.

Appellant's assignments of error challenge the trial court finding him in contempt and the trial court amending of Loc.R. 19 and the trial court's orders on medical treatment for the children.

Although appellant cites seven specific issues he was with the trial court's judgment entry of January 9, 2001, he does not follow the Appellate Rules in

designing specific assignments of error. Instead he raises issues for review. We will attempt as did appellee's trial counsel to formulate these issues into Assignments of Error.

I

Appellant claims the trial court's finding him in contempt of court to be against the manifest weight of the evidence. We disagree.

**Standard**

In appellee's motion for contempt she requested the following:

cite #116 filed 1/12

Appellant claims he can not be held in contempt for failure to pay the Visa bill, dog treatment bill and mediation debt because the decree does not set a specific date for when such payments are to be made. The debt allocation in the divorce decree was as follows:

**9. DEBTS:**The defendant shall pay the utility bills associated with the former marital residence and save the Plaintiff harmless from any liability thereon. The Defendant shall pay 75 percent of the balance due on the Visa account and the Plaintiff shall pay 25 percent of such balance. This is based upon the Defendant's being awarded the refrigerator and mower. The Court finds this division to be appropriate as the balance of purchases above these items (that is sums above \$698.00 of the balance) was for family household items. If the Plaintiff takes the refrigerator, then each party shall pay one half of the balance due on the Visa account.

The decree was granted on August 14, 198 some thirteen months prior to the motion for contempt on non-payment. As noted by the trial court appellatnt does not claim he paid these debts. The trial court only found appellant in contempt for

failure to pay the dog surgery and mediation bill. The trial court imposed a standard absent a specific time in the decree to be “reasonable length” and found fifteen months unreasonable.

cite green tab

Given the admission of appellant that he did not pay the bills as ordered we can not say that the finding by the trial court that an eighteen month delay is unreasonable was an abuse of discretion.<sup>1</sup>

In order to find an abuse of that discretion, we must determine the trial court’s decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217.

The trial court also found no basis for contempt in the visitation timing and scheduling nor on the issue of medical treatment for the children. Assignment of error I is denied.

## II

Appellant claims the trial court erred in modifying the decree on the issue of medical treatment for the children. We disagree.

Specifically appellant appears to want to be counseled on any medical treatment for the children. The divorce decree found that appellee was the

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<sup>1</sup>The trial court found the Visa bill and its set off for a refrigerator not to be a basis for contempt.

residential parent. R.C. 3109.04 specifically designates the residential parent as the person responsible for “sole custody and contact” for the minor children.

cite statute

“Custody” has been found to include the right to provide medical care. In re Smelser (1969) 22 Ohio Misc.41.

The trial court dicta in his judgment entry on the contempt explains to appellant the status of the law on legal custody. By so speaking the trial court has neither modified nor explained the designation of residential parent given in the original decree.

Assignment of error II is denied.

### III

Appellant claims the trial court abused its discretion in ordering that he put all questions and concerns about the children in writing. We disagree.

In order to find an abuse of that discretion, we must determine the trial court’s decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217.

cite entry red tab

It is obvious that the parties are having difficulties in communications about the children. Trial courts in the state have the right to interpret and explain their court entries. Further the very nature of the hearing was a contempt hearing to determine if appellant followed the court orders. The court in its order essentially

explained it's own Rule 19 visitation. We find no abuse of discretion. Assignment of error III is denied.

**IV, V**

Appellant claims it was error for the trial court to assess court costs and attorney fees against appellant. We disagree.

**Standard**

The nature of the contempt violation *sub judice* was criminal contempt.  
define crim. contempt

Pursuant to R.C. 2947.23 upon conviction the judge is mandated to “to the sentence the costs of prosecution and render a judgment against the defendant for such costs.”

The award of attorney fees for appellee in the prosecution of the contempt action was warranted.

need case cite Kenas 1992 84 Ohio App. 335

Accordingly, assignment of error IV and V are denied.

**VI**

Appellant objects to the wording of the judgment entry of the trial court. We disagree.

Appellant attempts to relitigate specific orders in the original decree of divorce. (re refrigerator, objects to Maj. report, visa bill) The decree of divorce was filed on ? no timely appeal was taken of the decree. Cite appellate case.

The judgment of the Court of Common Pleas of Licking County, Ohio,  
Domestic Relations Division is hereby affirmed.

By Farmer, J.

Gwin, P.J. and

Hoffman, J. concur.

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**JUDGES**

SGF/jp 0921

FIFTH APPELLATE DISTRICT

EDITH A. McFARLAND	:	
	:	
Plaintiff-Appellee	:	
	:	JUDGMENT ENTRY
-vs-	:	
	:	
JAMES A. McFARLAND	:	
	:	
Defendant-Appellant	:	CASE NO. 01CA21

For the reasons stated in the Memorandum-Opinion on file, the judgment of the Court of Common Pleas of Licking County, Ohio, Domestic Relations Division is hereby affirmed.

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JUDGES