

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JANICE PROTZ	:	JUDGES:
	:	
	:	Hon. Julie A. Edwards, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2009CA00270
JOHN PROTZ	:	
	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Stark County Court of
Common Pleas, Family Court Division Case
No. 2000DR0095

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: June 1, 2010

APPEARANCES:

For Defendant-Appellant:

JEFFREY JAKMIDES
325 E. Main St.
Alliance, OH 44601

For Plaintiff-Appellee:

DAVID S. AKE
101 Central Plaza S., Suite 600
Canton, OH 44702

Delaney, J.

{¶1} Defendant-Appellant John Protz appeals the October 6, 2009, judgment entry of the Stark County Court of Common Pleas, Family Court Division. Plaintiff-Appellee is Janice Protz.

STATEMENT OF THE FACTS AND THE CASE

{¶2} Appellant and Appellee were divorced on October 10, 2000. Two children were born as issue of the marriage. Paragraph 21 of the Divorce Decree contains the following provision as to the children's health care expenses:

{¶3} “* * *Defendant shall provide medical coverage for the minor children. All medical, hospital, dental, optical, orthodontic, and prescriptive expenses of the children not covered by insurance shall be divided to the applicable provisions of the Ohio Revised Code, Schedule ‘C’.”

{¶4} Exhibit C attached to the Divorce Decree states in pertinent part:

{¶5} “Obligor [Appellant] and obligee [Appellee] shall share the costs of any uninsured extraordinary medical, dental, optical or psychological expenses, including co-payments and/or deductibles under the health insurance plan(s) that cover the children in amounts equal to their percentage of total income found on Line 14 of the Child Support Computation Worksheet. Obligee shall be responsible for uninsured ordinary medical, dental and optical expenses including co-payments and/or deductibles.”

{¶6} Line 14 in the Child Support Computation Worksheet calculates 100% to Appellant and 0% to Appellee.

{¶7} On August 27, 2008, Appellee filed a Motion to Show Cause as to why Appellant had failed to comply with Exhibit C for his failure to pay for his child's medical expenses totaling \$24,268.00. A show cause hearing was held before the magistrate on August 11, 2009.

{¶8} At the hearing, Appellee testified that she had declared bankruptcy on August 16, 2006. Many of the original medical bills were discharged through bankruptcy or resolved by insurance, reducing the amount of the unpaid balance. The main discussion at the hearing was the orthodontia bills for the youngest child. Appellee had not submitted the bills to Appellant's health insurance because Appellee was unaware there was insurance available for such expenses. Appellant had tried to resolve the matter of the bill with his insurance and the orthodontist.

{¶9} The Magistrate's Decision was filed on August 12, 2009. In the Decision, the magistrate found Appellant in contempt for his failure to pay the extraordinary medical and orthodontia costs per the requirements of Exhibit C. The magistrate stated that because the case was decided prior to the enactment of R.C. 3119 in 2001, Exhibit C was therefore governed by R.C. 3113.21. R.C. 3113.21 did not define "extraordinary expenses." The magistrate found that the medical bills consisted of extraordinary expenses in the amount of \$1,997.94. Per Line 14 of the Child Support Computation Worksheet, Appellant was ordered to pay \$1,997.94 within 90 days to purge his contempt. Appellant was also ordered to pay Appellee's attorney fees and costs.

{¶10} Appellant filed an objection to the Magistrate's Decision. On October 6, 2009, the trial court sustained Appellant's objection to the Magistrate's Decision. The trial court found that the language contained within the Divorce Decree and Exhibit C to

be too vague to determine Appellant's obligation under the Order to find Appellant in contempt of the Order.

{¶11} The trial court vacated the August 12, 2009 judgment entry as to its finding of contempt and award of attorney fees. The trial court ordered that Appellant pay Appellee \$1,997.94 within 60 days, if that amount was not paid by insurance before that date.

{¶12} The trial court further ordered the following,

{¶13} "Prospectively, R.C. 3119.01(C)(4) will define extraordinary expenses. (Any amount > \$100/yr/child). Those extraordinary expenses are to be split according to the guideline worksheet percentages."

{¶14} It is from this decision Appellant now appeals.

{¶15} Appellant raises one Assignment of Error:

{¶16} "I. THE TRIAL COURT ERRED IN MAKING ORDERS AFTER FINDING THE DEFENDANT NOT GUILTY OF CONTEMPT."

{¶17} Appellant argues the trial court erred in going beyond the contempt issue before it and modifying the original Divorce Decree as to the definition of "extraordinary medical expenses." We disagree.

{¶18} As evidenced by the show cause hearing and the October 6, 2009 judgment entry, ambiguity exists as to the language of the Divorce Decree and Exhibit C as it relates to the parties' responsibilities for uninsured medical expenses, uninsured extraordinary medical expenses, and uninsured ordinary medical expenses. Due to the ambiguity, the trial court found that Appellant could not be held in contempt but did

order Appellant to pay the medical expenses in the amount of \$1,997.94 per the terms of the Divorce Decree.

{¶19} This Court has held that, “If a judgment entry is ambiguous, a trial court always retains jurisdiction to interpret and correct the order.” *Talley v. Talley* (Oct. 22, 1998), Muskingum App. No. CT98-0025. We find the trial court was within its jurisdiction to interpret the ambiguous order that resulted in a Motion to Show Cause and a subsequent contempt finding against Appellant.

{¶20} Appellant’s Assignment of Error is overruled.

{¶21} The judgment of the Stark County Court of Common Pleas, Family Court Division is affirmed.

By: Delaney, J.

Edwards, P.J. and

Hoffman, J. concur.

HON. PATRICIA A. DELANEY

HON. JULIE A. EDWARDS

HON. WILLIAM B. HOFFMAN

PAD:kgb

Hoffman, J., concurring

{¶22} I concur in the majority's decision to affirm the trial court's ordering Appellant to pay Appellee \$1,997.94.

{¶23} I write separately only to note I find that portion of the trial court's order indicating how it intends to act "prospectively" merely advisory. Accordingly, I do not believe the trial court's prospective pronouncement is binding or entitled to law of the case status should a controversy develop in the future as to what constitutes "extraordinary expenses" under the terms of the original decree.

HON. WILLIAM B. HOFFMAN

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JANICE PROTZ	:	
	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
JOHN PROTZ	:	
	:	
	:	
	:	Case No. 2009CA00270
Defendant-Appellant	:	

For the reasons stated in our accompanying Opinion on file, the judgment of the Stark County Court of Common Pleas, Family Court Division is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. JULIE A. EDWARDS

HON. WILLIAM B. HOFFMAN