HIGDON,
v.
HIGDON.

Court of Appeals of Georgia.

Decided: March 28, 2013.

Case No. A12A1763

BARNES, Presiding Judge

In this appeal, we review Dr. Higdon's challenge to the trial court's order addressing the parties' motions for contempt. We initially transferred this appeal to the Supreme Court, which determined that the appeal did not invoke its divorce and alimony jurisdiction and transferred it back to this Court. In its order, the Supreme Court explained that because it had "previously denied the application addressing the child support contempt . . . the only remaining issue is applicant's contention that the trial court erred in not holding [Mrs. Higdon] in contempt of the child custody provisions." Thus, as "any ruling by the Supreme Court or the Court of Appeals in a case shall be binding in all subsequent proceedings in that case in the lower court and in the Supreme Court or the Court of Appeals as the case may be,"OCGA § 9-11-60 (h), we only consider whether the trial court erred in denying Dr. Higdon's motion to hold Mrs. Higdon in contempt for violating certain child custody provisions in the temporary order. See *Egerton v. Jolly*, 133 Ga. App. 805, 806 (1) (212 SE2d 462) (1975).

The facts establish that the Higdons filed several motions for contempt against each other related to the custody and support issues arising from provisions in a February 4, 2011 temporary order. The order incorporated a June 9, 2010 temporary consent order, and provided, among other things, that the parents would have temporary joint custody of the four children and shared medical decision-making for the children. The order also provided the mother with child support of $1859, and divided the couples' possessions from the marital residence. The final judgment and divorce decree was filed on June 13, 2011, and per the parenting plan, Mrs. Higdon was granted final decision making on healthcare, education and extracurricular issue, and primary physical custody. Dr. Higdon filed a motion for new trial.

On August 30, 2011, after a hearing, the court entered an order on the parties' various contempt motions. It granted Mrs. Higdon's motion to hold Dr. Higdon in contempt for failing to pay child support, but denied Dr. Higdons' several motions to hold Mrs. Higdon in contempt for alleged violations of the temporary order.

1. In this appeal, we only consider whether the trial court erred in its refusal to hold Mrs. Higdon in contempt and whether it erred in finding that Dr. Higdon "came to court with unclean hands."

"[A] trial court has broad discretion to determine if a party is in contempt of its order, and the exercise of that discretion will not be reversed on appeal unless grossly abused. "*Hunter v. Hunter*, 289 Ga. 9, 11 (4) (709 SE2d 263) (2011). "Thus, the question of whether a contempt has occurred is for the trial court[.]" *Gallaher v. Breaux*, 286 Ga. App. 375, 377 (650 SE2d 313) (2007).

a. Dr. Higdon contended that the trial court erred in failing to cite Mrs. Higdon for contempt for failing to obtain certain medical evaluations and treatments for the children as ordered in an February 4, 2011 temporary order and in finding that he "came to court with unclean hands."

Mrs. Higdon testified at the hearing on the contempt motions that she had received only about $1,000 total in child support over the previous six months, although she had been awarded $1,858 per month in child support. She also testified that Dr. Higdon was responsible for half of the uncovered medical expenses, but would pay his half only sporadically. In that respect, she testified that she had paid $7,317 in medical expenses for the children, but Dr. Higdon had not reimbursed her for his half of those expenses.

The trial court found that Dr. Higdon exhibited unclean hands by not paying child support or half of the uncovered medical expenses, which directly contributed to the contempt claim he had brought against Mrs. Higdon for her alleged failure to obtain medical treatment for the children. Regarding the medical treatments, the trial court held that Dr. Higdon's actions had "resulted in [Mrs. Higdon's] chosen doctor . . . declin[ing] to treat the parties' children." The trial court quoted from a letter from the doctor that the cancellation was due to the "`complexity' of the issues surrounding the family," and "most notably" due to Dr. Higdon's "inappropriate and confrontational behavior" that had been experienced by her office staff. The trial court also found that Dr. Higdon's failure to pay child support contributed to the Mrs. Higdon's inability to obtain the medical evaluations and treatment.

"Unclean hands" is a shorthand reference to OCGA § 23-1-10, which states, "He who would have equity must do equity and must give effect to all equitable rights of the other party respecting the subject matter of the action." See *Dobbs v. Dobbs,* 270 Ga. 887, 888 (515 SE2d 384) (1999) (noting that OCGA § 23-1-10 "embodies both the `unclean hands' doctrine and the concept that `one will not be permitted to take advantage of his own wrong.'" (citations omitted). Under the unclean hands doctrine, wrongdoing must be directly related to the claim against which unclean hands is asserted. *Adams v. Crowell,* 157 Ga. App. 576, 577 (2) (278 SE2d 151) (1981).

"Given the foregoing, no abuse of discretion resulted upon the trial court's refusal to [hold Mrs. Higdon in contempt as to the medical treatments] under the doctrine of unclean hands. "*Matrix Fin. Servs. v. Dean*, 288 Ga. App. 666, 670 (b) (1) (655 SE2d 290) (2007).

b. Dr. Higdon also claimed that Mrs. Higdon was in contempt for failing to deliver to him certain personal property from the marital residence as required by the final divorce decree. At the contempt hearing, Dr. Higdon alleged that he still had "thousands of dollars worth

of possessions" at the marital residence and that Mrs. Higdon was in violation of the standing order because she would not allow him to get his possessions. But he also acknowledged that he had never specifically identified what possessions he claimed that were still at the marital property.

The trial court ordered Mrs. Higdon to allow Dr. Higdon to pick up any personal property that remained at the marital residence upon receipt of his written list of items, but declined to hold her in contempt. Given Dr. Higdon's vague testimony, we find no abuse of the trial court's discretion in refusing to find Mrs. Higdon in contempt under these circumstances. This is particularly true given that the trial court ordered Dr. Higdon to make a list of his property and further directed Mrs. Higdon to have the property available for his retrieval on a certain date. See *Dept. of Human Resources v. Cowan,* 220 Ga. App. 230, 232 (2) (469 SE2d 384) (1996) ("The trial court's discretion in [contempt] matters is broad[,] and its decision will be upheld if there is any evidence to support it.") (citation and punctuation omitted).

c. Finally, Dr. Higdon asserted that Mrs. Higdon was in contempt for improperly dropping him from her medical insurance even though their divorce was not final.

"To hold in contempt, the court must find that there was a wilful disobedience of the court's decree or judgment." *Beckham v. O'Brien*, 176 Ga. App. 518, 522 (336 SE2d 375) (1985). Here, the record demonstrates that under the provisions of the "Automatic Domestic Standing Order" applicable in this case, the parties were "enjoined and restrained from altering, suspending, or terminating any active insurance coverage." As the trial court found, the reason the divorce was not final was because Dr. Higdon filed a motion for new trial after Mrs. Higdon notified her insurance company. Thus, the court ordered Mrs. Higdon to notify her insurance company that the divorce was not yet final and to have Dr. Higdon's coverage reinstated until it was, but declined to find her in contempt under the circumstances. The record contains evidence that Mrs. Higdon's conduct was not a willful violation of the standing order, and the trial court did not abuse its discretion in denying Dr. Higdon's motion for contempt based on the insurance issue.

Judgment affirmed in Case No. A12A1763 McFadden and McMillian, JJ., concur.