

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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### ATTORNEY FOR APPELLANT

Aaron C. Medley  
CCSK Law  
Valparaiso, Indiana

### ATTORNEYS FOR APPELLEE

Donald W. Shelmon  
Donald Shelmon Law Office  
Rensselaer, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Jodi Hamstra,  
*Appellant-Respondent,*

v.

Greg Hamstra,  
*Appellee-Petitioner.*

August 2, 2021

Court of Appeals Case No.  
21A-DR-214

Appeal from the Jasper Circuit  
Court

The Honorable John D. Potter,  
Special Judge

Trial Court Cause No.  
37C01-1406-DR-499

**Bailey, Judge.**

# Case Summary

[1] Greg Hamstra (“Husband”) owed his ex-wife, Jodi Hamstra (“Wife”), a post-dissolution property settlement payment of \$500,000.00. When Wife filed a contempt petition, Husband responded with a petition to determine sums allegedly due him; under an equitable theory of unclean hands, the trial court granted Husband’s petition for extensive discovery related to a provisional order and management fees for transferred property. Ultimately, the trial court held each party in contempt of court, Husband for failure to timely pay Wife \$500,000.00, and Wife for lack of cooperation in discovery, and ordered their reciprocal payment of attorney’s fees. Husband tendered his \$500,000.00 payment several years after it was due, but the trial court found that Wife had refused partial payment and declined to award her full post-judgment interest. Wife now appeals that post-dissolution order. We affirm in part, reverse in part, and remand with instructions.

## Issues

[2] Wife presents four issues for review:

- I. Whether she is entitled to additional statutory post-judgment interest;
- II. Whether she is entitled to treble damages for civil conversion;
- III. Whether the trial court erroneously found her to be in contempt of court; and

- IV. Whether the trial court abused its discretion in ordering the payment of the entirety of Husband's attorney's fees as a discovery sanction.

## Facts and Procedural History

- [3] The parties were married on June 22, 1985. On June 24, 2014, Husband petitioned to dissolve the marriage. On May 20, 2016, Husband and Wife executed a Mediated Property Settlement Agreement ("the Agreement"). The Agreement provided that Husband was to transfer to Wife shares and membership interests in some real estate holding companies, including GJMS. Husband also agreed to pay Wife \$600,000.00 upon entry of the divorce decree and an additional \$500,000.00 no later than December 31, 2017. On June 20, 2016, the dissolution court adopted the Agreement and dissolved the marriage. Husband paid Wife \$600,000.00.
- [4] On January 3, 2018, Wife filed her "Petition for Citation of Contempt, to Reduce Delinquent Property Settlement Cash Payment to a Judgment, and [for] Payment of Fees and Expenses." (App. Vol. II, pg. 15.) Wife averred that Husband had failed to pay \$500,000.00 as required by the Agreement.
- [5] On January 19, 2018, Husband filed his "Motion to Impose Sanctions & Determine Sums Due Husband." (*Id.* at 51.) Husband alleged that Wife should be sanctioned for her conduct several years earlier. In particular, Husband requested that the court "determine the sum which should be due and owing [Husband] as a result of false testimony" given by Wife at a hearing held on January 20, 2015, in response to Husband's motion to modify a provisional

order. The testimony had concerned Wife's 2015 travel abroad to the city of Dubai. Husband had alleged that Wife failed to identify her travel companion or accurately state the purpose for travel.<sup>1</sup>

[6] On March 2, 2018, Husband filed a motion to compel discovery. He sought an order that Wife produce, among other things, a copy of her passport, her itinerary and expenses related to the Dubai trip, and her e-mails directed to three named individuals concerning "the management of the property and assets awarded [to her] in the Agreement" and the management expenses. (*Id.* at 58.) Husband subsequently sought copies of expenses incurred by GJMS and information related to Wife's travels to South Africa in 2015. The tenor of the documents and arguments before the trial court suggested that Husband sought to hold Wife accountable to pay expenses related to GJMS. Purportedly, at a mediation hearing, Wife's financial advisor had requested that Husband's father continue to provide management services after Husband's ownership interest in GJMS was transferred to Wife.

[7] On April 23, 2018, the trial court entered an order on the motion to compel discovery. The court observed that provisional matters are merged into a final settlement agreement but also referred to the equitable nature of a dissolution action. The court articulated "unusual circumstances at play in this case," specifically, Wife's federal lawsuit against Husband claiming "part of the

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<sup>1</sup> There was some suggestion that Husband also believed that Wife had overspent her monthly provisional allowance of \$18,000.00.

Agreement was procured by fraud,”<sup>2</sup> Wife’s petition for contempt, Husband’s “claim an offset is owed,” and the complexity attendant to division of “closely held family entities and businesses.” (*Id.* at 61-62.)

[8] The trial court determined that Wife’s “claim for sanctions and allegations of fraud in the Federal lawsuit open the door [in state court] for a defense of unclean hands” and that Husband was “seeking discovery that is relevant to those many areas.” (*Id.* at 62.) Accordingly, the trial court ordered that discovery proceed in response to Husband’s motion for calculation of sums due. Some requests were deemed overbroad, and some information privileged, but Wife was ordered to comply with the majority of the discovery requests.

[9] On June 14, 2018, Wife filed a discovery response, advising the trial court that she had, on May 14, 2018, provided 700 discovery documents to Husband. Wife represented to the court that she had not retained all personal documents after the dissolution, she had not anticipated post-dissolution litigation, and her requested e-mails may not have been retained. Wife suggested that some documents, no longer in her personal possession or control, could be found at the former marital residence.

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<sup>2</sup> GJMS was the plaintiff in a federal lawsuit that had some relationship to the Agreement, in that it concerned payment of property management fees and allegations of mismanagement. Neither Husband nor Wife were a named party. There was a separate federal lawsuit naming Husband as a defendant. The latter suit was dismissed on jurisdictional grounds. The corporate lawsuit was also dismissed, for reasons that are not made clear in the record of this appeal.

[10] On September 14, 2018, the parties were ordered to mediation and the proceedings were stayed. On June 27, 2019, Husband filed a motion to compel Wife's attendance at a deposition. On July 3, 2019, the trial court entered an order denying both Husband's motion to compel Wife's deposition attendance and Wife's motion to quash the deposition subpoena. Rather, the trial court ordered "discovery prior to mediation," which would include the deposition of each party, and potentially one additional deposition by each party "upon leave of court." (Supplemental App., Vol. II, pg. 4.) Interrogatories, Requests for Production, and Requests for Admissions were limited to seven requests each, including subparts. The trial court anticipated that mediation would be completed by November 30, 2019.

[11] On August 14, 2020, after mediation proved unsuccessful, the trial court entered its "Order on [Wife]'s Motion and Renewed Motion to Rule on Pending Motions Summarily." (App. Vol. II, pg. 119.) The order stated that both parties had been responsible for delays and, for reasons unknown to the court, several potential mediators had declined to serve in that capacity. Addressing Wife's petition for contempt, the order stated: "It is clear from the plain language of the property settlement agreement that [Husband] owes a \$500,000.00 payment to [Wife] and the deadline for that has passed." (*Id.* at 120.) Husband was ordered to pay \$500,000.00 into the court clerk's office by September 30, 2020. Wife was ordered to appear at the Jasper County courthouse for a deposition on September 16, 2020, and she was ordered to update her discovery responses no later than one day before the deposition.

Finally, Husband's request for discovery sanctions and "sums due" was held in abeyance until a further hearing could be conducted:

This motion is a request for sanctions that must be set for hearing. Generally, all provisional matters are merged into the final decree with narrow exceptions. Husband's allegations touch on the borders of that narrow exception and he is entitled to proceed and to present his case.

(*Id.*)

[12] On October 14, 2020, the parties appeared for a hearing on motions for sanctions and attorney's fees, with Wife appearing pro-se. Argument was heard but no testimony was given. Husband's counsel advised the trial court that Wife had appeared at her deposition without documents. Wife argued that the dissolution decree had determined the parties' property rights with finality and the requested discovery was irrelevant but, nonetheless, she had substantially complied with discovery requests. She advised the court that she had not kept expense receipts from three years earlier.

[13] On January 5, 2021, the trial court entered two orders, one denominated "Findings, Conclusion and Order on [Husband]'s Motion to Declare Rights & Obligations of the Parties," *Id.* at 123, and an "Order on Various Discovery Sanctions and Motions for Sanctions as Well as on the Issue of Pre-Judgment Interest." (Appealed Order at 1.) The first order addressed Husband's motion, which the trial court characterized as a motion "filed as a result of one of the [declaratory judgment] federal lawsuits," with the trial court concluding that it

could not interpret the Agreement so as to adjudicate the rights of third parties and stating, “the four corners of the [Agreement] speak for itself.” (App. Vol. II, pg. 124.)

[14] The second order addressed interest due Wife<sup>3</sup> and Husband’s motion for sanctions. The trial court concluded that each party had been acrimonious and had caused delays in the unsuccessful mediation process. Further, the trial court concluded that Wife had failed to “mitigate her damages” when she declined to pick up Husband’s proffered check for \$298,000.00;<sup>4</sup> thus, the trial court calculated that Wife was due interest only upon \$202,000.00 and for 623 days<sup>5</sup> as opposed to the 1018 days between the time the payment of \$500,000.00 was due and when payment was made to the clerk of the court. (Appealed Order at 4.) The trial court found both parties in contempt of court, Husband for his failure to timely pay the cash settlement, and Wife for “repeated delays in answering or providing discovery.” *Id.* at 5. Husband was ordered to pay Wife’s attorney’s fees in the amount of \$3,857.50 and Wife was ordered to pay Husband’s attorney’s fees in the amount of \$29,625.00. Husband was ordered to pay Wife \$27,582.00 in interest. Offsetting the amounts, the trial court

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<sup>3</sup> The parties agree that, notwithstanding references in motions and by the trial court to “pre-judgment interest,” a final decree had been entered and thus the trial court was actually addressing the amount of statutory interest due post-judgment.

<sup>4</sup> According to Wife, she was offered a check for \$299,000.00 not \$298,000.00.

<sup>5</sup> The reason why 623 days was used in the calculation is unclear.

ordered Husband to pay Wife \$1,814.50. Wife now appeals, challenging only the second order entered on January 5, 2021.

## Discussion and Decision

### Statutory Interest

[15] Indiana Code Section 24-4.6-1-101 fixes the time for an award of statutory interest upon a money judgment:

Except as otherwise provided by statute, interest on judgments for money whenever rendered shall be from the date of the return of the verdict or finding of the court until satisfaction at:

(1) the rate agreed upon in the original contract sued upon, which shall not exceed an annual rate of eight percent (8%) even though a higher rate of interest may properly have been charged according to the contract prior to judgment; or

(2) an annual rate of eight percent (8%) if there was no contract by the parties.

This statute serves as “an incentive on the part of judgment debtors to satisfy expeditiously their debt obligations to avoid this accrual of interest.” *Poehlman v. Federman*, 717 N.E.2d 578, 583 (Ind. 1999).

[16] In *Williamson v. Rutana*, 736 N.E.2d 1247, 1249 (Ind. Ct. App. 2000), a panel of this Court explained that an agreement for the payment of money, incorporated into a divorce decree, constitutes a money judgment:

[I]n accordance with Ind. Trial Rule 54, a “judgment” includes a decree and any order from which an appeal lies. A dissolution decree becomes final and appealable when entered by the trial court. IND. CODE § 31–15–2–16(b). Moreover, an agreement by the parties in a dissolution action will be incorporated into the decree once it is approved by the trial court. I.C. § 31–15–2–17. When an agreement is incorporated into the decree, it becomes an order to the parties to perform. *Id.*

We further point out that this court has determined that when the property in a marital estate is divided pursuant to an agreement by the parties, the amount that one spouse is ordered to pay the other is a money judgment that accrues interest from the date that the judgment was entered. *Irvine v. Irvine*, 685 N.E.2d 67, 71 (Ind. Ct. App. 1997). Post-judgment interest is statutorily mandated for money judgments. IND. CODE § 24–4.6–1–101; *see also Caldwell v. Black*, 727 N.E.2d 1097, 1100 (Ind. Ct. App. 2000). Such interest may be awarded when a lump sum is due and payment is late, even though the decree does not provide for the payment of interest. *Van Riper v. Keim*, 437 N.E.2d 130, 132 (Ind. Ct. App. 1982).

- [17] Here, the dissolution court adopted the Agreement and it was incorporated into the dissolution decree, a final and appealable order. The order was not appealed, nor was it set aside by the trial court upon a motion under the Indiana Trial Rules.
- [18] Husband and Wife agreed that Husband’s colleague at some point notified Wife that she could pick up a check for an amount less than the judgment

amount.<sup>6</sup> Although the trial court referred to Wife's alleged failure to mitigate damages, Wife was not seeking damages; it appears that Husband had generically claimed Wife should be estopped from claiming full interest payment because of her conduct. Husband did not identify a particular theory of estoppel. That said, "all forms of estoppel, however, are based upon the same underlying concept: a person who, by deed or conduct, has induced another to act in a particular manner will not be permitted to adopt an inconsistent position, attitude, or course of conduct that causes injury to the other." *Zoller v. Zoller*, 858 N.E.2d 124, 127 (Ind. Ct. App. 2006).

[19] The conduct here at issue is Wife's refusal to accept the partial payment check. Wife claims that the check was offered upon the condition that she accept it as full satisfaction of her judgment, which she could not accept; Husband claims that no condition was attached. No evidence was presented in this regard, and we are not in a position to resolve any factual dispute. To the extent that he raised a claim of estoppel, Husband did not establish it. The record on appeal shows that Wife held a money judgment for \$500,000.00; the judgment was to be paid by Husband by December 31, 2017. Husband paid \$500,000.00 to the court clerk much later. Wife is entitled to interest on the full amount due her and for the full period of time in which she was deprived of her use of the money, as prescribed by Indiana Code Section 24-4.6-1-101.

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<sup>6</sup> A copy of the check was not submitted into evidence. Wife advised the trial court that she had "requested in discovery in the Federal case a copy of that check, which has never been produced." (Tr. Vol. II, pg. 48.)

## Treble Damages

[20] Wife contends that she should have been awarded treble damages pursuant to Indiana Code Section 34-24-3-1, which provides in pertinent part:

If a person has an unpaid claim on a liability that is covered by IC 24-4.6-5 or suffers a pecuniary loss as a result of a violation of IC 35-43, IC 35-42-3-3, IC 35-42-3-4, IC 35-45-9, or IC 35-46-10, the person may bring a civil action against the person who caused the loss for the following: (1) An amount not to exceed three (3) times: (A) the actual damages of the person suffering the loss[.]

This statute, sometimes referred to as the “Indiana crime victim’s relief act,” permits a person who has suffered a pecuniary loss as a result of a criminal conversion to bring a civil action to recover the loss. *Larson v. Karagan*, 979 N.E.2d 655, 661 (Ind. Ct. App. 2012). A claimant need prove by only a preponderance of the evidence that the defendant committed the criminal act. *Id.* A conviction of conversion is not a condition precedent to recovery in this civil action, but the claimant must prove all the elements of the criminal act. *Id.* In any criminal conversion action, criminal intent must be proven, and “it is this mens rea requirement that differentiates criminal conversion from the more innocent breach of contract or failure to pay a debt—situations the criminal conversion statute was not intended to cover.” *Id.*

[21] Wife made no effort to present evidence, either testimonial or documentary, to establish the elements of criminal conversion on the part of Husband. The record would support no more than a conclusion that Husband failed to timely

pay a judgment debt, “a situation the criminal conversion statute was not intended to cover.” *Id.* Wife is not entitled to treble damages.

## Finding of Contempt

[22] The trial court’s order included the following language: “[Wife] was difficult, at best, in sitting for a deposition and in answering discovery. . . . [Wife] is in contempt of this Court’s orders compelling discovery and she should be sanctioned attorneys [fees] for that contempt as well as under Trial Rules 26 and 37 for repeated delays in answering or providing discovery.” (Appealed Order at 4-5.) Wife contends that she was found to be in indirect contempt of court without procedural due process.

[23] Contempt of court in general involves disobedience of a court or a court order; it may be either direct or indirect. *Reynolds v. Reynolds*, 64 N.E.3d 829, 832 (Ind. 2016). Indirect contempt involves interruptive, obstructive, or embarrassing acts, or those preventing due administration of justice, committed outside the presence of the court. *Id.* The willful disobedience of any lawfully entered court order of which the offender had notice is indirect contempt. *Henderson v. Henderson*, 919 N.E.2d 1207, 1210 (Ind. Ct. App. 2010). Indirect contempt proceedings require an array of due process protections, including notice and the opportunity to be heard. *Id.*

[24] These protections are set forth in Indiana Code Section 34–47–3–5, which provides:

(a) In all cases of indirect contempts, the person charged with indirect contempt is entitled:

(1) before answering the charge; or

(2) being punished for the contempt; to be served with a rule of the court against which the contempt was alleged to have been committed.

(b) The rule to show cause must:

(2) specify the time and place of the facts with reasonable certainty, as to inform the defendant of the nature and circumstances of the charge against the defendant; and

(3) specify a time and place at which the defendant is required to show cause, in the court, why the defendant should not be attached and punished for such contempt.

(c) The court shall, on proper showing, extend the time provided under subsection (b)(3) to give the defendant a reasonable and just opportunity to be purged of the contempt.

(d) A rule provided for under subsection (b) may not issue until the facts alleged to constitute the contempt have been:

(1) brought to the knowledge of the court by an information; and

(2) duly verified by the oath of affirmation of some officers of the court or other responsible person.

[25] Here, no rule to show cause was issued. If no rule to show cause is issued in compliance with Indiana Code Section 34-47-3-5, then a court generally cannot hold a person in indirect contempt. *Henderson*, 919 N.E.2d at 1211. Strict compliance may be excused in some cases, such as where there is an admission to the actions that form the basis of the contempt charge, or when a contemnor receives a copy of an original contempt information that contains detailed factual allegations of contempt. *Reynolds*, 64 N.E.3d at 834. Here, there is neither an admission nor adequate notice provided by a detailed factual allegation to excuse strict compliance with due process protections. The trial court erred in finding Wife to be in indirect contempt of court.

### Attorney's Fees as Discovery Sanction

[26] Wife contends that the trial court abused its discretion by ordering that she pay the entirety of Husband's post-dissolution attorney's fees, \$29,625.00, as a discovery sanction. More specifically, she observes that she was in fact deposed and that she provided numerous documents, and argues Husband failed to show that she withheld a document in her possession. Further, she has maintained throughout the post-dissolution proceedings that she was entitled to rely upon the finality of the dissolution decree and was not required to maintain expense records for a collateral challenge.

[27] The trial court observed that Husband had filed multiple motions to compel discovery and concluded that "all [Husband's] attempts at discovery were valid." (Appealed Order at 5.) We must disagree. After the parties reached a

mediated agreement and the dissolution court adopted the Agreement and entered a final decree, neither party appealed nor moved to set aside the order. Rather, Husband pursued a collateral challenge seeking a redetermination of his payment obligation; ultimately, he was unsuccessful. That said, Wife was not relieved of her duty to comply with a court's order on discovery. *See Waterfield v. Waterfield*, 61 N.E.3d 314, 334 (Ind. Ct. App. 2016) (concluding that an ex-wife seeking to set aside a decree on grounds of fraud could not ignore discovery orders based upon relevance argument), *trans. denied*.

[28] Indiana Trial Rule 37(B) provides that, when a party has failed to obey an order to provide or permit discovery, the trial court is authorized to “require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney’s fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.” This rule also provides for the payment of attorney’s fees when a party has refused to attend a properly noticed deposition. *See id.* A trial court’s decision to impose a discovery sanction is reviewed for an abuse of discretion. *Whitaker v. Becker*, 960 N.E.2d 111, 115 (Ind. 2012).

“Although the regular practice is to fashion progressive sanctions leading up to a dismissal or default judgment when it is possible to do so, imposing intermediate sanctions is not obligatory when a party’s behavior is particularly egregious.” *Id.* at 116.

[29] Here, after the parties were ordered to mediation and proceedings were stayed, a dispute arose as to whether the stay included discovery. The trial court ruled

that discovery would proceed and appeared to be persuaded by Husband's argument that Wife should have been more flexible with scheduling a deposition. Reportedly, she had agreed to a single date and Husband's position was that work responsibilities did not constrain Wife to that degree. Husband also insisted that Wife was claiming undue privileges and withholding documents. The contentions were not developed and the trial court made no determination that Wife had, or had not, withheld documents she was ordered to produce. We are not in a position to make a credibility determination.

[30] In general, the trial court expressed frustration with both parties and, in particular, expressed frustration with Wife's argument to the court that Husband had presented red herrings. Ultimately, the trial court imposed a severe sanction upon Wife without specificity as to her alleged lack of cooperation, apart from a delay caused by one of Wife's former attorneys. The trial court was apparently persuaded that out-of-state counsel altered a document bearing an attorney number so as to make it appear that counsel could practice in the State of Indiana. The trial court determined that the additional litigation fees caused by this were properly chargeable to Wife. This specific attribution does not constitute an abuse of discretion.

[31] In sum, the discovery sanction that Wife pay \$29,625.00 in attorney's fees is an abuse of discretion, but we remand for a determination of the attorney's fees attributable to discovery delay caused by deception on the part of Wife's former counsel.

## Conclusion

[32] Wife is entitled to statutory interest as provided by Indiana Code Section 24-4.6-1-101, notwithstanding any claim of estoppel or unclean hands. Wife is not entitled to treble damages upon a claim of criminal conversion. The trial court declared Wife in contempt of court absent procedural due process. The award of the entirety of Husband's attorney's fees as a discovery sanction is an abuse of discretion. We remand with instructions to the trial court to award statutory interest and calculate a discovery sanction based upon the delay caused by the conduct of Wife's former attorney.

[33] Affirmed in part, reversed in part, and remanded with instructions.

Crone, J., and Pyle, J., concur.