

Circuit Court for Baltimore City
Case No. 24-D-15-002502

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2893

September Term, 2018

SHIVA LOUIE

v.

AMIR SASSAN SHARIFI

Friedman,
Wells,
Wright,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wells, J.

Filed: March 18, 2020

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Shiva Louie, requested the Circuit Court for Baltimore City enforce the terms of a marital separation agreement against her former husband, appellee, Amir Sharifi, by holding him in constructive civil contempt. After a hearing that spanned three non-consecutive days, the circuit court denied the motion for contempt as to one issue and Ms. Louie's counsel did not go forward on the remaining issue.

Ms. Louie appeals and ask whether the circuit court properly denied Ms. Louie's petition for contempt. In response, Mr. Sharifi asserts Ms. Louie cannot appeal the denial of her contempt petition. For the reasons set forth below, we agree with Mr. Sharifi and dismiss the appeal.

BACKGROUND

In anticipation of their divorce, Shiva Louie and Amir Sharifi, reached a marital settlement agreement ("the agreement") on April 8, 2017. The parties later divorced.

In 2018, Ms. Louie sought to enforce two parts of the agreement against Mr. Sharifi. Specifically, Ms. Louie requested the Circuit Court for Baltimore City hold Mr. Sharifi in civil contempt for (1) not paying the private school tuition for one of the parties' two children and (2) not giving her the rental income from two properties Mr. Sharifi owned.¹

The hearing on Ms. Louie's petition spanned the following dates: July 26, 2018, August 1, 2018, and September 25, 2018. The court was intent on resolving the tuition issue first because resolution of that claim would allow the parties' daughter to enter

¹ After sale of the rental properties, the agreement called for the parties to equally split the proceeds.

college in a few weeks. Afterward, the court said it would address the allegation involving the rental income.

At the August 1st session, the court heard testimony from both parties. Neither disputed that the agreement obligated Mr. Sharifi to pay the full amount of his daughter's high school tuition. According to Ms. Louie, the parties' daughter had been accepted to the University of Maryland but could not register for fall classes because her high school would not release her transcripts as there was an outstanding balance of \$47,121.73 in unpaid tuition. According to Ms. Louie, Mr. Sharifi refused to pay the balance. Mr. Sharifi argued that (1) he paid Ms. Louie what she told him was due for both children's tuition (2) Ms. Louie never sent him invoices from the high school showing that there was an unpaid balance and (3) he paid Ms. Louie more than he was obligated under the agreement.

After the hearing, on August 2, 2018, the court issued a three-page written set of findings and an order reflecting that Mr. Sharifi was not in civil contempt on the tuition issue. Specifically, the court concluded that under the terms of the agreement, Ms. Louie was obligated to give Mr. Sharifi "adequate notice of all expenses for which Husband shall be liable," but had not. And the court found that over several months Mr. Sharifi gave Ms. Louie \$84,429.33 above what he was obligated to pay her under the agreement. The court found that there was no reason why some, if not all, of that money could be credited to Mr. Sharifi's tuition obligation. On this basis, the court determined that it could not find that Mr. Sharifi willfully or intentionally failed to comply with the terms of the agreement. The

court continued the hearing to September 25, 2018 to address the remaining issue of the rental income payments.

Ms. Louie immediately filed a motion to revise, alter, or amend the court's August 2nd order, essentially arguing that Mr. Sharifi had been copied on emails the high school sent Ms. Louie, therefore, he was on notice of the unpaid tuition balance. She also argued that the court had miscalculated the amount of the money Mr. Sharifi had paid her. Mr. Sharifi filed an Opposition.

At the September 25th hearing, instead of taking testimony, the court and Ms. Louie's counsel engaged in a discussion over whether Ms. Louie could call representatives from the high school to prove that the school copied Mr. Sharifi on emails regarding tuition, which Ms. Louie argued, placed him on notice of the amount of each year's tuition and when it was due. The court refused to permit the testimony, explaining that it had already ruled that under the agreement Ms. Louie was obligated to inform Mr. Sharifi about the tuition and when it was due, not the school.

Then, Ms. Louie's counsel said,

[MS. LOUIE'S COUNSEL]: - - in viewing your Honor's order, you found that you could not make a finding of willful or intentional violation of the order, and therefore could not hold him in contempt - -

THE COURT: Un-huh.

[MS. LOUIE'S COUNSEL]: - - which I certainly understood.

THE COURT: Un-huh.

[MS. LOUIE'S COUNSEL]: If the Court is viewing this as it appears it is, as purely a contempt proceeding, then I believe that Counsel is right, and as

an officer of the court, I will not be able to go forward and prove contempt on the other issue [rental payments] because of the collateral issue that Counsel raised.

THE COURT: And so therefore - -

[MS. LOUIE’S COUNSEL]: Well, I’m inquiring of the Court, am I reading this correctly, that the standard of proof is going to be the willful and intentional standard on the contempt, and that there are no other issues pending.

THE COURT: This is a - - it is a contempt proceeding, yes.

* * *

[MS. LOUIE’S COUNSEL]: In that case, your Honor, Defendant rests.

* * *

THE COURT: All right. Thank you. All right. I will make a finding then that the Defendant/Petitioner has failed to produce any additional evidence, or any evidence at this point, upon which the Court could rely to make a finding that the Plaintiff is in contempt of the judgment of absolute divorce or the marital settlement agreement, which is incorporated therein, and the Court will otherwise dismiss the contempt.

Ms. Louie subsequently filed this appeal.

DISCUSSION

As Ms. Louie failed to meet her burden to prove constructive civil contempt, she may not appeal the circuit court’s ruling against her. In *Pack Shack, Inc. v. Howard County*, 371 Md. 243 (2002) the Court of Appeals explicitly addressed this issue. There, Pack Shack, an adult bookstore, challenged the constitutionality of a county zoning ordinance. *Id.* at 246. The circuit court upheld the constitutionality of the zoning regulations and Pack Shack appealed to this Court. *Id.*

While the appeal was pending, the county filed a petition for constructive civil contempt against Pack Shack for allegedly continuing to operate as an adult bookstore in violation of the zoning ordinance. *Id.* After a hearing, the circuit court found Pack Shack not in contempt. *Id.* Dissatisfied with that decision, the county appealed to this Court and moved to consolidate it with Pack Shack’s pending appeal. *Id.* at 247. Pack Shack moved to dismiss the county’s appeal claiming there was no statutory basis to permit it. *Id.*

We held that though an unsuccessful contempt petitioner ordinarily has no right of appeal, as the issue of the constitutionality of the zoning ordinance and the allegation of contempt were intertwined, it was proper to consider the county’s appeal. *Id.* We ultimately vacated the circuit court’s decision concluding that the court applied the wrong standard for civil contempt and remanded. *Id.* The Court of Appeals granted certiorari.

In its decision, the Court observed that appeals of contempt findings are “solely” governed by Maryland Code, (1974, Repl. Vol. 2013) Courts and Judicial Proceedings (“C&JP”) Article § 12-304:

(a) Scope of review.—Any person may appeal from any order or judgment passed to preserve the power or vindicate the dignity of the court and adjudging him in contempt of court, including an interlocutory order, remedial in nature, adjudging any person in contempt, whether or not a party to the action.

(b) Exception.—This section does not apply to an adjudication of contempt for violation of an interlocutory order for the payment of alimony.

After reminding us “that the cardinal rule [of statutory construction] is to ascertain and effectuate the legislative intent,” *id.* at 253 (citations omitted), the Court held that

C&JP § 12-304 “clearly and unambiguously limits the right to appeal in contempt cases to persons adjudged in contempt.” *Id.* at 254. The Court noted that in this respect, “the Court of Special Appeals thus correctly concluded that ‘the express language of the applicable statutes point[s] to the conclusion that there is no right of appeal by a party who unsuccessfully seeks to have another party held in contempt.’” *Id.*; accord *State Comm’n on Human Relations. Baltimore City Dept. of Recreation and Parks*, 166 Md. App. 33, 39-40 (2005).

As we view the record, Ms. Louie’s original and amended petitions are entitled “*Petition to Enforce Settlement Agreement and/or Petition for Contempt.*” The substance of both petitions, as well as the circuit court’s show cause orders, reveal that Ms. Louie’s sole means of enforcing the terms of the agreement was to hold Mr. Sharifi in constructive civil contempt. Further, the court’s August 2nd order confirms that the sole issue before the court was whether Mr. Sharifi willfully refused to pay the tuition in violation of a court order. The colloquy reprinted above illustrates that the only means Ms. Louie ever undertook to enforce what she believed was Mr. Sharifi’s alleged intransigence was by way of the court’s contempt powers. As Ms. Louie did not prevail in her petition for contempt, she has no statutory right of appeal. *Pack Shack*, 371 Md. at 254.

Finally, we address one lurking question, namely the court’s “dismissal” of the remaining contempt allegation. As noted in the quoted exchange from the September 25, 2018 hearing, Ms. Louie’s counsel apparently concluded that if the court was going to apply the “willful and intentional” standard to determine civil contempt (as it should have)

on the remaining issue of the alleged nonpayment of rental income, then Ms. Louie was probably not going to prevail. What evidence Ms. Louie had to present to the court is unknown. What is unmistakable is that Ms. Louie declined to present any evidence to show that her former husband was in constructive contempt for the nonpayment of rental income to her. The court could have correctly noted that the verdict was “not in contempt,” as Ms. Louie presented no evidence to carry her burden. The court could have also found that the claim was abandoned. As we see it, there is no meaningful distinction between ‘dismiss’ and ‘abandon’ under these circumstances.

**APPEAL DISMISSED. APPELLANT TO
PAY COSTS.**