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ARKANSAS COURT OF APPEALS

DIVISION I
No. CA 11-1307

	Opinion Delivered June 13, 2012
DAVID H. DIXON APPELLANT	APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, FORT SMITH DISTRICT [NO. E-2001-241]
V.	HONORABLE ANNIE HENDRICKS, JUDGE
MARY E. DIXON APPELLEE	AFFIRMED

ROBIN F. WYNNE, Judge

Appellant, David Dixon, appeals from the circuit court's order finding that he has a continuing duty to pay alimony to appellee Mary Dixon and finding him in contempt for ceasing alimony payments after he reduced his work hours. We affirm.

The parties divorced on May 17, 2001, after thirty-eight years of marriage. The divorce decree stated that "David H. Dixon agrees to pay alimony in a total sum of $3,250.00 a month to Mary E. Dixon for as long as he is employed full-time at Riverside Furniture Corporation." Following the divorce, Mr. Dixon made the monthly payments faithfully through April 2008, at which time the payments ceased. On March 7, 2011, nearly three years later, Ms. Dixon moved for declaratory judgment and for contempt, asking the circuit court to determine whether Mr. Dixon owed a continuing duty to pay alimony and, if so, to find him in contempt for nonpayment.

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At a hearing held on September 1, 2011, Ms. Dixon testified that Mr. Dixon called her in March 2008 to inform her that he would be retiring and getting remarried the following month and that alimony payments would stop. She received the last payment in April 2008. Ms. Dixon explained that she had incurred certain debts in reliance on the alimony payments, but when the payments stopped, her debts became overwhelming, leading her to seek the advice of an attorney. She filed her contempt motion after learning that Mr. Dixon was still employed by Riverside Furniture Corporation.

Mr. Dixon testified that he called Ms. Dixon in November 2007 to tell her that he would be working only part time beginning in April 2008, but he denied ever telling her that he planned to retire. He testified that he continued to perform basically the same job he held prior to April 2008, which was a senior-executive position. However, his work hours—which were self-determined—had been reduced from forty hours per week to eighteen to twenty-two hours per week, and his gross income had been reduced from $13,000 per month to an average of $9000 per month. Mr. Dixon further testified that he continued to receive health-insurance benefits through his employer.

The court took the matter under advisement and, on September 30, 2011, entered an order finding that Mr. Dixon has a continuing duty to pay alimony to Ms. Dixon. The court noted that it was Mr. Dixon's decision to reduce his work hours and that he basically holds the same position now as he did before he reduced his hours. The court further noted Mr. Dixon's former and current gross income and the fact that he continues to enjoy health

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benefits through his employer. The court found Mr. Dixon in contempt and ordered a judgment against him for $133,250, the amount of past-due alimony.

On October 13, 2011, Mr. Dixon filed a motion for a new trial. In it, he argued that the divorce decree did not contain an express order for him to pay alimony, only a recital that he had conditionally agreed to do so. He also argued that the court's contempt order was contrary to the evidence presented at the hearing and claimed that his counsel at the hearing had been unable to adequately represent him due to an illness. Mr. Dixon's motion was deemed denied, and he filed a timely notice of appeal, challenging both the contempt order and the denial of a new trial.

On appeal, Mr. Dixon argues that the circuit court's finding of contempt was legally and factually erroneous. A finding of civil contempt must be based on the willful disobedience of a valid order of a court. *Applegate v. Applegate*, 101 Ark. App. 289, 294, 275 S.W.3d 682, 686 (2008). The order forming the basis for a contempt finding must be in definite terms as to the duties imposed, and the command must be express rather than implied. *Gatlin v. Gatlin*, 306 Ark. 146, 150, 811 S.W.2d 761, 764 (1991). Mr. Dixon devotes the majority of his argument to whether the divorce decree in this case contains an express order to pay alimony sufficient to support a contempt finding. He contends that the decree merely recites an agreement to pay but does not directly order him to pay, and therefore, he could not be found in contempt for violating that portion of the decree. We need not reach this particular issue because there was no consequence or penalty attached to the circuit court's bare finding of "contempt," and thus, the propriety of the finding is moot.

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The $133,250 judgment for arrears was independent of the contempt finding. The real issue in this case centers on the court's interpretation of the divorce decree. *See Bethell v. Bethell*, 268 Ark. 409, 419, 597 S.W.2d 576, 581 (1980) ("as a general rule, an ex-spouse is entitled to judgment for all past due installments of alimony awarded by a decree of divorce, not barred by the statute of limitations, unless equity cannot lend its aid because of the actions or conduct of the ex-spouse seeking judgment").

Regarding the judgment, Mr. Dixon argues that the circuit court made a factual error in finding that he remains employed full time. Our standard of review in bench trials is whether the circuit court's findings were clearly erroneous or clearly against the preponderance of the evidence. *DC Express, LLC v. Briggs*, 2009 Ark. App. 651, at 4, 343 S.W.3d 603, 606. The essence of Mr. Dixon's argument is that a person cannot be considered a full-time employee if the person works less than forty hours per week. We see no error in the circuit court's finding that Mr. Dixon works full time, despite his testimony that he works only eighteen to twenty-two hours per week. According to the testimony, it was Mr. Dixon's choice to reduce his work hours, and although he did experience some reduction in his income, that reduction was not related to the number of hours he worked. Furthermore, Mr. Dixon's job description did not change when his hours were reduced, nor did his employment benefits. He remained an upper-level executive with the discretion to set his own schedule and work hours. Based on these facts, we are not convinced that the circuit court clearly erred in finding that Mr. Dixon remains employed full time or in granting a judgment for past-due alimony.

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Affirmed.

PITTMAN, J., agrees.

HART, J., concurs.

HART, J., concurring. I agree that this case must be affirmed, but I disagree with the reasons set forth in the majority opinion. Of pivotal importance in this case is the fact that it was filed as a declaratory judgment action and the contempt motion was only an alternative theory for relief. Had the issue been only whether Mr. Dixon was in contempt, I would have voted to reverse.

Before a party may be held in contempt, the order allegedly violated must have been definite in its terms, clear as to what duties it imposed, and express in its commands. *Bundy v. Moody*, 2011 Ark. App. 200. If the order is not clear and definite in it its terms, we must reverse. Here, even the appellee has at least tacitly acknowledged by seeking declaratory judgment that there was some question as to what Mr. Dixon's obligations were under the 2001 divorce decree. Although the trial court purports to make a finding that Mr. Dixon was in contempt, it ordered no punishment and merely identified Mr. Dixon's obligations under his agreement to pay alimony—exactly the relief one would expect in a declaratory-judgment action. Ark. Code Ann. §16-111-103 (Repl. 2006).

Moreover, in my view, the trial court's finding that Mr. Dixon was employed full time by Riverside Furniture Corporation was not clearly against the preponderance of the evidence. While Mr. Dixon worked fewer hours and brought home a smaller paycheck, he remained a salaried employee, held the same title, had the same work obligations, and retained

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the same benefits. Accordingly, his obligation to pay alimony pursuant to the agreement that was recognized by the 2001 divorce decree continued.

Smith, Cohen & horan, PLC, by: *Matthew T. Horan*, for appellant.

Paul R. Post, for appellee.