

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA10-657

DEBBIE WALL

APPELLANT

V.

MARION WALL

APPELLEE

Opinion Delivered FEBRUARY 23, 2011

APPEAL FROM THE ARKANSAS
COUNTY CIRCUIT COURT,
NORTHERN DISTRICT
[NO. E-2001-138]

HONORABLE DAVID HENRY,
JUDGE

AFFIRMED

RITA W. GRUBER, Judge

This is an appeal from the denial of appellant's motion for contempt. For reversal, appellant contends that the trial court's failure to find appellee in contempt was arbitrary and against the weight of the evidence and that the court erred in finding that her claims were barred by the statute of limitations. We affirm the trial court's order.

Appellant Debbie Wall and appellee Marion Wall were divorced by a decree entered on February 11, 2002. The decree incorporated a property settlement agreement, which provided in relevant part that appellee was responsible for indebtedness on property located at 1806 Strait Place, Stuttgart, Arkansas, which appellant was in the process of purchasing. The agreement further provided that if the sale was not finalized "through no fault of the [appellant], then [appellee] agrees to be responsible for the indebtedness incurred on the purchase of another home of the same value, being \$100,000, as that located at 1806 Strait

Place, Stuttgart, Arkansas. Said purchase shall be finalized within six (6) months of the entry of the Decree of Divorce.” The agreement also provided the following:

In addition, [appellee] agrees to pay to [appellant] the sum of fifty thousand dollars (\$50,000), with said sum to be paid at the rate of \$10,000 per year. [Appellee] shall submit the first \$10,000 payment prior to January 5, 2003, with each subsequent payment to be paid by the 5th day of January every year thereafter until the \$50,000 sum is paid in full, making the final payment due January 5, 2007.

On January 26, 2009, appellant filed a motion for contempt alleging that appellee had failed to pay either the \$100,000 indebtedness for the house or the additional sum of \$50,000 owed to her. Appellee filed a response admitting that the parties entered into a property settlement agreement but denying the remaining allegations. Before the hearing on the motion, appellee submitted an amended response asserting the defenses of statute of limitations and insufficiency of process. He also asserted that his conduct was not willful but due to an inability to perform because of a psychological condition that occurred after the property settlement agreement was entered.

At the hearing, the court heard testimony from both parties. Appellant testified that she never purchased a house and that she wanted the money to do so. She said that she waited to file the motion for contempt because she knew appellee had filed for bankruptcy, had lost his trucking business, and had a “depression” issue. She testified that she was trying to give appellee time to get his financial situation together. Appellee testified that he took medication daily for bipolar and schizophrenia disorder, that he had lost his business and all of his assets, that he had “just gone back to work” in the last two or three years, and that he was a farm laborer and earned “a couple thousand dollars per month.” In response to the

argument of appellee that appellant's motion for contempt was not specific—that she was pursuing a court-order claim and not a contract claim and that her prayer for relief was not a clear statement of what she wanted—the court stated that the pleadings would conform to the proof. The court then asked the parties to submit briefs on the statute-of-limitations issue.

On February 2, 2010, the trial court entered an order denying the motion for contempt but awarding judgment to appellant in the amount of \$30,000, plus prejudgment interest, for the \$10,000 installment payments due in 2005, 2006, and 2007. The court incorporated word for word a letter opinion that set forth specific factual findings and conclusions of law. In its letter opinion, the court found that the property settlement agreement, while incorporated into the decree, was an independent contract and did not merge into the decree. The court also found that appellant did not complete the purchase of 1806 Strait Place or, until she filed the motion for contempt, demand that appellee pay or assume liability toward the purchase of another home.

In its legal conclusions, the court found that the parties' property settlement agreement was subject to the five-year statute of limitations for written contracts set forth in Ark. Code Ann. § 16-56-111 and not the ten-year statute of limitations found in Ark. Code Ann. § 16-56-114, applicable to judgments. The court then concluded that any cause of action regarding the \$100,000 house obligation accrued on August 11, 2002, six months after the date the divorce decree was entered. Appellant did not file a motion for contempt until January 26, 2009; thus, her claim was barred by the statute of limitations. With regard to the

\$50,000 obligation, the court cited *Karnes v. Marrow*, 315 Ark. 37, 864 S.W.2d 848 (1993), and stated that the statute of limitations for a debt payable in installments began to run against each installment at the time it became due. Because her motion for contempt was not filed until January 26, 2009, the first two installments—those due on January 5, 2003, and January 5, 2004—were barred by the statute of limitations. The remaining three installments, however, were not barred, and the court found appellee was obligated to pay those installments to appellant.

Finally, after considering all of the evidence and the long delay by appellant in filing the case, the court was unable to conclude that appellee acted so willfully as to justify a finding of contempt. The court denied the request that appellee be found in contempt but awarded judgment against appellee for \$30,000 due on the \$50,000 obligation under the parties' property settlement agreement.

Appellant's first point on appeal is that the trial court's failure to find appellee in civil contempt was arbitrary and against the great weight of the evidence. She relies upon Arkansas case law holding that willful disobedience of a valid order of a court is contemptuous behavior. *Omni Holding and Dev. Corp. v. 3D.S.A., Inc.*, 356 Ark. 440, 156 S.W.3d 228 (2004). Our standard of review for civil contempt is whether the finding of the trial court is clearly against the preponderance of the evidence. *Id.* Evaluating the credibility of the witnesses is a matter for the trial judge. *Chambers v. Ratcliff*, 2009 Ark. App. 377, at 3, 309 S.W.3d 224, 226. After reviewing the evidence concerning appellee's illness, bankruptcy, and current job, we cannot say that the court's finding that appellee's behavior was not

sufficiently willful to warrant contempt, particularly in light of appellant's delay in bringing this lawsuit, is clearly against the preponderance of the evidence.

Appellant also contends that the trial court erred in finding that her claims are barred by the statute of limitations. First, she argues that Ark. Code Ann. § 16-56-114 (Repl. 2005)—providing that actions on all judgments and decrees must be brought within ten years after the cause of action accrues—applies to this case. As the trial court found, this court has held otherwise. In *Meadors v. Meadors*, 58 Ark. App. 96, 946 S.W.2d 724 (1997), we faced precisely this issue and held that the five-year limitation period for written contracts found in Ark. Code Ann. § 16-56-111, and not the ten-year limitation period for judgments, applied to a property settlement agreement that was incorporated into a divorce decree. In *Meadors*, as here, in spite of its incorporation, the agreement constituted a separate, independent contract that did not merge into the decree. *Id.* at 99, 946 S.W.2d at 725.

Alternatively, appellant claims that, if the five-year limitation period applies in this case, it was tolled by Ark. Code Ann. § 16-56-116(a) (Repl. 2005), which provides, “If a person entitled to bring any action under any law of this state is under twenty-one (21) years of age or insane at the time of the accrual of the cause of action, that person may bring the action within three (3) years next after attaining full age, or within three (3) years next after the disability is removed.” First, there was no evidence presented that appellee was “insane” for purposes of this statute. And, of critical significance here, appellant brought this action, not appellee. The statute refers to a person “entitled to bring any action” and tolls the time in which the action must be brought until three years after “that person[’s]” disability has

been removed. Appellant did not allege that she was insane; this statute is not applicable here.

Finally, appellant argues that we should use the doctrine of equitable estoppel to preclude appellee from asserting the statute of limitations. She claims that appellee lured her into relaxing her vigilance by asserting his mental-health issues. The trial court found that appellant failed to demonstrate the necessary elements of estoppel. Before estoppel will toll the statute of limitations, the party to be estopped must be apprised of the facts; the other party must be ignorant of the true state of the facts; the party to be estopped must have acted so that the other party had a right to believe that the party intended his conduct to be acted upon; and the other party must have relied on the conduct to her prejudice. *Kitchens v. Evans*, 45 Ark. App. 19, 27, 870 S.W.2d 767, 771 (1994). “The issue is whether the conduct and representations of the party are so unfair and misleading as to outbalance the public’s interest in setting a limitation on bringing actions.” *Id.* (quoting 54 C.J.S. *Limitations of Actions* § 24 (1987)). We agree with the trial court that appellant failed to demonstrate these elements.

We affirm the trial court’s order denying appellant’s motion for contempt and awarding judgment of \$30,000 to appellant.

Affirmed.

PITTMAN and ROBBINS, JJ., agree.