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ARKANSAS COURT OF APPEALS

DIVISION I
No. CA10-747

LISA BRINKLEY APPELLANT V. THOMAS BRINKLEY APPELLEE	**Opinion Delivered** MARCH 9, 2011 APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT [NO. DR2009-20-6] HONORABLE MARK LINDSAY, JUDGE AFFIRMED

RITA W. GRUBER, Judge

This appeal arose from a petition for contempt filed by Lisa Brinkley against her ex-husband Thomas Brinkley for allegedly violating a provision of the parties' property settlement agreement. Mr. Brinkley filed a counterclaim for contempt against Ms. Brinkley. The Washington County Circuit Court dismissed both petitions, and Ms. Brinkley filed this appeal. We affirm the circuit court's order.

The Brinkleys were married for forty years when their decree of divorce was entered on June 2, 2009. They divided all of their debts and assets pursuant to a property settlement agreement, the terms of which were the result of a mediation between the parties held on May 28, 2009. The parties reviewed and signed the settlement agreement on June 2, 2009, and the agreement was incorporated word for word and made a part of the divorce decree.

On October 14, 2009, Ms. Brinkley filed a petition for contempt, alleging that Mr. Brinkley violated the terms of the settlement agreement by failing to pay certain outstanding debts owed by the parties' business; paying certain bills and expenses not contemplated by the divorce decree that violated the $5,000 cap on business-related expenses contained in the decree; failing to execute a quitclaim deed transferring his interest in certain real property; failing to provide a title to an automobile; and willfully and intentionally concealing outstanding business debts owed before the entry of the divorce decree. After a hearing, the circuit court entered a detailed five-page order denying and dismissing both parties' petitions for contempt, finding that both parties had unclean hands. The court did not consider issues that existed before entry of the divorce decree on June 2, 2009, because it found that both parties had a reasonable opportunity to obtain financial information before that time. The court specifically found that Ms. Brinkley did not meet her burden of proof regarding her claim that Mr. Brinkley violated the provision in the agreement regarding the $5,000 cap on business debts. Ms. Brinkley brought this appeal from the court's order.

In reviewing a bench trial, we must determine whether the trial court's findings were clearly erroneous or clearly against the preponderance of the evidence. *Housley v. Hensley*, 100 Ark. App. 118, 265 S.W.3d 136 (2007). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id*. We give special deference to the superior position of the trial judge to evaluate the credibility of witnesses and their testimony. *Id*.

Ms. Brinkley appeals only with regard to the circuit court's findings about the $5,000 cap. Specifically, she contends that the court clearly erred in finding that she failed to prove that Mr. Brinkley violated the $5,000 cap on using the business checking account to pay business expenses and in finding that expenses paid between May 28, 2009, and June 2, 2009, were not subject to the $5,000 cap. Pursuant to the settlement agreement, Ms. Brinkley was to receive possession of the parties' business checking account, which had a balance of approximately $15,000 to $20,000 on the day of the mediation. She also was to receive all of the business vehicles and control over existing insurance policies related to those vehicles. The settlement agreement authorized Mr. Brinkley to pay some expenses out of the business account after the decree was entered, but those expenses were not to exceed $5,000. Under the settlement agreement, Mr. Brinkley was responsible for any amount over the $5,000 cap. To understand Ms. Brinkley's contention, we turn to the pertinent language in the settlement agreement.

> A. THE BUSINESS CHECKING ACCOUNT.
>
> HUSBAND and WIFE each acknowledge that a business checking account exists at United Bank whose account number ends in 0445 and which shall be referred to hereinafter as "the Business Checking Account." The parties acknowledge that the balance in said Business Checking Account as of May 28, 2009 is approximately Fifteen to Twenty Thousand and 00/100 Dollars ($15,000 - $20,000). HUSBAND shall execute any and all necessary documentation to place WIFE's name on the Business Checking Account and to remove himself as a signor from the Business Checking Account by 4:00 p.m. on Tuesday, June 2, 2009. The parties each agree and so WIFE shall have the exclusive use and ownership of such Business Checking Account and all monies held on deposit therein, subject to the provisions for payment of certain debts as provided for and set forth in this Agreement.

The settlement agreement then provided that certain outstanding debts and expenses "reasonably related to the operation of the rental limo business up to a maximum of Five Thousand and 00/100 Dollars ($5,000.00)" would be paid using the funds in the business checking account. The agreement also specifically listed two bills to be paid out of the account that would not be applied to the $5,000 cap: a tax-preparation bill in the amount of $2,000 owed to Tamara Gilmour, C.P.A., and a bill in the amount of $2,625 owed to ADR, Inc., for mediation services. The agreement further provided as follows: "If any additional business debts are owed above and beyond the Five Thousand and 00/100 Dollars ($5,000) limit and repayment of such debts is not specifically provided for herein, such debts shall be paid in full and satisfied by HUSBAND and shall not be paid out of the Business Checking Account."

Ms. Brinkley contended in the circuit court, and she argues here, that at least $7,622.96 was paid out of the business checking account at the direction of Mr. Brinkley. She provided a spreadsheet of all of the checks written by Mr. Brinkley on the account after May 28, 2009. He wrote the following checks on June 1, 2009, the day before the agreement was signed: he paid himself $3,500 (and later paid back $3000 of that amount), several employees a total amount of $3,350, Hitech Security $75, Kutak Rock $73.50, SWEPCO $44.67, himself $100 and $306.35 reimbursement for insurance, and AR Gatewood Emergency Services $349.

Mr. Brinkley testified that these were regular business payments made on the first of each month. He did not recall the reasons for the Emergency Services bill or the $100 payment to himself. He also testified that he later paid a business expense of $636.63 to Department of Workforce Services out of his personal account, for which he wanted reimbursement. The remaining checks on the spreadsheet, written between June 2, 2009, and August 5, 2009, amounted to about $3,000 and included several automatic-payment withdrawals from Chase, a Progressive insurance premium payment for the business vehicles, a life insurance premium payment, and several expenses that the parties did not specifically identify. Mr. Brinkley testified that the balance in the business checking account on May 29, 2009, was $17,161.57. The balance on June 3, 2009, was $13,116.24.

Ms. Brinkley admitted that she was responsible for one of the Chase credit cards, but she did not know which automatic payment applied to that particular card. She was not aware that there were any automatic payments from the business checking account. She disputed the amounts of the payroll checks, but she admitted that she was not around the business during the last two weeks of May and did not know for a fact who was working. She testified that the parties had no agreement regarding expenses to be paid on June 1, 2009, but admitted that the agreement had not been signed until June 2, 2009. Ms. Brinkley also admitted that she never asked to see the checkbook or account statements at the mediation on May 28, 2009, or before signing the settlement agreement on June 2, 2009. She also said that she never asked for the opportunity to inspect the books or records at the business.

At the hearing, the court noted that on June 2, 2009, when the settlement agreement was signed and the divorce decree was entered, the parties represented to it that they had fully and finally settled their case and all claims, rights, and demands between them, and that they each had made a diligent effort to determine what property they owned or had an interest in. The court also noted that both parties were represented by attorneys and had the opportunity to conduct discovery. The court specifically stated that Ms. Brinkley had the opportunity to look at the business records—where she would have discovered the automatic insurance payments and automatic Chase payments made from the business account—and could have closed the account and opened her own account on June 2, 2009. The court said that the door was closed on all transactions that took place before June 2, 2009, because both parties represented to the court that everything was settled and both parties had an opportunity to check on these issues and did not. In its written order, the court found that any question as to the use of funds in the business checking account should have been resolved before June 2, 2009, and stated it was not considering issues that existed before that date. The court also found that Ms. Brinkley failed to prove that Mr. Brinkley violated the $5,000-cap provision of the settlement agreement.

We find no clear error in any of the circuit court's findings. The court's finding that all expenses paid by Mr. Brinkley from the business checking account on June 1, 2009, did not fall within the $5,000 cap because they were paid before the agreement was signed is not clearly erroneous. Ms. Brinkley failed to prove there were more than $5,000 in business

expenses paid by Mr. Brinkley after that date. Accordingly, we affirm the circuit court's order.

Affirmed.

PITTMAN and ROBBINS, JJ., agree.