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ARKANSAS COURT OF APPEALS

DIVISION IV

No. CV-18-565

TRUDY CRAIN

APPELLANT

V.

DONALD CRAIN

APPELLEE

Opinion Delivered February 20, 2019

APPEAL FROM THE PERRY COUNTY
CIRCUIT COURT
[NO. 53DR-16-102]

HONORABLE CATHLEEN V.
COMPTON, JUDGE

AFFIRMED

BRANDON J. HARRISON, Judge

Trudy Crain appeals an order of the Perry County Circuit Court that finally disposed of some contempt issues. Ark. R. App. P.–Civ. 2(a)(13) (2018). Trudy is acting on her own behalf and makes many arguments. Having reviewed her points in light of the record before us, we hold that the circuit court’s findings were not clearly against the preponderance of the evidence and wholly affirm its decision.

The parties in this case went through a contentious divorce that ended in February 2017. As part of that process, the circuit court entered a restraining order in October 2016 prohibiting the parties from mistreating each other and protecting all the property that any party had. The divorce decree expressly stated that Trudy “shall remain in the duplex [owned by Donald] for a period of forty-five days from February 2, 2017, and shall then vacate the property.”

Perryville police officers were called to the duplex the day of the divorce. Donald presented evidence to the circuit court that Trudy had damaged his property by writing negative messages about him, his son, and his ex-wife throughout the duplex. Photographs admitted as evidence show paint strewn about on furniture, doors, walls, and carpet. Spoiled food was left in the oven and the refrigerator. Trash was left in the yard, which had also been damaged by a vehicle that was driven on the lawn when it was wet.

The court found that Trudy caused this property damage, that she willfully violated the restraining order, and that Donald was entitled to be reimbursed for the cost of repairing the duplex, which totaled \$2,942. Trudy was also ordered to pay Donald's \$5,800 attorney's fee, the amount he requested. As for Donald, the court found that he owed Trudy money pursuant to the divorce decree. Specifically, Donald owed Trudy \$7,963, one-half of the money in a marital account on the date of the divorce. The court offset the amount each party owed to the other and ordered Trudy to pay the difference of \$779. The result of the appealed order is that Trudy must pay Donald \$779; she is also forbidden from contacting him directly or through a third party.

Trudy is unhappy with this result. To the extent that she is asking us to jail Donald, disbar his attorney, or find either or both of them guilty of crimes and liable for torts, the answer is: no; those issues are beyond this appeal's scope. This case is limited to reviewing the civil contempt finding and the resulting \$779 sanction. A contempt-related order to pay another person money for a willful disobedience is remedial and therefore a fine. This being the case, civil contempt is at issue. *See Omni Holding & Dev. Corp. v. 3D.S.A., Inc.*, 356 Ark. 440, 454, 156 S.W.3d 228, 238 (2004). On review, we ask whether the circuit

court's finding is clearly against the preponderance of the evidence. *Gatlin v. Gatlin*, 306 Ark. 146, 811 S.W.2d 761 (1991).

Here, it was not. Regarding the first ground, the circuit court did not find that Trudy or her coworker were credible witnesses and therefore did not punish Donald for allegedly driving by Trudy's place of employment. *Shores v. Lively*, 2016 Ark. App. 246, 492 S.W.3d 81 (due deference given to circuit court in domestic-relations cases to view and judge the credibility of the witnesses). Although Donald gave Trudy the spare key and title to her car seventy-three days after the divorce decree, instead of the forty-five days as ordered by the decree, the court found that Trudy was not harmed by the delay, and the use of a spare key did not affect her ability to use the car. *See Ball v. Ball*, 2014 Ark. App. 432, at 5, 439 S.W.3d 92, 94 (facts did not give rise to the level of willful disobedience that would mandate a contempt finding). As to Trudy's complaint that the court erred because it did not find Donald to be in contempt of the divorce decree, the court credited an email in the record from Trudy stating she had voluntarily vacated the duplex on 3 February 2017 and wrote "anyone can easily go there do what they want." Donald also testified that Trudy had told him that she had moved out. Given these credibility determinations, we decline to reverse. *Ball, supra*.

We will also note, as a matter of fairness, that the circuit court denied Donald's request to hold Trudy in contempt for failing to pay money for rent. Although the court orally ordered Trudy to pay rent, the directive never made it into the written order.

Trudy also complains about some criminal charges that were filed against her and dismissed. That Trudy was arrested related to the property damage done to the duplex was

not a result of Donald's willful disobedience of a court order. The voluminous pro se motions, text messages, emails, and photographs in the record support the circuit court's conclusion that Trudy caused Donald to incur unnecessary attorney's fees related to her conduct in the case.

The circuit court found that Donald was in contempt of the divorce decree because he had not paid Trudy one-half of the balance in a marital bank account. To the extent that Trudy argues here that the documents supporting the amount owed from that bank account were falsified by Donald or his attorney, the point was not ruled on by the circuit court. *Kulbeth v. Purdom*, 305 Ark. 19, 805 S.W.2d 622 (1991) (appellant has the burden of obtaining a ruling from the circuit court on the issue to be reviewed).

Finally, Trudy makes some procedural points that we will briefly address. In her appellate brief, she argues that she had insufficient notice of the 28 March 2017 contempt hearing and was therefore denied due process. She also states, "[b]eing that the Judge knew Mr. Crain and his family she has made this whole experience a nightmare for me;" and she says that the circuit judge should have recused. We find no merit to these arguments. Trudy objected to the notice for a 28 March 2017 hearing, but she later acquiesced, and the hearing continued. Before the 28 February 2018 hearing, which resulted in the March 6 order that Trudy has appealed, her attorney withdrew her pending motion to recuse. She is bound by her trial attorney's prior abandonment of her recusal demand. *See Scarlett v. Rose Care, Inc.*, 328 Ark. 672, 675, 944 S.W.2d 545, 547 (1997) (a client is generally bound by the acts of his or her attorney within the scope of the attorney's authority); *Holiday Inn Franchising, Inc.*

v. Hotel Assocs., Inc., 2011 Ark. App. 147, 382 S.W.3d (an appellant cannot change positions in an appeal).

Affirmed.

KLAPPENBACH and GLOVER, JJ., agree.

Trudy Crain, pro se appellant.

LaCerra, Dickson, Hoover & Rogers, PLLC, by: *Marjorie E. Rogers*, for appellee.