



ORIGINAL

SUBSTITUTE OPINION AFTER REHEARING
THE COURT'S PRIOR OPINION HAVING BEEN WITHDRAWN

NOT FOR OFFICIAL PUBLICATION
See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

IN THE MARRIAGE OF:

GINA R. LINDO,

Petitioner/Appellee,

vs.

PAUL A. LINDO,

Respondent/Appellant.

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JOHN D. HADDEN
CLERK

Case No. 121,825

APPEAL FROM THE DISTRICT COURT OF
CANADIAN COUNTY, OKLAHOMA

HONORABLE CHARLES GASS, SPECIAL JUDGE

AFFIRMED IN PART, VACATED IN PART, AND REMANDED

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For Respondent/Appellant

OPINION ON REHEARING BY GREGORY C. BLACKWELL, JUDGE:

Appellant, Paul Lindo, appeals various portions of his final divorce decree, arguing that the court improperly valued Paul Lindo Construction LLC, failed to correctly calculate his monthly income, and should not have found him in

indirect contempt. Upon review, we affirm the court's valuation of the business, but vacate the child-support order, which was based on the court's finding that Paul's gross monthly income was \$39,666.66, and remand for further proceedings consistent with this opinion. We also find that Paul's contempt issue was not yet appealable as he has not been sentenced.¹

BACKGROUND

Paul and Gina Lindo were married in May of 2007 and had three minor children. Paul earned income by operating a home construction business, Paul Lindo Construction LLC. Gina assisted Paul in the creation of the company and did some bookkeeping as well.

Gina filed a petition for dissolution of marriage on May 12, 2021. The following month, the court entered a temporary order which provided that Paul would pay Gina temporary support alimony in the amount of \$1,500 every two weeks. The month after that, in July 2021, the court revised the temporary order to increase the temporary support to \$1,000 a week and ordered Paul to continue making mortgage payments on the marital residence as well as provide for the utilities.

In June 2022, Paul moved to modify the temporary order. The court declined to modify the order at that time and stated that it would hear the motion at trial. In September 2022, Gina filed an indirect contempt citation, arguing that Paul had not been making spousal support payments, resulting in a total of

¹ Gina's motion to file a sur-reply is denied.

\$23,438.31 owed to Gina. He was arraigned in October 2022 and pled not guilty to the contempt citation.

Gina then filed an amended contempt citation in June 2023, alleging that Paul still was not in compliance with the court's temporary order, that the total arrearage was now \$48,994.00, and Paul had been willfully refusing to pay any support since April 1, 2023.

The parties went to trial in July 2023 on both the dissolution and contempt issues.² Gina called Amber Hite, a CPA that valued Paul Lindo Construction LLC per an order of the court. The court also heard from Paul and Gina. After closing arguments, the court issued a memorandum decision in August 2023 and the divorce decree was later filed on November 30, 2023. The court found that Paul had a gross monthly income of \$39,667 and ordered him to pay total child support of \$4,295.63 per month. The court found that Paul was in indirect contempt for a failure to pay support to Gina in the amount of \$48,994.00. Finally, the court found that Paul Lindo Construction had a marital value of \$350,000, awarded the business to Paul, and determined that Gina would then need an equalization payment of \$317,682.81. Paul appeals these decisions.

STANDARD OF REVIEW

"An action for divorce, alimony, and division of property is one of equitable cognizance, and the trial court's judgment will be left undisturbed unless found

² At the start of trial, Paul suggested that because issues raised in the contempt applications would be raised in the divorce itself, the parties should just proceed with the divorce issues first. The court entered a not guilty plea on Paul's behalf and stated that the matter would be heard with the divorce itself.

to be clearly against the weight of the evidence.” *Johnson v. Johnson*, 1983 OK 117, ¶ 15, 674 P.2d 539, 544.

Child support proceedings are also matters of equitable cognizance. Matters relating to child support are addressed to the sound legal discretion of the trial court and will not be reversed absent a showing of abuse of discretion or that the decision is clearly contrary to the weight of the evidence. *Merritt v. Merritt*, 2003 OK 68, 73 P.3d 878.

ANALYSIS

Paul first alleges that the court abused its discretion by improperly valuing his construction company and determining that Gina was entitled to an adjustment of \$317,682.81 based on that valuation. Paul specifically argues that the court should have valued Paul Lindo Construction LLC at zero dollars. Paul contends that his construction company has no enterprise goodwill value and is solely personal goodwill, therefore, it could not be sold for any amount because its income is entirely dependent on Paul continuing to work. Upon review, we find that the court did not abuse its discretion in determining that the company was worth \$350,000 and properly awarded Gina an adjustment.

The Oklahoma legislature has defined goodwill as the “expectation of continued public patronage.” 60 O.S. § 315. Goodwill of a business is property, transferable like any other. *Id.* § 316. “The good will value of any business is the value that results from the probability that old customers will continue to trade with an established concern.” *Freeling v. Wood*, 1961 OK 113, ¶ 12, 361 P.2d 1061, 1063. If the value arising from the prestige of a practice, or from its

expectation of continued public patronage, “depends on the continued presence of a particular individual,” then this value, “by definition, is not a marketable asset distinct from the individual.” *Travis v. Travis*, 1990 OK 57, ¶ 10, 795 P.2d 96, 100 (quoting *Prahinski v. Prahinski*, 75 Md.App. 113, 540 A.2d 833 (1988)). Conversely, if this value is an asset distinct from the personal reputation of a particular individual, as is common with many businesses, “that goodwill has an immediately discernible value as an asset of the business and may be identified as an amount reflected in a sale or transfer of a business.” *Id.*

Ms. Hite, a CPA, was hired to value his business and she was called by Gina to testify at trial. Ms. Hite’s valuation was the only valuation conducted, referenced, or submitted into evidence by either party. Paul disputes the valuation, suggesting that the court should have valued the business at zero dollars, claiming its value is entirely due to his personal goodwill. Ms. Hite testified that she used three different accepted valuation methods to determine that Paul Lindo Construction LLC was worth \$350,000.

Ms. Hite testified that in making her valuation report of the business she relied on the company’s tax returns from 2020 and 2021. Tr. (July 17, 2023), 7. She testified that valuations require CPAs to look at several different kinds of calculations and compare them. *Id.* at 15. The first calculation she ran was discretionary income, which is determined by the distributions from the business and then examining how much cash is left in the business. She specifically added:

[T]he valuation to me is how much would somebody have to pay him to stop doing his job. So you multiply how much money he’s earning

times some kind of factor and the factors are variable, they can be 1 to 6. It's dependent upon the industry, the market, and the kind of job he's in. So I chose two and a half. So after two and a half years somebody could have — if somebody were to pay him \$350,000, that would last him two and a half years.

Id.

Next, Ms. Hite testified that she ran a calculation based on the taxable income from the company less its debt payments. She noted that this was a “comparative” that she ran to back up the first calculation. *Id.* at 17. She looked at what Paul's tax return said his taxable income was and then reduced it by the debt payments that Paul had a cash flow for. *Id.* Finally, she testified about a calculation she ran based on gross revenues. Specifically, she stated that she needed “a third comparative” calculation, so she researched online and “found a company called Peak that suggested that for some construction companies you could value the gross revenues at 0.3 to 0.6. So that supported the calculation of 350.” *Id.* at 18. Upon review of the record, there was ample testimony to support her \$350,000 valuation of Paul Lindo Construction LLC that the court subsequently adopted.

Paul argues, however, that the company has no marital value because the \$350,000 income the business generated was “entirely dependent on Paul continuing to work,” and, as such, it has no value beyond personal goodwill. It appears that Paul relies on the following testimony from Ms. Hite to support this contention.

Ms. Hite's valuation report states that the valuation she conducted was based on Mr. Lindo continuing to work as “his expertise, experience, reputation and skill are the source for all work performed by the Company.” Petitioner's

Exhibit 8(a). Further, Ms. Hite was asked the following question by Paul's counsel: "if Paul Lindo quit his job, quit operating Paul Lindo Construction, how much income would the company have going forward?" *Id.* at 23. Ms. Hite responded: "zero dollars." *Id.* at 24.

Despite this contention at trial and in her expert report, we find no evidence in the record that Ms. Hite actually calculated or otherwise assessed personal versus enterprise goodwill. If any business owner who procures and oversees subcontractors, seeks out business contracts, manages day-to-day operations, and one day decides to immediately stop working, it follows that the business would subsequently earn zero dollars. This testimony by Ms. Hite in no way demonstrates that the business would generate no income if competently run by another person of equal skill, or any other consideration pertinent to ascertaining a company's institutional goodwill. Counsel did not ask Ms. Hite any specific questions about the value of the established customer base and the company's subcontractor contacts, the name and reputation of the company or the institutional goodwill of the business. For example, she could have asked about the company's value if Paul decided to sell it as a going concern and retire; however, she did not. Thus, the court's determination that the business was worth \$350,000 was not clearly against the weight of the evidence.

Next, Paul alleges that the court committed reversible error by imputing gross monthly income to Paul in the amount of \$39,666.66 per month. Upon review, we agree.

The court adopted Gina's monthly income calculations that she introduced as Petitioner's Aid 2 at trial. According to that exhibit, Paul's monthly income was \$39,666.66 and hers was \$2,500. Gina explains that she reached this calculation based on "trial exhibits including bank accounts, profit and loss statements, tax records, police reports, and testimony." *Answer Brief*, 16. It appears Gina added Ms. Hite's discretionary income calculation of \$350,000 to other calculations determining Paul's monthly expenses and Paul's cash he kept on hand. However, we agree with Paul that the discretionary income calculation of \$350,000 was not for one year.

Ms. Hite testified that she looked at the "distributions from the entity and how much cash is left in the business" and multiplied that number by a factor of 2.5. Tr. (July 17, 2023), 15. She clarified that a \$350,000 lump sum would replace Paul's business income for *two-and-a-half years*. If the court wished to use this calculated \$350,000 as evidence of Paul's yearly income, it should have divided it by 2.5, making Paul's yearly income \$140,000 and his monthly income thereby \$11,666.67. Gina also notes that Paul's documented monthly income was \$13,968.00 in 2021, \$20,091.02 in 2022, and \$15,629.17 in 2023. Examining the record as a whole, it is impossible to determine how the court arrived at \$39,666.66 for Paul's monthly income. Thus, the court's decision to impute \$39,666.66 to Paul was contrary to the weight of the evidence, and we

reverse and remand for further proceedings to determine Paul's monthly income for child support purposes.³

Paul also alleges that the court erred by finding him guilty of indirect contempt of court. Specifically, he argues that the court never offered Paul his right to a jury trial on the indirect contempt issue and also that the court effectively ignored his motion to modify his support obligations.⁴ However, the divorce decree finds as follows regarding Paul's contempt:

Based on the totality of the evidence presented, the Court finds that the Respondent [Paul] willfully violated the order of the court by failing to pay support in the amount of \$48,994.00. As such the Respondent is found Guilty of Indirect Civil Contempt. Sentencing shall be held on November 14, 2023 at 1:30p.m. in courtroom #5.

ROA 102. A survey of the docket sheet does not reflect that there was a hearing of any kind on November 14, 2023.⁵

³ Paul also argues that the court erred in not subtracting his self-employment tax from income pursuant to 43 O.S. § 118B(D)(3). Because we are vacating the child support order and remanding this issue for further proceedings, Paul is free to raise this issue with the trial court on remand.

⁴ In his brief, Paul notes extensively that the contempt citations were not verified by Gina as required by a district court rule. However, upon a thorough survey of the record, it does not appear that Paul objected to the lack of verification on any of the three contempt citations issued below. Issues not raised below will not be considered for the first time on appeal. *Jones v. Alpine Inv., Inc.*, 1987 OK 113, ¶ 11, 764 P.2d 513, 515.

⁵ The "event" section for this case on OSCN shows that there was a sentencing hearing set for November 14, 2023, but the docket does not contain any entries for the entire month of November. The "event" on December 12, 2023, states that there was a hearing set for a "motion to settle/contempt arraignment and sentencing *MTS stricken/contempt will go." The only entry on the docket sheet on this date, however, is Paul's motion to stay contempt proceedings.

The docket also reflects that Gina, in her motion opposing Paul's motion to stay contempt proceeding states, "this Court in its equitable powers should order that the contempt citation may proceed to sentencing and determination of a purge plan despite Paul Lindo's present appeal." Thus, it appears Paul's sentencing hearing never took place.

Oklahoma courts have held that, generally, a contempt order which defers sentencing is not an appealable order. *First Nat'l Bank & Trust Co. of Ada v. Arles*, 1991 OK 78, 816 P.2d 537. While, this Court has jurisdiction of an appeal to review a sentence imposed for contempt of court occurring in a civil matter, an order in contempt proceedings is not appealable by right until the judgment and sentence become final. *Lay v. Ellis*, 2018 OK 83, ¶ 21, 432 P.3d 1035, 1042. Here, the divorce decree clearly defers sentencing. Federal constitutional protections attach to an indirect contempt proceeding when penal sanctions are imposed and include the right to a jury trial. *Henry v. Schmidt*, 2004 OK 34, ¶ 19, 91 P.3d 651, 655. Here, however, no sanction has currently been imposed. Thus, while the decree itself is a final order, as it currently stands, this contempt finding is not a final order because Paul has not yet been sentenced by the court. As *Lay* notes, a contempt finding without sentencing constitutes an interlocutory order, and a party wishing to appeal it must seek certification by the trial judge for immediate appeal. *Id.* at ¶ 22. There was no certification in this case.⁶

CONCLUSION

Upon careful review of the record, we find that the court's valuation of Paul Lindo Construction LLC at \$350,000 was not contrary to the weight of evidence

⁶ The *Henry* case raises a difficult question, though we do not face it here. In *Henry*, a mother was subject to a bench trial for contempt without a knowing and voluntary waiver of jury trial, and a non-remedial custodial sentence was later imposed. As such, the mother's constitutional rights were violated. *Id.* ¶ 9. *Henry* is silent as to the result if the mother had not been sentenced to jail. We find no case law addressing this situation. In the two primary cases invoking the rule of *Henry*, a custodial sentence was later imposed. See *Thomas v. Barrow*, 2007 OK CIV APP 35, ¶ 1, 157 P.3d 1185, 1186 (thirty days in jail); *In re J.H.*, 2008 OK 104, ¶ 5, 213 P.3d 545, 547 (two days in jail).

and thereby affirm. However, we vacate the child support order and remand for further proceedings to determine Paul's monthly income for child support purposes and a recalculation of child support. Finally, as to contempt, because Paul has not yet been sentenced, we find there is no appealable order for us to review.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

WISEMAN, P.J., and FISCHER, J., concur.

July 2, 2025