

OHIO COURT OF APPEALS, FIFTH APPELLATE DISTRICT, DELAWARE
COUNTY

Berry-Silverman v. Silverman

2026-Ohio-1802 · No. 25 CAF 10 0094 · Decided May 15, 2026

SUMMARY

The Ohio Court of Appeals for the Fifth Appellate District affirmed the denial of Melissa Berry-Silverman’s motion to hold Andrew Silverman in contempt. The court concluded that she failed to establish by clear and convincing evidence that he violated orders concerning marital-home repair expenses, an equalization payment, or transfers of retirement assets. The court also held that the magistrate’s reference to unclean hands did not alter the failure to prove contempt.

CASE DETAILS

COURT	Ohio Court of Appeals, Fifth Appellate District, Delaware County
WRITING FOR THE COURT	Craig R. Baldwin; Andrew J. King; Robert G. Montgomery
JURISDICTION	Ohio Court of Appeals, Fifth Appellate District, Delaware County
DECIDED	May 15, 2026
DOCKET	25 CAF 10 0094
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Delaware County Court of Common Pleas, Domestic Relations Division, affirming the denial of appellant's motion to show cause and hold appellee in contempt.
STANDARD OF REVIEW	A trial court's decision regarding contempt is reviewed for abuse of discretion. An abuse of discretion requires a finding that the decision was unreasonable, arbitrary, or unconscionable, rather than merely an error of law or judgment.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	Melissa Berry-Silverman v. Andrew Silverman

TOPICS

- family law procedure
- divorce
- equitable distribution
- appellate procedure
- remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by declining to find appellee in contempt for allegedly failing to cooperate in maintaining the saleability of the marital residence and equally divide major necessary repair expenses.
2. Whether the trial court abused its discretion by declining to find appellee in contempt for allegedly failing to make the \$14,213 equalization payment, reduced by the appropriate portion of Heather Deskins's fees.
3. Whether the trial court abused its discretion by declining to find appellee in contempt for allegedly failing to complete the ordered retirement-account transfers.
4. Whether the magistrate's reference to the unclean-hands doctrine warranted reversal of the denial of appellant's contempt motion.

HOLDINGS

1. The trial court did not abuse its discretion in declining to find appellee in contempt because appellant failed to establish by clear and convincing evidence that the repairs were major and necessary, that appellee violated the decree, or that appellant paid the claimed repair expenses.
2. The trial court did not abuse its discretion in denying contempt because appellant failed to establish the amount of Heather Deskins's fees and therefore failed to establish the precise amount of the equalization payment appellee owed.
3. The trial court did not abuse its discretion in denying contempt because the decree required both parties to cooperate in dividing their respective retirement accounts, and appellant failed to prove by clear and convincing evidence that appellee alone failed or refused to complete the transfers.
4. The magistrate's reference to the unclean-hands doctrine did not require reversal because appellant independently failed to prove appellee's contempt by clear and convincing evidence.

KEY QUOTATIONS

“To find an abuse of discretion, we must find that the trial court's decision was unreasonable, arbitrary, or unconscionable, and not merely an error of law or judgment.” (¶16)

“The party seeking to enforce a court order must establish, by clear and convincing evidence, the existence of a court order and the nonmoving party's noncompliance with the terms of that order.” (¶17)

“Once the prima facie case has been established by clear and convincing evidence, the burden shifts to the non-moving party to either rebut the initial showing of contempt or establish an affirmative defense by a preponderance of the evidence.” (¶17)

FACTUAL BACKGROUND

The parties divorced after marrying in 2013 and having no children. Their divorce decree required them to cooperate in selling their marital residence, divide major necessary repair expenses, make an equalization payment, and cooperate in transferring specified retirement-account interests. Appellant filed for bankruptcy and appealed the divorce decree, delaying the sale of the residence; appellee continued paying the mortgage, taxes, and insurance until the property sold in May 2023. Appellant later sought contempt based on alleged failures to pay repair costs, make the equalization payment, and complete retirement-account transfers, but the trial evidence did not establish the necessity or payment of the repairs, the precise equalization amount, or appellee's sole responsibility for the retirement-transfer delay.

PROCEDURAL HISTORY

After the parties' divorce decree divided their marital property, required cooperation in the sale of their marital residence, and ordered transfers of retirement assets, appellant filed a motion for contempt alleging that appellee violated those obligations. A magistrate denied the motion, and the trial court overruled appellant's objections and denied the motion. Appellant appealed, asserting four assignments of error concerning home repairs, the equalization payment, retirement-account transfers, and the unclean-hands doctrine.

DISPOSITION

affirmed

CASES CITED

- Gordon v. Gordon, 2023-Ohio-4780, ¶14 (5th Dist.)
- Blakemore v. Blakemore, 5 Ohio St.3d 217, 219 (1983)
- Messenger v. Carper, 2019-Ohio-611 (5th Dist.)
- Pedone v. Pedone, 11 Ohio App.3d 164, 165, 11 Ohio B. 247, 463 N.E.2d 656 (1983)
- Beach v. Beach, 99 Ohio App. 428, 431, 134 N.E.2d 162 (1955)
- State ex rel. Henneke v. Davis, 66 Ohio St.3d 119, 120, 609 N.E.2d 544 (1993)
- Wolf v. Wolf, 1st Dist. Hamilton No. C-090587, 2010-Ohio-2762, 2010 WL 2473277, ¶4
- Morford v. Morford, 85 Ohio App.3d 50, 55, 619 N.E.2d 71 (4th Dist. 1993)
- McDonald v. McDonald, 4th Dist. Highland No. 12CA1, 2013-Ohio-470, ¶17-18
- Ward v. Ward, 5th Dist. Fairfield Nos. 15-CA-33, 15-CA-53, 2016-Ohio-5178, ¶41-44
- Allen v. Allen, 10th Dist. Franklin No. 02AP-768, 2003-Ohio-954, ¶16
- Cross v. Ledford, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus
- State v. Jamison, 49 Ohio St.3d 182, 552 N.E.2d 180 (1990)
- Davis v. Flickinger, 77 Ohio St.3d 415, 418, 1997-Ohio-260, 674 N.E.2d 1159
- Berry-Silverman v. Silverman, 2023-Ohio-824 (5th Dist.)