

[Cite as *Camburn v. Camburn*, 2005-Ohio-6502.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Maria T. Camburn,	:	
Plaintiff-Appellee,	:	
v.	:	
Gregory S. Camburn,	:	No. 05AP-152 (C.P.C. No. 05DR-01-124)
Defendant-Appellee,	:	(REGULAR CALENDAR)
(Susan M. Lantz,	:	
Appellant).	:	

O P I N I O N

Rendered on December 8, 2005

Tyack, Blackmore & Liston Co., L.P.A., and Thomas M. Tyack, for appellant.

Ron O'Brien, Prosecuting Attorney, *Patrick E. Sheeran*, and *Patrick J. Piccininni*, for Judge Carole R. Squire.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations.

BROWN, P.J.

{¶1} This is an appeal by appellant, Susan M. Lantz, from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, finding appellant in direct contempt of court.

{¶2} On January 11, 2005, Maria Camburn filed a complaint for divorce against Gregory Camburn. In the ensuing domestic relations action, Gregory Camburn retained appellant, an attorney, to represent him, while attorney Barry Wolinetz represented Maria Camburn.

{¶3} On February 3, 2005, appellant, on behalf of her client, filed a motion for disqualification/recusal of the trial judge. In the accompanying memorandum in support, appellant alleged that the trial court, contrary to Canon 3 of the Code of Judicial Conduct, was involved in telephone communication with "one or both of the Third Party Defendants, Joseph and Dianna Caparrotti."

{¶4} The next morning (February 4), appellant attempted to make a proffer in the presence of a court reporter immediately before the trial judge entered the courtroom. The following exchange then took place in the courtroom between appellant, the court bailiff, and the trial judge:

[Appellant]: I've talked to Jack Coleman [sic] this morning. For purposes of the record, it's a quarter past 8:00. Yesterday at 5 o'clock the Judge ordered me to be here at 8:00 a.m. I had requested to make a proffer yesterday shortly after 5:00, and the judge indicated that I could not, and that if I wanted to, I had to be here this morning to do so. So I'm here to do so. Present in the courtroom are my client --

[Bailiff]: Susan, please stop talking. The judge is about to --

[Appellant]: Barry Wolinetz is present on behalf of the --

[Bailiff]: Susan, I asked you to stop and turn off your phone.

THE COURT: On the record. I'm talking I'll let you talk later. Right now the Court is responding.

[Appellant]: And also --

THE COURT: If you cannot submit to Court's authority today, Ms. Lantz, you will be directed to leave the courtroom.

[Appellant]: And I'm asking the Court –

THE COURT: Ms. Lantz, this is not your opportunity to speak. No, it is not your opportunity.

[Appellant]: I will make this –

THE COURT: Ms. Lantz, it is not your opportunity to – Ms. Lantz.

[Appellant]: We agreed to be here at 8:00 to make my proffer, which I am –

THE COURT: Ms. Lantz.

[Appellant]: -- at this time.

THE COURT: We're off the record now.

(Thereupon a conversation was held off the record.)

THE COURT: Back on the record. I'm finding you in direct contempt of this Court.

(Tr. 2-3.)

{¶5} Later that morning, appellant made the following proffer before a court reporter:

* * * I'm going to now make the proffer I attempted to make at 8:15. I have submitted Defendant's Exhibit A, which is a multiple-paged document detailing the events that occurred in this courtroom.

The occurrences: The judge calling a witness ex parte in violation of Judicial Code of Conduct, Canon 3; the motion for disqualification filed yesterday; her refusal all day long to permit me a court reporter. Even when the court reporter was called and appeared, yourself, at 4:52 p.m. the Court did not permit testimony.

At 5 o'clock p.m. I specifically requested that I be permitted a proffer. The judge interrupted me, informed me that I was not permitted to make a proffer.

This morning in making the proffer the bailiff interrupted me, basically making it impossible for me to tender my proffer. Opposing counsel did the same thing. The court reporter was instructed by the judge to not record testimony. The judge entered the courtroom and would not allow what she was saying to be recorded.

The judge has basically ordered that – made some type of finding, without affording me due process, that I'm in direct contempt of the Court. I was here pursuant to the judge's instructions to make my proffer, which she instructed me to do at 8:00 a.m. this morning. In the course of doing that the Court interrupted me. It was going to proceed with the hearing.

(Tr. 2-3.)

{¶6} The trial court's contempt finding was journalized by entry filed February 4, 2005. In its entry, the court imposed a \$100 fine, but suspended the fine on the condition that appellant apologize to the court on the record and submit to the authority of the court for the remainder of the proceedings.

{¶7} On appeal, appellant sets forth the following assignment of error for review:

THE FINDING OF THE TRIAL COURT THAT THE APPELLANT WAS IN DIRECT CONTEMPT IS NOT SUPPORTED BY THE EVIDENCE AND IS CONTRARY TO LAW[.]

{¶8} In her sole assignment of error, challenging the trial court's finding of contempt, appellant argues that she attempted to place a proffer on the record of proceedings on the morning of February 4, 2005, based upon her understanding of the trial court's directive, one day earlier, that such a proffer could be made prior to the commencement of court the next morning. Appellant maintains that she was respectful to

the court, that her conduct was aimed at protecting her client's interests, and that the court erred in finding her to be in direct contempt.

{¶9} Contempt of court is generally defined as a "disobedience or resistance to a process, order, rule, or judgment of a court," and involves conduct " 'which brings the administration of justice into disrespect, or which tends to embarrass, impede or obstruct a court in the performance of its functions.' " *Durst v. Durst*, Seneca App. No. 13-02-38, 2003-Ohio-2029, at ¶16, quoting *Denovchek v. Trumbull Cty. Bd. of Commrs.* (1988), 36 Ohio St.3d 14, 15. The contempt power granted to a court is "that which enables a court to vindicate its authority in the face of defiance from one subject to that authority." *State ex rel. Celebrezze v. W.R.I.* (Apr. 4, 1988), Vinton App. No. 435. A trial court's finding of contempt will not be reversed on appeal absent an abuse of discretion. *Durst*, at ¶15.

{¶10} Under Ohio law, contempt may be either direct or indirect, and is further classified as either civil or criminal depending upon the character and purpose of the sanctions imposed. *Spencer v. Spencer*, Muskingham App. No. CT2004-0044, 2005-Ohio-5495, at ¶14. In the instant case, the trial court made a finding of direct contempt, which has been defined as "one that occurs in the presence of the court or so near to it as to obstruct the orderly administration of justice, and may be summarily punished." *In re Contempt of Gregg*, Cuyahoga App. No. 85679, 2005-Ohio-4996, at ¶9.

{¶11} In its February 4, 2005 entry, the court cited the following grounds as the basis for contempt:

* * * Attorney Lantz engaged in discourteous conduct which is degrading to a tribunal, in the presence of or so near the Court or Judge, as to obstruct the administration of justice, by disregarding the Court's directives and refusing to comply with the Court's and bailiff's repeated requests that she turn off her

cellular telephone; that she provide information with respect to the whereabouts of her witness in the *ex parte* emergency temporary custody order proceedings; and that she cease and desist from interrupting the Court's attempts to commence the proceedings and protect the minor children involved herein who are allegedly subject to an imminent threat of physical and/or emotional abuse. * * *

(Emphasis sic.)

{¶12} A review of the record indicates that a portion of the findings cited in the court's contempt entry include acts of alleged misconduct not reflected by the transcript of the morning proceedings of February 4, 2005. Specifically, the record does not reveal repeated requests by the bailiff or trial court for appellant to turn off her cell phone; rather, the transcript indicates only one such request by the bailiff (apparently made before the trial judge entered the courtroom). Nor does the record reflect a colloquy between appellant and the court regarding counsel's failure to provide information with respect to the location of a witness.

{¶13} As the portion of the transcript quoted above reflects, the trial judge, shortly after entering the courtroom, ordered the discussion to be continued off the record, and we recognize that the parties may have discussed those issues at that time (or prior to the time the trial judge initially entered the courtroom). However, in considering an appeal from a finding of contempt, "a reviewing court is bound by the record," and facts supporting the imposition of contempt must "affirmatively appear in the record." *Warren v. DeMarco*, Trumbull App. No. 2003-T-0052, 2004-Ohio-3191, at ¶17.

{¶14} The remaining issue, therefore, is whether the trial court abused its discretion in finding that the conduct by appellant, in attempting to make her proffer at or near the start of proceedings on the morning of February 4, posed an actual or imminent

threat to the administration of justice. As noted, appellant was making her proffer at the time the trial judge entered the courtroom, resulting in the judge admonishing appellant several times to stop talking. When appellant responded, "[w]e agreed to be here at 8:00 to make my proffer," the court then ordered the proceedings "off the record." The court shortly thereafter announced its finding of contempt.

{¶15} Courts have recognized that " 'the line between vigorous advocacy and actual obstruction defie[s] strict delineation, [but] doubts should be resolved in favor of vigorous advocacy.' " *In re Contempt of Greenburg* (C.A.9, 1988), 849 F.2d 1251, 1255 (counsel's loud voice, failure to heed court's order to sit down, and slamming hand on table "do not constitute the type of 'exceptional circumstances' that pose an immediate threat to the judicial process"). See, also, *In re Lodico*, Stark App. No. 2003-CA-00446, 2005-Ohio-172, at ¶49 ("displays of ill-mannered conduct are not summarily punishable under the law of direct contempt unless they pose an imminent threat to the administration of justice"); *In re Brannon*, Montgomery App. No. 19619, 2003-Ohio-4423 (defense counsel's conduct in twice interrupting prosecutor, expressing disagreement with trial judge's ruling on one occasion, and requesting judge to hold her voice down after judge spoke loudly when she admonished counsel to stop bickering did not constitute contempt of court).

{¶16} Upon review of the record in this case, we are unable to conclude that the conduct at issue was of a nature so disruptive that it crossed the line from vigorous advocacy to behavior that obstructed the efficient administration of justice. The transcript reflects an effort by counsel to preserve, albeit zealously on behalf of her client, an issue on the record by means of a proffer. The actual exchange between appellant and the trial

court was brief, constituting less than two pages of the hearing transcript, and it does not appear from the transcript that the proceedings were unduly prolonged by appellant's actions. Further, appellant's comments were only related to the proffer, and we do not construe counsel's remarks as intended to be disrespectful.

{¶17} We are cognizant that the trial judge advised counsel that she would be permitted to "talk later," and we do not condone appellant's failure to immediately comply with the court's directive to stop talking. However, appellant may have continued to press her point out of uncertainty whether the court, in indicating she would be permitted to talk later, would also grant her permission to make a proffer, especially in light of the events the previous day (during which, according to appellant, the trial court refused her request to place a proffer on the record before a court reporter). Moreover, although we are aware of no requirement that a trial judge issue a warning that a contempt finding is imminent, such notice in the instant case might have been sufficient to cause counsel to acquiesce to the court's initial directive and would have provided the basis for a finding of contempt had she failed to do so.

{¶18} We make clear that we do not question a trial court's concern for placing a "high premium on the importance of maintaining civility and good order in the courtroom." *Eaton v. City of Tulsa* (1974), 415 U.S. 697, 700, 94 S.Ct. 1228 (Powell, J., concurring). Balanced against this concern, however, is the fact that it is "essential to a fair administration of justice that lawyers be able to make honest good-faith efforts to present their clients' cases." *In re McConnell* (1962), 370 U.S. 230, 236, 82 S.Ct. 1288. In the instant case, because several of the reasons cited by the court in the contempt entry are not apparent from the record, and even accepting that appellant's attempt to make her

proffer at the start of the proceedings was ill-advised, under the record before this court, and under these circumstances, we are constrained to conclude that the trial court abused its discretion by finding appellant in direct contempt.

{¶19} Based upon the foregoing, appellant's single assignment of error is sustained, the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is reversed, and this matter is remanded to that court for further proceedings in accordance with law, consistent with this opinion.

Judgment reversed and cause remanded.

KLATT and McGRATH, JJ., concur.
