Cite as 2010 Ark. App. 743

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA 10-294

	Opinion Delivered November 3, 2010
ROBERT O. SHAFER, JR. APPELLANT	APPEAL FROM THE WHITE COUNTY CIRCUIT COURT [NO. PR-08-105-3]
V.	HONORABLE CRAIG HANNAH, JUDGE
ESTATE OF ROBERT O. SHAFER, SR. APPELLEE	AFFIRMED

COURTNEY HUDSON HENRY, Judge

Appellant Robert O. Shafer, Jr., appeals an order entered by the Circuit Court of White County finding him in contempt and requiring him to pay $2,500 in administrative costs, expenses, and attorney's fees to appellee, the Estate of Robert O. Shafer, Sr. In holding appellant in contempt, the circuit court found that appellant willfully disobeyed an order commanding him to deliver a plow to the executor of the estate. For reversal, appellant asserts that the contempt order must be reversed because the directives of the circuit court's previous order were not clear. We affirm.

The record reflects that Robert O. Shafer, Sr., died testate on May 26, 2007, leaving his three children, appellant, Karl Shafer, and Roberta Payne, as his heirs. Tension within the family caused the circuit court to appoint Robert Hudgins, an attorney and certified public

accountant, to serve as the executor of the estate, even though the will nominated appellant and Karl as co-executors. This measure did not assuage the discord among the children. At a contempt hearing held on June 24, 2009, testimony revealed that Karl, with the assistance of law enforcement, transported to appellant's home a flat-bed trailer loaded with property that had belonged to their father. Appellant testified that the property remained on the trailer and that it was located on his father's home place that had since been purchased by his brother-in-law. According to the sheriff's report, dated August 14, 2007, the property on the trailer included two plows and a breaking plow. In a letter written to Hudgins, appellant's attorney acknowledged that one plow was an asset of the estate but claimed that appellant was entitled to the other plow and the breaking plow. At the conclusion of the hearing, the circuit court ordered appellant to deliver the flat-bed trailer and one of the plows sitting on the trailer to Hudgins in ten days. In its written order filed on October 28, 2009,[1] the court stated:

> The court finds that a certain sixteen foot long trailer, two Masonic rings and one of the plows currently on the trailer are property of the estate; and Robert O. Shafer, Jr., is ordered to deliver the trailer, the rings, and a plow of his choice, from those on the trailer, to a location designated in writing by the personal representative within ten days.

On December 9, 2009, Hudgins filed a petition for contempt alleging that appellant had violated the order by not delivering one of the two plows that was on the trailer. The circuit

[1] The circuit court also found appellant in contempt for violating a previous order directing him to deliver the trailer to Hudgins. Appellant appealed the contempt finding, but we dismissed the appeal for the lack of a final order because the circuit court had not yet imposed sanctions against appellant. *Shafer v. Estate of Robert O. Shafer, Sr.*, 2010 Ark. App. 476.

court conducted a hearing on this matter on December 22, 2009. Karl testified that appellant delivered the trailer and that a solitary plow shank was attached to the trailer with bailing wire at delivery. Karl produced the rusted shank in open court and testified that the shank was the "part that goes into the dirt that digs the dirt up." Karl said that the shank could not be used for plowing without being attached to another piece of equipment and that the shank did not even have a hitch to mount behind a tractor. He testified that, by itself, the shank was useless. The circuit court admitted into evidence three photographs of the trailer with the shank tied onto it.

Karl further testified in reference to photographs that he said represented the equipment he delivered to appellant on the trailer in August 2007. From the photographs, he described a beam with a three-point hitch with disks on either end, a middle buster with a v-shaped plow, and the breaking plow that appellant claimed as his own. Karl testified that the shank was not one of those items and that the shank was not on the trailer when he delivered it to appellant.

Melvin Peters, who had been the deceased's neighbor, testified that he helped Karl load the trailer in 2007. He also personally observed the shank that was tied onto the trailer that was delivered to Karl by appellant. Peters testified that the shank was not among the items that he helped Karl load onto the trailer.

Appellant testified that the item he delivered to Karl was a plow and that it could be used to plow ground. He said, "You can get ahold of it and you can drag it right through the

ground and plow ground with it just like you can use a hoe." Appellant stated that he was given a choice of plows, that he delivered that one because it was his father's plow, and that the plow he delivered was one of the two plows that was on the trailer. In rebuttal, Karl said that it was possible that the shank was on the trailer. However, he testified that he did not think that it was and that he was "almost sure that it was not."

In its remarks from the bench, the circuit court found the testimony of Karl and Peters to be highly credible. The court stated that appellant was "playing games" with the court and that it had ordered a complete plow to be delivered, not merely "one little piece of metal." The circuit court found appellant in contempt and ordered appellant to pay the estate $2,500 in administrative costs, fees, and expenses. In addition, the court permitted appellant to choose from the photographs that had been introduced into evidence which plow he wanted and directed appellant to deliver it to Hudgins within ten days. Appellant has brought this appeal from the court's order memorializing its findings.

In urging reversal of the circuit court's decision, appellant contends that the October 2009 order was not definite in its terms as to which plow he was to deliver and that he accomplished what he believed was required of him by returning a plow of his choice. The willful disobedience of a valid court order is contemptuous behavior. *Ark. Dep't of Human Servs. v. Briley*, 366 Ark. 496, 237 S.W.3d 7 (2006). However, before one can be held in contempt for violating a court's order, the order must be definite in its terms, clear as to what duties it imposes, and express in its commands. *Doss v. Miller*, 2010 Ark. App. 95, ___ S.W.3d

___. As a general rule, judgments are construed like any other instruments; the determinative factor is the intention of the court, as gathered from the judgment itself and the record. *Terry v. White*, 373 Ark. 366, 288 S.W.3d 194 (2008).

Contempt is divided into criminal contempt and civil contempt. *Holifield v. Mullenax Fin. & Tax Advisory Group*, 2009 Ark. App. 280, 307 S.W.3d 608. Criminal contempt preserves the power of the court, vindicates its dignity, and punishes those who disobey its orders. *Id*. Civil contempt protects the rights of private parties by compelling compliance with orders of the court made for the benefit of private parties. *Id*. The focus is on the character of the relief rather than the nature of the proceeding. *Id*. A contempt fine for willful disobedience which is payable to the complainant is remedial and therefore constitutes a fine for civil contempt. *Omni Holding and Dev. Corp. v. 3D.S.A., Inc.*, 356 Ark. 440, 156 S.W.3d 228 (2004). However, if the fine is payable to the court, it is punitive and constitutes a fine for criminal contempt. *Id*. Here, the court ordered appellant to pay $2,500 of the estate's expenses and attorney's fees it incurred as a result of appellant's behavior. Being remedial in nature and payable to the complainant, we conclude that it is civil contempt. *Id*. *See also Briley*, *supra* (holding that requiring payment of the complainant's out-of-pocket expenses constitutes civil contempt). We will not reverse a circuit court's finding of civil contempt unless that finding is clearly against the preponderance of the evidence. *Henderson v. Teague*, 2009 Ark. App. 456.

The record of the hearing that produced the October 2008 order reflects that the trailer had three plows on it. One was noted to be a breaking plow that appellant claimed, and the circuit court allowed him to keep it. The court directed appellant to return one of the remaining two plows on the trailer. As we view the matter, the circuit court's order was crystal clear in its directive. Instead of abiding by the court's order, appellant delivered a shank but not either one of the plows that was loaded on the trailer. We hold that the October 2009 order suffered no infirmity and that the circuit court's finding of contempt is not clearly against the preponderance of the evidence.

Affirmed.

ABRAMSON and BROWN, JJ., agree.