ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION IV

CA 06-1405

JUNE 20, 2007

ROBERT BYNUM	APPELLANT	APPEAL FROM THE GREENE COUNTY CIRCUIT COURT [NO. DR2005-420(F)]
V.		HONORABLE WILLIAM LEE FERGUS, JUDGE
FAWN BYNUM	APPELLEE	AFFIRMED

This one-brief appeal is lodged on behalf of appellant Robert Bynum, who challenges the finding that held him in contempt of court and ordered a thirty-day jail sentence. His ex-wife, appellee Fawn Bynum, petitioned for and was granted a general order of protection in August 2005. Fawn petitioned to hold Robert in contempt for violating the order, accusing him of harassing her. Robert was held in contempt after a hearing conducted on April 4, 2006; the order from that hearing was entered on May 19, 2006. The judge found that she would not impose sentence for this contemptuous behavior, but "that any other actions that he takes that serve no legitimate purpose but to bother or harass the Petitioner, could be considered a violation of this order, and a 30 to 120 day jail sentence will be imposed." On June 6, 2006, an order to show cause was entered for Robert to appear and demonstrate why

he should not be held in contempt for failure to comply with the orders of the court. The show-cause hearing was conducted on September 14, 2006, and an order was filed the next day concluding that Robert was continuously in contempt of the orders, finding in part that:

> Such violations include but are not limited to him revving his engine at 10:20 p.m. at night so loudly that there was an attempt to burn up the engine, and passing slowly in front and behind of the Petitioner's property for no legitimate purpose. The Court finds that Petitioner's Exhibit number five (5) [a photograph] which exhibits the Respondent standing up with his hands waving in the air, is a clear violation of this Court's Order and shows there is no legitimate purpose for such behavior.

The trial judge did not believe Robert's assertion that he appeared only to pick up personal property he was awarded in the divorce decree, noting that he could have contacted his lawyer to make arrangements. The judge ordered a thirty-day imprisonment in the county jail, although it was held in abeyance on appeal. Appellant filed a timely notice of appeal, contending that the contempt order is invalid because there were non-specific proscriptions for his conduct, because his behavior did not rise to contemptuous behavior, and because the sentence had previously been remitted. We disagree with his arguments and affirm.

Contempt is divided into criminal contempt and civil contempt. *Johnson v. Johnson*, 343 Ark. 186, 33 S.W.3d 492 (2000). Criminal contempt preserves the power of the court, vindicates its dignity, and punishes those who disobey its orders. *Johnson*, 343 Ark. at 197, 33 S.W.3d at 499. Civil contempt, on the other hand, protects the rights of the private parties by compelling compliance with orders of the court made for the benefit of private parties. *Id*. *See also Fitzhugh v. State*, 296 Ark. 137, 138, 752 S.W.2d 275, 276 (1988) (civil contemnors carry the keys of their prison in their own pockets, but criminal contempt carries an unconditional penalty that cannot be purged); *Baggett v. State*, 15 Ark. App. 113, 116, 690

S.W.2d 362, 364 (1985) ("[C]riminal contempt punishes while civil contempt coerces."). This case concerned criminal contempt to punish appellant.

In an appeal of a case of criminal contempt, we view the record in the light most favorable to the decision of the trial judge and sustain that decision if it is supported by substantial evidence, viewing the evidence in the light most favorable to trial court's decision. *Atkinson v. Lofton*, 311 Ark. 56, 842 S.W.2d 425 (1992). Furthermore, credibility determinations are left to the finder of fact. *See Silvey Cos. v. Riley*, 318 Ark. 788, 888 S.W.2d 636 (1994).

Considering the foregoing statements of law, we examine what occurred at the trial court level, viewed in the light most favorable to the trial court findings of fact and determinations of credibility. Fawn testified at the show-cause hearing that she and Robert had divorced, and Robert was given thirty days in which to retrieve his property, if he was accompanied by an officer of the law. Fawn said he did not do that, and instead, he moved a trailer onto adjoining land on the Saturday after they were divorced. She said that Robert continually drove back and forth in front of her property, staring at her and her family, often late at night. She also recounted Robert walking around her property and mumbling. One night when a friend came to pick her up for work, Robert shined a spotlight at the vehicle, and her friend was nervous for Fawn to get in the vehicle to leave the place.

Fawn entered into evidence several photographs of Robert in his truck driving past her residence, and in one, he is standing outside the truck with his arms in the air "doing a jig." Fawn recalled one night in early June at about 10:30 p.m. when he revved his engine "like

someone was trying to blow a motor up," and she saw Robert parked right against her newly erected barbed-wire fence. Fawn also complained that Robert would show up at the local post office or gas station pump where she was, and it was bothersome. Fawn's son testified, basically corroborating his mother's testimony. Appellant testified that he merely drove on the road to get to his residence, that he had to get his mail and gasoline in town, and that he was doing nothing to bother Fawn or her family.

The trial judge found that even though some of Robert's behavior did not rise to frank harassment, Robert was nonetheless "continuously in contempt" since the last time they were in court in May 2006 because his behaviors served no legitimate purpose. The actual text of the May 2006 order, which he was found to have violated in September, prohibited him from "any other actions that he takes that serve no legitimate purpose but to bother or harass the Petitioner."

Appellant asserts that he was prohibited from engaging in actions with a purpose to annoy or harass Fawn, not from engaging in actions that served no legitimate purpose. Because there is a distinction between the two, he asserts, then there can be no findings of contempt. We disagree. The findings made fit the order he violated. To the extent that he argues that there were legitimate explanations he gave for being in the vicinity, those claims did not have to be believed by the trial judge, who sat as finder of fact. There is substantial evidence to find that appellant was in contempt of the May 2006 order.

Appellant also argues that the proscription was too vague to inform him of the acts to which he was being directed not to engage in. For a person to be held in contempt for

violating a court order, that order must be clear and definite as to the duties imposed upon the party, and the directions must be expressed rather than implied. *Jones v. Jones*, 320 Ark. 449, 898 S.W.2d 23 (1985). We believe that in the context of this domestic-relations proceeding, Robert was clearly advised not to bother or harass Fawn by any actions that served no legitimate purpose. We hold that under these circumstances, where Robert and Fawn had been in court on a prior occasion to stop his annoying behaviors and he was cautioned to stop, this Order of Protection was not fatally vague.

Appellant last contends that because the earlier finding of contempt in May was in effect suspended, then it amounted to a remission that could not later be imposed. A suspension of a contempt citation sentence amounts to a remission. *Higgins v. Merritt*, 269 Ark. 79, 598 S.W.2d 418 (1980); *Johnson v. Johnson*, 243 Ark. 656, 421 S.W.2d 605 (1967); *Songer v. State*, 236 Ark. 20, 364 S.W.2d 155 (1963). Our supreme court has reiterated this rule on other occasions, holding that an attempt to suspend the execution of a sentence for contempt of court, other than a mere postponement, is invalid and amounts to a complete remission of the punishment. *Johnson, supra*; *James v. James*, 237 Ark. 764, 375 S.W.2d 793 (1964). Appellant's argument is misplaced.

Appellant actually was given a thirty-day contempt citation in the order on appeal for *new* violations that occurred after the May 2006 order, warning him that further contemptuous behavior would result in punishment. Had appellant desired to raise the issue of a suspended sentence, then this would have been a potential argument to raise regarding

the May 2006 order, not the September 2006 order on appeal. Thus, we reject his argument.

Affirmed.

PITTMAN, C.J., and HEFFLEY, J., agree.