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# SUPREME COURT OF ARKANSAS

No. CV-18-733

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| IN THE MATTER OF THE GUARDIANSHIP OF BETTY BEVILL<br><br>JONATHAN R. STREIT<br>APPELLANT<br><br>V.<br><br>STATE OF ARKANSAS<br>APPELLEE | **Opinion Delivered:** June 13, 2019<br><br>APPEAL FROM THE WHITE COUNTY CIRCUIT COURT [NO. 73PR-18-90]<br><br>HONORABLE THOMAS M. HUGHES, JUDGE<br><br>AFFIRMED. |

**RHONDA K. WOOD, Associate Justice**

Attorney Jonathan Streit appeals the circuit court's contempt finding and $100 fine. Streit argues that the evidence was insufficient to support a finding of contempt. We affirm.[1]

In May 2018, Streit appeared before the circuit court on a petition for permanent guardianship over the person and estate of Betty Bevill. Evidently in the months preceding

[1]This court has typically reviewed attorney contempt cases pursuant to Arkansas Supreme Court Rule 1-2(a)(5), which states that the Arkansas Supreme Court has jurisdiction over the "discipline of attorneys-at-law." *See Bloodman v. State*, 2010 Ark. 169, at 1, 370 S.W.3d 174, 175. We now conclude that attorney-contempt cases do not fall under the meaning of Rule 1-2(a)(5), and prospectively, we direct the clerk of the court to assign them to the court of appeals.

the hearing, Streit was involved in a separate, unrelated appeal involving the same circuit court. *See In re Estate of Edens*, 2018 Ark. App. 226, 548 S.W.3d 179. In *Estate of Edens*, Streit represented the client of another attorney, Simpson, on an appeal of a denial of a recusal motion. In that case, Simpson had argued that the circuit court was biased against him and should recuse from all cases in which Simpson was associated. The circuit court denied the motion to recuse. Streit filed the appeal for Simpson's client, and the court of appeals reversed. *Id.* The mandate in *Estate of Edens* issued in April 2018, and approximately one month later, Streit appeared before the same circuit court in this case.

Streit argues that because he appealed and successfully reversed the circuit court in *Estate of Edens*, that the circuit court took issue with him at the guardianship hearing in the instant matter. Streit alleges that at the hearing, the circuit court immediately noted several deficiencies in the case file, including the lack of necessary professional medical evidence. The circuit court was unwilling to allow the matter to proceed without compliance with the statutory requirements. At that point the following exchange occurred.

> MR. STREIT: So just to be clear, if there is an individual who recognizes and has been diagnosed with dementia and wishes for a guardianship to be placed over her by her daughter –
>
> THE COURT: Sir, you don't need to be clear. I told you the answer.
>
> MR. STREIT: Judge – I understand that, Judge. I'm going to make my record.
>
> THE COURT: Why don't you –
>
> MR. STREIT: I'm going to make my record.

THE COURT: I tell you what. Why don't you go get the book and you can read it for yourself?

MR. STREIT: I'm going to make my record because, Judge –

THE COURT: I don't care if you make your record. You can stand here –

MR. STREIT: Judge, Judge, Judge –

THE COURT: Sir, –

MR. STREIT: You and I –

THE COURT: You can make your record.

MR. STREIT: You and I –

THE COURT: You can make your record, sir –

MR. STREIT: You and I both know what this is about.

THE COURT: We do? I don't know what it's about.

MR. STREIT: This is about an appeal on which you were reversed. That's what this is about.

THE COURT: Oh, is that what it's about?

MR. STREIT: Yes.

THE COURT: No, sir. Five minute recess.

When the court returned from recess, it re-called Streit's case and recited the portion of the probate code relating to medical evaluations. After explaining that it would not proceed without a written medical evaluation in the case file, the circuit court began reading aloud the Arkansas statute on contempt. Thereafter, it informed Streit,

> [A]s I recall, after I had informed you of what I thought were deficiencies, you said to me, we all know what this is about . . . . My response was, no I don't know what it was about. And at that point, you accused me of having motivation to call these requirements to your attention and to enforce the requirements, at least as to the requirement of having the written report from a doctor, and said I was doing this for something that was not related to this and was in fact I believe motivated by prejudice towards you. Am I correct?

Streit responded affirmatively. The circuit court asked Streit, "Do you wish to take that position?" To which Streit responded, "I do believe that, yes." As a result, the circuit court found Streit in contempt of court and assessed a fine of $100.

Streit argues that the evidence is insufficient to sustain a contempt finding. Arkansas Code Annotated section 16-10-108(c) (Repl. 2010) controls the court's power to punish for criminal contempt. A contemptuous act includes the "disorderly, contemptuous, or insolent behavior committed during the court's sitting, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due to its authority." Ark. Code Ann. § 16-10-108(a)(1). If committed in the immediate view and presence of the court, contempt may be punished summarily. Ark. Code Ann. § 16-10-108(c). Criminal contempt preserves the power of the court, vindicates its dignity, and punishes those who disobey its orders. *McCullough v. State*, 353 Ark. 362, 108 S.W.3d 582 (2003). The attorney's oath similarly provides, "I will maintain the respect and courtesy due to courts of justice, judicial officers, and those who assist them." In criminal-contempt cases, we view the record in the light most favorable to the circuit

court's decision and sustain that decision if it is supported by substantial evidence and reasonable inferences. *Id.*

Here, viewing the record in the light most favorable to the circuit court's decision, substantial evidence supports the decision to hold Streit in contempt. When the circuit court informed Streit that it would not proceed with the hearing because of the lack of a written medical record, Streit immediately questioned the judge's integrity in open court. Streit persisted with this theory even after the circuit court explained its reasoning for the decision. The record reflects Streit interrupted the circuit court on at least three occasions during the tense exchange. The circuit court allowed Streit an opportunity to reconsider his accusation, but Streit was unwilling. We emphasize that a court's contempt power should be used cautiously and sparingly; however, because we find substantial evidence supports the decision that Streit's actions displayed a lack of regard for the court's integrity and demonstrated disrespect, we affirm.

Affirmed.

BAKER and HART, JJ., dissent.

**KAREN R. BAKER, Justice, dissenting.** Because the record does not support the majority's decision to affirm the circuit court, I dissent from the majority opinion and would reverse and dismiss this matter.

This appeal stems from a guardianship matter and the statutory requirements necessary for the appointment of a guardian. During a discussion between Judge Hughes

and Streit regarding the statutory requirements and Streit's attempt to preserve the record, the circuit court erroneously held Streit in contempt.

Here, a careful review of the record demonstrates that at the commencement of the hearing, Judge Hughes immediately set the tone by pointing out deficiencies in Streit's case. Streit attempted to respond to Judge Hughes's objections, but before Streit could do so, Judge Hughes instructed him that he would not place a guardianship over the individual "without having the necessary records." Streit attempted to seek clarification from the court, but Judge Hughes interjected, stating, "Sir, you don't need to be clear. I told you the answer." Streit attempted to make his record, and after Judge Hughes interrupted him several times, the following dialogue ensued:

JUDGE HUGHES: You can make your record, sir –

MR. STREIT: You and I both know what this is about.

JUDGE HUGHES: We do? I don't know what it's about.

MR. STREIT: This is about an appeal on which you were reversed. That's what this is about.

JUDGE HUGHES: Oh, is that what it's about?

MR. STREIT: Yes.

JUDGE HUGHES: No, sir. Five minute recess.

After this exchange, the circuit court recessed for twelve minutes, reconvened and immediately continued to challenge Streit's position on the guardianship requirements. The record demonstrates that when Judge Hughes returned to court, he began reciting

portions of the statutes at issue. Streit again sought clarification from the court on the Judge's previous ruling, igniting another discussion on the merits of Judge Hughes's ruling which Streit sought to make a record. Following a drawn-out dialogue, Judge Hughes then read a portion of the Arkansas statute on contempt. He presented to Streit a summary of his impression of the events that unfolded: "You accused me of having motivation to call these requirements to your attention. . . and I said I was doing this for something that was not related to this and was in fact I believe motivated by a prejudice towards you. Am I correct?" Streit responded affirmatively, preserving his record and maintaining his earlier position. Judge Hughes asked Streit again, "Do you wish to take that position?" to which Streit replied, "I do believe that, yes." Judge Hughes then found Streit in contempt. This finding is simply wrong and should be dismissed.

"This court has, time and again, noted that lawyers must make a record when objecting and moving for some form of relief. *See*, *e.g.*, *Chapman v. State*, 343 Ark. 643, 38 S.W.3d 305 (2001) (holding that objection on basis of Ark. R. Evid. 803 was argued for the first time on appeal where the record revealed no objection on that particular basis; "Parties are bound on appeal by the scope and nature of the objections and arguments they presented at trial.")." *McCullough v. State*, 353 Ark. 362, 370–71, 108 S.W.3d 582, 587 (2003) (Brown, J. dissenting); *Tri-B Advert. Co. v. Thomas*, 278 Ark. 58, 61, 643 S.W.2d 547, 548 (1982)("The objecting party must make a sufficient record to enable this court to rule on the issues presented. *See Bank of Ozark v. Isaacs*, 263 Ark. 113, 563 S.W.2d 707 (1978)"). Further, a misunderstanding between counsel and the Court which will not

support a finding of contempt. *See McCullough v. Lessenberry*, 300 Ark. 426, 780 S.W.2d 9 (1989);

*Lessenberry v. Adkisson*, 255 Ark. 285, 499 S.W.2d 835 (1973).

Here, the record clearly establishes that Streit attempted to make a record regarding the denial of his petition for appointment of a guardian. However, the majority fails to recognize the complexity of the multiple guardianship statutes at issue. The record demonstrates that there were several different statutes at issue. Streit, even needing clarification himself, asked Judge Hughes several times to explain his rulings so that Streit could respond. Consequently, it was necessary to make a record as to what was occurring—a petition for appointment of a guardian to a ward with dementia—and Streit sought to obtain a ruling in the record as a potential ground for appeal. Further, after Judge Hughes recessed and then returned, Judge Hughes himself decided to revisit the issue, not Streit. After reading aloud the statute on criminal contempt, Judge Hughes asked Streit if he still maintained his earlier position regarding his alleged bias. In doing so, he essentially backed Streit into a corner: Streit could either confirm his position that Judge Hughes's interpretation of the guardianship statute was erroneous based on his bias even while presuming he would subsequently be charged with contempt, or answer in the negative, potentially responding with dishonesty, and failing to preserve the record for his client.

In short, the record shows that Streit's statements were made based on his right as counsel to make a record and not contemptuous. The crux of the issue here seems to be Judge Hughes's reaction to his previous experiences with Streit and perceived criticism

rather than Streit's behavior. In *Clark v. State*, 291 Ark. 405, 408, 725 S.W.2d 550, 553 (1987), we cited with approval the United States Supreme Court discussing the law on contempt:

> "The vehemence of the language used is not alone the measure of the power to punish for contempt. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil. . . . [T]he law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate." *Craig v. Harney*, 331 U.S. 367, 376 [67 S.Ct. 1249, 1255, 91 L.Ed. 1546] (1947). "Trial courts . . . must be on guard against confusing offenses to their sensibilities with obstruction to the administration of justice." *Brown v. United States*, 356 U.S. 148, 153 [78 S.Ct. 622, 625, 2 L.Ed.2d 589] (1958).

Here, the record does not support Streit's actions were contemptuous.

Based on my discussion above, I dissent.

HART, J., joins.

*Lightle, Raney, Streit & Streit, LLP*, by: *Jonathan R. Streit*, for appellant.

*Leslie Rutledge*, Att'y Gen., by: *Jacob H. Jones*, Ass't Att'y Gen., for appellee.