RENDERED: DECEMBER 1, 2000; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001124-MR

MINDY MCKINNEY — APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE LEWIS NICHOLLS, JUDGE
ACTION NO. 96-CI-00188

STEVEN O'DEL CREMEANS — APPELLEE

OPINION AND ORDER
DISMISSING APPEAL
** ** ** ** **

BEFORE: EMBERTON, McANULTY AND SCHRODER, JUDGES.

EMBERTON, JUDGE: Mindy McKinney appeals from an order of the Greenup Circuit Court holding her in contempt for failure to comply with visitation orders. Her sole allegation of error is that there was no evidence whatsoever that would support a finding of contempt. Because we are convinced that this appeal has been rendered moot by appellant's service of the sentence imposed, we dismiss the purported appeal from the judgment of contempt.

In March 1999, appellee filed a motion for a rule against appellant based upon her failure to abide by the terms and provisions of visitation orders between the parties. A

hearing was conducted on April 23, 1999, on this motion, as well as on appellant's motion for a rule against appellee based upon his failure to pay court-ordered child support. At the completion of the hearing, the trial court found both parties to be in contempt of court and sentenced each of them to seven days in Greenup County Jail. It further ordered the parties to attend a second parenting class (they had previously been directed to and did attend a parenting class) held by the Greenup Circuit Court. Although the parties were initially directed to begin service of the contempt sentences immediately, appellant's sentence was deferred at her request until May 8, 1999, to allow her to complete her final examinations at the University of Kentucky. A subsequent motion to alter or amend appellant's contempt citation was denied by order entered May 7, 1999.

In her brief to this court, appellant states that upon the denial of her motion to alter or amend the judgment, she "immediately surrendered herself and has in fact served seven days in the Greenup County Jail pursuant to the court's contempt citation." In this appeal, appellant seeks reversal of the judgment of contempt and expungement of that judgment from her record. Preliminary to a discussion explaining our holding that the issues advanced in this appeal are moot, a brief recitation of the distinctions between civil and criminal contempt is helpful.

In Commonwealth, ex rel Bailey v. Bailey,[1] the court distinguished civil contempt from criminal contempt as follows:

[1] Ky. App., 970 S.W.2d 818 (1998).

> Civil contempt involves the failure of one to do something under order of court — generally for the benefit of a party litigant. (Citation omitted). The purpose of civil contempt is to coerce rather than punish — to compel obedience to and respect for an order of the court. The primary characteristic of civil contempt is the fact that the contemnors "carry the keys of their prison in their own pocket." Blakeman v. Schneider, Ky., 864 S.W.2d 903 (1993).
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> Criminal contempt is conduct "which amounts to an obstruction of justice and which tends to bring the court into disrepute." Gordon v. Commonwealth, 141 Ky. 461, 463, 133 S.W. 206, 208 (1911). It seeks to punish conduct which has already occurred rather than compel a course of action. It is the purpose of the punishment (rather than the fact of punishment per se) that distinguishes civil from criminal contempt. Blakeman, supra. If the court's purpose is to punish, the sanction is criminal contempt. If the court's purpose is to goad one into action or to compel a course of conduct, the sanction is civil contempt.[2]

Thus, according to Bailey, we must determine whether the purpose for appellant's contempt citation was strictly punishment or whether its purpose was essentially remedial, seeking to compel compliance with the court's visitation orders. Using the criteria set out in Bailey, we have no doubt that it is the latter. Thus, appellant's sentence was imposed pursuant to a finding of civil contempt.

It is clear from a reading of the record that the trial court's purpose was to compel compliance with future visitation and support orders. That he may have used imprisonment for past failures to get the parties' attention does not, in our opinion, detract in a sense from the trial court's ultimate purpose. He

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[2] 970 S.W.2d at 820.

noted on the record the parties' intentional failures to comply with support and visitation ordered. The trial court also emphasized the fact that the parties apparently had not learned from their previous parenting class and ordered that they attend another session. Based upon these factors, we are convinced that the contempt order was essentially civil in nature, an attempt to compel future compliance.

That being established, we fail to discern what relief this court could afford appellant. Having served her sentence and facing no collateral consequences from the judgment convicting her of civil contempt, all issues related to that judgment are moot.[3] We are admittedly at a loss as to appellant's request for an expungement of her record, considering the fact that the Commonwealth was never involved in any criminal prosecution in this case. We find absolutely no basis for a claim of entitlement to having such a matter expunged from the record of civil proceedings. In sum, there is simply no relief to be gained by this appeal.

The appeal from the judgment convicting appellant of civil contempt is dismissed as moot.

ENTERED: December 1, 2000 /S/ Thomas D. Emberton
JUDGE, COURT OF APPEALS

McANULTY, JUDGE, CONCURS.

SCHRODER, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT: NO BRIEF FILED FOR APPELLEE

[3] Dent v. State, 136 Ga. App. 366; 221 S.E.2d 228 (1975).

Gordon J. Dill
Ashland, Kentucky