

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001753-DG

SALLY WASIELEWSKI

APPELLANT

v.

ON DISCRETIONARY REVIEW
FROM HART CIRCUIT COURT
HONORABLE LARRY D. RAIKES, JUDGE
ACTION NO. 00-XX-00008

HON. JAMES BONDURANT, FORMER
JUDGE OF HART DISTRICT COURT;
COMMONWEALTH OF KENTUCKY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, McANULTY, AND MILLER, JUDGES.

MILLER, JUDGE: This matter is before us on discretionary review of an order of the Hart Circuit Court entered July 17, 2001. We affirm.

Appellant, Sally Wasielewski, served as counsel for a juvenile defendant charged with theft by unlawful taking. On November 27, 2000, appellant was representing the juvenile defendant in an adjudication hearing in the Hart District Court. During the adjudication hearing, the juvenile defendant took the stand and testified. The Commonwealth cross-examined the juvenile, thus precipitating the following colloquy:

[COMMONWEALTH:] How about the four-wheelers? What about them?

[APPELLANT:] The what?

[COMMONWEALTH:] The four-wheelers.

[APPELLANT:] I'm unaware of any 4-wheelers in this case.

[COMMONWEALTH:] Well, would you let him answer the question?

[APPELLANT:] Well I mean I'm - I don't think that this is the same case.

[COMMONWEALTH:] Well, certainly it's the same case.

[APPELLANT:] The four-wheelers?

[COMMONWEALTH:] Yeah, the 4-wheelers. Tell us about the 4-wheelers.

[APPELLANT:] Judge, I - he isn't charged with stealing any 4-wheelers and I'm going to --

JUDGE: Well, he can ask him about 4-wheelers.

[APPELLANT:] I don't think so.

JUDGE: Overrule the objection, please, Miss Sally.

. . . . [TESTIMONY FROM JUVENILE DEFENDANT OMITTED].

[APPELLANT:] Judge we're getting off into a different case here --

JUDGE: Well, let's see where we're going. He's got a right to ask that question.

[APPELLANT:] I don't think so.

JUDGE: It's a perfectly legitimate question. I am overruling your objection.

[APPELLANT:] Judge, it's basic to a fair trial.

JUDGE: I'm overruling your objection, please.

[APPELLANT:] I'll instruct him not to answer. If --

JUDGE: He has already waived his right not to answer. It's a legitimate question. You must answer that question or I'm sending you to jail.

. . . . [TESTIMONY FROM JUVENILE DEFENDANT OMITTED].

[APPELLANT:] That's a separate crime if we're talking three or four days --

JUDGE: Miss Sally, we're trying to figure out how this young man got to the truck. Like you say, he says he - he didn't steal the truck. He says he picked it up in Horse Cave. I'm trying to find out how he got to Horse Cave.

[APPELLANT:] Well he's talking now - he's - the last question involved after the crime --

JUDGE: Well, I'm not interested in another case. I'm interested in how - the facts of this case.

[APPELLANT:] Okay. Then I would leave it to be this crime or immediately related to this crime because we're now getting into --

JUDGE: I have already overruled your motion twice. I'm not overruling any more. I don't want you interrupting on this answer any more.

[APPELLANT:] Well, judge, I will have to interrupt for --

JUDGE: Sheriff, take her out of here please, and we'll continue this case. Take her to jail this time, I've had all this I'm going to take.

Appellant's Brief at 1-4.

On November 27, 2000, the district court entered a written order finding appellant in contempt "for her behavior toward the court and ordered to jail for 1 day." Appellant appealed this order to the Hart Circuit Court. On July 17, 2001 the Hart Circuit Court affirmed the district court's order of contempt. Appellant thereupon filed a motion for discretionary review with this Court. Ky. R. Civ. P. 76.20. On October 29, 2001, this Court granted discretionary review. This appeal follows.

Appellant alleges the following contentions of error:

- I. THE TRIAL COURT'S ORDER IS INSUFFICIENT TO SUPPORT A CONTEMPT CONVICTION.
- II. MS. WASIELEWSKI'S CONDUCT DID NOT CONSTITUTE CRIMINAL CONTEMPT JUSTIFYING SUMMARY PUNISHMENT.
- III. THE LACK OF WARNING TO MS. WASIELEWSKI, AND THE FAILURE TO PERMIT HER TO OFFER MITIGATION OR EXCUSE, MAKES IMPOSSIBLE A FINDING OF CONTEMPT JUSTIFYING SUMMARY PUNISHMENT.
- IV. THE TRIAL COURT'S IMPOSITION OF SUMMARY PUNISHMENT WAS IMPROPER BECAUSE THIS WAS NOT DIRECT CONTEMPT.
- V. THE TRIAL COURT'S IMPOSITION OF SUMMARY PUNISHMENT WAS IMPROPER BECAUSE THERE WAS NO NEED FOR IMMEDIATE VINDICATION OF THE DIGNITY OF THE COURT.
- VI. THE TRIAL COURT'S ORDER MUST BE VACATED IN PART BECAUSE THE PUNISHMENT WAS EXCESSIVE.

Appellant's Brief at ii-v. As we believe appellant indeed committed direct criminal contempt, we view appellant's contentions of error to be without merit.

It has been said that "criminal contempts are all acts in disrespect of the court or its process, which obstruct the administration of justice, or tend to bring the court into disrespect." Adams v. Gardner, 176 Ky. 252, 195 S.W. 412, 414 (1917). "Criminal contempt can be either direct or indirect." Commonwealth v. Burge, Ky., 947 S.W.2d 805, 808 (1996). Here, we are concerned with direct criminal contempt, which has been defined as:

A direct contempt is committed in the presence of the court and is an affront to the dignity of the court. It may be punished summarily by the court, and requires no fact-finding function, as all the elements of the offense are matters within the personal knowledge of the court. (citation omitted).

Id.

In the case at hand, appellant repeatedly failed to abide by the orders of the district judge. In fact, not only did appellant refuse to abide by the rulings of the court, she also instructed her client to do likewise. The district judge repeatedly overruled appellant's objections and attempted to proceed with the hearing. We believe appellant's conduct constituted direct criminal contempt. It was committed in the presence of the court and constituted an affront to the dignity of the court. As appellant committed direct criminal contempt, we thus think that summary punishment of appellant was proper.

Id. Additionally, we are unable to conclude that the sentence of one day in jail was excessive considering the case as a whole.

Appellant cites this Court to Taylor v. Hayes, 418 U.S. 488, 94 S. Ct. 2697, 41 L. Ed. 2d 897 (1974) for the proposition that she was entitled to reasonable notice of the specific charge and to an opportunity to be heard before imposition of the contempt sentence. Taylor, however, did not involve summary punishment for contempt. In Taylor, the Court specifically stated that "[w]e are not concerned here with the trial judge's power, for the purpose of maintaining order in the courtroom, to punish summarily and without notice or hearing contemptuous conduct committed in his presence and observed by him." Id. at 907. Thus, we do not view Taylor as instructive.

For the foregoing reasons, the order of the Hart Circuit Court is affirmed.

ALL CONCUR.

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