

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-000816-MR

LISA C. HANDLEY (NOW WEBB)

APPELLANT

v. APPEAL FROM BARREN CIRCUIT COURT
HONORABLE W. MITCHELL NANCE, JUDGE
ACTION NO. 98-CI-00341

COMMONWEALTH OF KENTUCKY
ex rel. TIMOTHY W. HANDLEY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON AND VANMETER, JUDGES; GUIDUGLI,¹ SENIOR
JUDGE.

CAPERTON, JUDGE: Lisa Webb brings this appeal from a March 16, 2007,
judgment of the Barren Circuit Court, the Honorable William Mitchell Nance,

¹ Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Judge, presiding, whereby Webb was held in contempt of court for failure to pay child support. After a thorough review, we affirm.

The court held a hearing and found Webb to be in contempt of court for failure to pay child support with an arrearage adjudged to be six-hundred-sixty-nine dollars and ninety-five cents (\$669.95). Webb was sentenced to seven (7) days in the Barren County Correctional Center with the opportunity to purge herself of the sentence by paying the arrearage. While Webb was represented by counsel, she argues on appeal that her constitutional rights were violated when the trial court did not give her a jury trial for indirect criminal contempt of court.

When a court exercises its contempt powers, it has nearly unlimited discretion. *Smith v. City of Loyall*, 702 S.W.2d 838, 839 (Ky.App. 1986). Consequently, we will not disturb a court's decision regarding contempt absent an abuse of its discretion. "The test for abuse of discretion is whether the trial [court's] decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

It behooves us to undertake a brief review of our jurisprudence on a court's contempt powers. It has long been recognized that the courts of this Commonwealth have the inherent power to punish individuals for contempt. *Newsome v. Commonwealth*, 35 S.W.3d 836, 839 (Ky.App.2001). The Supreme Court of Kentucky has defined contempt as the willful disobedience of or the open disrespect for the court's orders or its rules. *Id.* Contempt falls into two categories:

civil and criminal. Civil contempt is distinguished from criminal contempt not by the punishment meted out but by the purpose for imposing the punishment. *A.W. v. Commonwealth*, 163 S.W.3d 4, 10 (Ky. 2005). If a court is seeking to coerce or compel a course of action, then the appropriate sanction is civil contempt; however, if the court is seeking to punish conduct that has already occurred, then the appropriate sanction is criminal contempt. *Id.*

Criminal contempt falls into two further categories: direct or indirect. *Commonwealth v. Pace*, 15 S.W.3d 393, 395 (Ky.App. 2000). Direct criminal contempt is committed in front of the court and constitutes an insult to the court's dignity. *Id.* The court may summarily punish direct criminal contempt because the court witnessed and, thus, has personal knowledge of all the elements that comprise the contumacious behavior. *Id.* Indirect criminal contempt is committed outside the court's presence. *Pace* at 395. Thus, in order to establish whether or not an order of the court was violated, the court must hold an evidentiary hearing that comports with due process. *Id.* With indirect criminal contempt, all the elements of the contempt must be proved beyond a reasonable doubt. *Pace* at 396.

Due process requires the offender be afforded a jury trial when the contempt is equated with a serious crime, i.e., that of a fine greater than five hundred dollars (\$500) or of incarceration for more than six (6) months. *See Miller v. Vettiner*, 481 S.W.2d 32 (Ky. 1972), *Bloom v. Illinois*, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968), and *Grant v. Dortch*, 993 S.W.2d 506 (Ky.App. 1999).

In the case sub judice, the court did indeed find Webb to be guilty of indirect criminal contempt of court beyond a reasonable doubt. We simply do not agree with Webb that this entitles her to a jury trial. Courts often speak in terms of criminal contempt, but this label does not definitively characterize the contempt. The purpose of the punishment is the defining characteristic. If the purpose is to coerce, it is more properly civil contempt. *See Shillitani v. U.S.*, 384 U.S. 364, 86 S.Ct. 1531 (1966) and *Blakeman v. Schneider*, 864 S.W.2d 903 (Ky. 1993). With the conditional nature of civil contempt, contemnors “carry the keys of their prison in their own pockets” by the ability to purge their sentence. *Blakeman* at 906. Further, contempt of court for failure to pay child support is often civil contempt in nature. *Commonwealth v. Burge*, 947 S.W.2d 805, 808 (Ky. 1996).

Although the judgment of the court found Webb to be guilty of indirect criminal contempt, Webb had the ability to purge herself of the seven (7) day sentence by paying her child support arrearage. The nature of the punishment was conditional and was intended to coerce Webb into following the court’s order. Webb’s contempt of court is more properly characterized as a civil contempt; therefore, she was not entitled to a jury trial. We do not find an abuse of discretion in the court’s decision. We may affirm a circuit court on any grounds when it has reached the correct result. *See Wright v. Sales*, 78 S.W.2d 23, 24-25 (Ky. 1935). Further, we do not find that the court abused its discretion in exercising its contempt powers; the judge was certainly free to use his judicial authority to enforce the court’s orders. *See Casteel v. Sparks*, 226 S.W.2d 533 (Ky. 1950).

For the aforementioned reasons, we affirm the judgment of the Barren
Circuit Court, the Honorable William Mitchell Nance, Judge, presiding.

ALL CONCUR.

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