

RENDERED: NOVEMBER 9, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000001-MR

CHRISTOPHER B. CASWELL

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A.C. MCKAY CHAUVIN, JUDGE
ACTION NO. 07-CI-005200

JACQUELINE K. RICHARDSON

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, COMBS AND THOMPSON, JUDGES.

COMBS, JUDGE: This case arises from a garnishment action. The judgment debtor appeals the order of the Jefferson Circuit Court finding him in contempt for his willful disregard of its garnishment order. After our review, we affirm.

The appellee, Jacqueline K. Richardson, obtained a final judgment *in personam* against the appellant, Christopher B. Caswell, on February 5, 2009.

Richardson next executed an affidavit in support of an order of garnishment. In her affidavit, Richardson indicated that C. Caswell, Inc., was indebted to or held property belonging to Christopher Caswell, the corporation's president and sole shareholder. An order of garnishment was duly issued on May 15, 2009, directing the corporation to hold and preserve all of the property belonging to the judgment debtor in its possession.

Although the order of garnishment was properly served, the corporation did not enter an appearance. Rather than file a motion compelling the corporation to appear for examination, Richardson filed a motion to hold both Caswell and his corporation in contempt. Following a hearing on the motion, the trial court found that the corporation was in possession of property that belonged to Caswell at the time the order was issued; that the corporation failed to file a timely affidavit; and that civil sanctions were appropriate.¹ The court fined the corporation \$25,000 but gave it the option to purge the contempt by answering the order of garnishment on or before November 12, 2009.

The corporation filed the required affidavit in November 2009. In the affidavit, the corporation, through Christopher Caswell, denied that it held money

¹ In accordance with the provisions of Kentucky Revised Statute[s] (KRS) 425.511(2), the court was at liberty to consider the proof of any debt owing or property held by the garnishee and to make an order respecting the garnishment proceedings.

or any other property belonging to Caswell. In an addendum to its affidavit, the corporation indicated that the garnishment order had been received on May 22, 2009, and that, as of that date, it had \$7,426.59 in the bank -- all of which was owed to suppliers and contractors. The addendum implied that the business would not likely be able to pay its debts. Richardson was granted leave to subpoena the corporation's bank records.

After reviewing the bank records, Richardson concluded that Caswell had used the assets of C. Caswell, Inc., for his own private purposes. Richardson filed a motion requesting that the court issue an order "punishing [Caswell and his corporation] for contempt of court." In her motion, Richardson alleged that Caswell had been untruthful in his affidavit. She contended that the corporation's bank statements showed that the business had made substantial withdrawals to pay Caswell's expenses of a purely personal nature soon after its receipt of the garnishment order in May.

Following an evidentiary hearing, the trial court entered its opinion and order. The court found that Christopher Caswell regularly deposited money into the corporate bank account and freely accessed any and all funds held by the corporation. The court determined that Christopher Caswell's affidavit filed in answer to the order of garnishment was intended merely to thwart Richardson's efforts to collect on the judgment.

The court held that Christopher Caswell was to be held personally accountable for the false representations made in the answer to the order of

garnishment. It ordered him to pay a fine of \$14,853.18 (payable to Richardson); to present himself for a 24 day-jail sentence; and to pay the costs of the proceeding, including Richardson's attorney's fees. In addition, the court held the corporation in contempt and required it to pay \$1,482.00 in costs and fees associated with its initial hearing. This appeal prosecuted by Christopher Caswell followed.

The issue before us is whether the trial court abused its discretion by fining Caswell and sentencing him to serve jail time for willfully disregarding its orders. In support of his contention, Caswell makes four specific allegations of error. First, he contends that the trial court erred by concluding that the corporation held money that belonged to him. Second, Caswell contends that the court erred by concluding that he lied in his affidavit. Third, he alleges that the court was prejudiced against him from the outset. Last, Caswell claims that Richardson's motion to hold him in contempt was made in bad faith.

Contempt is the "willful disobedience of – or open disrespect for – the rules or orders of a court." *Commonwealth v. Burge*, 947 S.W.2d 805, 808 (Ky. 1996). A trial court has inherent power to punish individuals for contempt, and its discretion in issuing contempt citations is nearly unfettered. *Crowder v. Rearden*, 296S.W.3d 445 (2009). We reverse a finding of contempt only if the trial court abused its discretion in imposing the sentence. *Id.*

Caswell contends first that the court erred by concluding that the corporation held money that belonged to him. We disagree.

In support of his argument, Caswell relies on the affidavit and testimony of Belinda Pinotti, accountant for Caswell and his corporation. Pinotti indicated to the court that as of the day on which the garnishment was served, there was no money to which Caswell was entitled. In light of this testimony, Caswell objects to the court's conclusion that the corporation was, in fact, holding money that belonged to him.

At the hearing, Caswell indicated to the court that he had routinely paid personal expenses from the corporate bank account and that he "knew it was my business's money, but . . . if I did not have the money in my personal account, yes, I used it at my leisure." From an abundance of testimony in a similar vein, the trial court concluded that the corporation was a mere instrumentality and that all the funds held in the corporate account on the day the garnishment was served "was for all intents and purposes being held *for* Mr. Caswell to do with as he pleased." Opinion and Order at 5. The trial court did not err by concluding from the evidence presented that the corporation held money belonging to Caswell.

Next, Caswell contends that the court erred by concluding that he lied in his affidavit. Again, we disagree.

While Caswell indicated in his affidavit that the funds in the corporate bank account were all tagged for disbursement to contractors and suppliers, he admitted that he wrote checks from the corporate account in May 2009 to pay off the loan on his Mercedes-Benz and to pay his home mortgage and that he otherwise generally used the corporate account as his own. Although he denied that he had

lied or willfully refused to obey the court's garnishment order, the trial court concluded from his testimony that Caswell's affidavit was patently false and that he had intended by this falsehood to avoid the order of garnishment by perpetrating this deception. The record contains ample proof to refute any claim of an abuse of discretion.

Caswell next alleges that the court was prejudiced against him. However, having carefully reviewed the transcript of the proceedings and the court's various orders, we cannot find any indication that the trial court had prejudged any of the issues to be resolved in the proceeding. While the court did interject at times and directly asked questions of witnesses, it appears that the court was merely attempting to expedite the proceeding. Furthermore, we find no basis for Caswell's bare allegation that the trial court carefully timed the rendering of its opinion and order to most severely impact Caswell's personal life. That allegation merits no further consideration or elaboration

Finally, Caswell contends that Richardson's motion to hold him in contempt was made in bad faith. Caswell argues that Richardson has known all along that neither he nor his corporation has sufficient assets to pay the judgment. Nevertheless, he claims that she has pursued the contempt proceedings in an effort to "squeeze" funds from his family. He complains that the contempt proceedings were merely an attempt to extort money from his family. Again, we can find absolutely no basis in the record to support these contentions.

We affirm the order of the Jefferson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Joseph A. Hammer
Louisville, Kentucky

BRIEF FOR APPELLEE:

Samuel B. Carl
William F. Stewart
Louisville, Kentucky