RENDERED: JULY 19, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000982-MR

NICHOLAS J. RAMLER — APPELLANT

v.

APPEAL FROM BOONE CIRCUIT COURT
HONORABLE GREGORY M. BARTLETT, SPECIAL JUDGE
ACTION NO. 16-CI-01430

JEFFREY S. SMITH and
LINDA TALLY SMITH, individually, and in
her official capacity as 54th JUDICIAL CIRCUIT
COMMONWEALTH'S ATTORNEY — APPELLEES

OPINION
AFFIRMING

BEFORE: ACREE, GOODWINE, AND LAMBERT, JUDGES.

GOODWINE, JUDGE: Nicholas J. Ramler ("Ramler") appeals an order of the Boone Circuit Court finding him in contempt for failing to comply with its nondisclosure order and awarding attorney's fees. Finding no error, we affirm.

Ramler worked as a full-time law clerk for Appellee, Linda Tally Smith ("Linda"), Commonwealth's Attorney for the 54th Judicial Circuit[1] from August 2015 to September 2016. Following his termination, Ramler filed for unemployment benefits and was denied. Ramler appealed the denial to the Kentucky Unemployment Insurance Commission ("UIC"). Kentucky Revised Statutes (KRS) 341.005(3).

On October 20, 2016, Appellees filed a complaint against Ramler alleging various privacy torts. Ramler answered and asserted various counterclaims. Appellees filed various motions, including a motion for injunctive relief. At the November 9, 2016 hearing, the parties informed the trial court they disposed of the motion for injunctive relief by agreed order, which the trial court then signed.

The trial court took up other issues at the hearing, including Appellees' motion to strike Ramler's response to the motion for injunctive relief on two grounds: (1) the response contained scandalous material; and (2) it was not properly filed with the Boone Circuit Clerk. Ramler's counsel hand-delivered the response and the attached compact disc ("CD") to Appellees' counsel and to the trial court just prior to the hearing. Sensing Appellees' counsel was accusing

[1] Appellee Jeffrey S. Smith ("Jeff") was a district court judge for the 54th Judicial District. We refer to them jointly as Appellees.

Ramler of wrongdoing, Ramler's counsel verbally withdrew his consent to seal the response and the attached ("CD").

The trial court read the agreed order in open court. Specifically, "[t]he parties are also ordered to stop disseminating any part of the computer data whether electronically, printed, orally, or any other fashion to any person or entity[.]" (R. at 47-48). Ramler's counsel informed the trial court that if Appellees wanted the information sealed, they would have to file a motion. Appellees' counsel agreed to do so. The trial court acknowledged there were standards for sealing documents and evidence in the record and it would research same. The trial court signed the agreed order, set both parties a briefing schedule and a hearing date and adjourned court.

The trial court made no additional verbal directives to the parties not to disseminate the information. Five days after the hearing—and before entry of the court's written order—Ramler sent the CD to the UIC because he believed it was relevant to his administrative appeal. He did not inform the UIC the CD was subject to a court order sealing it.

Appellees immediately filed a motion to show cause. Ramler's counsel argued he was out of town when Ramler sent the CD to the UIC, and he should have an opportunity to respond to the motion. The trial court scheduled a show cause hearing for November 23, 2016 and made it very clear the parties were

not to disseminate any information until it issued an order stating otherwise. The trial court also ordered counsel to file motions in the administrative hearing to seal the response and CD. The trial court made clear, however, that if the ALJ wanted to hear and consider the evidence, he or she could do so.

At the show cause hearing, Ramler conceded he was aware the trial court intended to seal the response and the CD but argued until the verbal order was reduced to writing, it was not a valid order. The trial court entered its written order November 15, 2016, which specifically stated "IT IS FURTHER ORDERED that until Plaintiffs (sic) motion is decided, Defendants' response and accompanying CD as referenced above shall be sealed pending resolution of Plaintiffs' motion." (R. at 49). Counsel for Appellees requested $2,522.02 in attorney's fees and cost. The trial court reduced the amount to $1,000. Ramler's motion to reconsider was unsuccessful. Ramler did not pay the $1,000 fee.

On May 14, 2018, Appellees filed another motion to show cause due to Ramler's failure to pay the $1,000. (R. at 256-58). On May 21, 2018, Ramler filed an affidavit in response arguing he did not have the ability to pay the $1,000. (R. at 260). At motion hour that same day, the trial court[2] inquired about whether Ramler made efforts toward payment. Ramler's counsel argued his inability to pay

[2] Judge Gregory Bartlett, Special Judge, presided. He was appointed special judge following Judge Stine's retirement August 4, 2017.

the $1,000, and referenced Ramler's response and affidavit.[3] Counsel read the affidavit into the record.

The trial court correctly noted that it needed to have a hearing to determine whether Ramler had the ability to pay the fee. Ramler's counsel argued Ramler intended to appeal the contempt order if the trial court made it final and appealable. The trial court agreed but reiterated Ramler needed to make reasonable efforts to pay if he did not appeal. (V.R. May 21, 2018, 10:12:42 – 10:19:36). Following entry of the order, Ramler appealed.

On appeal, Ramler argues the trial court erred by holding him in contempt because: (1) the UIC had exclusive jurisdiction over all claims submitted to it; (2) his actions were not in violation of a signed, written order entered by the clerk; and (3) the Appellees suffered no harm as the UIC maintains confidentiality of all documents pursuant to KRS 341.190.

We are mindful that a trial court has broad authority when exercising its contempt powers; consequently, our review is limited to a determination of whether the court abused its discretion. *Kentucky River Community Care, Inc., v. Stallard*, 294 S.W.3d 29, 31 (Ky. App. 2008). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or

[3] Ramler's counsel acknowledged the trial court had not seen the response and affidavit because he filed it that morning.

unsupported by sound legal principles." *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000). The trial court's underlying findings of fact are reviewed for clear error. *Commonwealth, Cabinet for Health and Family Serv. v. Ivy*, 353 S.W.3d 324, 332 (Ky. 2011).

Contempt is defined as "the willful disobedience of or the open disrespect for the court's orders or its rules." *Meyers v. Petrie*, 233 S.W.3d 212, 215 (Ky. App. 2007) (citing *Newsome v. Commonwealth*, 35 S.W.3d 836, 839 (Ky. App. 2001)). "Contempt may be either civil or criminal, depending upon the reason for the contempt citation." *Crowder v. Rearden*, 296 S.W.3d 445, 450 (Ky. App. 2009).

"A civil contempt occurs when a party fails to comply with a court order for the benefit of the opposing party, while criminal contempt is committed by conduct against the dignity and authority of the court." *Smith v. City of Loyall*, 702 S.W.2d 838, 839 (Ky. App. 1986). "It is not the fact of punishment but rather its character and purpose, that often serve to distinguish civil from criminal contempt." *Commonwealth v. Burge*, 947 S.W.2d 805, 808 (Ky. 1996) (internal quotation marks and citation omitted).

"In a civil contempt proceeding, the initial burden is on the party seeking sanctions to show by clear and convincing evidence that the alleged contemnor has violated a valid court order." *Ivy*, 353 S.W.3d at 332 (citation

omitted). "Once the moving party makes out a prima facie case, a presumption of contempt arises, and the burden of production shifts to the alleged contemnor to show, clearly and convincingly, that he or she was unable to comply with the court's order or was, for some other reason, justified in not complying." *Id.* (citing *Clay v. Winn*, 434 S.W.2d 650 (Ky. 1968)).

As required by *Ivy*, Appellees met their burden to show by clear and convincing evidence that Ramler violated a valid court order. *Id.* Ramler's actions were undisputed. Ramler argued during the show cause hearing, that the trial court's written order had not yet been entered and he needed to file the audio CD with the UIC as evidence in his administrative appeal. The trial court inquired why Ramler did not inform the UIC the CD was under a court-ordered seal. Ramler had no answer. Rather, he argued the ALJ had a right to consider his evidence. The trial court agreed but found Ramler should have informed the ALJ of its order to seal.

Sanctions for criminal contempt "are meant to punish the [contemnor's] noncompliance with the court's order and to vindicate the court's authority[.]" *Ivy*, 353 S.W.3d at 332. In contrast, sanctions for civil contempt "are meant to benefit an adverse party either by coercing compliance with the order or by compensating for losses the noncompliance occasioned." *Id.* (citation omitted).

Here, the trial court's finding was one of civil contempt because it found Ramler failed to comply with its nondisclosure order which benefitted Appellees. After finding Ramler in contempt, the trial court ordered him to comply with the nondisclosure order and imposed attorney's fees as a sanction to compensate Appellees for expenses incurred litigating the nondisclosure/contempt issue.

First, Ramler argues on appeal the trial court was without jurisdiction to hold him in contempt because the UIC had exclusive jurisdiction once a matter is filed before it. He compares the order temporarily sealing evidence to an injunction and relies on this comparison to support his argument. We disagree. Jurisdiction is a question of law. *De novo* review is generally the proper standard where the lower court is alleged to be acting outside of its jurisdiction. *Commonwealth v. Settles*, 488 S.W.3d 626 (Ky. App. 2016). Moreover, in Kentucky "injunctive relief is basically addressed to the sound discretion of the trial court." *Maupin v. Stansbury*, 575 S.W.2d 695, 697-98 (Ky. App. 1978) (citing *Bartman v. Shobe*, 353 S.W.2d 550 (Ky. 1962)).

By attempting to analogize the temporary sealing of the response and CD, Ramler seeks to draw parallels to cases prohibiting courts from enjoining actions of administrative agencies. Ramler then wants to draw these premises into an argument that the trial court did not have jurisdiction or authority to intervene in

the unemployment hearing wherein Ramler had sent the response and CD in violation of the court's order. He argues that a court's order pertaining to evidence in a case before that court has no bearing or effect on the parties in their conduct with the administrative agency. We disagree.

Ramler was before the trial court defending a lawsuit filed against him by Appellees. The trial court, as a court of general jurisdiction, certainly had jurisdiction to hear that case. Ramler was before the trial court in that proceeding when he acknowledged he was aware of, but consciously disregarded, its order because he believed the verbal order was not yet valid. He unilaterally decided to send it to the UIC without seeking leave of the trial court to do so. The UIC had not requested any of the material which the trial court had temporarily sealed. The trial court did not in any way seek to enjoin the administrative proceeding. It was already underway. Ramler's case before the trial court was unrelated to his unemployment claim.

Next, Ramler argues on appeal the trial court erred by finding him in contempt because he did not violate a written order and the trial court's verbal instructions were non-enforceable. We disagree. In Kentucky, it is well-settled law that a circuit court "speaks only through written orders entered upon the official record." *Kindred Nursing Centers Ltd. Partnership v. Sloan*, 329 S.W.3d 347, 349 (Ky. App. 2010). More specifically, for a court's order to take effect, it

must be in writing, signed by the judge and entered into the record by the clerk. *Murrell v. City of Hurstbourne Acres*, 401 S.W.2d 60, 61 (Ky. 1966). As a result, "an oral pronouncement is not a judgment until it is reduced to writing." *Brock v. Commonwealth*, 407 S.W.3d 536, 538 (Ky. 2013).

On November 9, 2016, the trial court read the nondisclosure directions from the agreed order in open court and then signed it. Thereafter, the trial court's verbal directives were specifically incorporated into its written order entered November 15, 2016, which clearly set forth Defendants' response and CD were sealed pending resolution of Plaintiff's motion. Ramler violated said order, and the trial court was well within its discretion to hold him in contempt and award attorney's fees to Appellees.

As the trial court correctly noted, it is not left to the attorneys or the parties to determine whether they think the judge's order is correct. They are to follow the ruling and appeal it if necessary. Here, Ramler failed to seek relief from the trial court or postponement of the administrative hearing, but instead took matters into his own hands. We agree with the trial court that Ramler's behavior was contemptuous.

In Kentucky, "[t]he purpose of civil contempt is to coerce rather than punish. Ultimately, then, the defining characteristic of civil contempt is the fact that contemnors 'carry the keys of their prison in their own pockets.'" *Blakeman v.*

Schneider, 864 S.W.2d 903, 906 (Ky. 1993). Ramler did not pay even a fraction of the amount due. The trial court found he had not made reasonable efforts to pay at least something and instructed him to do so if the order was not appealed. Ramler appealed. Ramler does not challenge his ability to satisfy the order and thereby purge a contempt amount. Rather, he challenges the validity of the trial court's finding of contempt for his actions. As discussed above, it was well within the trial court's discretion to find Ramler in contempt.

We review a trial court's order for attorney's fees for abuse of discretion. *Smith*, 702 S.W.2d at 839. *See also Gentry v. Gentry*, 798 S.W.2d 928, 938 (Ky. 1990) ("The amount of an award of attorney's fees is committed to the sound discretion of the trial court with good reason. That court is in the best position to observe conduct and tactics which waste the court's and attorneys' time and must be given wide latitude to sanction or discourage such conduct.").

"[I]n proper circumstances a reasonable attorney's fee may be allowed to the prevailing plaintiff in a civil contempt proceeding[.]" A.S. Klein, Annotation, *Allowance of Attorney's Fees in Civil Contempt Proceedings*, 43 A.L.R.3d 793 §3 [a] (1972). The trial court reduced the requested fees from $2,522.02 to $1,000. We cannot find the trial court abused its discretion under the circumstances. If Ramler does not pay the $1,000, the trial court—as it duly

noted—must conduct a hearing and make specific findings of Ramler's ability to pay the fee.

For the foregoing reasons, we affirm the order of the Boone Circuit Court finding Ramler in contempt and ordering him to pay $1,000 in attorney's fees.

ALL CONCUR.

BRIEFS FOR APPELLANT:	BRIEF FOR APPELLEES:
Stephen D. Wolnitzek Zachary M. Lotspeich Covington, Kentucky	Luke Morgan Lexington, Kentucky