STATE OF MICHIGAN

COURT OF APPEALS

TOWNSHIP OF COLUMBUS

Plaintiff-Appellee,

v

THOMAS MARKEL and CATHERINE MARKEL,

Defendants-Appellants.

UNPUBLISHED
May 6, 1997

No. 182853
St. Clair Circuit Court
LC No. 80-611267-CZ

Before: Holbrook, Jr., P.J., and White and A.T. Davis, Jr.*, JJ.

PER CURIAM.

Defendants appeal as of right from the St. Clair Circuit Court's order that required them to comply with the township's blight ordinance and awarded plaintiff $24,300 in penalties for defendants' noncompliance with past orders, as well as $6,000 in attorney fees. We vacate the court's order and remand for further proceedings.

In September 1993, after nearly fourteen years of sporadic litigation regarding defendants' alleged violation of plaintiff township's blight ordinance, the trial court issued an "Order for Compliance with Blight Ordinance" that concluded with the following penalty provisions:

> IT IS FURTHER ORDERED AND ADJUDGED that if the Defendants have not complied with this Order by the deadline date of September 18, 1993, then commencing on September 19, 1993, there will be a penalty of $50.00 per day assessed against the Defendants.
>
> IT IS FURTHER ORDERED AND ADJUDGED that if there is compliance with this Order there will be no attorney fees awarded to the Plaintiff. If there is non-compliance, the Court will review the issue of attorney fees at that time.

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* Circuit judge, sitting on the Court of Appeals by assignment.

On January 17, 1995, the successor trial judge signed a proposed order drafted by plaintiff's counsel, finding defendants to be "in non-compliance and violation of the Judgment and Orders of this Court" and ordering them to comply fully with the specific provisions of the judgment and orders by January 31, 1995. The court levied a $24,300 "penalty assessment"[1] against defendants and further awarded plaintiff $6,000 in attorney fees.

Although the trial court did not expressly rule that defendants' noncompliance with the court's earlier judgment and orders (requiring compliance with plaintiff's blight ordinance) constituted civil contempt, we agree with the parties that this was the intended characterization. A party who disobeys a lawful order of the court is punishable for contempt. MCL 600.1701(g); MSA 27A.1701(g); *In re Contempt of Calcutt*, 184 Mich App 749; 458 NW2d 919 (1990). Pursuant to MCL 600.1711(2); MSA 27A.1711(2), a person may be punished for any contempt committed outside the immediate view and presence of the court "after proof of the facts charged has been made by affidavit or other method and opportunity has been given to defend." Here, defendants were denied procedural due process of law because they were not afforded a full and fair opportunity to present a defense at the earlier show cause hearing, and the court failed to make findings of fact or conclusions of law on the record. See *Fraternal Order of Police, Lodge #98 v Kalamazoo Co*, 82 Mich App 312, 315-317; 266 NW2d 805 (1978). Furthermore, unlike *Cross Co v UAW Local No 155*, 371 Mich 184, 212-213; 123 NW2d 215 (1963), contempt charges against the present defendants were in abeyance at the time of the hearing in question and defendants were given no notice that they would have to defend against contempt charges at the hearing. Nor did the trial court utilize the record of any prior complete contempt proceeding in making its decision. Accordingly, we remand this matter to the trial court for a hearing, consistent with due process, to determine whether defendants are presently in contempt of the court's earlier judgment or orders. See *In re Contempt of Dougherty*, 429 Mich 81, 111-112; 413 NW2d 392 (1987).

Defendants also argue that the penalty assessed was excessive and in violation of law. Because we have determined that defendants were denied procedural due process of law in the lower court, the $24,300 penalty assessment and $6,000 attorney fee award are vacated. However, because we are remanding this matter for a new hearing, we will address this issue in order to provide direction to the lower court regarding the lawful boundaries for a contempt sanction. Pursuant to MCL 600.1715(1); MSA 27A.1715(1), a fine for contempt may not exceed $250, and this amount may not be exceeded by fining a party per diem for a continuing contempt. *Catsman v City of Flint*, 18 Mich App 641, 648-650; 171 NW2d 684 (1969); *In re Contempt of Johnson*, 165 Mich App 422; 419 NW2d 419 (1988). In addition to any other penalty imposed against a contemnor, an aggrieved party may be indemnified for losses sustained as a direct result of the contempt, including attorney fees. MCL 600.1721; MSA 27A.1721; *In re Contempt of Calcutt*, *supra* at 758. See also *Homestead Development Co v Holly Twp*, 178 Mich App 239, 244-246; 443 NW2d 385 (1989). Thus, in the event that on remand defendants are found to be in civil contempt, they may be fined a maximum of $250 and ordered to indemnify plaintiff for its actual attorney fees.

The trial court's January 17, 1995, order is vacated and this matter is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.
/s/ Alton T. Davis, Jr.

[1] The amount is based on a $50 penalty for each of the 486 days (between September 19, 1993, and January 17, 1995) that defendants were in noncompliance with the ordinance.