

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF HOLLAND,

Plaintiff-Appellee,

v

JERRY WOLTERS,

Defendant-Appellant.

UNPUBLISHED
February 26, 2002

No. 226116
Ottawa Circuit Court
LC No. 97-027934-CH

Before: Griffin, P.J., and Holbrook, Jr., and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order holding him in contempt of court, and sentencing him to serve ten days in jail, pay fines of \$250, and pay plaintiff \$2,273 in costs and attorney fees. On appeal, defendant challenges both the finding that he was in contempt, and the penalties imposed. We affirm.

We review a finding of criminal contempt for abuse of discretion. *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 714, 716; 624 NW2d 443 (2000); *People v Ahumada*, 222 Mich App 612, 617; 564 NW2d 188 (1997). Abuse of discretion occurs when a court makes a decision that "is so grossly violative of fact and logic that it evidences perversity of will, defiance of judgment, and the exercise of passion or bias," or "when an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling." *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996). We affirm the trial court's findings in a contempt proceeding if they are supported by competent evidence, and we weigh neither the evidence nor the credibility of witnesses. *Cross Co v UAW Local No 155 (AFL-CIO)*, 377 Mich 202, 217-218; 139 NW2d 694 (1966).

In the present case, there was ample factual support for the trial court's contempt ruling, and thus we find no abuse of discretion. Considerable evidence demonstrated that, after the trial court ordered him not to, defendant continued to rent rooms to individuals in what were supposed to be single-family residences, and that the aggregates of these individuals did not constitute the single housekeeping units they were required to be in order to comply with the City of Holland ordinance definition of single-family residences. Although the houses had kitchens that all the residents theoretically were free to use, the kitchens were empty, and so were obviously not used for housekeeping purposes; people kept and prepared food in their rooms. In fact, the terms of their leases prohibited individuals from keeping personal items in the common areas, such as the living rooms and the kitchens. This being the case, and given that defendant

landlord did not furnish, or hardly furnished these areas, it would have been impossible for the tenants to use the common areas as the means of providing a single housekeeping unit. Moreover, tenants continued to pay rent as individuals, each responsible only for a set sum based apparently on the portion of the premises he or she used, and not to pay rent on the house together with joint responsibility, as a family renting a house as a single housekeeping unit would do. Even without the evidence that individual tenants had individual locks on their doors and tended to keep their rooms locked, there was ample evidence for the trial court's finding that defendant did not rent houses to groups, but rooms to individuals. There was also evidence on which the trial court could justify its conclusion that defendant's actions were done culpably and willfully, in disobedience of the court's order. *People v Little*, 115 Mich App 662, 665; 321 NW2d 763 (1982). Because there is evidence to support all of these findings beyond a reasonable doubt, *In re Contempt, supra* at 716; *Little, supra*, and because we are not to weigh the evidence or make determinations as to credibility, *Cross Co, supra*, we must affirm.

The trial court did not err in the sanctions that it imposed. The jail term has already been served, so that any challenge to the propriety of imposing it as a sanction is now moot, and therefore not susceptible to review. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994). With regard to the award of attorney fees, MCL 600.1721 authorizes a court to require a contempt defendant to indemnify anyone who has suffered loss because of the defendant's misconduct, and the statute does not differentiate between criminal and civil contempt. *Homestead Development Co v Holly Twp*, 178 Mich App 239, 245-246; 443 NW2d 385 (1989). "The loss may include attorney fees that occurred as a result of the other party's contemptuous conduct." *Id.*; see also *Burnett v Burnett*, 152 Mich App 157, 161; 393 NW2d 562 (1986). Moreover, to the extent that defendant suggests that indemnifying a party for attorney fees incurred as a result of the other party's contempt is appropriate only in cases involving civil contempt, and not criminal contempt, we note that the sanctions imposed here were intended to secure compliance with the court's order, as well as to punish past misconduct, so the contempt finding could be regarded as being one for civil as well as criminal contempt. We find no abuse of discretion. *Homestead, supra* at 245.

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ Joel P. Hoekstra