STATE OF MICHIGAN

COURT OF APPEALS

RANDALL STURM and LINDA STURM,

Plaintiffs-Appellees,

v

RICHARD FAUGHN,

Defendant-Appellant.

UNPUBLISHED
December 30, 2003

No. 241707
Oakland Circuit Court
LC No. 97-541187-CZ

Before: Schuette, P.J. and Murphy and Bandstra, JJ.

PER CURIAM.

In this dispute between neighbors, defendant appeals as of right, challenging the trial court's November 21, 2001, opinion and order finding him in contempt of court for intentionally violating a permanent injunction forty-nine times,[1] imposing a $250 fine for each violation, and awarding plaintiffs compensatory damages of $45,000. Defendant also challenges the trial court's May 14, 2002, opinion and order awarding plaintiffs attorney fees and costs in the amounts of $32,500 and $778.34, respectively. We affirm as modified.

I. FACTS

Problems between the parties originally began before 1998, over the use of an easement on defendant's property. The parties entered into a mutual injunction in April 1998, allowing plaintiffs to park on the easement and prohibiting defendant from blocking their ingress and egress. In July 1998, the trial court issued an opinion and order holding that a parking easement existed.

[1] The court stated that defendant allowed cars to be parked in a manner that interfered with plaintiffs' ingress/egress thirty-four times, but only listed thirty-one incidents in its opinion. The court also cited five incidents when defendant used a leaf-blower to blow leaves onto plaintiffs' property, three incidents when defendant drove onto plaintiffs' lawn, one incident of trespass, two incidents involving the use of profanity, one tree-cutting incident, one incident involving the painting of smiley faces on the wall of defendant's house facing plaintiffs' window, and one incident in which defendant caused paint to spray onto plaintiffs' car, thus reflecting only forty-five specific incidents by our count.

In September 1998, plaintiffs testified that defendant repeatedly drove on their lawn, sprayed herbicide, threatened them, used obscene language in the presence of their young daughters, and that he or his guests parked vehicles so that plaintiffs could not use the easement. The trial court found defendant in contempt of the parties' "mutual injunction," ordered defendant to create a gravel parking area, and awarded plaintiffs $1,800 in costs.

On November 28, 1998, a permanent injunction was entered restraining defendant from blocking the easement and requiring the parties to "conduct themselves in a neighborly, congenial and amicable fashion." Defendant was ordered to refrain from interfering with plaintiffs' egress or ingress, to make an effort to prevent his guests from blocking plaintiffs' egress or ingress, to move his vehicles if requested, to operate his vehicles and watercraft safely, to refrain from driving or parking on plaintiffs' lawn, to refrain from threatening or harassing plaintiffs, to refrain from bringing garbage home from work, and to refrain from shoveling snow onto plaintiffs' property. In October 1999, defendant agreed to convey the easement to plaintiffs.

In March 2001, plaintiffs made numerous allegations that defendant was in violation of the November 1998 permanent injunction, and a series of hearings were held. Plaintiffs presented "a huge book of photographs and documentation." Plaintiffs alleged that defendant and his guests repeatedly parked their cars in a manner that blocked their access; that they docked their boat named "FA-Q" where it was visible to plaintiffs' two young daughters; that defendants shoveled snow and blew leaves onto plaintiffs' yard, at times completely blocking their driveway; that they shot out a pole light on plaintiffs' property; that defendant and his guests used vulgar language loudly and in front of the children; that defendant sprayed paint on plaintiffs' car; that defendant trimmed a tree over plaintiffs' property in an unattractive manner; that defendant attempted to hit plaintiffs' seven-year-old daughter as she walked her dog; and that defendant generally harassed plaintiffs and threatened physical violence.

On November 21, 2001, the trial court found defendant in contempt of the permanent injunction involving "49 specific" incidents,[2] fined defendant $250 for each instance, and found defendant liable for damages in the amount of $45,000, plus reasonable attorney fees and costs. On March 6, 2002, a hearing was held on the issue of attorney fees. On May 14, 2002, the trial court awarded plaintiffs attorney fees and costs "in the amount of $32,500.00 and $778.34." Defendant now appeals.

II. CONTEMPT CHARGES

[2] The court stated that defendant's parked cars interfered with plaintiffs' ingress/egress thirty-four times, but only listed thirty-one such incidents "and several other occasions." [Appendix A, 6-7.] The court also cited four incidents of leave-blowing onto plaintiffs' property, three incidents of driving on plaintiffs' lawn, one incident of trespass, two incidents of profanity (which also occurred on "several other dates"), one incident of cutting "limbs off of a tree," one incident regarding smiley faces painted on defendant's house facing plaintiffs' window, and one incident regarding paint sprayed onto plaintiffs' car while defendant was cleaning a paint tray with a hose, which this writer counts as forty-four specific incidents. [Appendix A, 6-8.]

Defendant raises several issues on appeal.[3] He argues that the judgment against him must be reversed because the trial court did not specifically articulate whether it was applying a criminal or civil standard of proof.

A. Standard of Review

An order of contempt is reviewed for an abuse of discretion. *In re Contempt of United Stationers Supply Co*, 239 Mich App 496, 499; 608 NW2d 105 (2000). Issues of law are reviewed de novo. *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 714; 624 NW2d 443 (2000).

For civil contempt, the trial court must find under a preponderance of the evidence standard that the defendant "was neglectful or violated its duty to obey an order of the court." *In re Contempt of ACIA, supra; In re Contempt of United Stationers Supply Co, supra.* For a finding of criminal contempt, "an alleged contemnor's 'willful disregard or disobedience' of a court order and clearly contemptuous act must be proved beyond a reasonable doubt." *In re Contempt of ACIA, supra.*

The trial court here did not expressly indicate which standard of proof it was applying, but specifically found that defendant "intentionally violated the permanent injunction" and referred to each violation as "willful." A finding of wilful disobedience is only relevant to criminal contempt. *Id.* In a civil contempt action, wilful disobedience is not required. *In re Contempt of United Stationers Supply Co, supra.*

B. Analysis

A trial court is presumed to know the law. *People v Sherman-Huffman*, 466 Mich 39, 43; 642 NW2d 339 (2002). Here, there is no indication that the trial court improperly applied a lesser, civil standard in making a finding of criminal contempt. Following a six-day evidentiary hearing, the court specifically found that defendant was not credible, that his affidavit was "perjurious," and that his assertions were contradicted by photographic evidence. Nothing in the record suggests that the court used a lower, preponderance of the evidence standard, or that it was trying to determine the civil question, whether defendant "was neglectful or violated its duty to obey an order of the court." *In re Contempt of ACIA, supra*. To the extent the trial court intended only a finding of civil contempt, any error in applying a higher criminal standard of proof would have inured to defendant's benefit, thus rendering it harmless. *Wayne County Prosecutor v Parole Bd*, 210 Mich App 148; 532 NW2d 899 (1995).

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[3] Although the trial court's November 21, 2001, order is the order adjudicating defendant in contempt, the sanctions imposed for that contempt were not finalized until entry of the court's order on May 14, 2002. Therefore, we conclude that the May 14, 2002, order was the final order for purposes of appeal. MCR 7.202(7). Because defendant timely filed an appeal from that order, his issues relating to the November 21, 2001, order are properly before this Court.

Defendant also argues that the trial court erred by "stacking" the maximum permitted fine of $250 for each of the forty-nine violations that it found. MCL 600.1715(1) provides that,

> except as otherwise provided by law, punishment for contempt may be a fine of not more than $250, or imprisonment, which, except in those cases where the commitment is for the omission to perform an act or duty which is still within the power of the person to perform shall not exceed 30 days, or both, in the discretion of the court.

"Criminal contempt in Michigan has been defined as 'petty' on the grounds that the penalty does not exceed six months imprisonment." *Ann Arbor v Danish News Co,* 139 Mich App 218, 233; 361 NW2d 772 (1984). As this Court reasoned in *Danish News*, if a trial court could impose a fine of $250 for each of several violations, it could also impose multiple jail terms of thirty days each, in which case "this would not be a petty criminal contempt and [defendant] would have been entitled to a jury trial." *Id.* See also *In re Contempt of Johnson, supra.* Although plaintiffs argue that the trial court here made forty-nine "findings" of contempt, there is only one contempt judgment in this case, based on forty-nine separate incidents. Under the plain language of MCL 600.1715(1), the trial court was limited to imposing a fine of $250 fine. We therefore modify the judgment of contempt by reducing the fine to $250.

III. DAMAGES

Defendant also argues that the $45,000 damage award must be reversed because there was no basis for its computation. We disagree.

A. Standard of Review

A damage award is reviewed for an abuse of discretion. *Homestead v Holly Twp,* 178 Mich App 239, 246; 443 NW2d 385 (1989). In order to find an abuse of discretion, the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias. *Facility Group of Michigan, Inc. v. Office Furniture Services, Inc,* ___Mich App __; __NW2d___(2003)

B. Analysis

The trial court awarded plaintiffs damages of $45,000 for "actual loss and injury, including sustained emotional distress and the loss of the quiet enjoyment of their premises as a proximate result of the misconduct found herein."Emotional damages, such as plaintiffs sought here, ordinarily cannot be determined with mathematical certainty. *Peterson v Trans Dep't,* 154 Mich App 790, 800; 399 NW2d 414 (1986) But "[i]t is sufficient if a reasonable basis for computation exists, although the result be only approximate. *Berrios v Miles, Inc,* 226 Mich App 470, 478; 574 NW2d 677 (1997) (citations omitted). As plaintiffs argue, there is evidence through plaintiffs' testimony to support a finding that plaintiffs suffered emotional injury and loss of enjoyment because of defendant's actions. The record established below by Judge Alice Gilbert (now retired) warrants an award of damages.

IV. ATTORNEY FEES

Defendant also argues that the trial court's award of attorney fees was unreasonable. MCL 600.1721 authorizes payment of "a sufficient sum to indemnify" a party who has suffered loss as a result of the other party's contempt. *Homestead Development Co v Holly Twp*, 178 Mich App 239, 246; 443 NW2d 385 (1989). The damages awarded may include attorney fees. *Id.* In determining whether attorney fees are reasonable, the trial court must consider: (1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client. *Papo v Aglo Restaurants*, 149 Mich App 285, 299; 386 NW2d 177 (1986). The "trial court need not detail its findings as to each specific factor considered. The court's award will be upheld unless it appears upon appellate review that its finding on the 'reasonableness' issue was an abuse of discretion." *Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982).

Here, following a hearing on this issue, the trial court indicated that it had considered the appropriate factors. This case involved more than eleven hearings. Both parties were represented by two attorneys. Itemized bills were submitted and defense counsel acknowledged that plaintiffs' attorneys were "excellent attorneys." The trial court awarded plaintiffs less than their requested amount of $47,737.34. We will not substitute defendant's view of what is reasonable for that of the trial court and find no abuse of discretion with regard to the court's award of attorney fees.

In sum, we affirm the trial court's award of attorney fees and $45,000 in damages, but modify the court's judgment to reflect a single fine of $250.

Affirmed as modified by this opinion.

/s/ Bill Schuette
/s/ William B. Murphy
/s/ Richard A. Bandstra