STATE OF MICHIGAN

COURT OF APPEALS

In re Contempt of YOLANDER W. GREEN.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

KEVIN RAY CLEGHORN,

Defendant,

and

YOLANDER W. GREEN,

Appellant,

and

MICHAEL D. WARREN, JR.,

Appellee.

UNPUBLISHED
August 25, 2005

No. 252855
Oakland Circuit Court
LC No. 2003-188876-FH

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Following a show cause hearing, the trial court issued an opinion and order finding appellant guilty of criminal contempt pursuant to MCL 600.1701(a) and (g). In a subsequent order, the court fined her $600. She appeals as of right. We affirm the finding of criminal contempt, but we remand to reduce the fine imposed on appellant to $250, the maximum permitted under the criminal contempt statute, MCL 600.1715(1). This case is being decided without oral argument pursuant to MCR 7.214(E).

After defendant Cleghorn was released on bond in the instant case, he was arrested and charged with two counts of felonious assault. At a bond hearing, appellant informed the trial court that she was Cleghorn's new medical caseworker. Appellant recommended that the court order him to a particular treatment facility, as opposed to jail. She agreed that the recommended

facility was "a secure facility, a lock-down facility," and testified that Cleghorn would have "24 hour on-going supervision." The court entered an order committing Cleghorn to the facility and ordering appellant to notify the court and the assistant prosecutor upon any violation of the order. Less than two weeks later, Cleghorn was released from the facility on a pass and failed to return. Appellant notified the prosecutor within a day after she was informed of Cleghorn's absence, but did not notify the court.

The trial court determined that appellant violated MCL 600.1701(a) and (g), which state:

> The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
>
> (a) Disorderly, contemptuous, or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings or impair the respect due to its authority.
>
> * * *
>
> (g) Parties to actions, attorneys, counselors, and all other persons for disobeying any lawful order, decree, or process of the court.

The trial court's opinion and order discusses two distinct bases for the court's finding of contempt. First, the court concluded that appellant violated MCL 600.1701(g) because she failed to comply with the portion of the order that required her to notify the court of any violations of the order, and "at best lackadaisically had notice sent to the assistant prosecutor in a dilatory fashion." Second, the court concluded that appellant violated subsection (a) because she "purposefully, voluntarily and knowingly misled" the court concerning the custodial conditions at the facility. The court stated, "Put simply, Ms. Green lied to the Court under oath."

"A trial court's findings in a contempt proceeding must be affirmed on appeal if there is competent evidence to support them. However, the issuance of an order of contempt rests in the sound discretion of the trial court, and is reviewed only for an abuse of discretion." *Brandt v Brandt*, 250 Mich App 68, 74; 645 NW2d 327 (2002).

Appellant argues that her contempt conviction should be vacated because the alleged acts of contempt were not "clearly and unequivocally" shown. She claims that she attempted to comply with the order, and took reasonable measures to inform the prosecutor and the court of Cleghorn's absence as soon as practicable by leaving a message and sending a fax to the prosecutor's office.

However, appellant's argument does not fully address the bases of the trial court's ruling. Appellant completely ignores the trial court's determination that she violated MCL 600.1701(a) by misrepresenting the conditions at the facility. Her failure to address this basis for the trial court's decision precludes appellate relief. *Roberts & Son Contracting, Inc v North Oakland Dev Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987).

Appellant also argues that the conviction should be vacated or "determined to have been a civil contempt" because the sentence imposed (a $600 fine) is inconsistent with a finding of criminal contempt, inasmuch as it exceeds the $250 maximum authorized by MCL 600.1715(1) and the sentence is remedial rather than punitive in nature.

Contrary to appellant's argument, the statutory provisions limiting the amount a court may order a contemnor to pay do not distinguish between civil and criminal contempt. MCL 600.1715(1) does not authorize a fine in excess of $250, whether the contempt is civil or criminal. *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 711, 714; 624 NW2d 443 (2000). The limitations on the amount of the monetary penalties that the court may order under that provision are the same regardless of whether the contempt is civil or criminal. Thus, we reject appellant's contention that the trial court's imposition of an amount in excess of $250 shows that the finding of contempt was civil rather than criminal in nature.

We likewise reject appellant's contention that the nature of the sentence was compatible with a finding of civil rather than criminal contempt. The distinction between criminal and civil contempt is discussed in *In re Contempt of Auto Club Ins Ass'n, supra* at 711-714. In civil contempt, the court uses coercive sanctions to compel a contemnor to comply with an order, whereas in criminal contempt, the court punishes the contemnor for past conduct. *Id*. In this case, the court intended to punish appellant for violating its order and knowingly misrepresenting the security of the facility. The court did not impose the sanction to force compliance with an order, as in civil contempt. For these reasons, the finding of criminal contempt is affirmed.

Nonetheless, we conclude the trial court exceeded its authority in imposing a fine in excess of the $250 maximum permitted under the statute. We therefore reduce the fine to the statutory maximum of $250.

Affirmed, but remanded for adjustment of the fine in accordance with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Hilda R. Gage
/s/ Christopher M. Murray