

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
PORTAGE COUNTY, OHIO**

MITCHELL SPERO, TRUSTEE OF	:	<b>OPINION</b>
THE MANNY AND SYDELLE SPERO	:	
DYNASTY TRUST, et al.,	:	<b>CASE NO. 2011-P-0002</b>
Plaintiffs-Appellees,	:	
- vs -	:	
PROJECT LIGHTING, LLC, et al.,	:	
Defendants-Appellants.	:	
MITCHELL SPERO, et al.,	:	
Third Party Defendants-Appellees.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2008 CV 1749.

Judgment: Affirmed.

*Alan N. Hirth and Peter Turner*, Meyers, Roman, Friedberg & Lewis, 28601 Chagrin Boulevard, Suite 500, Cleveland, OH 44122; and *William D. Lentz*, Sandvoss & Lentz, 228 West Main Street, P.O. Box 248, Ravenna, OH 44266-0248 (For Plaintiffs-Appellees and Third Party Defendants-Appellees, Mitchell Spero, Ezra Spero, and Greta Longwell-Albert).

*George J. Argie and Dominic J. Vitantonio*, Argie, D'Amico & Vitantonio, 6449 Wilson Mills Road, Mayfield Village, OH 44143-3402; and *Mitchell A. Stanley and Dennis Siciliano*, Smith & Condeni, L.L.P., 600 East Granger Road, Second Floor, Brooklyn Heights, OH 44131-6721 (For Defendants-Appellants).

*Dennis A. Rotman*, 1350 Standard Building, 1370 Ontario Street, Cleveland, OH 44113 (For Third Party Defendant-Appellee, The Spero Electric Corporation).

*James D. Wilson*, Cowden & Humphrey Co., L.P.A., 4600 Euclid Avenue, Suite 400, Cleveland, OH 44103 (For Third Party Defendant-Appellee, Greenfield Commercial Credit LLC).

TIMOTHY P. CANNON, P.J.

{¶1} Appellants, Sam Avny and Anthony J. DeAngelis, appeal the finding of contempt by the Portage County Court of Common Pleas.<sup>1</sup> Avny and DeAngelis were each fined \$250 and each sentenced to seven days in the Portage County Jail. For the following reasons, we affirm the judgment of the trial court.

{¶2} This case stems from the dissolution of a joint venture agreement between Avny/Lighting Design, Inc., and Mitchell Spero, Manny Spero, and The Spero Electric Corporation. Avny, who has expertise and experience in making and producing high-end lighting projects, partnered with Spero, who provided the office, facilities, and production.

{¶3} The parties formed several limited liability companies which were owned 50% by Avny and 50% by the Spero trusts. Two of these entities are Project Lighting, LLC and Prospetto Lighting, LLC. Another entity, Project Light, LLC, is solely owned by Avny. The parties debated the ownership of the fourth entity, Prospetto Light, LLC.

{¶4} As recognized by the trial court, prior to the filing of the lawsuit, a total lack of trust developed between the principals of the venture, as the parties did not act in good faith and their actions had been predicated on mistrust of the other.

{¶5} On March 24, 2009, the trial court's magistrate appointed a receiver, David Daywalt of Meaden & Moore, to immediately take possession of all assets, real and personal property, funds, documents, records, and business operations of Project Lighting, Prospetto Lighting, and Prospetto Light. The trial court found that "there are real questions as to which LLC or Corporation has what assets or liability and what

---

1. It appears from the briefs filed with this court that appellants are only contesting the trial court's finding of contempt with respect to Avny and DeAngelis.

inventory exists. There needs to be a true accounting of those assets and liabilities flowing from the joint venture into the various LLCs or Corporations.”

{¶6} On May 20, 2009, the trial court issued a judgment entry ordering, in part:

{¶7} “1. Control of all cash of Project Lighting, LLC, Prospetto Lighting, LLC and Prospetto Light, LLC in any and all accounts under the control of any [of] these three entities deposited in or with any financial institution, individual or other entity or person is to be transferred immediately to the exclusive control of the Receiver. Said transfer is to be accomplished by the signing of any documents necessary as required by any depository bank or other entity or individual in possession of the cash the bank selected by the Receiver, as well as by the bank.

{¶8} \*\*\*\*

{¶9} “5. All funds derived from the sale of any Prospetto inventory will be deposited with the Receiver and remain under his control pending further order of the Court.”

{¶10} Thereafter, “[t]he Court received information that Defendants Anthony J. DeAngelis [as the controller of all three LLCs] and Project Light LLC withdrew or authorized the withdrawal of the funds from the sale of Prospetto inventory. The Court received information that the Defendant Sam Avny may have authorized the withdrawal of the funds. Upon learning of the misappropriation the Plaintiffs also filed a contempt motion.

{¶11} “The Defendants, Project Light LLC, Anthony DeAngelis, and Sam Avny were Ordered to Appear and Show Cause why they should not be held in contempt for

criminal/civil contempt of this Court's prior order by misappropriating the \$80,000.00 in funds from the Prospetto inventory.

{¶12} "After the adversarial hearing, where the parties presented testimony of witnesses and presented evidence, and upon the Court's consideration of the record, the Court finds beyond a reasonable doubt from the evidence presented that the Respondents, Anthony J. DeAngelis, Sam Avny, and Project Light LLC, are in contempt and were in disobedience of this Court's prior Order in that they misappropriated approximately \$80,000.00 in funds that they knew should have been forwarded to the Receiver."

{¶13} The trial court fined Avny \$250 and sentenced him to serve seven days in the Portage County Jail, to begin immediately. The trial court fined DeAngelis \$250 and sentenced him to serve seven days in the Portage County Jail, to begin immediately. The trial court fined Project Light \$250.

{¶14} Appellants filed a timely notice of appeal and assert the following assignments of error for our review:

{¶15} "[1.] The trial court erred in finding appellants in contempt of court since there was no clear violation of an unambiguous court order.

{¶16} "[2.] The trial court erred in finding appellants in criminal contempt of court since appellants acted with no criminal intent.

{¶17} "[3.] The trial court erred in sentencing appellants to a jail sentence as such a sentence was unreasonable under the circumstances and an abuse of discretion.

{¶18} “[4.] The trial court erred in issuing the order and journal entry on January 7, 2011, finding appellants in contempt of court and ordering them to pay a fine of \$250 and serve 7 days in jail forthwith inasmuch as the trial court did not have jurisdiction and was divested of jurisdiction since the case was on appeal.

{¶19} “[5.] The trial court erred in proceeding with a contempt hearing on September 17, 2010 and in reconvening said hearing on December 17, 2010 and in again reconvening said hearing on January 7, 2011, wherein the trial court entered a contempt order and ordered Appellants Avny and DeAngelis to be jailed, inasmuch as the case was settled on [January] 28, 2010 and the settlement of the case included all unresolved issues, including the issue of contempt.”

{¶20} We shall first consider appellants’ fourth assignment of error, as it pertains to the trial court’s jurisdiction. Specifically, appellants argue the contempt hearings were held after a notice of appeal was filed with this court, thereby divesting the trial court of jurisdiction.

{¶21} “[O]nce a notice of appeal is filed, the trial court loses any jurisdiction to proceed in any way that would interfere with the appellate court’s jurisdiction to review an order, even if the trial court believed that the notice of appeal was improperly filed. \*\*\* This has been interpreted as allowing the trial court to only retain jurisdiction over collateral issues, such as contempt of court. \*\*\*\*” (Internal citations omitted). *In re Miller*, 3d App. Dist. Nos. 13-06-41, 13-06-42, 13-06-51, & 13-06-52, 2007-Ohio-4238, at ¶6.

{¶22} Consequently, appellants’ fourth assignment of error is without merit.

{¶23} Under the fifth assignment of error, appellants argue that execution of the settlement agreement disposed of the contempt issue. A review of the record, however, reveals that while the settlement agreement disposed of all pending claims, the issue of contempt remained unresolved.

{¶24} Appellants' argument has been addressed by the Supreme Court of Ohio in *State ex rel. Corn v. Russo* (2001), 90 Ohio St.3d 551, 556, finding "that a court may consider the collateral issue of criminal contempt even after the underlying action is no longer pending. \*\*\* [T]he dismissal of an underlying civil action does not divest a court of common pleas of jurisdiction to conduct *criminal contempt proceedings*. Therefore, even though the parties dismissed the underlying [civil] lawsuit in this case, we find that respondent has jurisdiction to continue the criminal contempt proceedings against relators." (Internal citation omitted and emphasis added).

{¶25} Appellants' fifth assignment of error is not well taken.

{¶26} Next, we shall consider appellants' first and second assignments of error together as they raise challenges to the sufficiency and/or the manifest weight of the evidence supporting the trial court's finding of contempt.

{¶27} This court has discussed the issue of contempt, stating:

{¶28} "The primary purpose of a contempt proceeding is to vindicate the authority and proper functioning of the court. \*\*\* Great reliance should be placed upon the trial court's discretion in holding a party in contempt. \*\*\*

{¶29} "Contempt is generally understood as a disregard for judicial authority. \*\*\* Contempt may be either direct or indirect. \*\*\* Direct contempt involves actions occurring in the presence of the court, while indirect contempt occurs outside its

immediate presence. \*\*\* Furthermore, contempt proceedings may be either criminal or civil in nature. Criminal and civil contempt serve different purposes in the judicial system and are governed by different rules. \*\*\* Civil contempt is pursued for the benefit of a complainant and is therefore remedial in nature. \*\*\* Alternatively, criminal contempt is usually characterized by unconditional fines or prison sentences. \*\*\* One charged and found guilty of civil contempt must be allowed to purge him/herself of the contempt by showing compliance with the court's order he/she is charged with violating. \*\*\* However, in the case of criminal contempt, there is no requirement that the individual charged be given the opportunity to purge the contempt." *In re Guardianship of Hards*, 11th Dist. No. 2007-L-150, 2009-Ohio-1002, at ¶22-23.

{¶30} "A prerequisite to a charge of contempt for disobeying a court order is the existence of a valid order.' \*\*\*

{¶31} "In criminal contempt proceedings "the defendant is presumed to be innocent" and "must be proved to be guilty beyond a reasonable doubt." \*\*\* "[S]ince the primary interest involved in a contempt proceeding is the authority and proper functioning of the court, great reliance should be placed upon the discretion of the trial judge.' \*\*\*." (Internal citations omitted.) *In re Guardianship of Hards*, 175 Ohio App.3d 168, 2008-Ohio-630, at ¶38-39.

{¶32} Absent an abuse of discretion, an appellate court will not overturn a lower court's determination in a contempt proceeding. *State ex rel. Ventrone v. Birkel* (1981), 65 Ohio St.2d 10, 11.

{¶33} We agree with appellant that in the case sub judice, the trial court treated the contempt as indirect criminal contempt. First, appellants were each sentenced to

seven days in jail and each fined \$250. These sanctions were not intended to force appellants to comply with the trial court's order; rather, it was punishment for failure to comply. See *Lyons v. Bowers*, 11th Dist. No. 2006-L-119, 2007-Ohio-1548, at ¶23-24. Further, although the trial court did not specify the statutory code section supporting its finding of criminal contempt, it is clear based on the trial court's findings that appellants were in violation of R.C. 2705.02(A). That code section provides that a person guilty of "[d]isobedience of \*\*\* a lawful \*\*\* order, judgment, or command of a court or office" may be punished for a contempt. The acts prohibited by R.C. 2705.02 are considered to be indirect acts of contempt. *Lyons v. Bowers*, supra, at ¶21.

{¶34} First, appellants argue that there was no "prior court order." The record, however, reflects that the trial court magistrate issued an order on March 24, 2009, appointing a receiver for Project Lighting, Prospetto Lighting, and Prospetto Light. After the receiver took his oath, the trial court issued an order dated May 20, 2009, which this court outlined above.

{¶35} "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt." *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 319. In reviewing the sufficiency of the evidence to support a criminal conviction, "[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *Id.*



{¶36} Weight of the evidence, in contrast to its sufficiency, involves “the inclination of the greater amount of credible evidence.” *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387. (Citation omitted and emphasis added.) Whereas the “sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support the verdict as a matter of law, \*\*\* weight of the evidence addresses the evidence’s effect of inducing belief.” *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, at ¶25. (Citation omitted).

{¶37} Generally, the weight to be given to the evidence and the credibility of the witnesses is primarily for the trier of fact to determine. *State v. Thomas* (1982), 70 Ohio St.2d 79, at the syllabus. When reviewing a manifest weight challenge, however, the appellate court sits as the “thirteenth juror.” *Thompkins*, 78 Ohio St.3d at 387. (Citation omitted.) The reviewing court must consider all the evidence in the record, the reasonable inferences, and the credibility of the witnesses to determine whether, “in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.” *Id.*, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶38} Appellants assert there was insufficient evidence and it was against the manifest weight of the evidence to find them guilty of contempt, as DeAngelis was earmarking the funds from Prospetto, his methodology was transparent, and his methodology was not forbidden by any trial court order.

{¶39} The trial court's finding that appellants were guilty of contempt was not against the manifest weight of the evidence. Evidence was presented at the hearing that the receiver was to focus on Project Lighting, Prospetto Lighting, and Prospetto Light. Mr. Rollins, an employee of Meaden & Moore, testified that he had been working with Mr. Daywalt since the beginning of the receivership. Mr. Rollins testified that Avny owns Project Light, while DeAngelis is the controller of all three entities, overseeing the accounting and day-to-day operations. Mr. Rollins further testified that he never authorized the consolidation of operations of Prospetto Light with Project Light, nor did he authorize customers of Prospetto Light to make checks payable to Project Light. Mr. Rollins stated that he expected if the Prospetto Light inventory was sold, the customers would make checks payable to Prospetto Light. Mr. Rollins learned that approximately \$89,000 of Prospetto Light's money had been deposited into a Project Light account. Those monies were transferred to Prospetto Light on December 4, 2009.

{¶40} Mr. Daywalt, the Vice President of Meaden & Moore, also testified. Mr. Daywalt testified that it was the receiver's duty to "control the jointly owned inventory as well as some jointly owned receivables, see that the inventory as it was being sold, that the cash was properly collected and deposited in the Receiver account and then control the cash at that point." Mr. Daywalt informed the court that DeAngelis did not ask permission of the receiver to deposit moneys, which may belong to the jointly held companies, into Project Light's bank account. Further, Mr. Daywalt was not aware that Project Light was depositing monies that may belong to the jointly-owned companies into its own account.

{¶41} The testimony of Debbi Miller, a former employee of Prospetto Light and Project Light, was also admitted. Ms. Miller stated that when she worked for Prospetto Light she reported to both DeAngelis and Avny. Ms. Miller testified that she sent a mass e-mail to vendors indicating that all checks shall be made payable to Project Light instead of Prospetto Light, per the direction of DeAngelis. Ms. Miller also indicated that if a check was received made payable to Prospetto Light, she was directed, by DeAngelis, to call the customer and have the check reissued to Project Light.

{¶42} DeAngelis testified that he was the controller of all three companies. DeAngelis testified that, although he did not inform the receivers, Prospetto Light stopped doing business in September 2009. DeAngelis stated it was his belief that Project Light paid for the entire inventory and, therefore, Project Light should be paid for the Prospetto Light inventory. Although this was his belief, he acknowledged that he never informed Mr. Rollins. Furthermore, DeAngelis testified that although he received monies from the sale of the Prospetto Light inventory and deposited such funds into Project Light's Chase Bank Account, "it was clearly earmarked on the books as payable to Prospetto Light so that all of that money could be segregated and any time that it was called for, it could be turned over."

{¶43} Based on the evidence, the trial court did not lose its way when finding appellants guilty of contempt.

{¶44} Additionally, there was sufficient evidence to support a conviction for contempt. As previously noted, the trial court specifically ordered that "*all funds derived from the sale of any Prospetto inventory will be deposited with the Receiver and remain under his control pending further order of the Court.*" (Emphasis added.) Based on the

above testimony, it is clear that DeAngelis, as the controller, and Avny, as the owner of Project Light, failed to follow this directive. Appellants' counsel focuses on the fact that DeAngelis earmarked the funds from the sale of Prospetto inventory so that it could be "turned over to the receiver upon request." However, this procedure, as instituted by DeAngelis, was clearly in contravention of the trial court's order. None of the funds generated from the sale of Prospetto inventory were to be deposited into the Project Light bank account, whether they were earmarked or not. Furthermore, although the money was earmarked, it is clear from DeAngelis' testimony that he believed Project Light was entitled to the monies from the sale of the Prospetto inventory. After viewing all of the foregoing evidence and testimony, a rational trier of fact could have found the essential elements of contempt proven beyond a reasonable doubt.

{¶45} Appellants' first and second assignments of error are without merit.

{¶46} Under the third assignment of error, appellants claim the trial court erred in imposing a seven-day jail term as it is unreasonable and not proportional to the contemptuous act.

{¶47} We note that appellants' third assignment of error, with respect to Avny, is moot. The record reflects that this court issued a stay, dependent upon appellants relinquishing their passports and posting a bond with the trial court clerk in the sum of \$5,000. Thereafter, Avny moved this court to dissolve the stay and for an order to allow him to complete the balance of his sentence—approximately two days. This court, in a judgment entry dated March 4, 2011, dissolved Avny's stay "so that he can complete the balance of his jail sentence." Avny was ordered to report to the Portage County Justice Center.

{¶48} Even though the challenge to the jail term is moot with respect to Avny, it fails on the merits with respect to DeAngelis. R.C. 2705.05 outlines the potential penalty when an accused is guilty of a contempt charge. With respect to a first offense, the court may impose “a fine of not more than two hundred fifty dollars, a definite term of imprisonment of not more than thirty days in jail, or both[.]” R.C. 2705.05(A)(1).

{¶49} As discussed supra, appellants in this case did not comply with the trial court’s order as it pertained to the funds derived from the sale of any of the Propetto Light inventory. Upon review, we find the sentence imposed by the trial court is well within its sentencing authority and is not disproportionate to the conduct. The third assignment of error is without merit.

{¶50} Based on the opinion of this court, the judgment of the Portage County Court of Common Pleas is hereby affirmed.

DIANE V. GRENDELL, J.,

THOMAS R. WRIGHT, J.,

concur.