

JUNE ZOE WILKINSON, )  
 )  
 Plaintiff/Appellant, ) Appeal No.  
 ) 01-A-01-9511-CV-00503  
 v. )  
 ) Davidson Circuit  
 GRANT ROBERT WILKINSON, ) No. 93D-440  
 )  
 )  
 Defendant/Appellee. )

**FILED**

**November 13, 1996**

**Cecil W. Crowson  
Appellate Court Clerk**

COURT OF APPEALS OF TENNESSEE  
MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CIRCUIT COURT FOR DAVIDSON COUNTY  
AT NASHVILLE, TENNESSEE

THE HONORABLE MURIEL ROBINSON, JUDGE

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AFFIRMED IN PART,  
REVERSED IN PART,  
AND REMANDED.

SAMUEL L. LEWIS, JUDGE

## MEMORANDUM OPINION<sup>1</sup>

This is an appeal by plaintiff/appellant, June Zoe Wilkinson ("Wife"), from a final decree of divorce. Wife contends that the trial court erred in awarding the divorce to defendant/appellee, Grant Robert Wilkinson ("Husband"), deviating from the Child Support Guidelines, determining the amount and duration of alimony in futuro, and holding Wife in contempt.

The parties were married in 1978. They had two children, Tracey and Erika. At the time of trial, the children were thirteen and fourteen, Wife was forty-seven, and Husband was fifty-three. In the past, Wife had worked as a registered nurse, but had not been licensed for the last 15 years. She has a bachelor's degree in nursing, and she estimated that it would take her three to five years to obtain her masters in public health. Husband has a Ph.D. and is a director in the department of pharmacology at Vanderbilt. He earns a base salary of \$130,000.00 per year. In addition, he receives \$15,000.00 per year as director of the therapeutic monitoring lab and also receives income from consultations. Husband claimed that he would not receive the \$15,000.00 of additional income after 1 July 1995.

On 1 February 1993, Wife filed a complaint for divorce. Thereafter, Husband filed a petition for contempt and, later, an amended petition for criminal contempt. Wife answered Husband's petitions and filed a counter-petition for contempt. On 14 July 1994, Wife filed a motion to amend and supplement her complaint to

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<sup>1</sup>Court of Appeals Rule 10(b):

The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case.

add adultery as a ground for absolute divorce. The parties entered into an agreed order on 22 July 1994 allowing Wife to amend her complaint.

On 20 January 1995, the court filed its final decree of divorce. The decree included the following findings and orders:

1) granted Husband a divorce based on the inappropriate marital conduct of Wife;

2) awarded custody of the two minor children to Wife and granted Husband reasonable visitation;

3) ordered Husband to pay child support of \$1,000 per child per month and to pay the children's school tuition and for their books (The court, without explanation, stated that it realized this order exceeded the child support guidelines.);

4) ordered Husband to maintain a \$250,000.00 life insurance policy to secure his payment of the child support;

5) ordered Wife to pay for the children's school uniforms and lunches;

6) ordered Husband to provide medical and hospital insurance for the children and to provide any other medical needs, such as dental care (The court did not require Husband to provide for the children's psychological counseling.);

7) ordered the parties to sell the marital home and to divide the net proceeds equally;

8) awarded Wife alimony in futuro of \$1,200.00 per month for three years or until her death or remarriage, whichever occurs first and, as additional alimony, awarded Wife the 1994 Oldsmobile, ordered Husband to pay the debt on the Oldsmobile, and ordered Husband to provide Wife with insurance under COBRA;

9) awarded Wife one-half of Husband's six Vanderbilt University retirement accounts (This award included the assets contributed to the accounts and the accumulated appreciation on those assets between 1 January 1978 and 11 January 1995.);

10) allowed the parties to keep their separate property and to retain their respective bank accounts and Merrill-Lynch accounts; and

11) held that Wife was in contempt of court, but did not set out any punishment.

On 13 February 1995, Wife filed a notice of appeal as to the final decree.

One month later, Husband filed a petition for contempt alleging, in part, that Wife interfered with his visitation and vandalized his property. In June 1995, the court entered an order which awarded Husband damages for Wife's alleged vandalism, fined appellant \$550.00 for her interference with visitation, sentenced her to ten days in jail, and found that Wife was not a credible witness. Thereafter, Wife filed a notice of appeal as to the contempt order.

On 27 June 1995, this court entered an order dismissing Wife's first appeal for lack of a final order. Specifically, the trial court failed to rule on Wife's petition for contempt against Husband and failed to set forth any punishment for Wife's contempt. In August, the trial court addressed the deficiencies in its final order. Specifically, the court entered a second final decree which restated the basic findings in the first decree and found that Wife's petition for contempt was without merit and that there would be no punishment for Wife's contempt.

Thereafter, Wife filed a notice of appeal as to the second final decree. On 22 November 1995, this court entered an order consolidating the appeals. Wife presents four issues for our consideration.

The first issue is whether "[t]he Trial Court erred in

granting the divorce to the husband." Wife "admits that the Trial Court would have evidence if looked at [sic] the light most favorable to the Husband, which could be considered inappropriate marital conduct and acts constituting grounds for divorce, if those acts affected the marital relationship." Wife, however, argues that there was also evidence that Husband was chronically abusive of Wife. She argues that the court should have declared the parties divorced pursuant to Tennessee Code Annotated 36-4-129(b). That section allows the trial court to declare the parties divorced rather than awarding a divorce to either party when "either or both parties are entitled to a divorce." Tenn. Code Ann. § 36-4-129(b)(1996).

Nothing in this statute mandates that the trial court declare the parties divorced rather than awarding a divorce to one or the other parties. It gives the trial court discretion to do so. We are of the opinion that a review of the entire record clearly shows that Wife was guilty of inappropriate marital conduct and that Husband was entitled to a divorce on those grounds. The evidence fully supports the trial judge's findings.

Wife's second issue is whether "[t]he Trial Court erred in setting the amount of child support, including excepting payment for psychological or psychiatric counseling from the husband's responsibility."

The trial court awarded child support of \$1,000.00 per child and ordered Husband to pay the private school tuition in the amount of approximately \$15,000.00 per year. In addition, the court ordered Husband to furnish medical and hospitalization insurance and to pay the children's expenses not covered by insurance, including dental bills, orthodontics, and eye care.

Husband presently earns some \$130,000.00 per year and in 1994 had consulting income of approximately \$1,500.00. Taking all of these matters into consideration, the child support ordered by the court exceeds the guidelines by some \$11,000.00 per year. Husband has not complained of the excess child support, and Wife is certainly in no position to do so. This issue is without merit.

Wife's third issue is whether "[t]he Trial Court erred in determining the amount and duration of alimony *in futuro*."

"The amount of alimony to be allowed in any case is a matter for the discretion of the trial court in view of the particular circumstances. The appellate courts are disinclined to review such discretion except in cases where it has manifestly been abused."

**Ingram v. Ingram**, 721 S.W.2d 262, 264 (Tenn. App. 1986)(citations omitted). Here, the court ordered Husband to pay Wife \$1,200.00 per month for a period of three years or until the death or remarriage of Wife, whichever occurs first.

There is no medical proof or other evidence that Wife can not engage in gainful employment. Wife attended Victoria College in Trinidad and received a bachelor's degree in nursing from the University of London. Thereafter, she worked as a registered nurse in New York. The trial court, regarding Wife's ability to earn a living stated:

The court finds that both of these parties are professional people, they both have professions. The court must make note that Mrs. Wilkinson has been a housewife and mother for the past 16 years, but she does have a degree in nursing. She's a very capable, articulate woman, and the court feels that the alimony to be paid shall be paid for a limited period of time. That shall be in the amount of \$1200 per month for a period of three years.

In addition to the \$1,200.00 per month, the trial court ordered Husband to pay Wife's health insurance under COBRA during the time

allowed by the insurance carrier and to pay the indebtedness owed on the 1994 Oldsmobile automobile awarded to Wife. Our review of this record fails to show any error in the trial court's award of alimony.

Wife's final issue is whether "[t]he Trial Court erred in finding the Wife in contempt for vandalism and failure to abide by the Final Decree of Divorce."

On 12 April 1995, Husband filed a "petition for criminal contempt and other relief." Husband alleged that Wife was in contempt of court because of "her deliberate violations of the Court's final decree of divorce . . . ." The specific acts of Wife alleged by Husband to be contemptuous included interfering with Husband's visitation and telephone calls; intercepting packages sent by Husband to the children; interfering with the court's order that the children receive psychological counseling; and interfering with the sale of the marital residence. Husband also alleged that Wife harassed Husband on numerous occasions and that Wife caused damage to the property of Husband and his girlfriend, Merrily Bossart. Thereafter, Husband requested the court to find Wife guilty of criminal contempt and sentence her to ten days in the Davidson County workhouse or jail. He also requested a restraining order, reasonable attorney's fees, and any other relief.

On 22 June 1995, the court entered an order as to the petition. The court stated:

10. Respondent is responsible for the damage to the property of Merrily Bossart and petitioner. Petitioner will be awarded a judgment in the amount of \$780.34 which will be a lien against respondent's share of the proceeds of sale of the residence . . . .

. . . .  
12. Respondent, June Zoe Wilkinson, is in willful contempt of this Court because of violation [sic] of the Court's restraining orders relating to phone

calls, the order of visitation, and the Court's order on interfering with the children's mail.

The court also fined Wife \$550.00 for interfering with Husband's visitation, ordered Husband to deduct this sum from the July 1995 child support payment, and sentenced Wife to ten days in the Metro jail.

It is Wife's contention that the evidence failed to establish that she was guilty of contempt or of vandalizing the property of Husband or Ms. Bossart. Finally, Wife contends that the court erred when it awarded damages to Husband for the damage to Ms. Bossart's property.

The court based its finding of criminal contempt on the Wife's failure to comply with the court's orders, not the vandalism.

The power to punish for contempt is inherent in the courts of justice. It is one of the tools available to the courts to maintain the integrity of their orders. Violation of a court's lawful orders is contemptuous conduct. Persons who do so may be found guilty of criminal contempt and, in the absence of a specific statute, may be imprisoned for ten days and fined \$50 or both.

Criminal contempt convictions are punitive in character, and their primary purpose is to vindicate the court's authority. Persons charged with criminal contempt are presumed innocent, and the State must prove them guilty beyond a reasonable doubt.

Persons convicted of criminal contempt lose their presumption of innocence, and bear the burden of overcoming their presumption of guilt on appeal. Appellate courts do not review the evidence in a light favorable to the accused and will reverse criminal contempt convictions only when the evidence is insufficient to support the trier-of-fact's finding of contempt beyond a reasonable doubt.

***Thigpen v. Thigpen***, 874 S.W.2d 51, 53 (Tenn. App. 1993) (citations omitted). It is the opinion of this court that there was sufficient evidence to find beyond a reasonable doubt that Wife violated the court's order. Nevertheless, the fine ordered by the court was excessive. Unless otherwise specified, courts are



limited to ordering ten days imprisonment and a fifty dollar fine. Tenn. Code Ann. § 29-9-103(b) (Supp. 1996). There are no other statutes on point. Thus, the court's award of \$550.00 to Husband was excessive and should have been \$50.00 payable to the clerk of the court.

Wife also contends that there was not sufficient evidence to establish that she vandalized the property and that the court erred in awarding Husband damages for the vandalism of Ms. Bossart's property. While we are of the opinion that there was sufficient evidence to establish that Wife was responsible for the property damage, we do not believe Husband was entitled to recover for the damage to Ms. Bossart's property.<sup>2</sup>

Specifically, it is the opinion of this court that Husband lacked standing to recover for Ms. Bossart's injuries.

Standing is a judge-made doctrine used to determine whether a party is entitled to judicial relief. It requires the court to decide whether the party has a sufficiently personal stake in the outcome of the controversy to warrant the exercise of the court's power on its behalf. To establish standing, a party must demonstrate (1) that it sustained a distinct and palpable injury, (2) that the injury was caused by the challenged conduct, and (3) that the injury is apt to be redressed by a remedy that the court is prepared to give.

***Metropolitan Air Research Testing Auth. v. Metropolitan Gov't of Nashville and Davidson County***, 842 S.W.2d 611, 615 (Tenn. App. 1992) (citations omitted). Husband must establish his own injury which the court can redress. It is clear that Husband did suffer damages and that he has standing to recover for those damages; however, he may not recover for any damages other than his own. To explain, the court can not redress the injuries of Ms. Bossart by awarding damages to Husband. Thus, it is the opinion of this court that the trial court erred in awarding damages to Husband for

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<sup>2</sup> Two of the receipts introduced as evidence of damages represented the cost of new tires for Ms. Bossart's car. The receipts totaled \$588.09.

Mr. Bossart's injuries.

For the foregoing reasons, the decision of the trial court is affirmed in part, and reversed as to the fine imposed on Wife for criminal contempt and as to the damages awarded Husband as a result of Wife's vandalism. The case is remanded to the trial court for the entry of an order consistent with this opinion, a determination of Husband's actual damages, and for any further necessary proceedings. Costs are taxed two-thirds to plaintiff/appellant, June Zoe Wilkinson, and one-third to defendant/appellee, Grant Robert Wilkinson.

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SAMUEL L. LEWIS, JUDGE

CONCUR:

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HENRY F. TODD, P.J., M.S.

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WILLIAM C. KOCH, JR., J.