

**Petition for Writ of Habeas Corpus Granted and Memorandum Opinion filed
September 8, 2016.**



In The

Fourteenth Court of Appeals

NO. 14-16-00574-CV

IN RE DANIEL HAMILL, Relator

**ORIGINAL PROCEEDING
WRIT OF HABEAS CORPUS
300th District Court
Brazoria County, Texas
Trial Court Cause No. 75019-F**

MEMORANDUM OPINION

On July 21, 2016, relator Daniel Hamill filed a petition for writ of habeas corpus in this court. *See* Tex. Gov't Code Ann. § 22.221 (West 2004); *see also* Tex. R. App. P. 52. In the petition, relator asks this court to order his discharge from confinement in the Brazoria County Jail pursuant to an oral pronouncement of contempt by the Honorable Randall Huffstetler, presiding judge of the 300th District Court of Brazoria County. We grant the petition.

BACKGROUND

On January 12, 2012, the trial court signed a child support order, directing relator to pay \$537 per month in child support, commencing on January 1, 2012. On April 10, 2014, the trial court signed the final divorce decree and ordered relator to pay child support pursuant the same terms as the January 12, 2012 order.

On June 1, 2016, Mother filed a motion for enforcement of the child support order contained in the final divorce decree, alleging thirty violations of the child support order and requesting that relator be held in contempt and jailed for 180 days, sentences to run concurrently, and fined up to \$500 for each violation. Mother alleged that the total arrearage at the time she filed the motion for enforcement was \$16,110, and requested a judgment on the arrearage and attorney's fees.

The trial court held an evidentiary hearing on July 7, 2016. At the end of the hearing, the trial court announced that relator was in contempt on five of the thirty alleged violations, sentenced relator to 180 days confinement in the Brazoria County Jail, sentences to run consecutively, and ordered relator to remain confined until he had paid the arrearages and attorney's fees in full.

The trial court ordered that relator "be taken into custody immediately [and] [o]rders due tomorrow." The trial court stated that it would make a docket entry and "forward that docket entry to the jail so they can have that." The trial court never signed a written order of contempt or commitment.

In four issues, relator claims that he is being unlawfully restrained because was deprived of his right to due process of law. We ordered relator released from jail upon his posting a bond, and requested a response to the petition from Mother.

STANDARD OF REVIEW

The power to punish a party who fails or refuses to obey a prior court order or decree is an inherent power of a court and is an essential element of judicial independence and authority. *Ex parte Bennett*, 600 S.W.2d 252, 254 (Tex. 1980) (orig. proceeding). An original habeas corpus proceeding is a collateral attack on a contempt order. *Ex parte Rohleder*, 424 S.W.2d 891, 892 (Tex. 1967) (orig. proceeding). The purpose of a habeas corpus proceeding is not to determine the guilt or innocence of the contemnor, but only to determine whether he has been unlawfully restrained. *Ex parte Gordon*, 584 S.W.2d 686, 688 (Tex. 1979) (orig. proceeding). To order a contemnor released, the trial court's order directing the contemnor to be confined must be void because it was beyond the power of the court or because relator was deprived of liberty without due process of law. *Bennett*, 600 S.W.2d at 254. The contemnor bears the burden of showing that he is entitled to relief. *In re Chaumette*, 439 S.W.3d 412, 415 (Tex. App.—Houston [1st Dist.] 2014, orig. proceeding).

ANALYSIS

In his third issue, relator contends that he was denied due process because the trial court ordered him confined in jail without a written order of contempt and a written order of commitment. Because this issue is dispositive, we addressed it first.¹

¹ In his other issues, relator claims he was denied his right of due process of law because the trial court (1) found him in contempt with fewer than ten days' notice; (2) denied his special exception to the lack of notice in the motion for enforcement; and (3) ordered relator to remain in jail until the child support arrearages and attorney's fees are paid in full because he is financially unable to pay.

“[A] trial court has no authority to verbally order a person confined for contemptuous acts committed outside the presence of the court.” *Ex parte Thompson*, 803 S.W.2d 876, 877 n.1 (Tex. App.—Corpus Christi 1991, orig. proceeding); *see also Ex parte Amaya*, 748 S.W.2d 224, 225 (Tex. 1988) (orig. proceeding) (“An arrest without a written commitment made for the purpose of enforcing a contempt judgment is an illegal restraint from which the prisoner is entitled to be relieved.”). Both a written judgment of contempt and a written order of commitment are required to imprison a person for constructive contempt. *In re Green*, 221 S.W.3d 645, 649 (Tex. 2007) (orig. proceeding) (per curiam) (quoting *Ex parte Hernandez*, 827 S.W.2d 858, 858 (Tex. 1992) (orig. proceeding (per curiam))); *In re Markowitz*, 25 S.W.3d 1, 3 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding).

The trial court verbally found relator in contempt of the child support order and ordered him confined in jail in Brazoria County. Although the trial court stated that the orders were “due tomorrow,” the court’s rulings were not reduced to writing in signed orders of contempt and commitment.

Mother points out that the trial court committed its oral order “to writing a docket sheet entry provided to the detention officer and facility.” However, a docket sheet entry is not sufficient to constitute a written order for commitment. A docket sheet entry ordinarily forms no part of the record that may be considered. *Barnes v. Deadrick*, 464 S.W.3d 48, 53 (Tex. App.—Houston [1st Dist.] 2015, no pet.). Docket sheet entries are inherently unreliable because they lack the formality of orders and judgments. *In re Bill Heard Chevrolet, Ltd.*, 209 S.W.3d 311, 315 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding). Instead, a docket sheet entry is

a memorandum made for the convenience of the trial court and clerk. *State v. Shaw*, 4 S.W.3d 875, 878 (Tex. App.—Dallas 1999, no pet.).

In the absence of a written contempt order and a written commitment order trial court, relator’s confinement in the Brazoria County Jail violates his due process rights. *See In re Griffith*, 434 S.W.3d 643, 646–47 (Tex. App.—Houston [1st Dist.] 2014, orig. proceeding) (holding that the relator’s due process rights were violated because the trial court did not sign a written commitment order and a docket sheet entry was not sufficient to satisfy due process requirements). We sustain relator’s third issue.²

CONCLUSION

Accordingly, we grant relator’s petition for writ of habeas corpus, order relator released from bond set by this court on July 22, 2106, and order relator discharged from custody.

PER CURIAM

Panel consists of Justices Boyce, Christopher, and McCally.

² In light of our disposition of relator’s third issue, it is not necessary to address relator’s other issues.