

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	Case No. 20061073-CA
)	
v.)	F I L E D
)	(November 6, 2008)
C.H.,)	
)	2008 UT App 404
Defendant and Appellant.)	

Second District Juvenile, Farmington Department, 516516
The Honorable Diane W. Wilkins

Attorneys: Scott L. Wiggins, Salt Lake City, for Appellant
Mark L. Shurtleff and John M. Peterson, Salt Lake
City, for Appellee

Before Judges Greenwood, Davis, and McHugh.

McHUGH, Judge:

C.H. (Mother) appeals the trial court's order finding her guilty of criminal contempt. Specifically, Mother contends that the evidence was insufficient to support her conviction. We affirm.

The State argues that the issues raised in this appeal are now moot due to the transfer to Idaho of the child custody proceedings from which this conviction arose. We disagree. "An issue on appeal is considered moot when the requested judicial relief cannot affect the rights of the litigants." State v. Sims, 881 P.2d 840, 841 (Utah 1994) (internal quotation marks omitted). However, a court cannot hold a criminal conviction moot so long as it is possible "that any collateral legal consequences will be imposed on the basis of the challenged conviction." Sibron v. New York, 392 U.S. 40, 57 (1968); see also In re Giles, 657 P.2d 285, 286 (Utah 1982) (citing Sibron favorably and applying collateral legal consequences rule to patients of mental hospitals). We have held that the "collateral legal consequences" of a criminal conviction include ramifications on future investigations or adjudications by the Division of Child and Family Services (DCFS). See In re A.W., 2002 UT App 159, ¶ 4, 48 P.3d 257 (holding appeal of adjudication

hearing in juvenile court not moot despite minor's attainment of majority due to possible collateral consequences). In the case before us, where Mother is still a resident of Utah, a record that includes her conviction of criminal contempt may negatively impact future decisions of DCFS with respect to Mother's rights to parent her children. Thus, we hold that the issues raised by Mother are not moot.

Having decided that Mother's appeal is not moot, we now address her claims substantively.¹ To convict a person of contempt for failure to comply with a court order "it must be shown that the person cited for contempt knew what was required, had the ability to comply, and intentionally failed or refused to do so." Von Hake v. Thomas, 759 P.2d 1162, 1172 (Utah 1988) (citing Coleman v. Coleman, 664 P.2d 1155, 1156 (Utah 1983); Thomas v. Thomas, 569 P.2d 1119, 1121 (Utah 1977)). "The decision to hold a party in contempt of court rests within the sound discretion of the trial court and will not be disturbed on appeal unless the trial court's action 'is so unreasonable as to be classified as capricious and arbitrary, or a clear abuse of discretion.'" Marsh v. Marsh, 1999 UT App 14, ¶ 8, 973 P.2d 988 (quoting Bartholomew v. Bartholomew, 548 P.2d 238, 240 (Utah 1976)).

First, Mother claims that there was insufficient evidence to support a conviction of criminal contempt because the trial judge's oral order did not provide adequate notice of what was required of her. According to Mother, notice was defective because the charge and conviction of criminal contempt came before the trial court entered its written order. Contrary to Mother's position, the Utah appellate courts have upheld contempt sanctions imposed as the result of the violation of an oral order. See Foreman v. Foreman, 111 Utah 72, 176 P.2d 144, 149 (1946) ("Since we hold that the order in the form given by the court[, orally,] was a valid, lawful order it follows that the plaintiff's disobedience is a contempt of court."); Envirotech Corp. v. Callahan, 872 P.2d 487, 498 (Utah Ct. App. 1994) (holding that the trial court did not abuse its discretion by finding defendant in contempt of the court's oral injunction order). Indeed, so long as Mother knew what was required, we see

¹We begin by noting that Mother's Letter in Lieu of Reply Brief did not comply with the requirements set forth in the rules of appellate procedure, see, e.g., Utah R. App. P. 24(c), 27. "Failure to adhere to the requirements may invite the court to impose serious consequences, such as disregarding or striking the briefs, or assessing attorney fees against the offending lawyer." State v. Green, 2004 UT 76, ¶ 11, 99 P.3d 820 (citing Utah R. App. P. 24(j)).

no significance to the fact that the trial court's oral order had not yet been formalized in a written order.² The record is clear that Mother was ordered numerous times in open court not to use profane or abusive language when speaking to the children, was reminded of this mandate by a case DCFS worker, and actually informed the DCFS worker that she understood the order. Nevertheless, Mother violated the order in the presence of the DCFS case worker.

Second, Mother asserts that the trial court erred by failing to enter written findings of fact and conclusions of law concerning the substantive elements of contempt. Mother relies on Von Hake v. Thomas, 759 P.2d 1162 (Utah 1988), for the proposition that trial courts must "enter written findings of fact and conclusions of law with respect to each of the substantive elements" of contempt, see id. at 1172. The Utah Rules of Civil Procedure have been amended, however, to expressly recognize that "[i]t will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court . . . or appear in an opinion or memorandum of decision filed by the court." Utah R. Civ. P. 52(a).³ Consequently, current "emphasis is on the explicitness of the findings rather than on whether they are written rather than transcribed." State v. Hurst, 821 P.2d 467, 470 (Utah Ct. App. 1991).

In the matter before us, the trial court clearly and explicitly explained in open court the factual basis for its conclusion that Mother received and understood the order, had the ability to comply with the order, and intentionally failed or refused to comply with the order. The trial court's written findings of fact and conclusions of law further explain the basis on which it found Mother guilty. We hold that the oral and written findings of the trial court are sufficient.

In sum, the trial court did not exceed its discretion in finding Mother guilty of contempt. The oral order of the trial

²Because we conclude that the preexisting oral order was binding on Mother, we need not address her argument that the trial court could not make the written order effective nunc pro tunc.

³Although this amendment was made effective in 1987, one year before the Von Hake decision, that court was reviewing a contempt order entered in 1984. See Von Hake v. Thomas, 759 P.2d 1162, 1166 (Utah 1988); see also State v. Hurst, 821 P.2d 467, 470 (Utah Ct. App. 1991) (acknowledging that the Von Hake court "deal[t] with [a] contempt order[] issued before the 1987 amendment of Rule 52(a)").

court was valid, and the trial court adequately explained its findings and conclusions in support of conviction. Affirmed.

Carolyn B. McHugh, Judge

WE CONCUR:

Pamela T. Greenwood,
Presiding Judge

James Z. Davis, Judge