

No. 1-10-3228

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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CASSANDRA R. BRINSON,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	No. 08 L 10782
ARACELI REYES MARTINEZ,	)	
	)	
Defendant,	)	
	)	Honorable
	)	Diane M. Shelley,
(PRZEMEK M. LUBECKI, Contemnor-Appellant.)	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice McBride and Justice Epstein concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The record contained sufficient support for the orders of direct criminal contempt when, in the presence of the trial court, the contemnor disobeyed the court's orders regarding courtroom conduct thereby obstructing the court in the administration of justice.
- ¶ 2 The contemnor, attorney Przemek Lubecki, appeals from orders of the circuit court of Cook County finding him in direct criminal contempt of court. The orders of contempt stem from Lubecki's behavior during a trial held in September 2010. He contends on appeal that there is

insufficient evidentiary support for the contempt orders in the record. He further contends that he was denied due process when the trial court fined him \$2,000 without the benefit of a jury trial or other procedural protection. We affirm.

¶ 3 In 2008, plaintiff Cassandra Brinson filed a complaint against defendant Araceli Martinez seeking damages arising out of an automobile accident. Lubecki and his firm were retained to represent defendant. The matter then proceeded to trial.

¶ 4 During a pretrial hearing, the trial court indicated that it was going off the record. The following exchange then took place:

"Lubecki: No, Judge, we are not going off the record with all due respect.

\*\*\* I would be asking that the court reporter types everything that you say. And, Your Honor, we've been through this before that you can not go off the record unless by agreement of all of the parties.

The Court: Madam court reporter—Please stop talking.

Lubecki: With all due respect, we are not going ever off the record in this court room, Judge. It's not your decision.

(Discussion held off the record.)

The Court: Let the record reflect that defense counsel has left the courtroom, and he's been outside of the courtroom for about 10 to 15 minutes. He left the courtroom at the Court's direction."

¶ 5 When Lubecki returned, he made a motion for substitution of judge. The court indicated that the motion was not "properly before the court." The court also stated that when a court reporter was in the courtroom, the reporter was under its direction. Lubecki responded that it was not up to the court to decide what was included in the record. Although the court stated that no substantive discussions regarding the case would be held off the record, Lubecki requested a

hearing on the motion. The court again stated that the motion was not properly before the court, and Lubecki requested a recess. Once that request was denied, he stated he would draft the motion "right now." When Lubecki later tendered a handwritten motion to the court, the court indicated that it had already made its ruling. The court then denied Lubecki permission to withdraw the motion, read it into the record, and ordered it marked as an exhibit and attached to the transcript. When Lubecki subsequently gave the court a typed copy of the motion, the court again stated that the motion was not timely. The court indicated it was "going to control the courtroom," and that Lubecki's "tactic" was inappropriate. After instructing Lubecki to stop talking several times, the court began to explain how jury selection would proceed.

¶ 6 When the court indicated that no back striking would be allowed, Lubecki said that back striking was permitted in a civil case. The court then reiterated that back striking was not permitted. The court subsequently presented a panel of four potential jurors to the parties. After plaintiff's counsel struck two, the court asked Lubecki whether the remaining two were acceptable. Lubecki objected, as he believed that the court was required to tender a panel of four potential jurors at a time. The court agreed to "accommodate" Lubecki, but also admonished him that there was "a certain way" he should conduct himself in the courtroom. The court instructed Lubecki to stop speaking when the court spoke or told him that argument was over.

¶ 7 When Lubecki later requested a sidebar, a discussion was held off the record. Once back on the record, Lubecki objected to the fact that anything was done off the record. During another sidebar, plaintiff's counsel expressed concern that the jury was going to notice the tension between the court and Lubecki. Lubecki later moved for a mistrial based upon the court's failure to tender a panel of four jurors and began to argue the motion for substitution of judge. The court declined to hear further argument and commented that Lubecki's strategy was to "create chaos in the courtroom."

¶ 8 Lubecki later made another motion for a mistrial, which the court denied. He then objected to the order in which the potential jurors were being considered. The court responded that it had the discretion to determine how each panel was tendered, and that counsel was "looking for issues." Lubecki replied that he did not appreciate the court's comments, as they were "inappropriate and \*\*\* unprofessional." He asked the court for a "little respect," as he was "representing [his] client in the face of improper conduct by the Court." The court responded that it was "appalled" by his impolite behavior. Lubecki then asked the court to recuse itself, because it could not be fair to him and had problems with him "personally."

¶ 9 At that point, the court indicated that because Lubecki was interrupting the proceedings, the court would limit how long he could speak unless it was a new matter and denied the motion for a mistrial. Lubecki continued to object to the court's procedure for picking the jury. After the court asked Lubecki to stop speaking, he asked how he was supposed to stop speaking while still representing his client. Lubecki subsequently told the court that the court was confused about the way a jury was supposed to be selected. He further stated that he had never picked a jury in such a disorganized completely confusing manner.

¶ 10 The court then told Lubecki to stop speaking, and said if he spoke again, the court would hold him in contempt and would fine him \$1,000 each time that he spoke out of turn. The court next asked Lubecki to exercise any challenges and he asked to see the jurors' cards. The court refused Lubecki's request, indicated that his "trickery" was over, and stated that if he did not answer he would be fined \$1,000. Lubecki asked for time to review his notes as he was "discombobulated and confused" due to the court's threat. The court then found Lubecki in contempt of court and fined him \$1,000.

¶ 11 Ultimately, a jury was selected and the trial commenced. After one of plaintiff's witnesses testified, Lubecki asked to make an offer of proof. After excusing the jury and the

witness, the court instructed Lubecki to proceed. Lubecki characterized the court's refusal to let him examine the witness as "odd." The court replied that it was within the court's discretion as to how to permit an offer of proof. After Lubecki completed his offer of proof, the court granted plaintiff's motion to strike defendant's affirmative defenses and prevent defendant from testifying because she did not attend court that day.

¶ 12 Before commencing the second day of trial, the court stated, *inter alia*, that it was "appalled" by the fact that Lubecki had presented his motion for substitution of judge to another judge the previous day "trying to influence the outcome" of the case. The court then stated that everyone was going to conduct himself as an officer of the court, otherwise the court would continue to enter sanctions. Lubecki responded that his substitution motion was based upon his belief that the court was acting to prevent the defense from keeping an accurate record. He also believed that the court's "constant calls" for the sheriff were an attempt to intimidate him and that he had been held in contempt merely because he questioned the court's procedure for picking the jury. Lubecki admitted that attempting to have his motion ruled upon by another judge may have been "naive." The court indicated that it was going to control the trial and anyone who spoke out of turn would be fined \$1,000.

¶ 13 At one point, Lubecki said he did not appreciate being "constantly interrupted" when the court took offense to what he was saying. The court responded that it did not take offense; rather, its role was to coordinate the case and to follow the rules of evidence. When Lubecki continued to complain that the court was interrupting him, the court indicated that it would do so in order to prevent a day "like \*\*\* yesterday." During closing argument, the court informed Lubecki that his argument was inappropriate, told him to stop speaking, and instructed him to move on. When the court later asked Lubecki a question, he responded by asking the court not to interrupt him. The court then excused the jury and addressed the attorneys.

¶ 14 The court stated that Lubecki's statements directed at the court were contemptuous and fined him \$1,000. When Lubecki demanded to know which statements were contemptuous, the court told him he was to follow the court's instructions. The court indicated that if Lubecki did not follow the court's orders, his closing argument would be terminated. Lubecki told the court that it was "actively interfering" with his ability to represent his client. During the following discussion, the court ordered Lubecki to stop speaking five times.

¶ 15 Ultimately, the jury returned a verdict in favor of defendant. Posttrial, the court entered a \$2,000 sanction against Lubecki and stated that the contempt order would subsequently be issued.

¶ 16 On October 15, 2010, the court entered a memorandum order of adjudication of direct criminal contempt. The order indicated that when the court wished to go off the record, Lubecki began to "literally scream at the court." Lubecki's tone was abrasive, disrespectful and "unfitting" for the courtroom, and he continued to yell and make derogatory comments about the court even after being assured that nothing of substance would be discussed off the record. This culminated in the court's request that a sheriff escort Lubecki to the hallway. The order then discussed Lubecki's attempts to file a motion for substitution of judge and his objections to the court's procedures during *voir dire*. After his motion for a mistrial was denied, Lubecki continued to argue with the court in an "inappropriate and disruptive manner" after almost every ruling and to claim that the court did not understand the law. Despite being warned about his conduct, Lubecki continued to disrespect and disrupt the court. It was after multiple requests to stop speaking that the court held Lubecki in direct contempt and fined him \$1,000. When he repeated this conduct, he was fined again. Ultimately, the court determined that Lubecki undertook a course of conduct intended to disrupt trial after his client had been barred from testifying and that this conduct constituted direct criminal contempt.

¶ 17 Criminal contempt of court is generally defined as "conduct which is calculated to embarrass, hinder or obstruct a court in its administration of justice or derogate from its authority or dignity, thereby bringing the administration of law into disrepute." *People v. Javaras*, 51 Ill. 2d 296, 299 (1972). Sanctions for criminal contempt ensure, *inter alia*, that judges and other court personnel are shown the respect to which they are entitled when performing their judicial duties, court proceedings are conducted in an orderly fashion, and court orders are obeyed. *In re Marriage of Betts*, 200 Ill. App. 3d 26, 45 (1990); see also *Levaccare v. Levaccare*, 376 Ill. App. 3d 503, 509 (2007) (criminal contempt is retrospective in nature and punishes either the act of doing what is prohibited or the failure to do what has been ordered).

¶ 18 Direct criminal contempt may occur when either the court personally observes a contemptuous act or a contemptuous act is committed outside the immediate physical presence of the trial court, but within an integral part of the court. *People v. Minor*, 281 Ill. App. 3d 568, 572-73 (1996). A party may be found in criminal contempt when, in the judge's presence, that party's action is disrespectful, disruptive, deceitful, or disobedient to the extent that such action affects the court's proceedings. *Betts*, 200 Ill. App. 3d at 45. The most readily recognizable example of direct contempt is criminal contempt consisting of an outburst during court proceedings or other disruptions of judicial proceedings. *Betts*, 200 Ill. App. 3d at 47.

¶ 19 "Direct criminal contempt may be found and punished summarily because all elements are before the court and, therefore, come within its own immediate knowledge." *People v. L.A.S.*, 111 Ill. 2d 539, 543 (1986). Consequently, the usual safeguards of procedural due process are not required for a direct criminal contempt conviction. *L.A.S.*, 111 Ill. 2d at 543. However, before citing a person with contempt, the trial court must find that his conduct was willful. *People v. Simac*, 161 Ill. 2d 297, 307 (1994). The person's state of mind does not have to be affirmatively proven, as a "contemptuous state of mind may be inferred from the allegedly

contemptuous conduct itself." *Simac*, 161 Ill. 2d at 307. Intent may be inferred from the circumstances around the conduct and the character of the conduct. *Simac*, 161 Ill. 2d at 307. The standard of review for direct criminal contempt is whether sufficient evidence exists to support a finding of contempt and whether the trial court considered facts outside the court's knowledge. *Simac*, 161 Ill. 2d at 306.

¶ 20 Because no appellee's brief has been filed in this case, we consider this appeal under the principles of *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 21 Lubecki contends that the evidence is insufficient to support a finding of contempt because the contempt order is ambiguous and conflicts with the transcript of the proceedings and other orders in the record. He further argues that an attorney cannot be found in contempt when his actions constituted good faith advocacy in the face of erroneous rulings by the trial court.

¶ 22 Here, the record reveals that Lubecki disagreed with the trial court over whether or not to go off the record, the procedure for picking a jury, and other matters related to the trial proceedings. Although the trial court told him that the motion for substitution of judge was untimely, he repeatedly attempted to file the motion. Lubecki also interrupted the court numerous times and refused to stop speaking when the court requested that he do so. He characterized the trial court as "odd" and "disorganized," labeled the court's comments about his behavior as inappropriate and unprofessional, and accused the court of being confused as to *voir dire* procedures.

¶ 23 After Lubecki stated that he had never picked a jury in such a "disorganized completely confusing manner," the court told him to stop speaking and that if he spoke out of turn again he would be held in contempt and fined \$1,000. When Lubecki then failed to answer a question posed by the court, the court stated that absent an answer the court would fine him. Lubecki

responded that he was discombobulated and confused by the court's threat, and the court found him in contempt and imposed the fine. With regard to the second finding of contempt, during closing argument Lubecki told the court to stop interrupting him. The court immediately excused the jury and told Lubecki that his comments to the court were contemptuous and entered a \$1,000 fine.

¶ 24 The trial court warned Lubecki numerous times that his failure to obey the court's orders regarding courtroom conduct would result in a finding of contempt and a fine. However, the record reflects that while in the court's presence, Lubecki disregarded the court's orders and continued the complained of behavior such that trial court could not proceed in an orderly fashion (*Betts*, 200 Ill. App. 3d at 45), and, as this conduct hindered the trial court from maintaining order in the courtroom and administering justice, *i.e.*, conducting trial in an efficient manner, sufficient evidence exists to support the finding of direct criminal contempt (*Simac*, 161 Ill. 2d at 306).

¶ 25 Lubecki, on the other hand, contends that the contempt order is contradicted by the transcript and other orders in the record. He argues that the trial court misstated the facts when, in the memorandum order, the court indicated that he screamed at the court and that his tone was disrespectful, abrasive, inappropriate, and disruptive, because the trial transcript does not indicate that anyone screamed or that anything other than "polite" discussion occurred. He also argues that the trial court's oral orders failed to specify whether he was held in civil or criminal contempt and that the plaintiff's order indicating that the matter was continued so that he could "purge" himself of the direct criminal contempt finding conflicts with the court's written order adjudicating him in direct criminal contempt.

¶ 26 Although it is unclear how the transcript could have memorialized Lubecki's tone, the record does reflect that the trial court admonished Lubecki that he should conduct himself in a

certain way in the courtroom and stated that it was appalled by his impolite behavior. Plaintiff's counsel also expressed concern that the jury was going to notice the tension between the court and Lubecki. While Lubecki correctly points out that neither oral contempt finding indicated whether he was found in civil or criminal contempt, the transcript indicates that Lubecki was found to be in contempt and fined after he refused, in the court's presence, to obey the court's orders. As the punishment was retroactive in nature and punished him for doing what was prohibited in the court's presence, the nature of the contempt finding was criminal. See *Levaccare*, 376 Ill. App. 3d at 509 (criminal contempt punishes the act of doing what is prohibited).

¶ 27 While the plaintiff's handwritten order stating that the matter was before the court for an adjudication of direct criminal contempt and that Lubecki could "purge" the finding by paying the fine is internally contradictory (see *Betts*, 200 Ill. App. 3d at 46-47), the trial court's memorandum order clarified the court's findings. What the trial court wrote in its order of adjudication of direct criminal contempt constituted the court's findings, because the trial court is the trier of fact in a direct criminal contempt case. *Thomas v. Koe*, 395 Ill. App. 3d 570, 582 (2009). That means the trial court had the responsibility to determine the credibility of witnesses, weigh evidence, and resolve conflicts in the evidence; a reviewing court gives deference to the trial court because it heard the evidence and observed the witnesses. *Koe*, 395 Ill. App. 3d at 582. Therefore, this court will defer to the trial court's conclusions regarding Lubecki's tone and the level of his voice, as the court observed Lubecki during trial. *Koe*, 395 Ill. App. 3d at 582.

¶ 28 Lubecki next contends that his actions in this case constituted good faith, zealous advocacy for his client in the face of erroneous decisions by the trial court rather than contempt. He urges this court to consider the circumstances and the "provocative" nature of the trial court's erroneous rulings. See *People v. Bertelle*, 164 Ill. App. 3d 831, 836 (1987) (although

provocation does not excuse contempt, it does impact "the determination of whether the requisite intent has been established beyond a reasonable doubt"). We disagree, as even if Lubecki believed the trial court's rulings were wrong, that did not give him the right to repeatedly question the court's authority and understanding of the law and to disobey the court's orders.

¶ 29 *Thomas v. Koe*, 395 Ill. App. 3d 570 (2009), is instructive. There, an attorney was found to be in direct criminal contempt after he attempted to question a witness on a topic that had been ruled inadmissible pursuant to a motion in *limine*. On appeal, he contended that direct criminal contempt could not exist when the contemnor was an attorney making a good faith attempt to represent his client.

¶ 30 The court disagreed, determining that there must be a line between zealous advocacy and disobeying the trial court. *Koe*, 395 Ill. App. 3d 580. In that case, the attorney, unhappy with the court's ruling, chose to disregard it. However, it was "utterly irrelevant" that the attorney believed that the trial court was wrong, because even when the court makes an erroneous decision, it remains entitled to "dignity and obedience." *Koe*, 395 Ill. App. 3d 580-81. The court reiterated that admittance to " 'the bar is a privilege burdened with conditions,' " one of which is obeying the court's orders. *Koe*, 395 Ill. App. 3d 580, quoting *In re Rouss*, 221 N.Y. 81, 84 (1917). If an attorney believes that the trial court erred, the proper procedure is to appeal, rather than to disregard the court's ruling. *Koe*, 395 Ill. App. 3d 581; see also *People ex rel. Fahey v. Burr*, 316 Ill. 166, 182 (1925) ("[a]n attorney's zeal to serve his client should never be carried to the extent of causing him to seek to accomplish his purpose by a disregard of the authority of the court").

¶ 31 In the case at bar, even if Lubecki believed that the trial court was wrong when it went off the record without his permission, declined to consider the motion for substitution of judge, and failed to tender him a panel of four potential jurors, the proper procedure was to preserve these

issues for appeal by objecting at the time and in a posttrial motion, rather than to accuse the court of being unprofessional, confused about the law, and odd. *Koe*, 395 Ill. App. 3d 581. Lubecki's continued questioning of the court's authority and refusal to follow the court's orders certainly hindered the court as it attempted to conduct the trial and administer justice to the parties, and cannot be excused by his assertion that he was acting as a zealous advocate for his client. *Koe*, 395 Ill. App. 3d 580

¶ 32 Lubecki finally contends that he was denied due process when the trial court fined him \$2,000 for direct criminal contempt without the benefit of a jury trial or other procedural protection. We disagree.

¶ 33 Direct criminal contempt may be found and punished summarily because the elements are before the trial court and within its own immediate knowledge. *L.A.S.*, 111 Ill. 2d at 543; see also *People v. Duff*, 2012 IL App (5th) 100479, ¶ 13 (June 18, 2012). A finding of direct criminal contempt may be made in a summary manner immediately after the contemptuous conduct occurs if the purpose of the sanctions is to restore order in the courtroom or to maintain control over court proceedings. *Betts*, 200 Ill. App. 3d at 49. When the total punishment for a particular course of criminally contemptuous conduct committed before the trial court exceeds the parameters of punishments normally imposed for misdemeanors and the punishment is not imposed immediately after occurrence of the contemptuous conduct, the contemnor is entitled to a jury trial as to the contempt charges. *Betts*, 200 Ill. App. 3d at 50. Although the traditional test for determining whether or not a charged offense is a misdemeanor is whether the penalties exceed \$500 or six months' imprisonment, there is some authority indicating that the fine component is subject to an upward adjustment on the basis of the contemnor's financial resources and inflation. See *Betts*, 200 Ill. App. 3d at 50-51 (collecting cases).

¶ 34 Here, while it is true that Lubecki was fined more than \$500, in each case the \$1,000 fine was imposed immediately after the trial court found him in contempt and in order to maintain control over the courtroom proceedings. *Betts*, 200 Ill. App. 3d at 49. Posttrial, the court stated that a written memorandum order would issue when the court had an opportunity to write it. Accordingly, because the punishment was imposed immediately after the contemptuous conduct, Lubecki was not entitled to a jury trial even though the total amount exceeded \$500. See *Betts*, 200 Ill. App. 3d at 50 (the contemnor is entitled to a jury trial as to the contempt charges when the total punishments for a particular course of criminally contemptuous conduct committed before a judge exceed \$500 *and* the punishment is not imposed immediately after occurrence of the contemptuous conduct).

¶ 35 For the reasons stated above, the judgment of the trial court is affirmed.

¶ 36 Affirmed.