

No. 1-17-3011

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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SAVAS TSITIRIDIS, DISPATCH TAXI	)	Appeal from the Circuit Court
MANAGEMENT, LLC, and PURE TAXI MEDIA, LLC,	)	of Cook County,
Illinois Limited Liability Companies,	)	
	)	
Plaintiffs,	)	
	)	No. 16 L 14175
v.	)	
	)	
EVGENY FREIDMAN,	)	
	)	Honorable
Defendant and Contemnor-Appellant.	)	David B. Atkins,
	)	Judge Presiding.

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PRESIDING JUSTICE MIKVA delivered the judgment of the court.  
Justices Griffin and Walker concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirm the trial court’s finding of indirect criminal contempt against defendant. We reject the only argument defendant makes on appeal which is that he was not admonished about his right to be present at trial and that the court would proceed *in absentia* if he failed to appear. The record on appeal does not support this claim and, in fact, shows that defendant was admonished.

¶ 2 This is an appeal from a finding of indirect criminal contempt that arose from a civil litigation matter between defendant-contemnor Evgeny Freidman and plaintiff Savas Tsitiridis regarding—according to Mr. Freidman—their mutual business interest in a company called

Dispatch Taxi Management LLC. On appeal, Mr. Freidman’s sole contention of error is that the trial court violated his constitutional right to be present at trial by trying him *in absentia* without first admonishing him of his rights pursuant to section 113-4(e) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/113-4(e) (West 2016)). Because Mr. Freidman has failed to provide this court with any evidence necessary to support this claim, we affirm.

¶ 3

### I. BACKGROUND

¶ 4 Plaintiffs—Mr. Tsitiridis, Dispatch Taxi Management LLC (Dispatch), and Pure Taxi Media LLC (Pure)—filed the initial complaint in the underlying case (case No. 16 CH 05153) on April 13, 2016.

¶ 5 On June 27, 2016, plaintiffs filed a verified petition for adjudication of indirect criminal contempt against Mr. Freidman, alleging that on June 10, 2016, the court had made an oral ruling “that [Dispatch employee] Ms. Cisneros could no longer perform work either for Freidman or other business ventures during Dispatch’s regular business hours or while using Dispatch’s resources.” That ruling was entered in a written order by Judge Neil Cohen on June 15, 2016, which enjoined the parties from:

“Causing or allowing Anita Cisneros to perform work which is not for the exclusive benefit of Dispatch or Pure either: (i) while using any Dispatch resource (*e.g.* the electronic mail server in place at Dispatch, the Dispatch telephone lines or other IT infrastructure, office supplies, *et cetera*); or (ii) during her standard working hours at Dispatch including all time between 8 am – 5 pm every Monday-Friday until this Order is no longer in effect.”

But, according to the contempt petition, Mr. Freidman “Immediately and Repeatedly Violate[d]

the Order,” starting as early as June 14 and continuing through June 23.

¶ 6 On the day that plaintiffs filed their contempt petition, the trial court entered an order directing Mr. Freidman “to appear before the Court no later than [July 6, 2016 @ 10:30 a.m.] for arraignment.” When that day arrived, Judge Cohen granted Mr. Freidman’s request for a substitution of judge as of right pursuant to section 114-5 of the Code (725 ILCS 5/114-5 (West 2016)). The case was then transferred to Judge David B. Atkins.

¶ 7 On June 23, 2017, the trial court entered an order resetting the trial date from July 19 to August 29, 2017, at 11 a.m. On August 29, 2017, the trial court entered an order noting that the petitioner had appeared prepared to prosecute the criminal contempt action but that Mr. Freidman, whose counsel was present, had failed to appear. The court again reset the trial, this time for September 14, 2017, and stated that if Mr. Freidman “fail[ed] to appear for any reason the Court [would] proceed with trial in absentia and issue a warrant for [Mr.] Freidman’s arrest.”

¶ 8 On September 7, 2017, Mr. Tsitiridis filed a petition for attorney fees “relating to Freidman’s failure to appear for trial on August 29, 2017.” Attached to the petition was a notarized declaration from Mr. Tsitiridis’s counsel, John D. Fitzpatrick, in which Mr. Fitzpatrick stated, in pertinent part:

“6. Ms. Cisneros was present [in court on August 29, 2017] after having taking leave from her position with Star North Management LLC. Upon learning that Freidman would not appear, I requested that the trial commence *in absentia* citing the prior admonishment on November 9, 2016.

7. On November 9, 2016, the Court admonished Freidman when he entered his not guilty plea during the arraignment that his failure to appear would

constitute a waiver of his right to confront witnesses and that the trial court would proceed in Freidman's absence.

8. Freidman did not object to either of those conditions \*\*\*."

¶ 9 Also attached to the petition for fees was a written order dated November 9, 2016, prepared by Mr. Freidman's counsel and entered by Judge Atkins, which granted Mr. Freidman's motion to modify the conditions of his bond. That order stated that Mr. Freidman was granted permission to leave the state of Illinois during the pendency of the contempt charges and that he "agree[d] to appear at any future court dates that this Honorable Court order[ed] him to do so."

¶ 10 At the September 14, 2017, hearing date, counsel for Mr. Tsitiridis noted that Mr. Freidman had, again, failed to appear for trial and asked that the trial proceed *in absentia*, based on the admonition given to Mr. Freidman in November 2016 and the August 29th order mandating his appearance on September 14th.

¶ 11 In response, Mr. Freidman's counsel explained that he had just heard from Mr. Freidman, stating: "He is in New York City. His son is having his bar mitzvah this weekend. He was with the rabbi this morning and apparently was unaware that the trial was occurring today. And perhaps that's my fault." Counsel objected to the court holding a trial *in absentia*, arguing it would violate Mr. Freidman's rights to a fair trial and to testify in his own behalf.

¶ 12 The court ruled on the matter as follows:

"Okay. Well, on the last court date this matter was set for trial, I gave counsel an opportunity to let his client know or let your client know that this case was going to proceed in absentia if he did not appear. And indeed, I believe that was part of the last court order.

So for that reason I am going to proceed forward with the trial in Mr. Freidman's absence.”

¶ 13 Anita Cisneros, the only trial witness, testified that after June 15—and at Mr. Freidman's request—she continued to spend a portion of her workday performing work for companies other than Dispatch. Ms. Cisneros knew that outside work was not supposed to be done between 8 a.m. and 5 p.m., but she continued to do it because Mr. Freidman asked her to continue to do it and threatened to terminate her if she did not do what he said.

¶ 14 On September 22, 2017, in a written order, the trial court found beyond a reasonable doubt that Mr. Freidman was in indirect criminal contempt of court for his violation of the court's order of June 15, 2016. The court also granted Mr. Tsitiridis's petition for attorney fees based on Mr. Freidman's failure to appear for trial on August 29, 2017.

¶ 15 On October 16, 2017, Mr. Freidman filed a motion for an acquittal or for a new trial. In it, he argued, in part, that he did not knowingly and intelligently waive his right to be present at trial pursuant to section 113-4(e) of the Code (725 ILCS 5/113-4(e) (West 2016)), and that the trial *in absentia* violated his right to confront the witnesses against him. On December 11, 2017, the court denied Mr. Freidman's motion for acquittal or a new trial, finding in part:

“On November 9, 2016, Defendant and his attorney appeared before the Court. As part of the arraignment proceedings a discussion ensued in which the Defendant promised to appear in Court as required if the Court did not impose a bond. Over Petitioner's objection the Court did not impose a bond at that time. The Court accepts the affidavit of Petitioner's counsel John Fitzpatrick that on that date Defendant Evgeny Freidman was admonished in person by the Court that Court

hearings would proceed in his absence if he failed to appear.”

¶ 16 In a separate order entered that same day, the trial court fined Mr. Freidman \$500 and sentenced him to 28 days in the Cook County Jail.

¶ 17 II. JURISDICTION

¶ 18 Mr. Freidman filed a timely notice of appeal on December 11, 2017. This court has jurisdiction pursuant to article VI, section 6 of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6), and Illinois Supreme Court Rules 603 and 606, governing appeals from final judgments of conviction in criminal cases (Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013)).

¶ 19 III. ANALYSIS

¶ 20 On appeal, Mr. Freidman argues that the trial court committed reversible error when it tried him *in absentia* for indirect criminal contempt without admonishing him in person pursuant to section 113-4(e) of the Code (725 ILCS 5/113-4(e) (West 2016)). Mr. Freidman requests that we vacate the trial court’s judgment and remand the cause for a new trial. No brief has been filed in response.

¶ 21 Mr. Freidman was charged with indirect criminal contempt. Contempt proceedings are *sui generis*. *In re Marriage of Betts*, 200 Ill. App. 3d 26, 48 (1990). “Because the power of a court to punish for contempt is inherent as essential and proper to the effective functioning of the courts and to the administration of justice [citation], courts are not strictly bound by the provisions of the Code of Civil Procedure [citation] or the Code of Criminal Procedure of 1963 [citation].” *In re Matter of Peasley*, 189 Ill. App. 3d 865, 869 (1989). Indirect criminal contempt proceedings must nevertheless “generally conform to the same constitutionally mandated procedural requirements as other criminal proceedings” and “the trial of an indirect criminal

contempt charge must conform to all procedural requirements and rights normally applicable to criminal trials.” *Id.* at 58. However, “only ‘substantial compliance’ ” with the requirement that a defendant receive the admonishments required by section 113-4(e) is necessary. *People v. Montes*, 2013 IL App (2d) 111132, ¶ 55.

¶ 22 Generally, a defendant has a constitutional right to be present at all stages of his trial and to confront the witnesses against him. *People v. Cobian*, 2012 IL App (1st) 980535, ¶ 11 (citing *People v. Smith*, 188 Ill. 2d 335, 340 (1999)). Although a defendant’s voluntary absence from trial may result in a waiver of those rights, “Illinois law requires that a defendant be admonished of this consequence.” *Id.* (citing *People v. Phillips*, 242 Ill. 2d 189, 194-95 (2011)). The question of whether a trial *in absentia* violated a defendant’s constitutional rights is a question of law we review *de novo*. *People v. Liss*, 2012 IL App (2d) 101191, ¶ 10.

¶ 23 Section 113-4(e) of the Code (725 ILCS 5/113-4(e) (West 2016)) provides:

“If a defendant pleads not guilty, the court shall advise him at that time or any later court date on which he is present that if he escapes from custody or is released on bond and fails to appear in court when required by the court that his failure to appear would constitute a waiver of his right to confront the witnesses against him and trial could proceed in his absence.”

¶ 24 Here, Mr. Freidman contends that the trial court failed to admonish him at all because “there is not one shred of persuasive evidence in this record that the admonishment actually happened.” We disagree. In his sworn declaration, counsel for Mr. Tsitiridis stated that at the arraignment on November 9, 2016, when Mr. Freidman entered his plea of not guilty, the trial court did, in fact, admonish Mr. Freidman “that his failure to appear would constitute a waiver of

his right to confront witnesses and that the trial court would proceed in [Mr.] Freidman's absence." This sworn statement is supported by the written court order from that same date, requiring Mr. Freidman to appear at all future court dates. Moreover, in its denial of Mr. Freidman's motion for acquittal, the trial court specifically accepted Mr. Fitzpatrick's declaration and found that Mr. Freidman was admonished in person that "hearings would proceed in his absence if he failed to appear."

¶ 25 And, finally, when Mr. Freidman failed to appear for the initial trial date of August 29, 2017, the trial court declined to proceed to trial in his absence that day and instead reset the trial for September 14, 2017, warning that if Mr. Freidman again failed to appear at the next trial date, it would proceed with the trial *in absentia*. While the admonishment to Mr. Freidman's counsel on August 29 did not substitute for an admonishment to Mr. Freidman himself, the continuance on that date gave Mr. Freidman another chance to appear in court.

¶ 26 There is no transcript from the November 9, 2016, trial date in the record. As the appellant, Mr. Freidman has the burden of providing "a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* at 392. Mr. Freidman also did not include any suitable substitute for a transcript of the November 9 trial date, such as a bystander's report or an agreed statement of facts (see Ill. S. Ct. R. 323(c), (d) (eff. Dec. 13, 2005)). In the absence of such documentation, we must presume the trial court's actions conformed to the law. *Foutch*, 99 Ill. 2d at 391-92. Thus, we cannot simply



assume, as Mr. Freidman asks us to, that he was not admonished.

¶ 27 In fact, the only evidence in the record we have before us demonstrates the contrary—that Mr. Freidman received an admonishment on November 9, 2016, when he appeared in court. This evidence includes Mr. Fitzpatrick’s declaration, the court’s order of November 9th, and the court’s own acceptance of Mr. Fitzpatrick’s declaration. Mr. Freidman offers us nothing to rebut this evidence.

¶ 28 Under these circumstances, we cannot find that the trial court violated Mr. Freidman’s constitutional right to be present at trial when it tried him *in absentia*.

¶ 29 IV. CONCLUSION

¶ 30 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 31 Affirmed.