2019 IL App (1st) 182070-U
No. 1-18-2070
Modified order filed December 19, 2019

FOURTH DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

ALBERT CAMPASANO, Plaintiff, v. THOMAS KOSTER and SOPHIA PASKO, Defendants (David Thollander, Contemnor-Appellant).	))))))))))))	Appeal from the Circuit Court of Cook County. No. 2018 MC 1600222-01 The Honorable Anna H. Demacopoulos, Judge, presiding.

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices McBride and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* We cannot say that the trial court abused its discretion in finding the contemnor in direct criminal contempt for the continued use of the word "gadzooks" after the trial court's ruling or comments.

¶ 2 Contemnor David Thollander appeals the trial court's order finding him in direct criminal contempt. On appeal, Thollander claims, among other things, that his conduct did not rise to the level of criminal contempt and that he lacked notice and an opportunity to be heard. The appellate record originally contained no transcript of the proceedings and a limited common law record. As a result, we had no choice but to affirm the trial court's order of criminal contempt. Subsequently, on Thollander's petition for rehearing, the transcript of the proceedings was filed, and we then withdrew our original Rule 23 order, and we now consider the report of proceedings as part of the appellate record.

¶ 3 BACKGROUND

¶ 4 On August 28, 2018, the trial court issued an order finding Thollander in direct criminal contempt based on the following facts. Thollander was counsel for the plaintiff in the case of Campasano v. Koster, No. 14-CH-13676 (Cir. Ct. Cook County), which was on trial before the court from May 21, 2018, through May 24, 2018. In the trial court's order, the court observed that it "repeatedly admonished Mr. Thollander to obey the Court's rulings, and further admonished him several times that if he continued his improper courtroom behavior, consisting among other things of shouting, behaving in a hostile manner,

interjecting during Court rulings, that Mr. Thollander would be found in direct criminal contempt."

¶ 5 Specifically, the trial court found in a written order dated August 28, 2018, that Thollander:

"a. Refused to comply with Court Orders;

b. Continually muttered under his breath throughout the trial;

c. Interrupted the Court yelling, 'Gadzooks!' after the Court ruled; and

d. Behaved in other rude, hostile, and unbecoming manners to the Court."

¶ 6 In its order, the trial court observed that Thollander was "admonished several times regarding his behavior," but he "refused to change his behaviors or acknowledge their impropriety." As a result, the trial court found that Thollander's conduct, "which occurred in the presence of this Court while we were in open session, impeded and interrupted this Court's proceedings, lessened the dignity of the Court, and tended to bring the administration of justice into disrepute."

¶ 7 In its order, the trial court observed that it gave Thollander the "opportunity to make a statement in allocution on the Record, on May 24, 2018." The trial court then adjudicated Thollander to be in direct criminal contempt and fined him $1000 to be paid within 30 days. The trial court

observed that Thollander was served a copy of the order in open court on August 28, 2018.

¶ 8 On September 4, 2018, Thollander filed a timely notice of appeal, and this appeal followed. On September 26, 2018, Thollander moved this court for an order staying enforcement of the fine pending the disposition of the appeal, which this court granted. On October 5, 2018, a six-page common law record was filed with this court, which contained only the trial court's August 28, 2018, order and the notice of appeal.

¶ 9 On October 18, 2018, Thollander moved this court for leave to supplement the appellate record with the trial transcripts. In his motion, he observed that the record transmitted to the appellate court on October 5, 2018, did not contain the trial transcripts, and that he had most of the trial transcripts, except for a couple which he stated were not relevant. He observed that the trial transcripts were not filed in the underlying action of Campasano v. Koster, 14-CH-13676, and had not been filed with the appellate court in this contempt action. Thus, Thollander moved this court for an order allowing him to file certain transcripts, which this court granted.

¶ 10 The transcripts were not attached to Thollander's motion, and he did not file either the transcripts or a motion for an extension of time before November 1, 2018. On November 8, 2018, he filed an "Appendix," that contained a "Table

of Contents to Record on Appeal." The table of contents listed various reports of proceedings. However, the reports were not in the appendix and were not filed with this court until the filing of his petition for rehearing.

¶ 11 On December 14, 2018, the Cook County State's Attorney's Office filed a letter with this court stating that it "was not involved in the lower court proceedings in any manner and will not be filing a brief in this appeal." In response, Thollander filed a motion on January 11, 2019, to accelerate this appeal. On January 17, 2019, this court ordered that this case be "taken for consideration on the record and the appellant's brief only." However, now we consider the case based on the newly filed transcripts of the report of proceedings.

¶ 12 The newly-filed transcripts reveal that, during the course of the bench trial, Thollander was held in direct criminal contempt three separate times. After each event, Thollander was initially fined $1000 for a total sanction of $3000. The first contempt finding was the product of the following exchange:

"THE COURT: Mr. Thollander, if you make one more comment under your breath—

MR. THOLLANDER: I said gadzooks.

THE COURT: Mr. Thollander, if you make one more comment that's offensive to this Court, I will hold you in contempt of court.

Mr. THOLLANDER: Gadzooks is offensive to the Court?

THE COURT: You are now in contempt of court. I'm fining you $1,000."

¶ 13 The second contempt finding occurred seconds later based upon the following exchange:

"THE COURT: Ask another question, Mr. Besetzny.

MR. THOLLANDER: May I ask the Court—

THE COURT: You are now [at] $2,000."

¶ 14 The third contempt finding occurred minutes later based upon the following exchange:

"THE COURT: Mr. Thollander, clearly the witness is confused as I am to your question. You're asking a question that's confusing. You may clarify. What tab are you looking at?

MR. THOLLANDER: I am looking at the tab that counsel has indicated—

THE COURT: What tab?

MR. THOLLANDER: 25.[1]

[1] The court later indicated that Thollander screamed the word "25" in a loud manner.

THE COURT: Mr. Thollander, you are now at $3,000. I will not tolerate your conduct any longer. We are terminating for the day."

¶ 15 On May 24, 2018, the trial court vacated the $3000 fine, entertained Thollander's allocution at the end of the trial, and took under advisement what type of sentence or fine would be imposed on a future date. On August 28, 2018, the trial court entered its "Order of Adjudication Direct Criminal Contempt" and fined Thollander $1000, which we quoted earlier (*supra* ¶ 5).

¶ 16 ANALYSIS

¶ 17 The instant appeal was filed pursuant to Illinois Supreme Court Rule 304(b)(5) (eff. Mar. 8, 2016), which permits the appeal of "[a]n order finding a person or entity in contempt of court which imposes a monetary or other penalty." In the case at bar, the trial court found Thollander in direct criminal contempt of court and imposed a monetary penalty. Hence, we have jurisdiction to consider his appeal.

¶ 18 Next, we must determine whether the contempt is civil or criminal. While a trial court may label the contempt as civil or criminal, it is the substance of the contempt finding, not the label given by the trial court, that will govern whether the contempt is considered criminal or civil on appeal. *In re Marriage of O'Malley ex rel. Godfrey*, 2016 IL App (1st) 151118, ¶ 28; *SKS & Associates, Inc. v. Dart*, 2012 IL App (1st) 103504, ¶ 15.

¶ 19 In order to determine whether a contempt finding is civil or criminal in nature, it is important to consider " 'the purpose for which the contempt sanctions are imposed.' " *Emery v. Northeast Illinois Regional Transportation Co.*, 374 Ill. App. 3d 974, 977 (2007) (quoting *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 278 (2006)). Civil contempt is " 'designed to compel future compliance with a court order.' " *Emery*, 374 Ill. App. 3d at 977 (quoting *Sharp*, 369 Ill. App. 3d at 279). A person held in civil contempt must have the ability to purge the contempt by complying with the court order. *O'Malley*, 2016 IL App (1st) 151118, ¶ 26; *Pryweller v. Pryweller*, 219 Ill. App. 3d 619, 633 (1991). If the contempt is based on past actions which cannot be undone and the contemnor lacks the ability to purge the contempt, then the contempt is criminal, since the purpose of civil contempt is to compel compliance with court orders, not to punish. *O'Malley*, 2016 IL App (1st) 151118, ¶ 26.

¶ 20 Criminal contempt is instituted to punish, rather than to coerce. *O'Malley*, 2016 IL App (1st) 151118, ¶ 27; *Emery*, 374 Ill. App. 3d at 977; *Sharp*, 369 Ill. App. 3d at 279. Criminal sanctions are retrospective in that " 'they seek to punish a contemnor for past acts [that] he cannot now undo.' " *Emery*, 374 Ill. App. 3d at 977 (quoting *In re Marriage of Betts*, 200 Ill. App. 3d 26, 46 (1990)). " '[I]ndirect civil contempt is a continuation of the original cause of action,' " while criminal contempt proceedings are separate and distinct and not

part of the original case being tried. *Levacare v. Levacare*, 376 Ill. App. 3d 503, 509 (2007) (quoting *People v. Budzynski*, 333 Ill. App. 3d 433, 438 (2002)). In sum, "criminal contempt consists of punishing for doing what has been prohibited or not doing what has been ordered, while civil contempt is invoked to coerce what has been ordered." *O'Malley*, 2016 IL App (1st) 151118, ¶ 27.

¶ 21 In the case at bar, there is no question that the nature of the contempt was criminal because it was given as punishment for past conduct, and a specific monetary penalty was imposed.

¶ 22 In the case at bar, Thollander claims both that his conduct did not rise to the level of criminal contempt and that he was not afforded the procedural safeguards accorded criminal contempt.

¶ 23 The type of conduct that rises to the level of direct criminal contempt is "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." (Internal quotation marks omitted). *People v. Simac*, 161 Ill. 2d 297, 305 (1994) (quoting *People v. L.A.S.*, 111 Ill. 2d 539, 543 (1986)). All Illinois courts possess the inherent power to punish contempt because such power is necessary for the court to maintain its authority and exercise its judicial functions. *Simac*, 161 Ill. 2d at 305.

¶ 24 Illinois law recognizes two types of criminal contempt: direct and indirect. *L.A.S.*, 111 Ill. 2d at 543. Direct criminal contempt concerns contemptuous conduct that occurred in the very presence of the judge, while indirect criminal contempt concerns contemptuous conduct that occurred in whole or in an essential part outside the presence of the court. *Simac*, 161 Ill. 2d at 306; *L.A.S.*, 111 Ill. 2d at 543. See also *Windy City Limousine Co. L.L.C. v. Milazzo*, 2018 IL App (1st) 162827, ¶ 40. In the case at bar, the trial court's order indicates that all the alleged contemptuous conduct occurred in the very presence of the judge and, thus, was direct criminal contempt.

¶ 25 On appeal, when a contemnor challenges the sufficiency of the evidence supporting the contempt finding, the analysis is the same as a sufficiency challenge for any other offense, except that a reviewing court must also consider "whether the judge considered facts outside of the judge's personal knowledge," which would render it indirect as opposed to direct criminal contempt. *Simac*, 161 Ill. 2d at 306. In the case at bar, the trial court's August 28, 2018, order lists only conduct that occurred before it; thus, it is solely direct criminal contempt.

¶ 26 Whether a party is guilty of contempt is generally a question of fact for the trial court to decide. *In re Estate of Lee*, 2017 IL App (3d) 150651, ¶ 38. As a result, a reviewing court will not disturb the trial court's factual findings of

contempt unless its findings were against the manifest weight of the evidence, or the record establishes that the trial court abused its discretion in some other fashion. *Lee*, 2017 IL App (3d) 150651, ¶ 38.

¶ 27 In order to find direct criminal contempt, a court must find both: (1) that the conduct was calculated to embarrass, hinder or obstruct a court or to derogate its authority or dignity (*Simac*, 161 Ill. 2d at 305 (quoting *L.A.S.*, 111 Ill. 2d at 543)); and (2) that the alleged contemnor's conduct was willful (*Simac*, 161 Ill. 2d at 307). For the latter, the alleged contemnor's state of mind does not have to be affirmatively proven; rather, his or her contemptuous state of mind may be inferred from the conduct itself and its surrounding circumstances. *Simac*, 161 Ill. 2d at 307. " 'An attorney's zeal to serve his client should never be carried out to the extent of causing him to seek to accomplish his purpose by a disregard of the authority of the court.' " *Simac*, 161 Ill. 2d at 307 (quoting *People ex rel. Fahey v. Burr*, 316 Ill. 166, 182 (1925)).

¶ 28 When the contemptuous acts occur within the presence of the judge and when the judge acts immediately (*instanter*), the contemnor has the following due process rights in both civil and criminal contempt cases: (1) to be advised of the conduct deemed contemptuous, (2) the right to make a statement in allocution before being sanctioned, (3) the right to receive a copy of the written order of the adjudication of contempt, (4) the right to appeal, and (5) in civil

contempt cases only, the right to purge oneself of the contempt. *SKS & Associates, Inc. v. Dart*, 2012 IL App (1st) 103504, ¶ 20.

¶ 29 To better understand the interactions of the trial court and Thollander, we will summarize the major interactions as they occurred. Thollander represented the plaintiff in the underlying case, which apparently was a cause of action for age discrimination and a cause of action for intentional interference with a contract.[2] Thollander examined his first witness without a court reporter, and we have no record of that examination.

¶ 30 During the course of this bench trial, the trial court found that a number of Thollander's questions were irrelevant and requested Thollander to proceed with questions pertaining to the issues in the age discrimination case. In some instances, the trial court struck the questions without an objection by opposing counsel. Thollander then became obviously frustrated with the trial court and stated:

> "MR. THOLLANDER: All right. For the record, your Honor, over the course of today, I have perceived the Court to be caustic and offensive to me, overly hostile and frankly unfair, and I want the record to know that.

[2] The record on appeal does not contain the complaint.

THE COURT: Okay. I'm going to make a record, then. And I'm so glad that's why I have a court reporter. It's funny that you have a court reporter here for Mr. Koster's testimony but not your client's testimony. So let's make the record now that we have, please. Please don't speak over me.

The issue in this case here is whether or not Mr. Koster discriminated against Mr. Campasano as it relates to age. Leaving personal property behind does not in any way indicate whether or not there was any age discrimination.

He's answered the question as to the Pablo contract four different times as it relates to personal property.

If you ask the question the right way, Mr. Thollander, you might get the answer that you're looking for. Your questions are just phrased poorly. You're getting the wrong answer. If you don't like the answer, you're stuck with the answer.

If you want to ask a different question, please feel free to ask a different question. But I'm going to sustain objections to irrelevant questions.

Please, if you can ask another question. I'm not interested in what your problems are. Ask another question.

MR. THOLLANDER: I'm going to make the record clear.

THE COURT: I control the record here, Mr. Thollander. Ask another question.

MR. THOLLANDER: The Court has sustained—

THE COURT: Ask another question.

MR. THOLLANDER: I'm going to make the comment on the record.

THE COURT: Ask another question.

MR. THOLLANDER: I'm not going to do that until I make a comment on the record. You objected—you sustained—

THE COURT: Ask another question.

MR. THOLLANDER: You sustained an objection. There was no objection.

THE COURT: Ask another question.

MR. THOLLANDER: For the record, that's what you did.

THE COURT: Ask another question. You're free to ask as many questions as you would like."

¶ 31 Later, the trial court questioned Thollander and refused to allow him to make what Thollander called "a record." Thollander never used the words

"offer of proof"; he attempted only to make statements on the record, which the trial court refused to permit him to do. Thollander stated, "I'm going to make the record clear" or "I'm going to make the comment on the record." When the trial court stated, "ask another question," Thollander replied, "I'm not going to do that until I make a comment on the record." There were occasions in the report of proceedings where the trial court admonished Thollander for speaking while she was talking; and on one occasion, Thollander acknowledged that he was doing so and advised the court that he would refrain from speaking over the court. However, the court reporter could not take down what both were saying, so the court reporter recorded only the trial court's comments.

¶ 32 At one point in the proceedings, Thollander made an oral motion for a mistrial, accusing the trial court of "being an advocate for the defendant." At another point in the proceedings, the trial court and Thollander argued as to whether Thollander agreed to supply a court reporter, and Thollander stated that, if the court believed he did, "then hold me in contempt."

¶ 33 At another point in the trial, the court responded to Thollander's argument that the trial court was not correct in its interpretation of the law by saying:

> "The case is not over. I have not made my decision. You have not rested your case yet. You are still free to consider and present all the evidence that you will. No arguments have been made in this case yet,

Mr. Thollander. So for you to make an argument that I do not know the law is simply unfair. But your frustration is coming through because you may not have been able to prepare your case, and that is not this Court's problem."

¶ 34 What finally led to the trial court's contempt finding was the following interaction between the court and Thollander:

"MR. THOLLANDER: The code in the rules preclude offers of compromise. What the counter-plaintiff is trying to do is bring these offers and settlement as a vehicle to bypass the rules of the code and present evidence that's not admissible. What was or wasn't done, that's for the Court to decide on the merits. Offers or no offers, it has no bearing, no relevance to this present matter, none whatsoever.

THE COURT: Well, one of the elements that['s]—in the tortious interference is damages.

MR. THOLLANDER: Correct.

THE COURT: And the tortious interference of a contract and the damages, I'm assuming that they're going to prove up is that the lis pendens was pending from the day that it was filed which appears to be August 22nd of 2014 until the closing which was October of 2015, and if there were in fact—Mr. Campasano has testified that Mr. Koster never

made an offer for the home to be sold prior to Judge Martin ordering it to be done. If there were in fact offers for that to be done and you failed to relay that offer to him, it is relevant.

MR. THOLLANDER: It's not relevant. The offers are—whether there was or wasn't an offer has no bearing on whether there's damages. Moreover, it's—

THE COURT: Mr. Thollander, it's a very simple question. If offers were made through you as his agent and you failed to extend that, it does go to damages. How does it not go to damages?

MR. THOLLANDER: Any offers, any settlement offers are precluded.

THE COURT: It's not a settlement offer.

MR. THOLLANDER: Well, what is it then? An offer? It is a settlement offer.

THE COURT: Are you saying that you don't have an ethical obligation to tell your client what the settlement offer was?

MR. THOLLANDER: I absolutely do.

THE COURT: And your client testified that there wasn't one.

MR. THOLLANDER: Well, I'm not going to breach attorney-client privilege.

THE COURT: It's not attorney-client privilege.

MR. THOLLANDER: Sure, it is. Whether there was or wasn't a discussion and the content of the discussion?

THE COURT: No, no, no, no. Mr. Thollander, whether or not there was—are you saying—

MR. THOLLANDER: Am I on the stand? Am I a witness?

THE COURT: Mr. Thollander, you—again your conduct.

MR. THOLLANDER: My conduct.

THE COURT: Mr. Thollander, take a deep breath and count to 10.

You have an ethical obligation that when there has been an offer that has been accepted to extend that to your client. In this particular case, what is being—there's evidence at this point that is being elicited as it relates to damages. You're telling me that this goes to settlement.

MR. THOLLANDER: Correct.

THE COURT: Was it relayed to Mr. Campasano? He said that he was never given an offer to sell.

MR. THOLLANDER: Of course he was.

THE COURT: Okay. Well, then what's the issue here?

MR. THOLLANDER: The issue is to present evidence as to the settlement offers. There was settlement offers that preclude and resolve the litigation is admissible.

THE COURT: But it goes to damages when it relates to—

MR. THOLLANDER: If it's not allowed as a matter of law, you can't enter it and can't hear it. What the Court is now doing is bypassing the rules of evidence and allowing testimony or potential testimony as to settlement offers.

THE COURT: In this particular instance, I do believe that it goes to the issue of damages because it's the tortious interference of the contract, and what is the contract here is the lis pendens that was pending and that's what was pending.

MR. THOLLANDER: The ultimate issue is not whether there were offers made. As an end result, the property was eventually sold. The damages stopped. The alleged damages stopped then. Whether there was or wasn't offers has no bearing on the damages. It's irrelevant.

THE COURT: Mr. Besetzny.

MR. BESETZNY: I believe Your Honor is correct. This goes to the issue of damages. This is not an offer, and I think my question was very clear. It wasn't an offer to settle the lawsuit. I didn't ask him about

that. I asked him whether or not there had been offers made to sell the property, not settle the lawsuit, sell the property. Were requests—was there discussions, was there a dialogue, were there attempts made had Mr. Campasano purchased the property after he filed his lawsuit after he recorded his lis pendens. That's what I asked.

THE COURT: All right. I'm going to allow the testimony. Go ahead, Mr. Koster.

MR. THOLLANDER: (Inaudible).

THE COURT: I'm sorry? Say it a little louder, Mr. Thollander.

MR. THOLLANDER: Oh, gadzooks.

THE COURT: We're going to take a five-minute recess.

MR. BESETZNY: Thank you, Your Honor.

(Whereupon, a short recess was taken.)

THE COURT: Mr. Koster, you're still under oath.

You may ask another question.

MR. THOLLANDER: Your Honor, if I can make a record?

THE COURT: No.

MR. THOLLANDER: I can't talk?

THE COURT: Mr. Thollander, I'm warning you at this time. Please have a seat. Mr. Thollander, please have a seat.

MR. THOLLANDER: I want to make a record.

THE COURT: Have a seat.

MR. THOLLANDER: I still want to make a record.

THE COURT: Have a seat.

MR. THOLLANDER: I'm sitting down.

THE COURT: Thank you.

MR. THOLLANDER: I want to make a record.

THE COURT: Mr. Besetzny, please. You may ask another question.

MR. THOLLANDER: Your Honor, I'm objecting to the Court. I want to make a record as to the issue of the offer. Mr. Campasano's complaint sought among other things enjoining the sale and having the property sold to him, and the discussions and offers around the sale all pertained to settlement or partial settlement of this case.

THE COURT: Ask another question, Mr. Besetzny.

Mr. Thollander, if you make one more comment under your breath—

MR. THOLLANDER: I said gadzooks.

THE COURT: Mr. Thollander, if you make one more comment that's offensive to this Court, I will hold you in contempt of court.

MR. THOLLANDER: Gadzooks is offensive to the Court?

THE COURT: You are now in contempt of court. I'm fining you $1,000.

Ask another question, Mr. Besetzny.

MR. THOLLANDER: May I ask the Court—

THE COURT: You are now [at] $2,000.

Ask another question, Mr. Besetzny."

¶ 35 Thollander argues that his conduct did not rise to the threshold of direct criminal contempt because his conduct was not " 'calculated to embarrass, hinder or obstruct a court in its administration of justice, or to derogate from its authority or dignity, or bring the administration of law into disrepute.' " *People v. Hanna*, 37 Ill. App. 3d 98, 99 (1976) (quoting *People v. Miller*, 51 Ill. 2d 76, 78 (1972)). We do not find Thollander's argument persuasive. It is true that the court's contempt power is an extraordinary one that should be used sparingly and with the utmost sensitivity. *People v. Geiger*, 2012 IL 113181, ¶ 25. Thollander argues that his conduct was a good faith attempt to represent his client without hindering the court's functions or dignity.

¶ 36 We do not find this argument persuasive under the facts of this case. No matter how frustrated a lawyer becomes with a court's rulings and comments, it is nonproductive and obstructive to disobey the court when the court refuses to allow an attorney to make statements on the record that he or she believes are necessary. It is equally nonproductive and obstructive to use any rude or disrespectful words or gestures when a person disagrees with the trial court's rulings. See *In re Marriage of Betts*, 200 Ill. App. 3d at 45 (conduct which may be punished by means of criminal contempt proceedings includes disrespectful or disruptive acts that affect judicial proceedings). Thollander knew or should have known that the use of the word "gadzooks" was offensive and disrespectful to the court, and admittedly, he made the comment in deep frustration from the court's rulings and comments in this case. He believed, as all litigators do, that he knew his case better than the judge. He had a trial strategy in presenting his case and the trial court limited his presentation, finding that many of his questions were not relevant to the issues in the case. Instead of attempting to educate the judge as to his trial strategy, he argued and fought with the judge, attempting to embarrass, hinder, and obstruct the court in its decision-making process. When the trial court took a recess, after the first use of the word "gadzooks," any reasonable litigator would have refrained from saying the word again.

¶ 37 "Gadzooks" is a contraction of "God's hooks" and refers to the nails used in the crucifixion of Jesus. Wiktionary, http://en.wiktionary.org/wiki/gadzooks (last visited Dec. 18, 2019). See also Lexico, lexico.com/en/definition/gadzooks (last visited Dec. 18, 2019) ("[T]he nails by which Christ was fastened to the cross."). Here, Thollander put "more fuel in the fire" by continuing to embarrass the court by using that word again.

¶ 38 After a court makes a ruling or a comment, the only words that a lawyer may use, if any, are ones stating that they do not agree with the ruling. Not "wow," "crazy," or "gadzooks." They are all nonproductive, offensive, and disrespectful—and disruptive—to court proceedings. See *In re Marriage of Betts*, 200 Ill. App. 3d at 45 (the most readily recognizable example of conduct punishable by direct criminal contempt is an outburst on the part of litigants that disrupts judicial proceedings). The trial court was well within its discretion to find Thollander in direct criminal contempt.

¶ 39 We turn to Thollander's next claim, which concerns a lack of procedural safeguards. With respect to procedural safeguards, "[p]roperly identifying whether a contempt charge is direct or indirect is critical because a direct contempt charge may be resolved summarily without formal pleadings, notice, or a hearing, as the alleged conduct was witnessed firsthand by the judge." *Windy City*, 2018 IL App (1st) 162827, ¶ 41. "Conversely, when someone is

charged with indirect contempt, regardless of whether it is civil or criminal, the alleged contemnor is entitled to certain due process protections, including notice and the opportunity to be heard," as we have previously stated. *Windy City*, 2018 IL App (1st) 162827, ¶ 41.[3]

¶ 40 Thus, for example, in a case of indirect criminal contempt, this court found that an alleged contemnor was "entitled to similar constitutional protections and procedural rights that a criminal defendant is afforded." *O'Malley*, 2016 IL App (1st) 151118, ¶ 31; *In re Marriage of Weddigen*, 2015 IL App (4th) 150044, ¶ 27. See *Windy City*, 2018 IL App (1st) 162827, ¶ 46 (limiting *O'Malley* to indirect criminal contempt). We found that the failure to provide such constitutional or procedural guarantees in a case of indirect criminal contempt required this court to vacate the finding of indirect criminal contempt. *O'Malley*, 2016 IL App (1st) 151118, ¶¶ 31-32 (vacating an indirect criminal contempt finding due to the trial court's failure to provide such guarantees); *Luttrell v. Panozzo*, 252 Ill. App. 3d 597, 601 (1993). We found that the required constitutional protections included: (1) the right to a jury trial when incarceration exceeds six months or the fine exceeds $500; (2) the right to

[3] Thollander's appellate brief contradicts itself on the issue of whether he was permitted an allocution. At one point his brief states that, on May 24, 2018, the trial court "entertained Appellant's allocutions at the end of the trial." However, later in the brief, he claims that "the trial court nevertheless deprived Appellant of his right of allocutions." The transcripts illustrate that the trial court did give Thollander the opportunity for allocution.

counsel; (3) the right to a change of judge; (4) the right to be charged with a written complaint, petition or information; (5) the right to personal service and to know the nature of the charges; (6) the right to file an answer and have a public trial; (7) the right to present evidence and subpoena witnesses; (8) the right to the presumption of innocence and against self-incrimination; and (9) the right to be proven guilty beyond a reasonable doubt. *O'Malley*, 2016 IL App (1st) 151118, ¶ 31; *Budzynski*, 333 Ill. App. 3d at 439. See also *Windy City*, 2018 IL App (1st) 162827, ¶ 46 (listing these rights as applying to a case of indirect criminal contempt).

¶ 41 As we observed above, the procedural safeguards for direct criminal contempt are (1) to be advised of the conduct deemed contemptuous, (2) the right to make a statement in allocution before being sanctioned, (3) the right to receive a copy of the written order of the adjudication of contempt, and (4) the right to appeal.

¶ 42 In the case at bar, the trial continually advised Thollander not to talk at the same time as the court. In fact, Thollander admitted he was doing so and stated he would refrain from continually cutting off the court. However, the report of proceedings illustrates that Thollander continued to talk over the judge from the fact that the transcripts show Thollander started to talk on repeated occasions when the judge's comments were not concluded. When Thollander

initially used the word "gadzooks," the trial court took a recess. The recess speaks volumes because it shows the court's displeasure with the word "gadzooks." Yet, when the court resumed testimony, Thollander continued to use the same word when he was displeased with the court's ruling or comments. The court was also upset when Thollander shouted the word "twenty-five." Taking all of that conduct together, we cannot say that the trial court abused its discretion in finding Thollander in direct criminal contempt of court. Nor can we say that the court did not advise Thollander of the conduct deemed contemptuous. Thollander made a statement in allocution, before being sanctioned, claiming that his conduct was not designed to be contemptuous. He received the order of contempt, and formally appealed it.

¶ 43 The State filed a letter with this court stating that it "was not involved in the lower court proceedings in any manner and would not be filing a brief in this appeal." This does not mean that Thollander failed to receive a written document charging him with criminal contempt. Thus, we cannot find any error by the trial court with respect to procedural safeguards.

¶ 44 As for the monetary sentence that Thollander received, we review a sentence imposed for direct criminal contempt only for an abuse of discretion. *People v. Geiger*, 2012 IL 113181, ¶ 27. A trial court abuses its discretion in sentencing only where the sentence is greatly at variance with the spirit or

purpose of the law or manifestly disproportionate to the nature of the offense. *Geiger*, 2012 IL 113181, ¶ 27. When determining an appropriate sentence for criminal contempt, a trial court may consider: "(1) the extent of the willful and deliberate defiance of the court's order, (2) the seriousness of the consequences of the contumacious behavior, (3) the necessity of effectively terminating the defendant's defiance as required by the public interest, and (4) the importance of deterring such acts in the future." *Geiger*, 2012 IL 113181, ¶ 28. In light of the trial court's findings that it repeatedly admonished Thollander to curtail his behavior and his continued behavior in apparent defiance of these admonishments, and the need to deter such acts in the future, this court cannot say that the $1000 fine was an abuse of discretion.

¶ 45 CONCLUSION

¶ 46 For the foregoing reasons, we cannot find that the trial court's findings of direct criminal contempt were against the manifest weight of the evidence, or that the trial court erred by failing to provide procedural safeguards, or that it abused its discretion in sentencing.

¶ 47 Affirmed.