

2019 IL App (1st) 182070-U
No. 1-18-2070
Order filed March 29, 2019

FOURTH DIVISION

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

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

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice McBride and Justice Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* Where the appellate record contains no report of proceedings and a limited common law record, we have no option but to affirm the trial court's order of criminal contempt.

¶ 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. Since the appellate record contains no transcript of the proceedings and a limited common law record, we have no choice but to affirm the trial court's order of criminal contempt.

¶ 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 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 trial court in this contempt action. Thus, Thollander moved this court for an order allowing him to file certain transcripts, which this court granted. Our order stated in full:

"On the Motion by Appellant, David C. Thollander, to supplement [the] common law record with trial transcripts in the matter of *Campasano v. Koster*, 2014 CH 13676, the underlying action which gave rise to the appeal, Appellant's Motion is hereby granted but transcripts must be certified. Appell[ant] shall file the trial certified^[1] transcripts within seven (7) days [t]hereof, on or before 11-1-18."

¹ The order states "trial certified" rather than "certified trial."

¶ 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 at any time. The appendix contained only: (1) the notice of appeal and the trial court's August 28, 2018, order which were both already part of the common law record filed with this court; and (2) a motion for substitution of judge, dated May 11, 2016, which was not part of the common law record before us.

¶ 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."

¶ 12 ANALYSIS

¶ 13 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." Here, the trial court found Thollander in direct criminal contempt of court and imposed a monetary penalty. Hence, we have jurisdiction to consider his appeal.

¶ 14 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.

¶ 15 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.

¶ 16 In contrast, 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.

¶ 17 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.

¶ 18 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.

¶ 19 The type of conduct that rises to the level of 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.

¶ 20 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.

¶ 21 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 order lists only conduct that occurred before it; thus, it is solely direct criminal contempt.

¶ 22 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.

¶ 23 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)).

¶ 24 In the case at bar, Thollander's appellate brief cites repeatedly to the trial transcripts that were never made a part of the record.

¶ 25 In contempt proceedings, as in any other appeal, it is the appellant that 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, a reviewing court will presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *E.g.*, *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). See also *Xcel Supply LLC v. Horowitz*, 2018 IL App (1st) 162966, ¶¶ 51-52; *People v. Stephens*, 2017 IL App (1st) 151631, ¶ 10 n.3 ("It is the appellant's burden to provide a sufficiently complete record to support his or her claims."). Any doubts arising from the incompleteness of the record will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392; *Xcel Supply*, 2018 IL App (1st) 162966, ¶ 52. In *Xcel Supply*, for example, this court observed that since "the appellate record in the case at bar contains no transcripts," we had no basis for concluding that the trial court

failed either to accord the defendant procedural safeguards or to base its factual findings on evidence. *Xcel Supply*, 2018 IL App (1st) 162966, ¶ 54. Similarly, in the case at bar, we have no basis for concluding either that the trial court failed to accord Thollander procedural safeguards or failed to base its factual findings on evidence. When the 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. *Illinois v. Allen*, 397 U.S. 337 (1970).

¶ 26

On appeal, this court granted Thollander's motion to supplement the record with the trial transcripts. However, he failed either to supplement the record or to seek an extension of time to do so. Instead of seeking *more* time to supplement, he actually moved this court to *accelerate* his appeal, and this court permitted his appeal on his brief only. In light of the fact that this court has accommodated his every motion, including his first motion to stay enforcement of his fine pending the outcome of this appeal, there is no reason apparent on

this record why he failed to seek an extension of time to file the transcripts that we permitted him to file—at his request.

¶ 27 Without transcripts or a report of proceedings, we are unpersuaded that the trial court's findings of contempt were against the manifest weight of the evidence.

¶ 28 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, ¶ 41.²

¶ 29 Thus, for example, in a case of indirect criminal contempt, this court found that an alleged contemnor was "entitled to similar constitutional

²Thollander'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."

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 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).

¶ 30 As we observed above, the procedural safeguards for direct 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. With hardly any common law record and with no transcripts before us, we cannot find that the trial court failed to provide any of these guarantees. While the State 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," that 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.

¶ 31 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 find that the \$1000 fine on appeal before us was an abuse of discretion.

¶ 32

CONCLUSION

¶ 33

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.

¶ 34

Affirmed.