

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000020-ME

JOHN W. RIDLEY

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE MARGARET R. HUDDLESTON, JUDGE
ACTION NO. 03-D-00256

ROIANN RIDLEY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI, KNOPF, AND McANULTY, JUDGES.

GUIDUGLI, JUDGE: John W. Ridley has appealed from the Warren Circuit Court's order entered December 1, 2004, finding him in civil contempt for violating the September 2, 2003, domestic violence order (hereinafter "DVO"), and sentencing him to a suspended sentence of 24 hours in the county jail. We affirm.

On August 20, 2003, Roiann Ridley filed a petition for dissolution of marriage in the Warren Circuit Court.¹ Roiann

¹ Ridley v. Ridley, 03-CI-1310. The circuit court's decision in the dissolution action is currently pending on appeal before this Court.

also filed a Domestic Violence Petition/Motion that day in the same court. In her petition, Roiann stated:

I have been staying with a friend the past few days and prior to that our sons were home and are now gone and I no longer feel safe given numerous prior incidents of physical abuse. He has slapped me repeatedly, pinned me to the floor, spanked me, tied my hands and beat me, held my head under the bathroom faucet, held me down and poured water in my nose and mouth to choke me, and he has pulled my hair as I have jumped out of the window. I will be filing today for divorce and fear that this will put him over the edge.

The circuit court entered an emergency protective order that day, and scheduled hearing for September 2, 2003. John chose not to contest the petition at the hearing. Accordingly, the circuit court entered a DVO restraining John from committing further acts of domestic violence and from contacting Roiann, and ordering him to remain at least 1000 feet away from her at all times. The DVO is to remain in effect until September 2, 2006. During the course of the hearing, John and Roiann agreed to split their respective attendance at their son's track events. The circuit court ordered John to submit to domestic violence counseling with a certified domestic violence counselor, and warned him that any violation of the terms of the DVO could subject him to misdemeanor charges or a contempt finding. Furthermore, the circuit court indicated that the DVO

could be modified or even dismissed as the dissolution matter moved forward.

In fact, the circuit court amended the DVO on June 3, 2004, to allow both John and Roiann to attend a wedding in South Carolina. Specifically, the circuit court provided: "RESP'S ATTY SHALL PROVIDE TO PET.'S ATTY THE SPECIFIC DATES AND LOCATIONS THAT RESP WILL BE IN SOUTH CAROLINA TO ATTEND THE RANDELL WEDDING. WHILE IN SOUTH CAROLINA, RESP SHALL REMAIN 1000 FEET AWAY FROM PET. WITH THE EXCEPTION OF BEING ALLOWED TO ATTEND THE RANDELL WEDDING FUNCTIONS." The amended DVO then provided, "RESP SHALL NOT BE ALLOWED TO STAY OR GO TO THE CABINS OR THE HOTEL WHERE PET. MAY BE STAYING. FURTHER, RESP SHALL NOT HAVE ANY DIRECT OR INDIRECT CONTACT OR COMMUNICATION WITH PET. AT ANY TIME."

The trial in the dissolution action took place from September 29 through October 1, 2004. Following the last day of the trial, both John and Roiann attended an event at the Kentucky Museum Library on the Western Kentucky University campus. Roiann went on vacation the next day, and upon her return (as well as the return of her attorney from a vacation) filed a Domestic Violence Show Cause Order. Her affidavit read as follows:

On Friday, October 1, 2004 at 5:45 pm I was leaving the Justice Center and traveling to the Kentucky Museum on Center Street when

Mr. Ridley pulled up behind me at the stop light on the corner of 11th and Center Streets. He continued to follow me until I turned onto 13th Street.

I parked in the lot across from the Kentucky Museum to attend the reception for the opening of the Natcher Political Collection; where I was a sponsoring patron (copy attached) and am a 4 year member of the Advisory Board to the Museum.

Mr. Ridley attempted to race me (he was running for the door as I crossed the street) to the front door. He eventually turned and walked away when it became apparent to him that I was going to arrive first. Approximately 15 minutes later Mr. Ridley entered the reception where I was standing 10 feet away. I then left rather than cause disruption to such a dignified event. (His signature appears in the guest register 3 lines after mine.)

A show cause hearing as to why John should not be held in contempt for violating the DVO was scheduled for November 17, 2004. At the hearing, Roiann testified in conformity with her affidavit, while John chose to rely upon his written response to the show cause order. In his response, John provided his version of the events, and stated that he did not intentionally violate the DVO in order to attend the event. He also indicated that Roiann was only using the DVO to control his actions and to inflict punishment and embarrassment on him. Because he had completed the ordered domestic violence program and there was no indication that he presented any type of danger to Roiann, John requested that the circuit court replace the DVO with a

restraining order removing the requirement that he remain 1000 feet away from her at all times. This would allow him to attend social events and go about in public, for purposes of his work, without fear of violating the DVO.

At the conclusion of the hearing, the circuit court found that John had admitted that he saw Roiann prior to the entry into the museum and that he was in attendance at the reception. The circuit court noted that John and his attorneys were "acutely aware" of the procedure to amend the DVO for specific upcoming events. Because he was in violation of the terms of the DVO, the circuit court entered an order finding John to be in civil contempt and sentencing him to 24 hours in jail. The sentence was held in abeyance provided that there were no further violations of the DVO. This appeal followed.

On appeal, John argues that the circuit court erred by holding him in civil contempt as the DVO was invalid, by refusing his request to modify the DVO, and by punishing him for criminal contempt under the guise of civil contempt. Roiann disputes each of John's arguments.

John's first argument centers around his contention that the circuit court's original DVO was invalid. He asserts that the entry of this DVO represented arbitrary action on the part of the circuit court, as it violated § 2 of the Kentucky Constitution by interfering unreasonably with his ability to

pursue his work without providing any meaningful protection to Roiann. On the other hand, Roiann contends that the issuance of the DVO was based upon a plethora of facts justifying its entry.

While we might agree with John's argument that the issuance of the DVO perhaps interferes unreasonably with his ability to pursue his profession, we are unable to presently review its propriety. At the September 2, 2003, hearing, John, while represented by counsel, chose not to contest the entry of the DVO and agreed to the requirements that he remain 1000 feet away from Roiann and that he not attempt to contact or communicate with her. Because he chose not to contest the entry of the DVO, and furthermore did not appeal its entry within thirty days, we cannot at this time review whether its issuance was proper. Accordingly, because we cannot review the entry of the original DVO and because John admitted that he had violated the conditions of the DVO by failing to remain 1000 feet away from Roiann, we must uphold the circuit court's finding that John was in contempt.

John next argues that the circuit court committed error by refusing his request to modify the DVO into a restraining order. He states that his position as a financial adviser places him in a position "different from that of most people" because he is required to be in public places on a regular basis and to travel internationally. Furthermore, his

reputation could be affected negatively. He asserts that the circuit court abused its discretion in failing to grant his request, as a restraining order would accomplish the same objective, yet allow him to go about freely in public. Roiann counters with her argument that the DVO has prevented further acts of domestic violence, and should not be removed or altered merely because no further acts have occurred.

KRS 403.750(3) provides that “[u]pon proper filing of a motion, either party may seek to amend a domestic violence order.” We shall review the circuit court’s refusal to amend the DVO under an abuse of discretion standard. “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.”² “Abuse of discretion in relation to the exercise of judicial power implies arbitrary action or capricious disposition under the circumstances, at least an unreasonable and unfair decision.”³

In the present case, we cannot hold that it was an abuse of the circuit court’s considerable discretion to deny John’s request to amend the DVO. The matter was before the circuit court on a show cause order as to why John should not be held in contempt for violating the terms of the DVO. Moreover,

² Commonwealth v. English, 993 S.W.2d 941, 945 (Ky. 1999).

³ Kuprion v. Fitzgerald, 888 S.W.2d 679, 684 (Ky. 1994), citing Kentucky National Park Com’n v. Russell, 301 Ky. 187, 191 S.W.2d 214 (1945).

John admitted that he technically violated DVO by attending the reception in the presence of Roiann. That he did not intend to violate the DVO and that he assumed the circuit court would have allowed him to attend the event if requested is of no consequence. The undisputed fact is that John was in contempt of the DVO when he entered the reception. While obviously no abuse to Roiann occurred at that time, the circuit court had to consider John's admitted violation when deciding whether to modify the DVO. Based upon John's violation and subsequent finding of contempt, the circuit court in this instance was well within its discretion in denying John's request to convert the DVO into a restraining order. However, this ruling does not preclude John from filing a motion pursuant to KRS 403.750(3) and presenting a similar argument in the future. We would also suggest that the parties set up an arrangement or policy, either by agreement or through the court, to deal with future social engagements, as they did with the track schedule. This should help to prevent further violations of the DVO, should it remain in effect.

Lastly, John argues that the circuit court improperly punished him for criminal contempt, rather than civil contempt as stated, when he was sentenced to a suspended punishment of 24 hours in jail. He asserts that the punishment imposed was applicable to a criminal contempt proceeding because he would

have no opportunity to purge himself of contempt. He then argues that he did not meet at least one of the elements of criminal contempt, namely, that he exhibited willful disobedience toward the court's order. Therefore, he argues that he should not have been held in contempt. On the other hand, Roiann argues that the circuit court's contempt finding was civil in nature, as it was used to coerce John into complying with the terms of the DVO in the future and give him notice of the potential punishment he would incur if he did violate the terms.

In Commonwealth v. Burge,⁴ the Supreme Court of Kentucky thoroughly addressed contempt and the different forms it might take. It is well settled that that contempt "is the willful disobedience toward, or open disrespect for, the rules or orders of a court."⁵ Contempt can be either civil or criminal.⁶

Civil contempt consists of the failure of one to do something under order of court, generally for the benefit of a party litigant. Examples are the willful failure to pay child support as ordered, or to testify as ordered. While one may be sentenced to jail for civil contempt, it is said that the contemptuous one carries the

⁴ 947 S.W.2d 805 (Ky. 1996).

⁵ Id. at 808.

⁶ Id., citing Gordon v. Commonwealth, 141 Ky. 461, 463, 133 S.W. 206, 208 (1911).

keys to the jail in his pocket, because he is entitled to immediate release upon his obedience to the court's order.⁷

On the other hand, criminal contempt "is conduct 'which amounts to an obstruction of justice, and which tends to bring the court into disrepute.'"⁸ The purpose of criminal contempt is "to punish conduct which has already occurred rather than to compel a course of action. It is the purpose of the punishment (rather than the fact of punishment *per se*) that distinguishes civil from criminal contempt."⁹ The Bailey court concluded with the statement that, "If the court's purpose is to punish, the sanction is criminal contempt. If the court's purpose is to goad one into action or to compel a course of conduct, the sanction is civil contempt."¹⁰

In the present matter, we agree with Roiann that the circuit court's imposition of a suspended 24-hour sentence was in the form of civil contempt, as it was used to compel John's future compliance with the terms of the DVO rather than as a punishment. In effect, John indeed holds the "keys to the jail in his pocket" through his future good behavior and lack of violation of the DVO. We also disagree with John's reliance

⁷ Id. at 808.

⁸ Id., citing Gordon, 141 Ky. at 463, 133 S.W. at 208.

⁹ Commonwealth, ex rel. Bailey v. Bailey, 970 S.W.2d 818, 820 (Ky.App. 1998).

¹⁰ Id.

upon this Court's opinion in Commonwealth v. Pace,¹¹ because Pace specifically deals with the criminal contempt of an attorney who failed to appear before the court. In this case, we are dealing with the admitted violation of a DVO and a circuit court attempting to use its contempt power to coerce future compliance with its order. The circuit court did not commit any error in either finding John in civil contempt of the DVO or in imposing a suspended jail sentence for the violation.

We recognize that this case represents a somewhat unique case, in that the parties involved appear to move in the same social circles and John's profession requires him to interact with clients and potential clients in the same public arena in which Roiann might also be found. Obviously, this has presented, and will most likely continue to present, difficulties for John while he and Roiann live in the same area and interact with the same groups of people. In hindsight, it might have proven beneficial for John to have contested the entry of the original DVO at the circuit court level, and before this Court, if necessary. It is clear that John did not appreciate the consequences of the entry of the DVO on his professional life. An EPO or a DVO is a powerful tool, and can be exceedingly useful in preventing future acts of domestic violence by providing for the immediate arrest without a warrant

¹¹ 15 S.W.3d 393 (Ky.App. 2000).

of those who violate its terms. We rely upon the circuit and family courts of this Commonwealth to utilize their discretion in entering such orders only in cases truly warranting such protection. Had John actually contested the entry of the DVO rather than deciding to voluntarily subject himself to its terms, we cannot be sure that such discretion would have been used had the DVO been entered under those circumstances.

For the foregoing reasons, the Warren Circuit Court's order finding John in civil contempt of the DVO is affirmed.

KNOFF, JUDGE, CONCURS.

McANULTY, JUDGE, CONCURS IN RESULT ONLY.

BRIEFS AND ORAL ARGUMENT FOR
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