

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

FILED

March 27, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

VALERIE ANN POOLE,) C/A NO. E1999-01965-C0A-R3-CV
)
Petitioner-Appellee,) HAMILTON CRIMINAL
)
vs.) HON. DOUGLAS A. MEYER, JUDGE
)
CITY OF CHATTANOOGA,) AFFIRMED IN PART, REVERSED
) IN PART, VACATED IN PART,
Defendant-Appellant.) AND REMANDED

HERBERT A. THORNBURY, POOLE, THORNBURY, MORGAN &
RICHARDSON, Chattanooga, for *Amicus Curiae*.

KENNETH O. FRITZ and MICHAEL A. McMAHAN, City Attorney's Office,
Chattanooga, for Defendant-Appellant.

OPINION

Franks, J.

The City of Chattanooga (“City”) appeals from the Trial Court’s grant of a writ of *habeas corpus* to petitioner, Valerie Ann Poole.

The petitioner was cited to Chattanooga’s municipal court for civil contempt by a warrant dated February 24, 1998. Petitioner was found in contempt, but the finding was set aside and petitioner was ordered to appear in municipal court on June 12, 1998. When she failed to appear, a *capias* was issued for her arrest, and she was returned to Court on September 21, 1998 and was found in contempt of court for failure to pay any amount on her penalties and fines. She was ordered confined to the workhouse by the municipal judge until October 5, 1998, or until she made arrangements to pay the amount due. She was returned to the municipal court on October 5, and was ordered returned to the workhouse until November 6, 1998. She was returned to court on November 6, and was sent back to the workhouse until January 15, 1998.

Petitioner filed her petition for *habeas corpus* on November 11, 1998, which was granted by the Criminal Court of Hamilton County, and she was ordered released from custody. In granting the writ, the Trial Court found that the municipal judge exceeded his contempt powers in the imprisonment of petitioner, and that the municipal court was not authorized to impose interest on the judgments. The City was further enjoined from imposing or collecting interest on such judgments.

Between March 8, 1988 and September 21, 1998, petitioner was found guilty in the municipal court for violation of various city ordinances and State criminal statutes. As of December 15, 1998, the amount owed, according to the City’s records, totaled \$3,462.35. Petitioner had only paid \$152.35 on these judgments.

In determining whether a contempt proceeding is civil or criminal in nature, the proper focus is on the character and purpose of the action. *U.S. v. Mitchell*, 556 F.2d 371 (6th Cir. 1977). Criminal contempt is punitive, and its purpose is to vindicate the authority of the law and courts. *Shiflet v. State*, 400 S.W.2d 542 (Tenn. 1966). A civil contempt, on the other hand, is where one person refuses or fails to comply with an order of the court and punishment is meted out for the benefit of the party litigant. Punishment in a civil contempt is remedial, compelling the doing of something by the contemner, which, when done, will purge the contempt. *Id.*

Tennessee Code Annotated §§ 29-9-103, 104, provide courts with the

authority to punish for contempt of court. T.C.A. 29-9-103 provides:

- (a) The punishment for contempt may be by fine or by imprisonment, or both.
- (b) Where not otherwise specially provided, the circuit, chancery, and appellate courts are limited to a fine of fifty dollars (\$50.00), and imprisonment not exceeding ten (10) days, and, except as provided in § 29-9-108, all other courts are limited to a fine of ten dollars (\$10.00).

The Trial Court found that the municipal court judge was limited to a fine of \$10.00 for punishment of criminal contempt. Among the charges against petitioner are two contempt of court charges dated August 17, 1993, and October 12, 1993. For both of those, the beginning balance is listed at \$76.50. According to the Trial Judge, this denotes court costs of \$26.50 and fines of \$50.00, in excess of the statutory limit of \$10.00.

In the case of *King v. Love*, 766 F.2d 962 (6th Cir 1985), the Court construed Tennessee law to hold that a City court judge is limited to imposing a ten dollar fine for criminal contempt.

The contempt powers of Tennessee judges are statutorily defined. Tenn. Code Ann. § 29-9-103. That section states that “where not otherwise specifically provided,” circuit, chancery and appellate courts may impose no more than ten days in jail and a fifty dollar fine for contempt. All other courts are limited to imposing a ten dollar fine. Since the Memphis City Court is not a circuit, chancery or appellate court, judges presiding over that court may impose no more than a ten dollar fine for contempt of court. Although Chapter 288 of the Private Acts of Tennessee of 1972 grants the Memphis City Court concurrent jurisdiction with the criminal courts and general sessions courts over misdemeanor cases, that Chapter does not specifically provide for expanded contempt powers as required by Tenn. Code Ann. § 29-9-103. Consequently, Judge Love exceeded his authority in jailing King for contempt on March 4, 1980.

Id.

The Chattanooga City Charter addresses the contempt power of the Municipal court. Chapter 1, Sec. 4.1 states:

The city court and the judge thereof shall have and exercise the same jurisdiction in cases of contempt of court as is now provided by statute for circuit and criminal courts and the judges thereof.

The City Charter then addresses the fines allowed for the violation of an ordinance.

The board of commissioners shall have power by ordinance (a) to provide for fines, forfeitures and penalties for the breach of any ordinance of the city and for the enforcement, recovery and appropriation of the same, and (b) to provide for confinement in a workhouse for failures to pay any fine. No fine shall exceed fifty dollars (\$50.00), but such limitation shall not apply to penalties or forfeitures.

Chattanooga City Charter § 4.50.

The Trial Court, in granting the writ, found section 4.1 of the City Charter to be null and void on the basis that it conflicts with T.C.A. § 29-9-103. However, the two provisions may be read in a way as to avoid conflicting language. Section 4.1 grants “jurisdiction” over contempt to the municipal court and judge. T.C.A. § 29-9-103 then operates to limit the punishment that the city court and judge may impose on that contempt. While Section 4.5 allows for a \$50.00 fine, that is for the violation of a city ordinance, and not for contempt. It further provides for imprisonment for failure to pay a fine, which is allowed under T.C.A. § 29-9-104, so long as the person being imprisoned has the ability to pay the fine. Because the provisions of the City Charter and the Tennessee Code can be read together in such a way as to not expand the power of the City Court to punish contemnors, the Trial Judge erred in striking down that portion of the City Charter as being null and void.

The City also argues that the City Court has enhanced powers of contempt under T.C.A. § 6-5-306. This section provides:

Penalty for violation of home rule municipal ordinances. – All home rule municipalities are empowered to set maximum penalties of thirty (30) days imprisonment and/or monetary penalties and forfeitures up to five hundred dollars (\$500), or both, to cover administrative expenses incident to correction of municipal violations.

However, this section does nothing to expand the contempt powers of the City Court. This ordinance deals specifically with violations of ordinances and not with findings of contempt. Moreover, it must be read in conjunction with other sections of the Tennessee Code that serve to limit the punishments handed down by municipal courts, as opposed to, circuit and criminal courts.

Pursuant to the City Charter, the municipal judge has jurisdiction to hear all contempt matters over which the circuit and criminal courts also have jurisdiction. He or she may imprison a person for civil contempt for failing to perform an act which is within his power and ability to perform. In cases of criminal contempt, the municipal judge is limited to imposing a fine of \$10.00 without any authority to order imprisonment.

T.C.A. § 29-9-104 provides the punishment for civil contempt:

(a) If the contempt consists in an omission to perform an act which it is yet in the power of the person to perform, he may be imprisoned until he performs it.

The municipal judge has civil contempt powers. However, it is clear that under both federal and state law, a person cannot be imprisoned indefinitely for failure to pay a fine unless that person has a current ability to pay. *See Mowery v. Mowery*, 363 S.W.2d 405 (Tenn. Ct. App. 1962); *Gossett v. Gossett*, 241 S.W.2d 934 (Tenn. Ct. App. 1951); *Quality First Staffing Services v. Chase-Cavett Services, Inc.*, 1999 WL 281312 (Tenn. Ct. App. May 7, 1999). In American Jurisprudence, a “debtor’s prison” is an anathema. The purpose of civil contempt is to compel the contemner to comply with the proper order of the court with which he is charged and refuses to comply. As has been stated as to civil contempt, the contemner holds the key to his or her own cell. *See Gossett*, 241 S.W.2d at 936.

The United States Supreme Court first dealt with the issue of incarcerating individuals for nonpayment of fines in 1970. In *Williams v. Illinois*, 399 U.S. 235 (1970), the Court forbade the practice of extending the aggregate period of punishment for a defendant beyond the maximum period authorized by statute solely because the defendant cannot afford to pay a fine. This was extended in *Tate v. Short*, 401 U.S. 395 (1971), which held that under the equal protection clause of the U.S. Constitution that it was prohibited to have an automatic conversion of a fine imposed to imprisonment for those who are too poor to pay.

Later, in *Bearden v. Georgia*, 461 U.S. 660 (1983), the Court dealt with a situation where a petitioner was imprisoned for disobeying a prior court order to pay a fine. The Court prohibited this practice as being nothing more than imprisoning someone for their inability to pay a fine; the same practice that was forbade in *Williams* and *Tate*.

The Tennessee Court of Criminal Appeals dealt with this issue in *State v. Coleman*, 675 S.W.2d 206 (Tenn. Crim. App. 1984). In that case, the defendant was indigent and requested to pay his fine in installments, however, this request was refused and his fine was converted into a prison term. The Court found that this conversion had violated the defendant's rights under the equal protection clause.

As a result of this case, along with others, the Tennessee legislature made several changes in the law. First, they provided a means for the collection of fines which includes the ability of a defendant to pay in installments or at some later date. If the defendant does not pay the fine as directed, the court is to make a finding as to the reason for nonpayment, and only if the defendant has the ability to pay, the court may imprison the defendant until such payment is made. T.C.A. § 40-24-104(a)¹. Additionally, Tennessee law provides that costs and litigation taxes may be collected in the same manner as fines, except that a person *cannot* be imprisoned for failure to pay those costs and taxes. T.C.A. § 40-24-105(a).

Accordingly, when the City attempts to collect fines, it must first separate out the fine from the court costs and taxes. If the defendant is able to pay the

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The period of imprisonment may not exceed the limits of the penalties of a Class C misdemeanor, which is 30 days. T.C.A. §40-35-111(e)(3).

fine, but refuses, that person may be imprisoned until he pays, without regard to payment of costs and taxes. If the person is unable to pay the fine, he or she may not be imprisoned. Thus, the threshold finding by the Judge should be whether the person in contempt has the current ability to pay the fine.

The Trial Judge found that the municipal court had neglected to make a finding as to the petitioner's ability to pay the fines. The petitioner testified that she had lost her job in 1990 or 1991 and that since that time her only income was as a prostitute. She stated that she did not pay any of the income towards her fines because she "chose not to try to turn any more tricks than [she] had to to live." She further stated that she had applied and been turned down for jobs throughout this time. The Trial Court ruled that

[S]he didn't have the ability to pay. She testified here today that she's indigent. She doesn't have any money, no money saved up, doesn't own any property, real or personal.

And also, it doesn't - - this order doesn't spell out how she could purge herself of contempt. . . You can't just lock somebody up from February of '98 and then bring them back to court and then pass it over to January 15, 1999.

The municipal court erred in not making a finding as to the ability to pay. While the burden is on the contemner to prove inability to pay, evidence establishes the petitioner had no income other than what she had made as a prostitute. It is clear from the record that the petitioner has no assets or other income. Moreover, the municipal court could not suggest that the petitioner should have continued her work as a prostitute in order to pay the City its money.²

We find that because petitioner had no current ability to pay her fines, she should not have been imprisoned by the municipal Judge. By so doing, the Judge

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The attorney for the petitioner stated to the Trial Court: "The statement by the Court was that since she was, to the Court's knowledge, a prostitute, she should turn tricks to earn the money to pay the fines."

exceeded the authority granted to him under Tennessee Law and the Chattanooga City Charter.

The City argues that the Trial Judge erred in granting petitioner's writ of *habeas corpus* because "a defendant being held on civil contempt is not entitled to all of the constitutional guarantees under the Constitution, including being released pursuant to a writ of habeas corpus." The City bases its argument on the premise that the alleged contemner had the means to free herself and thus chose to remain incarcerated during the appellate process. The City states in its brief:

City Court found that Poole had the ability to pay on grounds that she had earned money, she knew of her obligation to pay and failed to pay.

A *prior* ability to pay does not justify imprisonment for civil contempt. For civil contempt, there must be a current ability to pay. Having earned money in the past and knowingly failing to pay could sustain criminal contempt charges, but the municipal court is limited to a fine of \$10.00 as punishment for criminal contempt.

T.C.A. § 29-21-101 provides:

Grounds for writ. – Any person imprisoned or restrained of his liberty, under any pretense whatsoever, except in cases specified in § 29-21-102, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment and restraint.³

In *Leonard v. Leonard*, 341 S.W.2d 740 (Tenn. 1960), the Tennessee Supreme Court said:

In the case before us, that is a petition for contempt for failure to pay alimony, the order cannot be attacked by the bringing of a habeas corpus proceeding based on the inability to comply with the order because the remedy here, where there is a holding of contempt, is by an appeal.

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Section 29-21-102 only eliminates federal prisoners committed by a federal court with exclusive jurisdiction from the benefits of this writ.

Thus on the appeal there is the record which shows the facts and they are fully set forth upon which the contempt order is based. This would not be true in a petition for habeas corpus.

Leonard, 341 S.W.2d at 742; *see also Richmond v. Barksdale*, 688 S.W.2d 86 (Tenn. Ct. App. 1984).

However, where the contempt order is void, and not merely voidable, a writ of habeas corpus is proper. *Leonard* at 744 (quoting *State v. Galloway & Rhea*, 45 Tenn. 326, 337 (Tenn. 1868))said:

It stands on the law of universal application to the judgment of Courts that if the Court has no jurisdiction the judgment is void. If, therefore, it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that the judgment is upon a cause of contempt, for which the Court has no statutory power to punish, or if it so appears that the punishment inflicted is not within the power prescribed by statute for such cause, the judgment will be void for want of jurisdiction of the court, and will be no justification for the imprisonment or sentence, and no sufficient answer to the writ of habeas corpus.

The Court further explained:

In other words, what we have been trying to say is this, that where the jurisdiction of the court is made to depend upon the existence of some fact of which there is an entire absence of proof, it has no authority to act in the premises. Thus on a petition for *habeas corpus*, which would be from an order of commitment, and there was no finding on the face of the decree that the man was able to comply with the terms, then it would be void,

Id. at 745.

A Texas Appellate Court says it well:

A writ of habeas corpus will issue if the contempt order is void because it deprives the relator of liberty without due process of law, or because it was beyond the power of the court to issue.

In re Castro, 998 S.W.2d 935 (Tex. App. 1999) (internal citations omitted); See also 39 C.J.S. *Habeas Corpus* § 113 (1976).

We conclude the contempt order entered on September 21, 1998 by the municipal judge is void. The order on its face shows that Poole was found guilty of civil contempt, and then orders “defendant to be held at the workhouse for failing to pay her fines and costs. Case reset for 11/6/1998” and was signed by the Trial Judge. This judgment is void because, as we have explained, the order of incarceration exceeds the authority of the Judge to incarcerate indefinitely for failure to pay fines or to recite a factual basis for any incarceration. The judgment is also void because it orders the defendant to be held for failure to pay costs. Moreover, she was imprisoned beyond 11/6/1999 without any further order from the court.

Since some of the proceedings in the municipal court are in the record and before us, we are constrained to review that record because of the issues raised by the City on appeal and the egregious procedures followed in the municipal court in relation to the petitioner in this case.

The transcripts of the municipal court proceedings that are before this court reveal that on September 11, 1998, the municipal court issued a *capias* for petitioner. At the time, the municipal court said:

This is a review payment. Look at Valerie’s thing and see what she’s done. Probably nothing. We know Ms. Poole. Probably out there on the strip. I told you she ain’t done nothing - - issue a *capias* and just lock her up, Ms. Poole. And now we get her this time, then she’s just going to stay out there and let the jail be her home.

The record reveals that petitioner was brought into municipal court on September 21, 1998 and sent to the workhouse for civil contempt. She was brought back before the municipal court on October 5, and this transpired:

THE COURT: Valerie Poole, you owe \$3,363.85.

WITNESS: Yes, sir.

THE COURT: Where is the City's money? I told you I'm just going to keep you in jail. I don't care if it cost the City a million dollars. You're going to stay in jail until we get our money because you've been ripping and running all out here in the streets, hustling, and doing all this other mess you do. And you're going to pay us the City's money or jail is going to be your permanent residence.

WITNESS: Yes, sir.

THE COURT: Now, has she paid anything since the last time I had her in here? If she hasn't - - well, she's going to go back to jail. You're going to stay in jail. Hold her for another three weeks. I'm going to hold you until you pay.

WITNESS: Yes, sir.

THE COURT: Now, you may not ever pay, but that's all right. They'll just have a Valerie Poole Wing. They'll just have an engraved marquee that's going to be your wing...

November the 6th. Continue her case until November 6th. Just lock her back up. So we're going to continue this. She's about the eighth one I've got like this. One man has been out there three years. I don't care. He'll stay until we get our money.

Petitioner appeared at this hearing without benefit of counsel, and it is clear that no finding of ability to pay was made by the municipal judge at this hearing.⁴

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Due process mandates that an indigent defendant has the right to be represented by counsel at a contempt hearing if the indigent defendant faces the loss of his freedom. *Bradford v. Bradford*, 1986 WL 2874 (Tenn. Ct. App. March 7, 1986) (citing *Lassiter v. Department of Social Services of Durham County*, 452 U.S. 18 (1981)). While the right to appointed counsel in civil contempt

Petitioner was brought again before the same judge on November 6, 1998. The hearing went as follows.

VALERIE ANN POOLE, having been first duly sworn, was examined as follows:

THE COURT: You owe \$3,391.14. Now, has Ms. Poole paid anything? Hadn't paid anything since '92. Well, guess what Valerie, I'm putting you back in jail. You heard me say, you're going to stay in jail until we get the City's money.

THE WITNESS: Yes.

THE COURT: And I don't know whether it'd be this year, next year or when the Master sets the world free, but you're going to make jail your home. I hope that you find your bunk comfortable. You like your bunk; do you?

THE COURT: You are the one I was trying to tell the people, see what drugs did to you. You're a classic example.

WITNESS: Yes, sir.

THE COURT: But just send her on back. And I'm not going to be bothered anymore this year. Don't let her get back - - I don't want to see Ms. Poole anymore until sometime in January, because I'm not going to be - - I'm not going to ruin my Christmas holiday with Valerie Poole...

proceedings has been called "unsettled," *Parker v. Turner*, 626 F.2d 1 (6th Cir. 1980) n. 2, "the overwhelming majority of courts throughout the country have held that due process requires the appointment of counsel for indigents in civil contempt proceedings if they are sentenced to imprisonment." *Rutherford v. Rutherford*, 464 A.2d 228 (Md. 1983).

The 15th of January, let her come at 9 o'clock, and let's see if she's paid anything. And if she hadn't paid anything, then we'll make sure she's locked up so my home will be save [sic].

The record reveals that the municipal judge denied petitioner due process. She was not given the opportunity to address the court and present any defense or evidence of her inability to pay. Instead, the municipal judge told petitioner on November 6, 1998, before she had spoken, that she was to be returned to jail for not having paid the money that she owed the City. In a contempt proceeding, there should be no strict or technical rulings against the accused, and the freest opportunity should always be given to the him or her to make a defense. *Bowen v. Bowen*, 278 S.W.2d 670 (Tenn. 1955); *Robinson v. Air Draulics Engineering Co.*, 377 S.W.2d 908 (Tenn. 1964); *also see State v. Turner*, 914 S.W.2d 951 (Tenn. Crim. App. 1995).

The municipal judge exceeded his authority in this case. Civil contempt is meant to be coercive, not punitive. The Judge's comments that he did not care if the petitioner paid the fines and that she could just stay in jail illustrate the punitive nature of the incarceration.

Next, the City asserts that the Trial Judge did not have jurisdiction to rule on the municipal court's finding the petitioner guilty of contempt. It reasons that the City Court has concurrent jurisdiction as a circuit and criminal court, as provided by Chattanooga City Charter § 4.1, and therefore jurisdiction to hear any appeal to the finding of contempt would be with the Court of Appeals. However, as the City recognized earlier in its brief, this is not an appeal, but rather a *habeas corpus* proceeding to determine whether the petitioner had been unlawfully detained. Pursuant to T.C.A. § 29-21-103, any judge of the circuit or criminal courts may grant a writ of *habeas corpus* for that purpose.

The Trial Court concluded that charging interest on unpaid fines was not authorized and enjoined the City from imposing or collecting interest on any such cases in the City Court. However, the Trial Court's action on this issue was beyond the scope of the writ, and we vacate the findings and the injunction.

For the foregoing reasons, we affirm the judgment of the Trial Court, finding the petitioner was illegally held and restrained, but vacate his judgment on the

issue of the injunction against the City. The case is remanded with the cost of the appeal assessed to the appellant.

Herschel P. Franks, J.

CONCUR:

Charles D. Susano, Jr., J.

D. Michael Swiney, J.