

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

FILED

SHERI LYNN BUTLER,)
)
Plaintiff/Appellee,)
VS.)
)
HUBERT BUTLER,)
)
Defendant/Appellant.)

Shelby Chancery No. 103436-3 R.D.
Appeal No. 02A01-9409-CH-00218

November 21, 1995
Cecil Crowson, Jr.
Appellate Court Clerk

APPEAL FROM THE CHANCERY COURT OF SHELBY COUNTY
AT MEMPHIS, TENNESSEE
THE HONORABLE D. J. ALISSANDRATOS, CHANCELLOR

RONALD D. KRELSTEIN
Memphis, Tennessee
Attorney for Appellant

REBECCA M. BAGGETT
Memphis, Tennessee
Attorney for Appellee

**AFFIRMED IN PART, REVERSED IN PART
AND REMANDED**

ALAN E. HIGHERS, JUDGE

CONCUR:

W. FRANK CRAWFORD, PRESIDING JUDGE

DAVID R. FARMER, JUDGE

Defendant appeals from a conviction of criminal contempt for violation of a

permanent injunction.

The parties in this case were divorced in March of 1992 on grounds of irreconcilable differences. In October of 1993, the Defendant agreed in a consent order to a permanent injunction that enjoined him from "coming about, following, bothering, molesting, harassing, or interfering with Plaintiff in any manner and from making telephone calls to Plaintiff at her home or place of employment."

The pertinent facts relating to the alleged violation of the injunction are as follows. On May 11, 1994, Plaintiff visited her friend's house, which was located across the street from Defendant's residence. After leaving her friend's house, Plaintiff drove to a nearby intersection, where she encountered the Defendant in his car at a stop sign. Both parties turned left at the next stoplight and proceeded north on Germantown Road. Defendant drove up beside Plaintiff and waved at her. Plaintiff testified that she thought he was trying to run her off of the road. As the parties approached Plaintiff's apartment complex, Plaintiff slowed down and Defendant pulled in front of her to turn into her apartments. Defendant testified that his intent was not to go to Plaintiff's apartment, but rather, was to see another one of his friends that lived in the same complex. Defendant testified that while he was waiting to turn, Plaintiff struck him from behind with her car. Plaintiff then made a u-turn and went south on Germantown Road and Defendant turned around and pursued her. After driving to a drugstore parking lot, Plaintiff turned around and went back to her apartment and called the sheriff's department.

The trial judge found as a fact that Plaintiff had "barely bump[ed]" the rear bumper of Defendant's car, and that Defendant had lost his temper as a result of "this little bitty bump." In the trial judge's opinion, Defendant should have exercised self-control and contacted the police. The trial judge ruled that Defendant was guilty of criminal contempt beyond a reasonable doubt and to a moral certainty because he had "followed" Plaintiff in contravention of the injunction. Defendant was fined \$50.00, sentenced to 24 hours of confinement, and ordered to pay \$450.00 to Plaintiff in attorney's fees.

Defendant appeals the trial judge's decision, arguing that the evidence was insufficient to sustain a conviction because he was justified in following Plaintiff after she struck his car. He also argues that the trial court's assessment of attorney's fees against him was improper due to the fact that the statute governing criminal contempt does not permit such fees to be awarded.

The first issue raised on appeal is the sufficiency of the evidence to support the finding of the trial judge that Defendant violated the injunction.

There is no question but that this was a judgment for criminal contempt because the sentence imposed upon the appellant was in no way conditional, but was intended as punishment for his past actions. Robinson v. Gaines, 725 S.W.2d 692, 694 (Tenn. Crim. App. 1986); Sitton v. Finley, 743 S.W.2d 933, 935 (Tenn. Crim. App. 1987). In a criminal contempt action, the proof must be sufficient to overcome the presumption of innocence and show guilt beyond a reasonable doubt. Strunk v. Lewis Coal Co., 547 S.W.2d 252, 253 (Tenn. Crim. App. 1976); Robinson v. Air Draulics Engineering Co., 377 S.W.2d 908, 912 (Tenn. 1964). In this case, the trial judge found that Defendant had violated the court's orders "beyond a reasonable doubt." Determining whether an order has been followed is the prerogative of the trial court and is uniquely within the trial court's discretion. Pass v. State, 184 S.W.2d 1, 4 (Tenn. 1944); Robinson, 377 S.W.2d at 912. Consequently, the evidence on appeal must be viewed in the strongest legitimate light supporting the conviction. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). The Defendant, therefore, comes to us "burdened with the presumption of guilt." Robinson, 377 S.W.2d at 912. In order to obtain a reversal of his conviction, the Defendant must show that the evidence preponderates in favor of his innocence. Id.

In Nashville Corp. v. United Steel Workers of America CIO, 215 S.W.2d 818 (Tenn. 1948), the Tennessee Supreme Court stated:

The power to punish for contempt is one of the highest prerogatives of a court of justice; and, upon its bold and prudent exercise depend the respect, the dignity, and efficiency of courts as arbiters of human rights. The mandates

of a Court of Chancery must in all cases be obeyed, according to the spirit of the decree, promptly, faithfully and without question, or evasion. The party, upon whom the order or command of the court operates, is not allowed to speculate upon the equity of the bill, or the legality or regularity of the order or decree, or of the writ issued thereon; but his simple duty is to obey; and when he disobeys it is a duty the court owes to itself and to the public to punish him at once.

Id. at 821.

In the present case, Defendant admitted that he followed Plaintiff after she allegedly bumped his car. This conduct was clearly prohibited by the express terms of the injunction. We agree with the trial judge that the proper response would have been to call the police. Defendant was required to exercise self-control under the circumstances to avoid violating the injunction.

We hold that the trial judge did not abuse his discretion in finding that Defendant violated the injunction and the evidence on appeal does not preponderate against such finding. Defendant's conviction for criminal contempt is, therefore, affirmed.

Defendant's second contention is that the trial judge erred in awarding attorney's fees to Plaintiff.

It has long been the law that a fifty-dollar fine and ten days' imprisonment are all that a chancery court may impose for criminal contempt. Weidner v. Friedman, 126 Tenn. 677, 151 S.W. 56 (Tenn. 1912). Although the punishment for criminal contempt may be either a fine or imprisonment or both, the punishment is confined to the prescribed limits of \$50.00 and ten days. Robins v. Frazier, 52 Tenn. 100, 104 (1871).

Tennessee Code Annotated § 29-9-103 establishes the punishment that may be imposed in an action for criminal contempt. This section provides:

Punishment.--(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).

T.C.A. § 29-9-103 (Supp. 1995).

Plaintiff was unable to adduce any Tennessee law standing for the proposition that it is permissible for a court to exceed the statutorily-defined limits for punishment for criminal contempt by awarding attorney's fees to the prevailing party in a suit for violation of an injunction.¹ Neither are we aware of any such case law.

Appellee might prevail in her quest for attorney's fees if this were a case for civil contempt because there is authority holding that attorney's fees may be awarded in civil contempt proceedings. TWM Manufacturing Co. v. Dura Corp., 722 F.2d 1261 (6th Cir. 1983); In re Crabtree, 60 B.R. 147 (Bankr. E.D. Tenn. 1986); Kuykendall v. Latham, 1991 WL 10178 (Tenn. App. Feb. 4, 1991). However, the instant case is one for criminal contempt and the punishment for criminal contempt has been clearly delineated in the above statute.

We agree with Defendant that the award of attorney's fees was improper because it was simply not within the limits established by the statute. Although we sympathize with Plaintiff because she was forced into court by Defendant's actions, the general rule is that absent a statute, contract, or recognized ground of equity, there is no inherent right to have attorneys' fees paid by the opposing party. State ex rel. Orr v. Thomas, 585 S.W.2d 606 (Tenn.1979); Ezell v. Graves, 807 S.W.2d 700 (Tenn. App. 1990). There is no statute in this State requiring the losing party to pay the prevailing party's attorneys fees in a case such as this. To allow these fees without statutory authority would violate public policy. Owen v. Stanley, 739 S.W.2d 782, 788 (Tenn. App. 1987); John J. Heirigs Construction Co. v. Exide, 709 S.W.2d 604, 609 (Tenn.Ct.App.1986).

¹There are many cases where attorney's fees have been awarded to the prevailing party in criminal contempt proceedings involving child custody or child support payments. These attorney's fees, however, are expressly provided for by a statute governing child custody and support proceedings. See, Sherrod v. Wix, 849 S.W.2d 780 (Tenn. App.1992); Tenn. Code Ann. § 36-5-103(c) (Supp. 1995).

The judgment of the trial court is affirmed in part, reversed in part, and remanded for any further and necessary proceedings. Costs on appeal are taxed equally to the parties.

HIGHERS, J.

CONCUR:

CRAWFORD, J.

FARMER, J.