IN THE COURT OF APPEALS OF TENNESSEE

FILED

August 19, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

JULIA SUTTLES	:	HAWKINS CIRCUIT
	:	CA No. 03A01-9602-CV-0005
Plaintiff-Appellee	:	
	:	
	:	
vs.	:	HON. JOHN K. WILSON
	:	JUDGE
	:	
	:	
STEVE SUTTLES and	:	
SIERRA MERRELL	:	
	:	
Defendants-Appellant	:	REMANDED

PAUL G. WHETSTONE, OF MORRISTOWN, TENNESSEE, FOR APPELLANT

JULIA SUTTLES, PRO SE FOR APPELLEE, OF CHURCH HILL, TENNESSEE

O P I N I O N

Sanders, Sp.J.

Defendant Steve Suttles appeals from a judgment for contempt of an order of protection granted to the Plaintiff pursuant to TCA § 36-3-601, et seq.

Sometime prior to October 27, 1994, the Plaintiff-Appellee, Julia Suttles, and Defendant-Appellant Steven Suttles were divorced in Hawkins County. It appears they had two minor children aged five to three years old at the time of divorce. On October 27, 1994, Julia Suttles petitioned the Circuit Court of Hawkins County for an order of protection from the Respondent, Steve Suttles, pursuant to TCA § 36-3-601, et seq. She alleged he tried to force her automobile off the highway on two separate occasions, he made threatening telephone calls to her and followed her.

The circuit judge issued an ex parte order of protection pursuant to TCA § 36-3-605 enjoining the Respondent from coming about the Petitioner, from abusing her or threatening to abuse her or committing any acts of violence against her, and set the case for hearing on November 4, 1994. The order was served on Respondent on October 27, 1994.

At the hearing on November 4, the court, as pertinent, enjoined and restrained the Respondent from harassing, phoning, following, annoying or coming about the Petitioner. In accordance with TCA § 36-03-605(b) the court also issued an order extending the order of protection for one year.

On May 8, 1995, the Petitioner filed a petition asking the court to hold Respondent in contempt for violating the November 4, 1994, protective order.

Upon the hearing of that petition, as pertinent, the court found the Respondent had violated the protective order on four separate occasions and imposed $50 fines and l0-day jail

sentences for each separate violation, but suspended them on the condition of Respondent's good behavior and strictly following the order of protection. The court entered an order on May 18, 1995, substantially broadening his ex parte order of protection and the November 4 order.

In October, 1995, the Petitioner filed a petition in which she asked the court again to hold the Respondent in contempt for violating the protection order.

Upon the hearing of the petition for contempt, the court found the Respondent had been in violation of the order of protection on five separate occasions and imposed a fine of $50 and 10 days in jail for each violation. The court, again, suspended all of the fines and the prison terms, except 10 days of the jail terms, conditioned on Defendant's good behavior. The order of the court also provided the Defendant might petition the court to allow the 10-day jail term to be served by community service.

The Respondent has appealed, presenting five issues for review, which can be summarized as follows: 1. The November 4, 1994, order was void; 2. The court was without jurisdiction to enjoin the Respondent from committing the acts for which the court held him in contempt; and 3. The evidence was insufficient to sustain a conviction.

In support of his contention that the November 4, 1994, order of protection is void, the Respondent states: "At the conclusion of the November 4, 1994, hearing, the Trial Judge noted that this order constituted an 'ex parte' order of protection and that a hearing would be conducted for a full order of protection."

He argues that, despite the fact a hearing was ordered, no hearing occurred within 10 days as required pursuant to TCA § 36-3-106(b) and the ex parte order expired.

We agree with Respondent that there is a handwritten, undated note at the bottom of the second page of the order stating the substance of what he argues. There is, however, nothing else in the record which shows when the notation was made, why it was made, or that there is any relation between the notation and the rest of the order preceding the notation which bears the signature of the judge and the certification of service by the court clerk. We cannot agree with Respondent that no hearing was held on the ex parte order of protection within 10 days of its service on Respondent pursuant to TCA § 36-3-605(b). The record shows the officer served the petition for an order of protection and the ex parte order on Respondent on October 27, 1994. The notice required the Respondent to appear for hearing on November 4, 1994, at 9:00 a.m. The hearing on the petition and ex parte hearing were held on November 4, which was seven days after notice was served on Respondent.

The Respondent's second issue is the court was without jurisdiction to enjoin him from the acts for which he was held in contempt. In support of this insistence, he says the injunctive relief contemplated by the statute "prohibits Respondent from: Coming about petitioner for any purpose and specifically from abusing, threatening to abuse petitioner, or committing any acts of violence upon petitioner upon the penalty of contempt." He insists the statute does not contemplate any further injunctive relief.

While we agree the statute grants the type of injunctive relief stated by the Respondent, we find the statute to be broad enough to give the court sufficiently broad authority to enjoin the Respondent from any type of conduct which would be either physically or mentally abusive to the Petitioner.

TCA § 36-3-606(a) (1995 Supp.), as pertinent, provides: "A protection order granted under this part to protect the petitioner from domestic abuse may include, but is not limited to:...." It then enumerates activities for which both injunctive and mandatory-injunctive relief may be granted, which include such broad terms as "Directing the respondent to refrain from committing domestic abuse or threatening to commit domestic abuse against petitioner, prohibiting the respondent from telephoning, contacting or otherwise communicating with petitioner, directly or indirectly." (Emphasis ours.)

A review of the injunctive orders of the court reveals the court restrained the Respondent from abusing or threatening to abuse or committing any acts of violence against Plaintiff. Respondent is enjoined from harassing, phoning, following Julia Suttles, her family, friends, or employees where she works, or friends of hers at school or coming about her place of employment. One order further provides: "The Defendant, Steve Suttles, or his agent is enjoined from being in the city limits of Surgoinsville, Tennessee unless for child visitation purposes, or on the main 4-lane to pass through.

"Defendant, Steve Suttles, or his agents [are] enjoined from being in the city limits of Church Hill except to pass.

* * *

"The defendants will not take any action or co-conspire to destroy anyone's life, their property or their business. ....

"This Order also includes actions directed by the defendant toward any landlord of the plaintiff or her friends.

"The Court orders that Julia Suttles will determine the hair grooming of the two minor children."

The Petitioner testified that on June 11, 1995, after their young son, Steve, had been visiting Respondent, there were "tattoos all over Steven's upper body; most obvious were on his neck, arms and side of his face. They were temporary tattoos.... It took two or three days to get them off.... Respondent had cut Steven's hair. It was cut all off.... Every bit of it had been shaved." A prior court order provided: "Julie Suttles will determine the hair grooming of the two minor children." On June 18 when Petitioner asked Respondent about Steven's hair cut, Respondent replied, "No one was going to dictate when he would or would not see his children.... No one was going to dictate what he could do with his children...."

Petitioner testified that on the night of June 19, when she went out of her house she saw Respondent in his "vehicle coming from the back of my apartment." This was in Church Hill. On July 11, about 6:00 p.m. Petitioner, while driving her car on the highway, met the Respondent driving his car in the opposite direction with their two children in the car with him and as they met "he (Respondent) was motioning with his finger up in the window, an obscene gesture."

The Petitioner testified that on August 13, 1995, when the Respondent returned the children to her after their visitation

with him he began cursing her with numerous obscenities because he had received a letter from Child Support Enforcement asking for additional information on his employment. He stated "that he would not pay it, he was going to quit his job if that's what it took. If I didn't call them off, I would regret ever asking for an increase."

On September 30, the Petitioner left the town of Surgoinsville, driving her car on the Old Stage Road, taking her car for repairs to a garage located on Burmen Road. A friend, Ms. Bargetti, was following her in another car with the parties' minor children. Near the intersection of Old Stage Road and Burmen Road Petitioner observed the Respondent following them. He followed them until they turned off on Burmen Road to the garage. The Respondent traveled past the road to the garage but turned around and came back to the garage. There he proceeded to violently curse both Petitioner and Ms. Bargetti in the presence of the children. He called them vile, vulgar, and degrading names. Petitioner testified "He ended with the fact that we would regret it if we ever drove down that road again, for that was his road and we had no right coming about it." As he left he started holding his finger up making obscene gestures. It appears the Respondent lived on Old Stage Road and Petitioner and Ms. Bargetti had passed his residence on the way to the garage.

The Respondent testified at the trial but the only portion of the Petitioner's testimony he disputed was being at her residence in his car on the night of June 19.

The court made no finding of fact on the record. He made no finding of any specific acts of the Respondent which constituted

contempt. His order, as pertinent, states: "Upon the proof the court finds that the Defendant, Steve Suttles, is in contempt of court for violation of the order of protection on June 11, 1995, on June 19, 1995, on July 11, 1995, on July 28, 1995, on September 30, 1995."

We find the order of the court fails to contain sufficient facts to be reviewable on appeal. Generally, "an order merely reciting that the accused is guilty of contempt, without showing what the conduct was which resulted in the contempt, is not sufficient". 17 Am.Jur.2d, Contempt § 213, Recitals of Fact, p. 565. Also, "the purpose of the requirement of an order reciting the facts of a contempt...is to permit the correctness of the order to be reviewed on appeal." 17 Am.Jur. (Supp.April 1996) Contempt § 213, p.52.

The case is remanded to the trial court for the entry of an order setting forth the facts upon which the court's order is predicated.

The cost of this appeal, in our discretion, is taxed to the Appellant.

_____
Clifford E. Sanders, Sp.J.

CONCUR:

_____
Herschel P. Franks, J.

_____
Don T. McMurray, J.