

**IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE**

**AT NASHVILLE**

**MAY 1999 SESSION**

**FILED**

**December 20, 1999**

**STATE OF TENNESSEE,** \_\_\_\_\_ \*

\_\_\_\_\_ **Appellee** \*

**V.** \*

**JOSEPH D. GRAY,** \_\_\_\_\_ \*

\_\_\_\_\_ **Appellant.** \*

No. M1998 00256 CCA R3 CD

DAVIDSON COUNTY

**Cecil Crowson, Jr.**

Hon. Gale B. Robinson, Judge

**Appellate Court Clerk**

(Criminal Contempt)

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OPINION FILED:

TRANSFERRED - TENN. R. APP. P. 17

NORMA MCGEE OGLE, JUDGE

## OPINION

On October 7, 1998, the appellant, Joseph D. Gray, pled guilty in the Davidson County General Sessions Court to two charges of criminal contempt of court. The appellant had violated an order of protection issued by the Davidson County Circuit Court pursuant to the Domestic Abuse statute. Tenn. Code. Ann. § 36-3-601 to -621 (1997). Upon the appellant's pleas of guilt, the court imposed concurrent sentences of ten days incarceration in the Davidson County Jail, staying execution of the sentences pending the resolution of this appeal. The appellant utilized the procedure set forth in Tenn. R. Crim. P. 37(b)(2)(iv) in order to reserve his right to appeal a certified question of law challenging the jurisdiction of the General Sessions Court. Following a review of the record and the parties' briefs, we conclude that the appellant should have filed his appeal with the Tennessee Court of Appeals.

Tenn. Code. Ann. § 16-5-108(a)(3)(1994) provides that the jurisdiction of this court shall extend to review of the final judgments of trial courts in cases of civil or criminal contempt "arising out of a criminal matter." In contrast, Tenn. Code. Ann. § 16-4-108(b) provides that the court of appeals has jurisdiction "over civil or criminal contempt arising out of a civil matter." Accordingly, the preliminary question before this court is whether the appellant's acts of contempt and subsequent convictions "arose out of" a criminal or civil matter.

Again, this contempt case arose out of proceedings initiated under the Domestic Abuse statute by the appellant's wife for the purpose of obtaining a protection order. "Domestic abuse statutes are civil and protective rather than criminal and punitive in nature . . . ." 28 C.J.S. Domestic Abuse and Violence § 3 (1996). See also Cooke v. Naylor, 573 A.2d 376, 377-378 (Me. 1990). Thus, the

court of appeals recently and without comment exercised jurisdiction over an appeal in a criminal contempt case in which the appellant had violated an order of protection. Macklin v. Macklin, No. 03A01-9807-CV-00232, 1999 WL 76098 (Tenn. Crim. App. at Knoxville, January 29, 1999). See also Suttles v. Suttles, No. 03A01-9602-CV-0005, 1996 WL 469686 (Tenn. App. at Knoxville, August 19, 1996).

Nevertheless, the State asserts that this court should exercise jurisdiction, because “this case has indicia of a criminal matter.” The State then cites, as examples, the issuance of arrest warrants charging the appellant with criminal contempt and the appellant’s pleas of guilt to criminal contempt. However, the criminal nature of the contempt case is irrelevant in determining whether jurisdiction lies in this court or the court of appeals. Both courts have jurisdiction over criminal contempt cases. Rather, it is the nature of the underlying order of protection proceedings that is determinative.

The State also urges this court to seek guidance from our decision in Neal v. Brooks, No. 88-127-III, 1988 WL 123971 (Tenn. App. at Nashville, November 22, 1988). In Neal, the appellant was found guilty of criminal contempt for violating an order of protection. Id. at \*1. The appellant originally filed his appeal in the court of appeals, which then transferred the case to this court. Id. We accepted jurisdiction, observing that this court had exclusive appellate jurisdiction in criminal contempt matters. Id. Significantly, this court emphasized that our jurisdiction included convictions of criminal contempt when the appellant had violated an order in a *civil proceeding*. Id. As already noted, the legislature amended Tenn. Code. Ann. § 16-5-108 and Tenn. Code. Ann. § 16-4-108, effective July 1, 1989, to divide jurisdiction in both civil and criminal contempt cases between this court and the court of appeals depending upon the nature of the underlying

proceedings.

For the foregoing reasons, we transfer this appeal to the court of appeals pursuant to Tenn. R. App. P. 17.

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Norma McGee Ogle, Judge

CONCUR:

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David G. Hayes, Judge

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Jerry L. Smith, Judge