

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 2, 2022 Session

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BLANKENSHIP CPA GROUP, PLLC v. STEPHEN WALLICK

**Appeal from the Chancery Court for Williamson County
No. 16CV-45016 Joseph A. Woodruff, Chancellor**

No. M2022-00359-COA-R3-CV

A temporary injunction restrained a former employee of an accounting firm from committing acts of harassment against the firm or any of its principals, employees, or agents. An Internet news article reported the former employee’s perspective on his history with the firm. The former employee posted a link to the article on his Facebook page and circulated the article to clients of the firm and others. The firm filed a petition for criminal contempt, alleging that the former employee violated the restraint on acts of harassment against the firm. The trial court held the former employee in criminal contempt for willfully disobeying the injunction. We affirm in part and reverse in part.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed
in Part; Reversed in Part; Vacated in Part; and Remanded**

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which FRANK G. CLEMENT JR., P.J., M.S., and ANDY D. BENNETT, J., joined.

Stephen Crofford, Brentwood, Tennessee, for the appellant, Stephen Christopher Wallick.

David T. Hooper, Brentwood, Tennessee, for the appellee, Blankenship CPA Group, PLLC.

OPINION

I.

A.

Steven Wallick had an established accounting practice in Dickson County. In 2012, Mr. Wallick and Blankenship CPA Group, PLLC (“the Firm”) entered into “an asset purchase and employment agreement” in which the Firm agreed to purchase Mr. Wallick’s accounting practice. *State v. Wallick*, No. M2020-01121-CCA-R3-CD, 2021 WL 4075033, at *1 (Tenn. Crim. App. Sept. 8, 2021) *perm. app. denied* (Tenn. Jan. 19, 2022). Over the next three years, the Firm paid Mr. Wallick the agreed asset purchase price as well as employee compensation. *Id.* Mr. Wallick resigned from the Firm on November 30, 2015. *Id.* After his departure, the Firm discovered that Mr. Wallick had “downloaded client data files from the Firm’s server and made unauthorized copies of the information.” *Id.* He also collected and retained “\$62,417.90 in accounts receivable that belonged to the Firm.” *Id.* at *2. The Firm filed criminal charges. After a jury trial, Mr. Wallick was convicted of theft of property valued over \$60,000, a Class B felony. *Id.* at *4.

While the criminal proceedings were ongoing, the Firm filed this civil action. According to the Firm, the civil suit concerned Mr. Wallick’s “unauthorized and clandestine downloading of records and data owned either by [the Firm or the Firm’s] clients, his diversion of and collection of accounts receivable belonging to [the Firm, and] his acts of extortion, defamation, and harassment.” At the outset, the Firm obtained an ex parte restraining order against Mr. Wallick.

Later, the Firm asked the court to convert the ex parte order into a temporary injunction. After an evidentiary hearing, the court issued a temporary injunction. Among other things, the order restrained and enjoined Mr. Wallick from “making any threats towards or acts of extortion or harassment against [the Firm] or any of its principals, employees, or agents including, but not limited to, verbal or written threats or coming on the property of any of [the Firm’s] offices.” But the court expressly refused to prohibit solicitation of the Firm’s clients. It also declined to “enjoin in advance any defamatory or disparaging statements that might be made by [Mr. Wallick] regarding [the Firm] or any of its principals, employees or agents.”

In September 2017, Mr. Wallick sent text messages to two Firm employees warning them to update their résumés because he was about to release information about alleged tax fraud and criminal collusion at the Firm. He also hand-delivered a package and sent a private Facebook message to Judy Walters. Mrs. Walters is the spouse of Michael Walters, a Firm principal and the director of the Firm’s Dickson office. Both communications to Mrs. Walters accused her husband of conspiring with a Firm client to commit tax fraud.

Mr. Wallick’s actions prompted the Firm to file a petition for civil contempt, which was resolved by agreement. Mr. Wallick agreed that he had violated the temporary injunction “by the continuing willful and intentional acts of harassment toward [the Firm] and its principals, employees and agents.” And he specifically acknowledged that his contact with Mrs. Walters “was in willful disobedience of the Temporary Injunction.” After the parties announced their agreement, the court found that the essential elements for

a contempt finding were satisfied, and it was appropriate to hold Mr. Wallick in civil contempt.

B.

This appeal concerns a later-filed petition for criminal contempt. The Firm alleged that Mr. Wallick had willfully violated the temporary injunction by committing multiple “acts of harassment” against the Firm. At the bench trial, the Firm presented evidence of Mr. Wallick’s conduct and its effect on the Firm. Mr. Wallick did not offer any countervailing evidence.

The proof showed that, on July 28, 2020, Mr. Wallick posted a link on his Facebook page to an online article written by a freelance journalist. The post included the message, “Everyone. Please share this story. I was called a few months ago and asked about an interview. I gave my story and this guy hunted down documentation and support.” Mr. Wallick urged anyone who saw his post to share the link with others, calling it “the only way [to] expose the corruption.”

The article presented Mr. Wallick’s perspective on his history with the Firm and his criminal conviction. In large part, the article repeated claims that Mr. Wallick had previously made in other forums. It resurrected Mr. Wallick’s accusations of tax fraud and ethical violations against a Firm principal, Mr. Walters. The article also disclosed personal information about both Mr. and Mrs. Walters. Mr. Wallick claimed that his criminal conviction was tainted by prosecutorial misconduct. According to Mr. Wallick, the Firm’s owners used their political connections to punish him for trying to expose corruption.

C.J. Blankenship, the Firm’s managing member, testified for the Firm along with Mr. and Mrs. Walters. They told the court that the statements in the article about the Firm and Mr. Walters were false and misleading. The jury had already rejected Mr. Wallick’s story, and his conviction had been affirmed on appeal. The Tennessee State Board of Accountancy had also dismissed his accusations after a hearing.

On August 20, 2020, Mr. Wallick faxed copies of the article to Mrs. Walters and several of the Firm’s clients. That September, he also sent an email message to a Nashville attorney ostensibly seeking information on the relationship between the prosecutor in his criminal trial and a member of the jury. The email included a link to the article with the entreaty, “Please read the full story below.” A few days later, Mr. Wallick sent an identical email to a federal judge.

As Mr. Walters and Mr. Blankenship recounted, each time Mr. Wallick shared the article, it caused more distress for the Firm. Mr. Walters heard from multiple unhappy clients who had received the fax communications from Mr. Wallick. The client identified as part of the tax fraud scheme was extremely upset that these accusations had resurfaced.

And Mr. Blankenship dealt with the clients who received the article in an email. The federal judge was a Firm client. The attorney was not a client, but he forwarded the message to Mr. Blankenship's brother, who was a Firm client.

Mrs. Walters shared her emotional distress at receiving yet another communication from Mr. Wallick accusing her husband of bad behavior. She thought he would leave her alone after he was sanctioned for the previous incident. And both of the Walters complained that the article revealed private information about them, such as their home address, details about their recent move, and the identity of the banks that held the mortgage note on the Walters' home and Mrs. Walters's business office. On cross-examination, they conceded that the published information was available in public records.

Ultimately, the court found Mr. Wallick guilty beyond a reasonable doubt on five counts of criminal contempt.¹ Count I related to the fax Mr. Wallick sent to Ms. Walters, and Count II related to the faxes sent to Firm clients. Count III related to the Facebook post. Count IV related to the email Mr. Wallick sent to a Nashville attorney. And Count V related to the email he sent to a Firm client.

The court found that the article contained "materially false, misleading and defamatory statements" about the Firm. And it determined that posting a link to the article on Facebook, sending a copy of the article to Mrs. Walters, sending copies of the article to Firm clients, sending an email with a link to the article to a Nashville attorney, and sending an identical email to a federal judge were all acts of harassment against the Firm in willful violation of the temporary injunction. But the court found Mr. Wallick not guilty of criminal contempt based on his "participation in the composition of the article." As punishment, the court ordered Mr. Wallick to serve 40 days in county jail and pay a fine of \$200.

II.

A.

Criminal contempt "is punishment for an offense against the authority of the court." *Sherrod v. Wix*, 849 S.W.2d 780, 786 n.4 (Tenn. Ct. App. 1992). "In criminal contempt proceedings, the defendant is presumed to be innocent and must be proven guilty beyond a reasonable doubt." *Doe v. Bd. of Prof'l Resp.*, 104 S.W.3d 465, 474 (Tenn. 2003). But once held in criminal contempt, a person loses his presumption of innocence and, on appeal, bears the burden of overcoming a presumption of guilt. *Thigpen v. Thigpen*, 874

¹ "Courts properly 'find' or 'hold' persons in contempt and impose 'sanctions' or 'punishment' for contempt[,] but [they] do not 'convict' persons of contempt." *Baker v. State*, 417 S.W.3d 428, 438 (Tenn. 2013).

S.W.2d 51, 53 (Tenn. Ct. App. 1993). We will reverse findings of guilt in a criminal contempt judgment only “if the evidence is insufficient to support the finding by the trier of fact of guilt beyond a reasonable doubt.” TENN. R. APP. P. 13(e).²

The “four essential elements” for a contempt finding are well-known. *Konvalinka v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, 249 S.W.3d 346, 354-55 (Tenn. 2008); *Furlong v. Furlong*, 370 S.W.3d 329, 336 (Tenn. Ct. App. 2011). The order allegedly violated must be lawful. *Konvalinka*, 249 S.W.3d at 354. The order must also be clear and unambiguous. *Id.* The individual charged “must have actually disobeyed . . . the order.” *Id.* at 355. And the violation must be willful. *Id.*

The proper interpretation of a court order is a question of law, which we review de novo. *Id.* at 356 n.19. We construe the temporary injunction “using an objective standard that takes into account both the language of the order and the circumstances surrounding the issuance of the order, including the audience to whom the order is addressed.” *Id.* at 356. We give the language of the order a plain and ordinary meaning. *Id.* at 359. Litigants, such as Mr. Wallick, are entitled to rely on a reasonable interpretation of a court order, so we interpret any ambiguities in the order in favor of Mr. Wallick. *See id.* at 356.

B.

Mr. Wallick argues that his conduct did not violate the specific language of the order. And, in finding him guilty, the court impermissibly broadened the scope of the injunction.

A court order must “spell[] out the details of compliance in a way that will enable reasonable persons to know exactly what actions are required or forbidden.” *Id.* at 355. Here, the injunction restrained and enjoined Mr. Wallick “[f]rom making any threats towards or acts of extortion or harassment against [the Firm] or any of its principals, employees, or agents including, but not limited to, verbal or written threats or coming on the property of any of [the Firm’s] offices.” This language is clear and specific. It does not enjoin all acts of harassment. It only prohibits acts of harassment directed toward or against the Firm and the others specifically listed.

In Count I, Mr. Wallick was charged with criminal contempt for sending a fax to Mrs. Walters. As Mr. Wallick notes, Mrs. Walters was not specifically listed in the

² Mr. Wallick argues that the judgment does not comply with Tennessee Rule of Civil Procedure 52.01. In all bench trials, Rule 52.01 requires the court to “find the facts specially[,] . . . state separately its conclusions of law and direct the entry of the appropriate judgment.” TENN. R. CIV. P. 52.01. This requirement facilitates effective appellate review. *Lovlace v. Copley*, 418 S.W.3d 1, 34 (Tenn. 2013). Assuming, without deciding, that Rule 52.01 is applicable to a criminal contempt judgment, we conclude that the court’s order is sufficient for our review.

injunction. But, in interpreting the court's order, we must consider the effect of the agreed order resolving the prior petition for civil contempt. *See id.* at 356. In the agreed order, Mr. Wallick acknowledged and agreed that his prior contact with Mrs. Walters was in "willful disobedience" of the injunction's prohibition on acts of harassment against the Firm. And the court expressly found that it was appropriate to find Mr. Wallick in civil contempt under those circumstances.

We affirm the court's finding of guilt on Count I. The agreed order extended the injunction's protection to spouses, such as Mrs. Walters. Mr. Wallick was held in civil contempt for sending a legal document and a private message to Mrs. Walters, both of which accused her husband of colluding with a Firm client to commit tax fraud. In this instance, the court found him in criminal contempt for substantially similar conduct. Mr. Wallick faxed to Mrs. Walters's business the text of an online article that repeated his previous accusations and included a few more. After entry of the agreed order, Mr. Wallick was well aware that such conduct was a violation of the temporary injunction.

Mr. Wallick also contends that the criminal contempt holding violated his rights under the First Amendment to the federal constitution.³ We find Mr. Wallick's First Amendment argument unavailing as to Count I. Here, Mr. Wallick agreed in the prior contempt proceeding that communications like these with Mrs. Walters were proscribed by the injunction. Thus, we conclude there was no burden on Mr. Wallick's First Amendment rights by restricting his communications with Mrs. Walters.

We do not reach the same result on the remaining four counts of criminal contempt. The Firm argued, and the trial court agreed, that the injunction also prohibits conduct directed toward third parties that causes reasonably foreseeable harassment to the Firm. That is too broad a reading of the injunction. The injunction prohibits "making any threats **towards** or acts . . . of harassment **against**" a specific list. The plain import of this language is that the forbidden conduct must be directed toward the Firm or the others on the list.

Counts II and V were based on Mr. Wallick's missives to Firm clients. Count II involved faxes to several clients; Count V involved an email to a client who was a federal judge. The agreed order only added spouses to the list of protected individuals. It did not otherwise alter the literal meaning of the temporary injunction. *See id.* at 359 ("If the language in an order is clear, then the literal meaning of the language in the order controls."). Nothing in the temporary injunction or the agreed order prohibited Mr. Wallick from contacting the Firm's clients or even disparaging the Firm to those clients.

³ To the extent Mr. Wallick seeks to raise similar claims under the Tennessee Constitution, such claims are waived because he did not include them in his statement of issues. *See Hodge v. Craig*, 382 S.W.3d 325, 335 (Tenn. 2012) (reasoning that "an issue may be deemed waived when it is argued in the brief but is not designated as an issue").

In Count III, Mr. Wallick was charged with criminal contempt for posting a link to the article on his Facebook page. This conduct, whether the article was defamatory or not, did not violate a clear and specific directive in the injunction. As we stated previously, the temporary injunction did not enjoin Mr. Wallick from making defamatory or disparaging statements about the Firm. It prohibited him from committing “acts of harassment against the Firm or any of its principals, employees or agents.” Nothing in the injunction prohibited Mr. Wallick from posting this link on his personal Facebook page.

Count IV concerned Mr. Wallick’s email to the Nashville attorney. At best, the attorney could be categorized as a friend of the Firm. He forwarded the email to his law partner, Mr. Blankenship’s brother. Again, the injunction did not prohibit Mr. Wallick from sharing the article with an unrelated third party.

To be clear, Mr. Wallick may be liable for his conduct on some other basis. But the question on appeal is whether he willfully disobeyed a court order. The injunction did not clearly and unambiguously prohibit the conduct that formed the basis for Counts II-V. Because Mr. Wallick did not violate a clear and specific court directive when he posted the link on his Facebook page and circulated the article or a link to the article to Firm clients and a Nashville attorney, the evidence is insufficient to support a finding of guilt beyond a reasonable doubt. So we reverse the criminal contempt holdings on Counts II-V.⁴

III.

We affirm the criminal contempt holding on Count I, but we reverse on the remaining counts. Because the trial court merged Counts I and II for purposes of sentencing and the fine, we also vacate the punishment. We remand for a determination of an appropriate punishment and such further proceedings as may be necessary and consistent with this opinion.

s/ W. Neal McBrayer
W. NEAL MCBRAYER, JUDGE

⁴ Our ruling makes it unnecessary to address the First Amendment issue on Counts II-V.