IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 29, 2023 Session

# LYNNE INGRAM BOLTON v. DAVID BOLTON

**Appeal from the Circuit Court for Davidson County**
**No. 20D-47 Robert E. Lee Davies, Senior Judge**

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**No. M2022-00627-COA-R3-CV**

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This is a criminal contempt case. Appellant/Father appeals the trial court's finding that he is guilty of four counts of criminal contempt for violating the trial court's orders regarding medical treatment for the minor child. Discerning no error, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed and Remanded**

KENNY ARMSTRONG, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and ARNOLD B. GOLDIN, J., joined.

Karla C. Miller, Nashville, Tennessee, for the appellant, David Bolton.

Abby R. Rubenfeld, Nashville, Tennessee, for the appellee, Lynne Tyler Ingram.

## OPINION

### I. Background

Appellant David Bolton ("Father") and Appellee Lynne Ingram ("Mother") were married on December 27, 2018. One child was born to the marriage in June 2019. On January 10, 2020, Mother filed a Complaint for Divorce. On July 16, 2021, the trial court entered an order divorcing the parties.

Throughout the post-divorce litigation, both parties have made accusations of misconduct against the other party, filed multiple motions and requests for emergency injunctive relief, and several interim orders were entered. As is relevant to the findings of contempt in this case, on October 14, 2020, Father filed a motion to prevent Mother's

interference with the child's medical care, alleging that Mother was attempting to change the child's pediatrician because Father had communicated his concerns about possible child abuse to the child's pediatrician; this resulted in the filing of a complaint with DCS and ensuing investigation (there were never any findings or charges of abuse). On January 19, 2021, the trial court entered an order on Father's motion. This order specifically outlines the criteria the parties will use in seeking medical treatment for the child, *see infra*.

On December 31, 2020, Mother filed a motion for designation of a pediatrician. On February 5, 2021, the trial court entered an order on Mother's motion and several other motions. As is relevant here, the February 5, 2021 order outlines the specific circumstances under which Father may seek medical care and information concerning the child, *see infra*.

During the course of the litigation leading up to the instant appeal, Mother filed three petitions for criminal contempt against Father. The first two petitions were resolved by agreed order entered on April 15, 2021. The third petition is the subject of this appeal; therein, Mother alleged thirteen counts of criminal contempt, all of which were dismissed except for Counts 4, 5, 9 and 10, *see infra*. Following a hearing on November 16 and December 20, 2021, the trial court entered an order on April 29, 2022. The trial court found Father guilty of criminal contempt on the four remaining counts set out above. The trial court sentenced him to a total of 34 days of incarceration, and awarded Mother $4,500.00 as a portion of her attorney's fees. The trial court ordered that Father would serve 14 days and stayed execution on the remaining 20 days "upon the Father's strict compliance with the Court's orders." Father appeals.

## II. Issues

Father raises the following issues for review as stated in his brief:

> I. Was the evidence sufficient to support a finding of guilt of criminal contempt beyond a reasonable doubt as to Count 4?
> a. Was the Trial Court's Order of February 5, 2021 clear and unambiguous as to Count 4?
> b. Was the evidence insufficient to support a finding of willfulness as to Count 4?
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> II. Was the evidence sufficient to support a finding of guilt of criminal contempt beyond a reasonable doubt as to Count 5?
> a. Was the Trial Court's Order of February 5, 2021 clear and unambiguous as to Count 5?
> b. Was the evidence insufficient to support a finding of willfulness as to Count 5?

III. Was the evidence sufficient to support a finding of guilt of criminal contempt beyond a reasonable doubt as to Count 9?
a. Was the Trial Court's Order of January 19, 2021 clear and unambiguous as to Count 9?
b. Was the evidence insufficient to support a finding of willfulness as to Count 9?

IV. Was the evidence sufficient to support a finding of guilt of criminal contempt beyond a reasonable doubt as to Count 10?

V. In the event this Honorable Court reverses any or all of the counts of criminal contempt against Father, should the attorney fees awarded to Mother be adjusted accordingly, including remand for consideration of an award of attorney fees to Father?

VI. In the event the Father is successful on this appeal should he be awarded his attorney fees?

## III. Standard of Review

As this Court has explained:

> A person charged with criminal contempt is "presumed innocent and may not be found to be in criminal contempt in the absence of proof beyond a reasonable doubt that they have willfully failed to comply with the court's order." ***Long v. McAllister-Long***, 221 S.W.3d 1, 13 (Tenn. Ct. App. 2006) (citing ***Black v. Blount***, 938 S.W.2d 394, 398 (Tenn. 1996); ***Thigpen v. Thigpen***, 874 S.W.2d 51, 53 (Tenn. Ct. App. 1993)). If the defendant is found guilty by the trial court, the defendant has the burden on appeal of illustrating why the evidence is insufficient to support the verdict of guilt. ***Black***, 938 S.W.2d at 399. When the sufficiency of the evidence in a criminal contempt case is raised in an appeal, this court must review the record to determine if the evidence in the record supports the finding of fact of guilt beyond a reasonable doubt, and "if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt" we are to set aside the finding of guilt. *See* Tenn. R. App. P. 13(e) (directing that "findings of guilt in criminal actions shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt").

***Pruitt v. Pruitt***, 293 S.W.3d 537, 545-46 (Tenn. Ct. App. 2008). Thus, appellate courts do not review the evidence in a light favorable to the accused. ***Thigpen***, 874 S.W.2d at 53 (Tenn. Ct. App. 1993). A conviction will be reversed for insufficient evidence only when the facts in the record, and any inferences that may be drawn therefrom, are insufficient as

a matter of law for a rational trier of fact to find the accused guilty of the crime beyond a reasonable doubt. ***Black***, 938 S.W.2d at 399; Tenn. R. App. P. 13(e).

## IV. Analysis

Tennessee Code Annotated section 29-9-102 authorizes courts to "inflict punishments for contempts of court" for, *inter alia*, "[t]he willful disobedience or resistance of any . . . lawful writ, process, order, rule, decree, or command of such courts[.]" Tenn. Code Ann. § 29-9-102(3). A person can violate a court order "'by either refusing to perform an act mandated by the order or performing an act forbidden by the order.'" ***In re Samuel P.***, No. W2016-01665-COA-R3-JV, 2018 WL 1046784, at *8 (Tenn. Ct. App. Feb. 23, 2018) (quoting ***Overnite Transp. Co. v. Teamsters Local Union No. 480***, 172 S.W.3d 507, 510-11 (Tenn. 2005)). "There are three essential elements to criminal contempt: '(1) a court order, (2) the defendant's violation of that order, and (3) proof that the defendant willfully violated that order.'" ***Pruitt,*** 293 S.W.3d 537, 545 (Tenn. Ct. App. 2008) (citing ***Foster v. Foster***, No. M2006-01277-COA-R3-CV, 2007 WL 4530813, at *5 (Tenn. Ct. App. Dec. 20, 2007)). In addition, the party moving for contempt must show the following four elements: (1) the order allegedly violated was lawful; (2) the order was clear and unambiguous; (3) the individual charged did in fact violate the order; and (4) the individual acted willfully in so violating the order. ***Konvalinka v. Chattanooga-Hamilton Cnty. Hosp. Auth.***, 249 S.W.3d 346, 354-55 (Tenn. 2008).

The findings of contempt in this case involve Father's violation of the trial court's January 19, 2021 order and its February 5, 2021 order. The January 19, 2021 order outlined a protocol for the parties to follow in the event either of them suspected abuse of the minor child by the other party; the trial court also indicated its concern that the child was being taken for unnecessary medical visits. In relevant part, the order states:

> 3. If either party notices bruises or marks they may bring it to the attention of the medical provider but they are not to bring the minor child to see the primary care provider for purposes of observance or inspection but he or she shall only take the minor child to the medical provider as medically needed. The court reiterates that the Department of Children's Services is the investigative arm of this court and if there are concerns about child abuse it is to be reported to the department and not to Vanderbilt each time.
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> 5. The court reiterates that a parent taking a minor child to the medical provider every two weeks to be observed and inspected after picking up for his or her parenting time is inappropriate and places that parent at risk of termination of his or her parenting time, and the court has already explicitly instructed the parties to document his or her concerns and if necessary notify

the Department of Children's Services and the court is not going to tolerate inappropriate behaviors especially if they involve the minor child.

The trial court's February 5, 2021 order provides more details concerning the parameters of the child's medical care, to-wit:

> 3. [Father] may contact the provider to ask questions or obtain information but otherwise [Mother] shall be in charge of setting appointments and taking the minor child to all medical appointments or events absent a medical emergency. [Father] shall not use this authority to harass or make excessive requests from the medical provider. [Father] remains restrained and enjoined from having contact with [Mother] except as explicitly permitted in the temporary restraining order and shall not attend the child's medical appointments.
> 4. Should a medical emergency occur while a minor child is in [Father's] care, he shall immediately take the minor child to the ER or emergency clinic and notify [Mother] via text message and in compliance with the temporary restraining order so that she may follow up or address any further steps necessary.
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> 6. The court reiterates its prior orders remain in effect regarding medical visits as well as the original temporary restraining order.

Mother alleged two counts of contempt involving Father taking the child to Vanderbilt on August 8, 2021 due to a rash. As alleged by Mother in her petition:

> COUNT 4: [Father] violated the February 5, 2021 order by taking the minor child to [Vanderbilt] for a rash on or about August 8, 2021, which is not a medical emergency, when the court has explicitly ordered Mother to handle all medical appointments through the primary care provider.
> COUNT 5: [Father] violated the February 5, 2021 order for failing to notify Mother by text message as required when taking the minor child to the emergency room on or about August 8, 2021.

In its April 29, 2022 order, the trial court held:

> As to Count #4, it is alleged that the Father violated the February 5, 2021 order by taking the child to Vanderbilt University Medical Center for a rash on August 8, 2021. In the order in question, the Court explicitly ordered that the Mother handle all medical appointments as the primary care provider. In looking at the February 5, 2021 order, the Court held that the

Father may contact the medical provider to ask questions or obtain information but otherwise, the Mother shall be in charge of setting appointments and taking the child to all medical appointments, *absent a medical emergency*.

The order specifically states that the Father shall not harass or make excessive requests from a medical provider. Further, the Father remains restrained from contact with Mother except as explicitly permitted in the temporary restraining order, and he shall not attend the child's medical appointments. Should a medical emergency occur while the child is in the Father's care, the order provides that he shall immediately take the child to the ER or emergency clinic and notify the Mother via text message and in compliance with the temporary restraining order, so that she may follow up or address any further steps necessary. In this instance, the Court must look to the medical records that have been provided in two (2) parts in Trial Exhibit #6 and #7. In looking at the medical records, the Court finds an appropriate and necessary business record affidavit which allowed the records to be introduced into evidence. When the Court reviewed the medical records, it reflected that the Father, Mr. Bolton, took the child on August 8, 2021 to the Vanderbilt Clinic. The medical records, on page 14, evidence that Mr. Bolton was the presenting parent. "Patient was brought by [F]ather who has shared custody." While it is incorrect that the Father has "shared custody," the records report that when he took possession of his son, the child had a rash on his penis and genital area. The child's medical records indicate that he was normal in all other respects other than a rash.

In this instance, the Court specifically finds that this occurred on August 8, 2021 and that this medical visit was not a medical emergency. As to Count #4, the Court finds that the order in question was a lawful, unambiguous order of the Court, and the father willfully violated same. The Court finds the Father guilty beyond a reasonable doubt. Counsel suggested that some of these orders are confusing. When the Court reviewed these orders, the Court did not find any ambiguity regarding the orders. In looking at the Court's order of January 19, 2021, the Court specifically notes that if either party notes bruises or marks, they may bring it to the attention of the medical provider, but they are not to bring the child to see the provider for purposes of observance or inspection and that he or she shall only take the child to the medical provider as medically needed. In its order of February 5, 2021, the Court explained what "medically needed" was pursuant to its order. It was ordered to be a medical emergency, and in this instance, a rash is not a medical emergency. The Court finds the Father's behavior to be willful. **Therefore, the Court finds the Father guilty beyond a reasonable doubt of Count #4.**

(Emphases in original).

Turning to Count 5, in its April 29, 2022 order, the trial court found:

> As to Count #5, it is alleged that the Father violated the February 5, 2021 order by failing to notify the Mother by text message as required when taking the child to the emergency room on or about August 8, 2021. Again, reviewing the Court's February 5, 2021 order, should a medical emergency occur while the child is in the Father's care, he shall immediately take the minor child to the ER or emergency clinic and notify the Mother via text message and in compliance with the temporary restraining order, so that she may follow up or address any further steps. The restraining order provides that she may come to the location where the child is being treated and interface with the emergency personnel.
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> As to Count #5, the unrebutted testimony of the Mother is that she was not notified by text message from the Father as ordered, and there was nothing to prevent him from doing so. In fact, the Court order specifically allowed him to contact the Mother for that purpose. The Court has been provided with no testimony or evidence that the Father could not have contacted Mother. The Court finds the order in question is lawful and unambiguous, and the Father's behavior was willful. **The Court finds the Father guilty of Count #5 beyond a reasonable doubt.**

(Emphasis in original).

Concerning Counts 4 and 5, Father first contends that the January 19 and February 5 orders are not clear and unambiguous. As set out in his brief:

> The Father submits that these two Orders must be read together due to the Paragraph 6 language of the February 5, 2021 Order which states "The court reiterates its prior orders remain in effect regarding medical visits as well as the original temporary restraining order". Because of this language, the Order of February 5, 2021, of which the Father was found in criminal contempt as to Count 4, is not clear and unambiguous. If the Court intended for the February 5, 2021 order to "supersede" or "modify" the January 19, 2021 Order, then the Father would respectfully submit that is typically handled by a statement of this type: "All prior Orders of the Court remain in effect except as specifically modified herein", or something to that effect. The February 5, 2021 Order contained no such "qualifier". Therefore, the Father, in taking the child to the [Vanderbilt] walk-in clinic on August 8, 2021, was fully compliant with the January 19, 2021 Order, which provided that he should only take the minor child to the medical provider as medically needed. At this appointment on August 8, 2021, the child was diagnosed with a rash which was apparently recurring, and which required a prescription for an

> ointment which was to be applied 3 times per day. Clearly, this visit was "medically needed", although not necessarily an emergency. Therefore, the Father did not violate the February 5, 2021 Order as alleged by the Mother at Count 4.

Where, as Father argues here, an order allows for more than one interpretation, it must: (a) be construed with consideration of the issues it was intended to decide, and (b) be interpreted in light of both the context in which it was entered and the other parts of the record, including pleadings, motions, issues before the court, and arguments of counsel. ***Morgan Keegan & Co., Inc. v. Smythe***, 401 S.W.3d 595, 608 (Tenn. 2013). Here, the trial court entered its January 19 and February 5, 2021 orders to address its concern, as set out in the January 19 order, that "a parent taking a minor child to the medical provider every two weeks to be observed and inspected . . . is inappropriate and places that parent at risk of termination of his or her parenting time." In this regard, the February 5 order is consistent with the January 19 order. As set out in context above, the January 19, 2021 order provides that: (1) "[the parties] are not to bring the minor child to see the primary care provider for purposes of observance or inspection"; (2) "[the parties] shall only take the minor child to the medical provider as medically needed"; and (3) "if there are concerns about child abuse it is to be reported to the department and not to Vanderbilt each time." The February 5 order merely clarifies the mandates set out in the January 19 order. As set out above, the February 5 order provides: (1) "[Mother] shall be in charge of setting appointments and taking the minor child to all medical appointments or events absent a medical emergency"; and (2) "[s]hould a medical emergency occur while a minor child is in [Father's] care, he shall immediately take the minor child to the ER or emergency clinic and notify [Mother] via text message." The two orders are neither ambiguous nor in conflict. From the plain language of the orders, the trial court was clearly concerned with the child being subjected to repeated and unnecessary medical examinations, which the trial court found to be "inappropriate". The trial court cautioned the parties that it would not "tolerate such behaviors." To that end, by the January 19 and February 5 orders, the trial court held that: (1) Mother had sole authority to make all of the child's medical appointments except in the case of a "medical emergency"; (2) the parties would notify the Department of Children's Services ("DCS") with any abuse concerns; (3) in the event of a medical emergency, Father could take the child to the ER or emergency clinic, but he was charged to notify Mother via text message. Father argues that the trial court's statement in its February 5 order that "The court reiterates its prior orders remain in effect regarding medical visits as well as the original temporary restraining order," contains no "qualifier" indicating that the February 5 order modifies or amends the January 19 order. Based on this assertion, Father contends that "in taking the child to the [Vanderbilt] walk-in clinic on August 8, 2021, [he] was fully compliant with the January 19, 2021 Order, which provided that he should only take the minor child to the medical provider as **medically needed**" (emphasis added). Father's argument is not persuasive when the January 19 and February 5 orders are construed in view of the issue they were intended to address, *i.e.,* the child being subjected to unnecessary, non-emergency, medical exams. ***Morgan Keegan &***

***Co., Inc.***, 401 S.W.3d at 608. Viewed in the context of the problem the trial court was trying to address, the February 5 order merely clarifies that "medically needed," as used in the January 19 order, means a "medical emergency." The question, then, as to counts 4 and 5, is whether the child's rash constituted a medical emergency so as to trigger Father's authority to take the child to Vanderbilt on August 8.

Although the trial court's order does not define what constitutes a "medical emergency," we note that it would be difficult to limit the term to one definition as a "medical emergency" could arise from any number of illnesses or injuries. Whether a condition is a "medical emergency" is best left to the medical experts as documented in their records, and the trial court was correct to rely primarily on the child's medical records in reaching its decision that the child's rash was not a medical emergency. Turning to the medical records from the child's visit to Vanderbilt on August 8, 2021, the "History of the Present Illness" section states that Father

> reports that when he got his son this time he had a rash on his penis and genital area. It is uncomfortable during diaper changes. No drainage. He has had multiple rashes in the past per dad and he never gets medication passed to him from the mother. This time he would like 2 tubes so the mother can have some and so that he can be sure to have the cream if the mother does not give it back when he gets the son next time.

The medical records further describe the child's "rash" as a "4cm area[,*i.e.*, approximately 1.6 inches] with raised papules[,*i.e.,* bumps] and surrounding erytherma[,*i.e.,* reddening]. . . ." The only medication prescribed was bactroban ointment, which treats impetigo and skin rashes. Furthermore, there was no "drainage" in the affected area, which we read to mean no infection. Importantly, Father informed the treating physician that the child "had multiple rashes in the past," which, in itself, indicates that the August 8th presentation was for a recurrent problem and not an emergent situation. It appears that Father's primary goal on August 8th was to obtain sufficient cream to treat the rash. Under even the most liberal definition of "medical emergency," the child's rash, although "uncomfortable," was not one. In his brief, Father admits as much, stating, "[T]his visit was 'medically needed,' although not necessarily an emergency." As such, Mother was the parent charged with making an appointment for the child to see a doctor, and Father overstepped the trial court's orders in taking the child to Vanderbilt on August 8. Nonetheless, Father asserts that his actions were not willful, thus negating a finding of criminal contempt. We turn to that question.

This Court has outlined the law on willfulness in the context of criminal contempt as follows:

As this Court has put it,

> [I]n the context of criminal contempt, willfulness has two elements: (1) intentional conduct; and (2) a culpable state of mind. *See* ***State v. Beeler***, 387 S.W.3d 511, 523 (Tenn. 2012); ***Konvalinka*** [***v. Chattanooga-Hamilton Cty. Hosp. Auth.***], 249 S.W.3d [346,] at 357 [(Tenn. 2008)]. Willful disobedience of any court order "entails an *intentional* violation of a known duty. . . ." ***Beeler***, 387 S.W.3d at 523 (emphasis in original) (citing ***In re Sneed***, 302 S.W.3d 825, 826 n. 1 (Tenn. 2010)). The statutory definition of intentional conduct is found in Tennessee Code Annotated section 39-11-302(a) (2010): "'Intentional' refers to a person who acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result." Tenn. Code Ann. § 39-11-302(a). To satisfy the culpable state of mind requirement, the act must be "undertaken for a bad purpose." ***Konvalinka***, 249 S.W.3d at 357. In other words, willful disobedience in the criminal contempt context is conduct "done voluntarily and intentionally and with the specific intent to do something the law forbids." ***Id.*** (quoting ***State v. Braden***, 867 S.W.2d 750, 761 (Tenn. Crim. App. 1993) (upholding this definition of willful misconduct for criminal contempt)).

***Duke v. Duke***, No. M2013-00624-COA-R3-CV, 2014 WL 4966902, at *31 (Tenn. Ct. App. Oct. 3, 2014); *see also* ***Levoy v. Levoy***, No. M2018-01276-COA-R3-CV, 2019 WL 6331247, at *3 (Tenn. Ct. App. Nov. 26, 2019) (requiring both intentional conduct and a culpable state of mind to prove criminal contempt); ***Renken v. Renken***, No. M2017-00861-COA-R3-CV, 2019 WL 719179, at *6 (Tenn. Ct. App. Feb. 20, 2019) (same); ***Howell v. Smithwick***, No. E2016-00628-COA-R3-CV, 2017 WL 438620, at *4 (Tenn. Ct. App. Feb. 1, 2017) (same); ***In re Carolina M.***, No. M2014-02133-COA-R3-JV, 2016 WL 6427853, at *5 (Tenn. Ct. App. Oct. 28, 2016), *perm. app. denied* (Tenn. Feb. 15, 2017) (same). Indeed, in its most recent pronouncement on this issue, the Tennessee Supreme Court has indicated that criminal contempt requires "an *intentional* violation of a known duty." ***State v. Beeler***, 387 S.W.3d 511, 523 (Tenn. 2012) (second emphasis added) (citing ***In re Sneed***, 302 S.W.3d 825, 827 (Tenn. 2010) (noting that willful is equivalent to intentional under Tenn. Code Ann. § 39-11-302(a) ("'Intentional' refers to a person who acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.")).

> *But see* ***Mobley v. Mobley***, No. E2012-00390-COA-R3-CV, 2013 WL 1804189, at *18 (Tenn. Ct. App. Apr. 30, 2013) (stating that willful in the criminal context can mean "undertaken with a bad purpose," but it can also mean "'a thing done without ground for believing it is lawful; or conduct marked by careless disregard whether or not one has the right so to act. . . .'" (quoting [***State v.***] ***Casper***, 297 S.W.3d [676,] 687–88 [(Tenn. 2009) (quotation omitted)])).
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> Additionally, many cases upholding criminal contempt convictions mention that the contemnor had knowledge of the order that was being violated. *See, e.g*., ***Levoy***, 2019 WL 6331247, at *3 ("The evidence at trial supports a finding that Father's violations of the plan were willful. He was aware of the provisions of the parenting plan."); ***Renken***, 2019 WL 719179, at *6 ("Father knew that he was required to provide Mother with a working phone number to contact the children."); *cf.* ***Mobley***, 2013 WL 1804189, at *18 (noting mother's argument in the contempt trial was that she had complied with the trial court's order to the best of her ability and understanding, not that she did not have notice of the order allegedly violated).

***Mawn v. Tarquinio***, No. M2019-00933-COA-R3-CV, 2020 WL 1491368, at *6-*7 (Tenn. Ct. App. March 27, 2020). Here, there can be no doubt that Father was aware of the mandates outlined in the trial court's January 19 and February 5 orders, and Father's argument that the orders are somehow conflicting or unclear is unpersuasive, *see discussion supra*. Father admits that the child's rash did not constitute a medical emergency; nonetheless, he proceeded to take the child to Vanderbilt without first consulting with Mother (who was charged with making all of the child's non-emergent medical appointments). So, while Father may not have undertaken the August 8th visit with bad purpose, he certainly exhibited a "careless disregard [as to] whether or not [he had] the right so to act . . . ." ***Mobley***, 2013 WL 1804189, at *18 (internal quotation omitted). Accordingly, we conclude that the facts in the record, and the reasonable inferences that may be drawn therefrom, are sufficient as a matter of law for a rational trier of fact to find Father guilty of violating the trial court's order as set out in count 4 of Mother's petition. ***Black***, 938 S.W.2d at 399; Tenn. R. App. P. 13(e).

The trial court also found Father guilty of count 5 of Mother's petition for his failure to text Mother concerning the August 8th trip to Vanderbilt. As the trial court correctly noted, there is no proof to rebut Mother's testimony that she did not receive the required text when Father took the child to the clinic. In relevant part, Mother testified:

> Q [to Mother]. Did [Father] notify you that he was taking the minor child to the doctor for an emergency on August 8th?
> A. He did not before during or after, no.
> Q. Did he reach out to you to ask for you to make a medical appointment

under the order for [the child's] rash?
A. He did not.
THE COURT: All right. And do I correctly understand that neither before or during the time the child was treated at Vanderbilt, [Father] didn't notify you where you could come and interface with the health care providers?
THE WITNESS: That's correct.
Q. How did you find out about this appointment?
A. . . . I found out because the prescription was sent to Walgreens and Walgreens notified me of a prescription being ready and that's how I knew trying to figure out why my son was seen and for what? I don't know if this was for this particular visit, but that is the only way I would have been made aware.

Furthermore, as briefly noted by Mother in her brief, it appears, from the child's medical records, that Father failed to list Mother as a party entitled to information concerning the August 8th visit. In the medical records, Father is listed as the sole person entitled to information concerning the child's treatment on August 8th. This notation provides further evidence that Father failed to notify Mother concerning the visit to Vanderbilt on August 8th, and may also go to his bad intent to withhold information from her, which would constitute "an *intentional* violation of a known duty," *i.e.*, willfulness. ***Beeler***, 387 S.W.3d at 523 (emphasis added). The evidence is sufficient to support the trial court's conclusion that Father violated its orders as set out in count 5 of Mother's petition.

Turning to counts 9 and 10, which involve Father taking the child to Vanderbilt in October 2021. As alleged by Mother:

COUNT 9: [Father] violated the January 19, 2021 order by failing to report the suspected abuse to the Department of Children's Services and not to Vanderbilt as court ordered for the weekend of October 14-18, 2021.
COUNT 10: [Father] violated the February 5, 2021 order by failing to notify mother by text message of a trip to the emergency room the weekend between Thursday, October 14th and Monday, October 18th of 2021.

As to Count 9, in its April 29, 2022 order, the trial court found:

[I]t is alleged that the Father violated the Court's January 19, 2021 order by failing to report to the Department of Children's Services suspected abuse purportedly observed by him on the weekend of October 14-18, 2021. The Mother testified that she became aware that the child had been to the Vanderbilt Clinic on that weekend. She provided the Court with the child's Vanderbilt medical records supported with a business record affidavit. In this instance, the medical records provide that on October 15, 2021, the Father brought the parties' healthy two-year-old child in for inspection and

evaluation of bruising. On examination, that patient had multiple bruises in different stages to his legs and bottom. The facility took photos documenting the concerns of the Father with what he believed represented non-accidental trauma. The records further reflect that the Department of Children's Services was notified by the hospital, and their representative also appeared and examined the child. Pursuant to the orders of this Court, the child should not have been at the Vanderbilt Clinic. While the Court's order of January 19, 2021 specifically states, "if either party notices bruises or marks, they may bring it to the attention of the medical provider," the January 19, 2021 order specifically states that the parents are <u>not</u> to bring the child to see the primary care provider for purposes of observation or inspection, and that he or she shall only take the child to the medical provider as medically needed. In the orders in this case, including the initial restraining order, the Court reiterated that the Department of Children's Services is the investigatory arm of this Court, and if there are concerns about abuse, such concerns must be reported to DCS and not to Vanderbilt Clinic.

The Court further finds that the Father violated the order by taking the child to Vanderbilt Clinic, and in addition, pursuant to his own affidavit, being Trial Exhibit #11, signed October 18, 2021, the Father specifically stated, on page 5 of his affidavit, paragraph 16, "I am at a loss as to where to turn. I have not made a referral to DCS but physicians [of the child] have. I have been unimpressed by the department's timeliness and thoroughness. Further, I am under an order that Mother is the only party able to make regular doctor appointments with the child, leaving me to decide to either A: violate a court order to go to a physician to protect our child or B: follow the court order but seek no medical opinion about the bruising. I am out of options and I continue to find more bruising every other weekend when I pick up our son from daycare."

The minor child was at the Vanderbilt Clinic three (3) days earlier on October 15, 2021. The Court notes that in this count, the Mother has alleged that the child was at Vanderbilt for the weekend of October 14 through 18, which this Court finds is sufficiently specific where the medical records clearly show the child was at Vanderbilt on October 15, 2021. The Court finds the order to be a lawful, unambiguous order of the Court and finds the Father's behavior to be willful. **The Court finds the Father guilty beyond a reasonable doubt of Count #9 for failing to notify the Department of Children's Services of the bruises purportedly observed.**

(Emphases in original).

Again, Father argues that the January 19 and February 5 orders are ambiguous. We have previously addressed that argument and found the orders to be clear and unambiguous. In the alternative, Father argues that there is insufficient evidence to support

the trial court's finding that he is guilty of contempt on count 9 of Mother's petition. We disagree. As discussed above, in its January 19th order, the trial court held that, "[i]f there are concerns about child abuse it is to be reported to the department and not to Vanderbilt each time." Like the trial court, we have reviewed Trial Exhibit 11, *i.e.*, Father's October 18, 2020 affidavit, which was filed in support of his Ex Parte Emergency Motion to Temporarily Enjoin and Restrain Mother's Parenting Time. Therein, Father candidly states:

> I have not made a referral to DCS but [the child's] physicians . . .have. I have been unimpressed by the department's timeliness and thoroughness. Further, I am under an order that Mother is the only party able to make regular doctor appointments for the child, leaving me to decide to either A: violate a court order to go to a physician to protect our child or B: follow the court order but seek no medical opinion about this bruising. I am out of options and I continue to find more bruising every other weekend when I pick up our son from daycare.

Father's statements provide sufficient evidence to find him guilty of violating the trial court's January 19, 2021 order. Specifically, he acknowledges that he understands the trial court's mandates. He further acknowledges that if he takes his concerns of abuse to the child's physician, he will be in violation of the trial court's order to take such concerns to DCS. Yet, Father bypassed DCS and took the child to Vanderbilt. This was "an intentional violation of a known duty," ***Beeler***, 387 S.W.3d at 523, and constitutes Father's willful violation of the trial court's order. Father's statement that he has "been unimpressed by the department's timeliness and thoroughness" constitutes his subjective opinion and is insufficient to relieve Father of his obligation to follow the trial court's orders. There is sufficient evidence to support the trial court's finding of contempt on count 9 of Mother's petition.

As to Count 10, the trial court held:

> [I]t is alleged that the Father violated the [February 5, 2021] order by failing to notify the Mother by text of his trip with the child to the emergency room . . . on October 15, 2021 . . . . In this instance, again, the Father is under an obligation to notify the Mother when he takes the child to the doctor. He is only to take the child to the doctor in the event of an emergency. In this instance, the Father took the child to the Vanderbilt Clinic. Whether he thought it was an emergency or not, he failed to notify the Mother as required by the Court. As noted, the Court finds its order to be a lawful and unambiguous order of the Court. The Mother's testimony on this issue is clear and unrebutted, and nothing prevented the Father from being able to notify her. The Court finds the [F]ather's behavior to be willful. **Therefore, the Court finds him guilty of Count #10 beyond a reasonable doubt.**

(Emphasis in original). Mother's testimony that she received no notice of the October doctor's visit is undisputed. In relevant part, she testified:

> THE COURT: . . . Ms. Ingram, this is the emergency room visit, when, the emergency room visit of October 15th?
> THE WITNESS: Yes, Your Honor.
> THE COURT: And did [Father] notify you that the child was taken to the emergency room for an emergency circumstance?
> THE WITNESS: He did not report during or after. I only learned of it after requesting medical records through the Vanderbilt University Medical Center portal.
> THE COURT: So, he didn't text or e-mail or provide any information, you found this out by checking the child's medical records at Vanderbilt?
> THE WITNESS: That's correct. . . .

Indeed, there is no evidence that Father attempted to contact Mother when he chose to take the child to Vanderbilt. As noted by the trial court, there is no evidence to suggest that Father was unable to contact Mother, and so the inference is that he chose not to do so. As discussed above, the trial court's order was clear and unambiguous that Father was required to contact Mother for any care the child needed. Father clearly failed to follow that mandate. Accordingly, there is sufficient evidence to support the trial court's finding of contempt on count 10 of Mother's petition.

Having affirmed the trial court's findings of contempt, we leave undisturbed its award of attorney's fees to Mother, and we deny Father's request for attorney's fees.

## V. Conclusion

For the foregoing reasons, we affirm the trial court's order. The case is remanded for such further proceedings as may be necessary and are consistent with this opinion. Costs of the appeal are assessed to the Appellant, David Bolton, for all of which execution may issue if necessary.

S/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE