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Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs September 1, 2022

**PAMELA DIANE STARK v. JOE EDWARD STARK**

**Appeal from the Circuit Court for Shelby County  
No. CT-002958-18 Robert Samuel Weiss, Judge**

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**No. W2021-01288-COA-R3-CV**

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This appeal arises from a divorce action filed in 2018. The wife appeals from the trial court's order finding her guilty of two counts of criminal contempt. Because one count of criminal contempt was alleged as civil contempt, we vacate the trial court's finding of criminal contempt on that count. We affirm the finding of criminal contempt on the second count. We vacate the punishment of community service and remand for determination of an appropriate punishment pursuant to Tennessee Code Annotated section 29-9-103.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court  
Affirmed in part; Vacated in part; Case Remanded**

JOHN W. MCCLARTY, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and CARMA DENNIS MCGEE, J., joined.

Pamela Diane Stark, Blue Eye, Missouri, pro se.

Melissa C. Berry and Michelle S. Crawford, Memphis, Tennessee, for the appellee, Joe Edward Stark.

**OPINION**

**I. BACKGROUND**

This is the fourth appeal in the 2018 divorce action between the appellant, Pamela Diane Stark ("Wife"), and the appellee, Joe Edward Stark ("Husband").<sup>1</sup> Wife acknowledges that this case has an extensive, complicated history within the state and federal courts. Much of the litigation involved Husband's petition for a restraining order

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<sup>1</sup> Husband elected not to file an appellate brief.

and Husband's petition for civil and criminal contempt, both of which followed Wife's airing of grievances on the internet. We recite the procedural history to the extent relevant to the issues on appeal. In so doing, we liberally incorporate the recitations from this Court's previous opinions, namely: *Stark v. Stark*, No. W2019-00901-COA-T10B-CV, 2019 WL 2515925 (Tenn. Ct. App. June 18, 2019); *Stark v. Stark*, No. W2019-00650-COA-R3-CV, 2020 WL 507644 (Tenn. Ct. App. Jan. 31, 2020), *perm. app. denied* (Tenn. Aug. 10, 2020), *cert. denied*, 141 S. Ct. 1687 (2021); and *Stark v. Stark*, No. W2020-01692-COA-R3-CV, 2022 WL 1744695 (Tenn. Ct. App. May 31, 2022).

Wife is a licensed attorney. She and Husband met through work when she served as an assistant district attorney in the Shelby County District Attorney General's Office and he served as a sergeant in the Homicide Division of the Memphis Police Department ("MPD"). They married in May 2013. Following two separations and two prior complaints for divorce filed and then nonsuited by Wife, the parties separated for a third and final time after a physical altercation on June 17, 2018. Wife filed a third complaint for divorce on June 29, 2018. Notice of the mandatory temporary injunctions prescribed by Tennessee Code Annotated section 36-4-106 was issued to the parties on the same day. The statute states that when a petition for divorce is filed and served, certain temporary injunctions "shall become an order of the court." Tenn. Code Ann. § 36-4-106(d)(2). These include "[a]n injunction restraining both parties from harassing, threatening, assaulting or abusing the other and from making disparaging remarks about the other . . . to either party's employer[.]" Tenn. Code Ann. § 36-4-106(d)(1)(C). The statutory injunctions "shall be in effect against both parties until the final decree of divorce . . . is entered . . . or until the court modifies or dissolves the injunction[.]" Tenn. Code Ann. § 36-4-106(d)(1). Wife's amended complaint for divorce alleged three interspousal tort claims against Husband, including alleged battery arising from the June 17 altercation.

On January 15, 2019, Husband filed a petition for a restraining order. Husband alleged that he had recently become aware of a Facebook post made by Wife on December 14, 2018, in which she publicly posted allegations regarding Husband and the alleged incident of domestic violence between them. Wife's December 14, 2018 Facebook post read:

Anyone who knows me, knows I am a staunch supporter of not only MPD, but law enforcement as a whole. That being said, police officers are only human. Further, they are human beings who are specifically trained to rely on each other for their very life. Thus, it is ridiculous to believe that law enforcement, especially from the same specific force, should investigate a case where there is potential wrong doing and/or legal consequences for one of their own.

Being in charge of the investigation, they decide what if anything is done, documented or collected as they investigate one of their own with no one

watching over their shoulder.

I speak now as a recent victim of domestic violence at the hands of a Memphis Police Officer. I can attest to exactly how wide “the thin blue line can get.” Do not get me wrong, I understand it. Who among us would want to hang one of our own out to dry. This is even more so for the Brotherhood of Blue. However, it is even more devastating. Who do you turn to when those sworn to serve and protect and enforce the law, don’t.

Husband claimed that the above Facebook post also disparaged MPD and its investigation of the incident. Husband asserted that Wife’s dissemination of these allegations in a public forum would cause him immediate and irreparable injury, including but not limited to loss of employment, demotion, or damage to his reputation within the department. As such, Husband asked the trial court to enter a restraining order directing Wife to remove the Facebook post and to cease and desist from making any future comments, orally or on social media, that might jeopardize his employment or impugn his reputation with the police department. Husband sought an award of attorney fees incurred in bringing the petition for a restraining order.

Wife responded to the petition. She argued that her post was critical of MPD, not Husband. She also argued that the restraining order sought by Husband would infringe on her “constitutional rights.” The trial court heard Husband’s petition for a restraining order on February 7, 2019. At the outset, Husband’s counsel explained that Husband was asking the trial court to extend the existing statutory injunctions to specifically address public posts on social media or communication with Husband’s employer that would have a detrimental effect on his reputation or employment.<sup>2</sup> Husband submitted as exhibits the Facebook post made by Wife and also a lengthy email Wife had sent to the mayor of Memphis about the incident. Husband testified that his co-workers at the police department viewed the Facebook post before he did. He explained that he and Wife have many mutual friends on the social media site because Wife worked as a prosecutor. Husband testified that a special prosecutor from another city was appointed to conduct an investigation regarding the alleged incident of domestic violence involving him and Wife.<sup>3</sup>

Wife’s email to the mayor likewise claimed that she was a victim of domestic violence at the hands of Husband and a victim of misconduct by MPD. She identified Husband by name and rank and described her version of the physical altercation between them and the events that followed. Wife asked the mayor to “look into this before it goes

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<sup>2</sup> The statute provides that either party to the divorce may “apply[] to the court for further temporary orders, an expanded temporary injunction, or modification or revocation of this temporary injunction.” Tenn. Code Ann. § 36-4-106(d)(2).

<sup>3</sup> Husband was never charged with a crime based on the alleged domestic violence.

further.” Husband testified that the city mayor is considered his ultimate boss and employer. He opined that Wife’s social media post and email to the mayor constituted harassment and brought his reputation into question.

Wife did not testify but repeated her argument that she had an absolute right to criticize the police department. At the conclusion of the hearing, the trial court informed Wife that the problem with her argument was the existence of the automatic injunction prohibiting her from “making disparaging remarks about the other [spouse] . . . to either party’s employer.” *See* Tenn. Code Ann. § 36-4-106(d)(1)(C). The trial court acknowledged Wife’s “freedom of speech” argument but emphasized that her email did not convey “a general concern about police corruption,” but instead was in direct reference to Husband. The court explained that the references to Husband were “off limits.” The trial court then ruled from the bench that the Facebook post had to be removed that same day and that Wife would not be permitted to make further allegations on social media or have communication with Husband’s employer. Wife refused, stating:

Well, Your Honor, I will just with all candor to the [c]ourt say you might as well take me into custody right now. I have contacted the FBI as well as having contacted the mayor of Memphis to try and get this addressed. I am saying that I am a victim of corruption from the Memphis Police Department, and I am going to pursue every course of action I have and . . .

The trial court interjected and asked Wife whether she intended to remove the Facebook post. Wife responded, “I am not.” The trial court ordered Wife to be taken into custody and held the court in recess. When the hearing resumed, the trial court again asked Wife whether she intended to comply with the court’s order, and Wife again declared that she would not. The trial court found Wife to be in direct contempt of court and ordered that she be held in custody until she agreed to remove the Facebook post and apologize to the court. The court again ordered a recess. After being held in custody for approximately four hours, Wife agreed to remove the Facebook post and was released from custody. She removed the December 14 Facebook post but replaced it with a meme of a woman making a shushing motion to her mouth. Soon afterward, Wife updated her Facebook profile photograph to that of a person with lips sewn shut.

By order entered February 13, 2019, the trial court granted Husband’s petition for restraining order. The court found that Wife had contacted Husband’s supervisors, including the mayor of Memphis, in contravention of the mandatory injunction issued pursuant to Section 36-4-106 and “that the sole purpose of making the [Facebook] post and contacting [Husband’s] employer was to harass [Husband]” in contravention of the statutory injunction. The trial court further found that Wife “put on no defense proof only arguing that she had a right to post the statements.” The trial court ordered Wife to remove the December 14, 2018 Facebook post and enjoined her from “making any other public allegations against [Husband] on social media (on any platform) or to his employer which

may affect [Husband's] reputation or employment.”

The trial court entered its order on direct civil contempt on March 29, 2019, finding Wife to be in direct contempt of court, but also finding that Wife had purged her contempt. Wife appealed the trial court's orders on civil contempt and Husband's petition for restraining order. In January 2020, we dismissed Wife's appeal of the order granting Husband's petition for a restraining order upon finding Wife's appeal had not been properly perfected. *Stark v. Stark*, No. W2019-00650-COA-R3-CV, 2020 WL 507644, at \*3 (Tenn. Ct. App. Jan. 31, 2020), *perm. app. denied* (Tenn. Aug. 10, 2020), *cert. denied*, 141 S. Ct. 1687 (2021). We dismissed Wife's appeal of the order finding her in civil contempt as moot upon determining that Wife had not shown “specific prejudicial collateral consequences resulting from the trial court's finding of contempt.” *Id.* at \*7.

On May 9, 2019, Wife re-posted on Facebook the December 14, 2018 language that the trial court had ordered removed. The May 9 Facebook post was identical to the earlier disallowed post except that the first two sentences of the third paragraph read, “From personal experience I can attest to exactly how wide ‘the thin blue line can get.’” Wife commented under her May 9 Facebook post, “If I go to jail, someone please put money on my book.”

On June 27, 2019, the Memphis newspaper *Commercial Appeal* published an article entitled, “Former prosecutor: Memphis police ‘destroyed my career’ after domestic assault involving officer.” The article was published both in print and digitally. Wife had agreed to be interviewed for the article telephonically and in-person at her home. The article contains a photograph of Husband surrounded by files in an office. The photo is captioned “Memphis Police Department Sgt. Joe Stark, shown in a file photo.” The article also contains a photograph of Wife captioned, “Pamela Stark, a former assistant district attorney with Shelby County, says officials in the Memphis Police Department, city of Memphis, and the Shelby County District Attorney's Office intimidated her in an effort to dissuade her from making domestic assault allegations against her husband, a Memphis police officer, according to a lawsuit filed on Wednesday, June 19, 2019.” The article outlines “[Wife's] account, detailed in court filings and interviews with *The Commercial Appeal*.” Under the subheading, “What happened during the alleged assault,” the article sets forth Wife's account of the June 17, 2018 altercation between her and Husband, and includes the quote, “After he slammed me into the door facing, I just went in my room and locked the door.”

On July 17, 2019, Husband filed a petition for civil and criminal contempt and for determination of a previously reserved issue of attorney fees. In his petition, Husband asserted that Wife had posted images on social media suggesting that she had been silenced and that Wife continued to reference her allegations of domestic violence in the context of his employment with MPD. Husband's petition referenced the mandatory temporary injunctions set forth in Tennessee Code Annotated section 36-4-106 and the trial court's

February 13, 2019 order. Husband's petition alleged that the June 27, 2019 *Commercial Appeal* article constituted "willful, knowing, criminal contempt" of the trial court's orders. Husband attached copies of Wife's Facebook page and the *Commercial Appeal* article to his petition. Wife was personally served the petition and signed the scire facias. Wife submitted to a deposition in which she answered many questions about the article. The trial court issued a Fiat and Notice of Hearing setting Husband's petition to be heard on August 16, 2019, and containing the following warning:

This petition placed you in jeopardy of being found in Criminal contempt of this court's order(s). Each incident of contempt can result in your incarceration in jail for contempt.

As to Criminal contempt, pursuant to Tenn. Code Ann. 29-9-101, et seq., you have certain constitutional rights of a criminally accused person including but not limited to, the right not to testify against yourself, the right to counsel, and the presumption of innocence.

Wife moved for a stay and/or continuance. At the August 16 hearing on Husband's contempt petition, the trial court noted that Wife had filed an action in the United States District Court for the Western District of Tennessee and continued the matter.

On February 19, 2020, Wife moved to dismiss Husband's petition for civil and criminal contempt or, in the alternative, for a bill of particulars/more definitive statement. On March 13, 2020, Husband filed a motion for arguments to be heard. Wife later responded to it. On March 20, 2020, Wife filed a motion to alter or amend the restraining order and contempt order. In her motion, Wife asserted, "[a]s a content-based, speaker-based, and overbroad restriction on speech, [the statutory injunction in Section 36-4-106] is unconstitutional and contravenes the First Amendment, and the temporary restraining order that the Court issued based on that statute should be dissolved as void."<sup>4</sup> Wife further asserted that, as applied to her, the section is an unconstitutional restraint in contravention of the First Amendment of the United States Constitution and Article I, Sections 19 and 23 of the Tennessee Constitution. Wife also asserted that the trial court's order directing her

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<sup>4</sup> Tennessee Code Annotated section 36-4-106(d)(3) provides:

The temporary injunctions provided in this section shall only apply to the spousal parties named in the petition and shall not apply to any third party named in the petition; provided, however, that nothing in this subsection (d) shall preclude any party from applying to the court for an order of injunctive or extraordinary relief against any other party named in any petition as provided by law or rule.

to remove the December 14, 2018 Facebook post and enjoining her from making further allegations against Husband on any social media platform amounted to “unconstitutional, content-based, speaker-based, prior restraints that contravene the First Amendment and Article I, Section 19 and 23 of the Tennessee Constitution.”

Upon the State of Tennessee’s motion, the trial court allowed the State to intervene for the limited purpose of defending the constitutionality of the statute. In its partial response to Wife’s motion to alter or amend the restraining order, the State argued that Wife had waived any challenge to the constitutionality of section 36-4-106 by failing to raise it earlier, that the divorce trial was scheduled for June 10, 2020, and the constitutionality of the statute would become moot following entry of the final decree of divorce.

The trial court heard Wife’s motion to dismiss Husband’s petition for civil and criminal contempt or, in the alternative, motion for bill of particulars/more definitive statement; Husband’s motion for arguments; and Wife’s response to Husband’s motion for arguments via Zoom on May 14, 2020. In that hearing, Wife sought clarification as to which alleged action(s) formed the basis of criminal contempt. The trial court explained:

All right. With regards to the allegation of criminal contempt, I don’t know how much more clear [Husband] could make it. The issue is whether—is regarding the article being, that was authored by Mr. Phillip Jackson [of the *Commercial Appeal*], so I’m not going to require a bill of particulars on that.

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There’s only one count listed. So.

By order entered May 18, 2020, the trial court denied Wife’s motion to dismiss; denied her motion for more definite statement with respect to the allegations of criminal contempt; and granted Wife’s motion for more definite statement with respect to Husband’s allegations of civil contempt. The trial court ordered Husband to identify which Facebook posts allegedly formed the basis of civil contempt. The court again reserved the issue of attorney fees. Husband filed his definite statement pertaining to civil contempt on May 21, 2020. Husband identified a February 7, 2019 Facebook post, which he submitted was an edited version of Wife’s December 14, 2018 post; the May 9, 2019 post, which had been subsequently deleted; and a May 16, 2019 post, which also had been deleted.

On June 5, 2020, the trial court heard Wife’s motion to alter or amend the restraining order and the contempt order, the State’s partial response, and Husband’s motion in opposition. On June 8, 2020, the trial court stayed the proceedings for lack of jurisdiction because Wife’s application for permission to appeal this Court’s January 2020 judgment was pending in the Tennessee Supreme Court. The trial court likewise stayed Husband’s petition for civil and criminal contempt.

The trial court heard Wife's complaint for divorce and Husband's countercomplaint for divorce over six days in June and July 2020. The final decree of divorce was entered on November 24, 2020. Wife's tort claims against Husband were dismissed. Husband's petition for civil and criminal contempt and Wife's motion to alter or amend the restraining order and order of contempt were reserved. Wife appealed certain issues such as the division of the marital estate, and this Court's corresponding judgment was entered May 31, 2022.

In August 2020, the Tennessee Supreme Court denied Wife's application to appeal this Court's January 2020 judgment on the trial court's 2019 restraining order and order on civil contempt. On December 18, 2020, the trial court heard Wife's motion to alter or amend the restraining order and contempt order, Husband's response, and the State's partial response to Wife's motion. Wife then moved to stay the trial court's bench rulings pending the United States Supreme Court's review of her petition for a writ of certiorari.

By order entered January 21, 2021, the trial court denied Wife's motion to alter or amend the 2019 restraining order and contempt order. The trial court determined that Husband's July 17, 2019 petition for civil and criminal contempt was not moot and had been specifically reserved in the final decree of divorce; that the temporary injunction provided by Tennessee Code Annotated section 36-4-106(d) was constitutionally valid and enforceable by the court when attached to the summons and properly served; and that the injunctive relief granted by the court in ordering Wife to remove the December 14, 2018 Facebook post was narrowly tailored injunctive relief properly granted under Tennessee Rule of Civil Procedure 65.07.

The United States Supreme Court denied Wife's petition for writ of certiorari in March 2021.<sup>5</sup> Finally, the trial court heard Husband's petition for civil and criminal contempt on August 10, 2021. Husband and Wife testified. Wife, representing herself, cross-examined Husband. Husband related that one of his co-workers presented him with the published *Commercial Appeal* article. It was established that Husband's name appears in the article eleven times. Husband testified, "Where I moved to, people have come to me with this," and that "it's the first thing that pops up" when one Googles his name. Wife admitted that she knew she was subject to both the statutory injunction and the trial court's February 13, 2019 order further enjoining her "from making any other public allegations against [Husband] on social media (on any platform) or to his employer which may affect his reputation or employment" when she gave the interview to the *Commercial Appeal* reporter. Wife also admitted that she and Husband still knew all the same people and that she knew he was employed by MPD when she posted on Facebook on May 9, 2019. After closing arguments, the trial court took the matter under advisement.

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<sup>5</sup> *Stark v. Stark*, 141 S. Ct. 1687 (2021).



By order entered September 30, 2021, the trial court found Wife guilty of criminal contempt of the court's mandatory injunction entered upon the filing of the divorce complaint and of the February 13, 2019 order for (1) knowingly and intentionally participating in the creation of the *Commercial Appeal* article by submitting to hours of in-person and telephonic communications with the author; and (2) willfully posting on Facebook, on May 9, 2019, a slightly modified version of the December 14, 2018 post that she was previously ordered to remove. The court determined that because the allegations in the *Commercial Appeal* article were posted on the internet, the "effects are irreversible and not subject to civil contempt." The trial court found that Wife "knew or should have known the obvious potential and intent that the publication of [] disparaging comments was going to be received by [Husband's] employer, [MPD]." The court further found that the fact Wife used the media did not insulate her from liability for her participation in the violation of the court's order. Instead of imposing incarceration, the trial court ordered Wife to perform 160 hours of community service with the Family Safe Center (or a comparable agency representing victims of abuse), "in light of her education and legal ability." Additionally, the court ordered Wife to pay Husband's attorney fees and expenses related to the petition in the amount of \$3,500.00.

On November 15, 2021, the trial court granted Wife's motion for additional findings, denied Husband's petition for civil contempt, and denied any remaining claims or requests for relief. Wife appealed.

## II. ISSUES

We consolidate and restate the issues on appeal as follows:

- A. Whether the trial court erred in finding Wife guilty of two counts of indirect criminal contempt.
- B. Whether the mandatory temporary injunctions set forth in Tennessee Code Annotated section 36-4-106(d) are unconstitutional.

## III. STANDARD OF REVIEW

As our Supreme Court articulated in *State v. Beeler*:

A person charged with criminal contempt is presumed innocent, and guilt must be proven beyond a reasonable doubt. *Black v. Blount*, 938 S.W.2d 394, 399 (Tenn. 1996); *Robinson v. Air Draulics Eng'g Co.*, 214 Tenn. 30, 377 S.W.2d 908, 912 (1964). Once convicted, however, the contemnor loses the presumption of innocence and bears the burden of overcoming the

presumption of guilt on appeal. *Black*, 938 S.W.2d at 399; *Robinson*, 377 S.W.2d at 912. Thus, appellate courts do not review the evidence in a light favorable to the accused. *Thigpen v. Thigpen*, 874 S.W.2d 51, 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).

*State v. Beeler*, 387 S.W.3d 511, 519 (Tenn. 2012).

#### IV. DISCUSSION

##### A.

Tennessee Code Annotated section 29-9-102 gives the courts the power to “inflict punishments for contempts of court” in several specific instances, including “[t]he willful disobedience or resistance of any . . . party . . . to any lawful writ, process, order, rule, decree, or command of such courts[.]” Tenn. Code Ann. § 29-9-102. The statute limits the punishments that may be imposed for contempt: “[t]he punishment for contempt may be by fine or by imprisonment, or both.” Tenn. Code Ann. § 29-9-103(a); *see also* Tenn. Code Ann. § 29-9-103(b) (providing that the punishment imposable by circuit, chancery, and appellate courts is limited to a fifty-dollar fine and ten days’ imprisonment).

Contempt may be classified as civil or criminal. *Baker v. State*, 417 S.W.3d 428, 436 (Tenn. 2013). Civil contempt sanctions are “remedial and coercive,” *i.e.*, designed to encourage a party to comply with the court’s orders. *Id.* (citing *Overnite Transp. Co. v. Teamsters Loc. Union No. 480*, 172 S.W.3d 507, 511 (Tenn. 2005)). For this reason, a civil contemnor “carries the keys to his prison in his own pocket” and can be released from confinement by complying with the court’s order. *Id.* (quoting *State ex rel. Anderson v. Daugherty*, 191 S.W. 974, 974 (1917)). “Sanctions for criminal contempt are generally both punitive and unconditional in nature, designed to punish past behavior, not to coerce directly compliance with a court order or influence future behavior.” *Id.* “A finding of criminal contempt pursuant to Tennessee Code Annotated section 29-9-102 is not a criminal conviction.” *Id.* at 439.

Contempt may be further categorized as direct or indirect. *Beeler*, 387 S.W.3d at 520 (citing *Black*, 938 S.W.2d at 398). Contempt is direct when it occurs in the court’s presence and indirect when it does not. *Id.* Although a court may take summary action when the contemptuous conduct occurs before the court, indirect contempt requires certain procedural protections. *Beeler*, 387 S.W.3d at 520. “For example, indirect criminal contempt may only be punished after the accused contemnor has been given notice and an

opportunity to respond to the allegations at a hearing.” *Baker*, 417 S.W.3d at 436; *see also* Tenn. R. Crim. P. 42; *State ex rel. Flowers v. Tenn. Trucking Ass’n Self Ins. Grp. Tr.*, 209 S.W.3d 602, 611 n.8 (Tenn. Ct. App. 2006) (“One alleged to have committed acts of criminal contempt, other than those acts committed in the court’s presence, must be given both notice of the alleged contempt and a hearing.”).

This appeal involves indirect criminal contempt. Criminal contempt requires proof of these elements:

First, the order alleged to have been violated must be “lawful.” Second, the order alleged to have been violated must be clear, specific, and unambiguous. Third, the person alleged to have violated the order must have actually disobeyed or otherwise resisted the order. Fourth, the person’s violation of the order must be “willful.”

*Furlong v. Furlong*, 370 S.W.3d 329, 336–37 (quoting *Konvalinka v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, 249 S.W.3d 346, 354 (Tenn. 2008) and applying its standards to criminal contempt). “Orders alleged to have been violated should be construed 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.” *Konvalinka*, 249 S.W.3d at 356 (citations omitted). “Ambiguities in an order alleged to have been violated should be interpreted in favor of the person facing the contempt charge.” *Id.* (citations omitted).

At the outset of her argument, Wife posits that “the mandatory injunction promulgated by the Tennessee legislature is not a court order for which contempt authority attaches.” She reasons that “the legislature simply has no authority to dictate the orders of the judicial branch and enter an injunction in pending court actions.” Respectfully, this argument is not well-developed. Also, it is without merit because the statute explicitly states that when a petition for divorce is filed and served, certain temporary injunctions “shall become an order of the court.” Tenn. Code Ann. § 36-4-106(d)(2). Again, a court’s contempt authority extends to its “lawful writ, process, order, rule, decree, or command.” Tenn. Code Ann. § 29-9-102. Here, Wife’s petition for divorce was properly filed and served. We hold that the statutory injunction set forth in Tennessee Code Annotated section 36-4-106(d)(1)(C) restraining Wife and Husband from “harassing, threatening, assaulting or abusing the other and from making disparaging remarks about the other . . . to either party’s employer” was a lawful order of the trial court to which contempt authority attached.

We turn now to the two counts of indirect criminal contempt on which the trial court found Wife guilty. As to the count of willfully posting on Facebook, on May 9, 2019, a slightly modified version of the December 14, 2018 post that Wife was previously ordered to remove, we agree with Wife that Husband did not allege these facts to support a charge

of criminal contempt.

Parties facing criminal contempt charges must “be given explicit notice that they are charged with criminal contempt and must also be informed of the facts giving rise to the charge.” *Long v. McAllister-Long*, 221 S.W.3d 1, 13 (Tenn. Ct. App. 2006). A criminal contempt notice must “(A) state the time and place of the hearing; (B) allow the alleged contemner a reasonable time to prepare a defense; and (C) state the essential facts constituting the criminal contempt charged and describe it as such.” Tenn. R. Crim. P. 42(b)(1). Essential facts are those which:

(1) allow the accused to glean that he or she is being charged with a crime, rather than being sued by an individual, (2) enable the accused to understand that the object of the charge is punishment—not merely to secure compliance with a previously existing order, and (3) sufficiently aid the accused to determine the nature of the accusation, which encompasses the requirement that the underlying court order allegedly violated by the accused is itself clear and unambiguous.

*McClain v. McClain*, 539 S.W.3d 170, 219 (Tenn. Ct. App. 2017) (citation omitted). In this case, Husband’s July 17, 2019 petition clearly alleged Wife’s “post[s] on social media in violation of the Court’s orders” as constituting civil contempt. This was reiterated in Husband’s May 21, 2020 definite statement in which he submitted that the “May 9, 2019 post which was later deleted” constituted civil contempt on Wife’s part. The criminal contempt section of Husband’s petition references only the *Commercial Appeal* article, as the trial court specifically confirmed during the May 14, 2020 hearing. Given these facts, Wife could not have gleaned that she was being charged with a crime based on her May 9, 2019 Facebook post. We determine that Wife was not provided with the requisite notice, pursuant to Tennessee Rule of Criminal Procedure 42(b), that she was being charged with criminal contempt for the Facebook post, so we vacate the portions of the trial court’s September 30 and November 15, 2021 orders finding Wife in criminal contempt for willfully posting on Facebook, on May 9, 2019, a slightly modified version of the December 14, 2018 post that she was ordered to remove on February 7, 2019.

The trial court’s second finding of criminal contempt against Wife was based on her knowing and intentional participation in the creation of the *Commercial Appeal* article by submitting to hours of in-person and telephonic communications with the author. Wife agrees that, at the time she was interviewed for the article and at all times relevant, she was subject to the trial court’s order enjoining her from “making any other public allegations against [Husband] on social media (on any platform) or to his employer which may affect [Husband’s] reputation or employment.” Wife does not dispute that the actions of communicating with the *Commercial Appeal* reporter and giving hours of interview material for the newspaper article were willful. Rather, Wife argues that such actions did not violate the restraining order entered by the court because she “neither uttered the public

allegations at issue on social media nor to [Husband's] employer.” In Wife’s view, “[t]o the extend [*sic*] the allegations were available for his employer to read, they were published by the *Commercial Appeal*.” This argument strains credulity and invites us to disregard “the circumstances surrounding the issuance of the [restraining] order.” *Konvalinka*, 249 S.W.3d at 356. By the time the article was published, Wife had already written to Husband’s ultimate employer, the Memphis mayor, about the subjects she discussed in the *Commercial Appeal* article. The *Commercial Appeal* is a major Memphis newspaper. The article’s headline names Husband’s employer, MPD, and calls the reader’s attention to “domestic assault involving officer.” The testimony established that Husband’s name appears eleven times in the article about the alleged domestic assault. The article features a photograph of Husband captioned “[MPD] Sgt. Joe Stark.” The testimony further established that the article’s direct quotations from Wife’s interviews, as opposed to alleged facts the author may have sourced from public records, including “he slammed me into the door facing,” were damaging to Husband’s reputation and affected his employment. We agree with the trial court’s rational inference that Wife knew that the numerous public allegations she made were going to be received by Husband’s employer. We also agree that Wife’s choice to use a newspaper as the method of communication with Husband’s employer does not insulate her from culpability.

With all the above considerations in mind, we find no error in the trial court’s conclusion that Wife’s knowing and intentional participation in the creation of the *Commercial Appeal* article fell within the prohibitions set forth in the court’s February 13, 2019 restraining order. We conclude that a rational trier of fact could have found beyond a reasonable doubt that Wife violated the order. Therefore, we affirm the trial court’s finding of one count of criminal contempt against Wife based on her participation in the creation of the article published on June 27, 2019, in the *Commercial Appeal*.

Lastly, Wife asserts that the trial court erred when it sentenced her to 160 hours of community service with the Family Safe Center or a comparable agency. We agree. Although the trial court has discretion on whether to impose a penalty, if a penalty is imposed, a trial court is limited to the statutory penalties, *i.e.*, a fine of fifty dollars or imprisonment not exceeding ten days, or both. *See Baker*, 417 S.W.3d at 435 (“Tennessee courts are vested with the authority to punish both types of contempt with either a fine, a period of confinement, or both.”) (citing Tenn. Code Ann. § 29-9-103(a)); *see also Simpkins v. Simpkins*, 374 S.W.3d 413, 420 (Tenn. Ct. App. 2012) (“The maximum sentence for each act of criminal contempt is ten days of confinement in jail and the maximum fine is \$50.00.”). Accordingly, we remand for determination of an appropriate punishment against Wife for one count of criminal contempt pursuant to Tennessee Code Annotated section 29-9-103.

## B.

Our discussion above is dispositive of this appeal. Also, we “avoid deciding

constitutional issues when a case can be resolved on non-constitutional grounds.” *Haynes v. City of Pigeon Forge*, 883 S.W.2d 619, 620 (Tenn. Ct. App. 1994). Therefore, we do not reach the second issue concerning whether the mandatory temporary injunctions set forth in Tennessee Code Annotated section 36-4-106(d) are unconstitutional. In any event, because the final decree of divorce has been entered, the parties are no longer subject to the temporary statutory injunction and the issue is moot. *See* Tenn. Code Ann. § 36-4-106(d)(1) (the temporary statutory injunctions remain in effect against both parties “until the final decree of divorce . . . is entered[.]”).

## V. CONCLUSION

For the foregoing reasons, we affirm in part and vacate in part the judgment of the circuit court. The case is remanded for determination of an appropriate punishment against Wife for one count of criminal contempt and for such further proceedings as may be necessary and consistent with this opinion. Costs of the appeal are taxed to the appellant, Pamela Diane Stark.

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JOHN W. McCLARTY, JUDGE