

2012 IL App (2d) 110722-U
No. 2-11-0722
Order filed March 23, 2012

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

LEONARD HUMPAL and MARILYN HUMPAL,)	Appeal from the Circuit Court of Winnebago County.
)	
Petitioners-Appellees,)	
)	
v.)	No. 09-CH-681
)	
WILLIAM PAPPAS,)	Honorable
)	Lisa R. Fabiano,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Bowman and Birkett concurred in the judgment.

ORDER

Held: Respondent was held in civil contempt, not criminal contempt, as the sanctions were prospective and compensatory, rather than punitive, and thus respondent was not entitled to criminal-contempt process.

¶ 1 Respondent, William Pappas, appeals a judgment holding him in indirect civil contempt of court. He contends that the judgment is actually for criminal contempt and must be vacated because he was denied the rights due a defendant in a criminal proceeding. We affirm.

¶ 2 On April 10, 2009, petitioners, Leonard and Marilyn Humpal, filed a petition for injunctive relief against respondent, alleging that he had engaged in a course of conduct calculated to harass and abuse them. On April 20, 2009, the trial court entered a “Mutual Injunction” that, in pertinent part, enjoined respondent from (a) directly or indirectly contacting petitioners (and specified others) or (b) discussing petitioners or their activities with any private, nonprivileged person or entity.

¶ 3 On April 26, 2010, petitioners petitioned for a rule to show cause, alleging that, beginning in October 2009, respondent violated the Mutual Injunction numerous times, primarily through e-mails posted on Craigslist. On June 25, 2010, petitioners filed a request for respondent to admit facts, including that, 53 times between October 10, 2009, and April 13, 2010, he had posted certain specified items on Craigslist. On August 22, 2010, respondent having failed to respond to the request, the trial court deemed the facts admitted.

¶ 4 On September 21, 2010, the trial court held a hearing on petitioners’ petition for a rule to show cause. Respondent was present. Petitioners presented evidence of respondent’s past violations of the Mutual Injunction, primarily the aforementioned Craigslist postings. Petitioners presented no evidence of ongoing violations of the Mutual Injunction or other contemptuous acts by respondent. At no point did the court notify respondent of any rights that he would have had in a proceeding for criminal contempt, such as the right against self-incrimination. The court found by a preponderance of the evidence that respondent had committed indirect civil contempt.

¶ 5 On November 19, 2010, the trial court ordered that respondent (1) not contact petitioners or the others protected by the Mutual Injunction and that he refrain from “discussing them, their lives, their livelihoods, or their activities in any form whatsoever”; and (2) pay \$9,931 in attorney fees and

costs, which petitioners had incurred in bringing the contempt petition. Further, if respondent did not comply “with the Purge Order herein,” he would serve seven days in jail.

¶ 6 Respondent moved to reconsider the judgment, arguing that, in essence, the trial court had held him in indirect criminal contempt without affording him the rights due a criminal defendant. Respondent reasoned that the contempt order was criminal, not civil, because the court had punished him for what he had already done. The court denied the motion to reconsider but reduced the attorney fee and cost award to \$8,305. Respondent timely appealed.

¶ 7 On appeal, respondent again contends that the contempt order was criminal, not civil, and, therefore, it must be reversed because he did not receive the procedural rights due a defendant in a criminal case. Because the facts are undisputed and the issue is one of law, our review is *de novo*. See *People v. Damkroger*, 408 Ill. App. 3d 936, 940 (2011).

¶ 8 Civil and criminal contempt are distinguished by the purpose of the sanction: the former is imposed to coerce compliance with a court order, but the latter is imposed as punishment for past acts. *In re Marriage of Carpel*, 232 Ill. App. 3d 806, 823 (1992). Here, the contempt order had two parts: (1) it enjoined respondent from violating the Mandatory Injunction again; and (2) it required him to pay the attorney fees and costs that petitioners incurred in bringing the contempt action. Neither part was a criminal sanction.

¶ 9 The first part of the order imposed no punishment, but required only that respondent conform his future conduct to the Mandatory Injunction—as he was already legally obligated to do. The only “punishment” was that, if respondent later violated the Mandatory Injunction, he would serve seven days in jail. Thus, although the *finding* that respondent was in contempt was based on his past conduct, the *sanction* imposed was purely coercive and prospective. That is the crucial point.

¶ 10 The second part of the order imposed a monetary obligation on respondent, but it was not punishment. A civil-contempt order may require the contemnor to pay the attorney fees that another party incurred in petitioning for contempt. *Harper v. Missouri Pacific R.R. Co.*, 282 Ill. App. 3d 19, 30 (1996); *Frank B. Hall & Co. v. Payseur*, 99 Ill. App. 3d 857, 862 (1981). That the fees relate to the cost of the contempt action distinguishes this case from *Helm v. Thomas*, 362 Ill. App. 3d 331, 334 (2005), cited by respondent, in which the fees were held punitive because they represented what the other parties had expended as a direct result of the contemptuous behavior itself—not their costs of petitioning for contempt.

¶ 11 We find *In re Marriage of Samuel*, 394 Ill. App. 3d 398 (2009), persuasive. There, the trial court found an attorney in contempt, based on his past improprieties. The contempt judgment fined the attorney and required him to apologize to the court. *Id.* at 400. The appellate court vacated the fine, holding that it was punitive and had been imposed without the required criminal-trial safeguards. However, because the apology could be construed as a promise not to engage in similar behavior in the future, ordering it was coercive, not punitive. *Id.* at 402. The mere fact that the civil-contempt finding was based entirely on past conduct did not prohibit imposing an sanction that was wholly prospective. The situation here is similar: requiring respondent to refrain from further violations of the Mandatory Injunction, and requiring incarceration if he did so, was a proper civil-contempt sanction, even though the finding of contempt was based wholly on his past conduct.

¶ 12 The judgment of the circuit court of Winnebago County is affirmed.

¶ 13 Affirmed.