

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).

2014 IL App (4th) 140057-U

NO. 4-14-0057

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 22, 2014

Carla Bender

4th District Appellate
Court, IL

In re: Adjudication of Direct Civil Contempt of State's	)	Appeal from
Attorney Seth P. Uphoff,	)	Circuit Court of
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Livingston County
Petitioner-Appellee,	)	No. 13CC9
v.	)	
SETH P. UPHOFF,	)	Honorable
Respondent-Appellant.	)	Mark A. Fellheimer,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* We dismiss respondent's appeal for lack of jurisdiction where the contempt finding was not a final and appealable order because no contempt sanctions were imposed.

¶ 2 Respondent, Seth P. Uphoff, the Livingston County State's Attorney, appeals the trial court's November 21, 2013, order finding him in direct civil contempt of court. We dismiss for lack of jurisdiction.

¶ 3 I. BACKGROUND

¶ 4 On November 21, 2013, the trial court found respondent in direct civil contempt of court for his failure to comply with the trial court's order to have the State's witnesses present in court at 8:30 a.m. on the day of trial.

¶ 5 The gist of the problem appears to be the State's Attorney and the public defender were failing to communicate about their pending cases prior to the weeklong jury call in Livingston County, resulting in 68 cases remaining to be tried over the course of five days during the week of November 18, 2013. Because of the resulting chaos, disruption, and waste of time, including that of jurors coming to the courthouse to fulfill their civic duty, the trial court, when issuing its trial calendar, in large bold type, directed "**ALL ATTORNEYS, DEFENDANTS, AND WITNESSES MUST BE PRESENT AND READY FOR TRIAL AT 8:30 a.m. ON THE DAY OF TRIAL.**" Twenty-three cases were set for trial November 18, 2013, with any cases not tried then to be carried over to November 19. Twenty-eight cases were set for trial on November 20, and 17 cases were set for trial on November 21.

¶ 6 On November 20, 2013, in open court, an assistant State's Attorney told the trial court some of their witnesses were not present at 8:30 a.m. The trial judge, later that same morning, advised respondent and two of his assistants they and defense counsel had been ordered to have all witnesses present at 8:30 a.m. the following day and all other days of the remaining jury calendar. (No transcript of the November 20, 2013, discussion was included in the record on appeal. These facts were gleaned from the court's November 22, 2013, order adjudicating respondent in direct civil contempt and from the transcript of proceedings from November 21, 2013.)

¶ 7 On November 21, 2013, when the trial court called the first case for trial, the defense answered all of its witnesses were present. The State had only one of its witnesses present. The court was provided copies of written notices to two of the State's witnesses directing them to come to court to testify at 9 and 9:30 a.m. respectively, rather than 8:30 a.m.

¶ 8 Following lengthy discussions, the trial court found respondent in direct civil contempt for failing to have his witnesses present as ordered. The written order provided respondent could purge the contempt by having his witnesses present at 8:30 a.m. for the January jury call. The court set a status hearing on whether respondent purged his contempt for January 21, 2014.

¶ 9 On December 9, 2013, respondent filed a motion to clarify the order of direct civil contempt, requesting, *inter alia*, clarification of whether the trial court's finding should have been one of indirect civil contempt, rather than direct civil contempt.

¶ 10 During the December 19, 2013, hearing on respondent's motion, the trial court declined respondent's request to impose sanctions so respondent could take an immediate appeal of the contempt finding. Instead, the court reiterated respondent would have the opportunity to purge the contempt by having all the State's witnesses present at 8:30 a.m. during jury trials scheduled in January 2014. The court left the matter set for a January 21, 2014, status hearing and stated it would determine at that point whether sanctions were necessary.

¶ 11 At the conclusion of the January 21, 2014, status hearing, the trial court found respondent had sufficiently purged himself of the contempt. As a result, the court did not impose sanctions on respondent.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, respondent argues the trial court's contempt order should be vacated where the court "improvidently used its contempt power to take constructive control of the State's Attorney's subpoena power." We note no appellee brief was filed in this case. However,

in such instances, we may still review an appeal where the record is simple and the issues are easily resolved. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976). That said, we have a duty to consider *sua sponte* our appellate jurisdiction and dismiss the appeal if jurisdiction is lacking. *In re Marriage of Mardjetko*, 369 Ill. App. 3d 934, 935, 861 N.E.2d 354, 355 (2007).

¶ 15 In this case, it is undisputed the trial court did not impose contempt sanctions on respondent. The court opted instead to wait and provide respondent the opportunity to purge himself of the contempt, which it ultimately found he did. However, a contempt order is not a final and appealable order until and unless the court imposes a sanction upon the contemnor. *Revolution Portfolio, LLC v. Beale*, 341 Ill. App. 3d 1021, 1026, 793 N.E.2d 900, 904 (2003). Indeed, it has been consistently held "an order adjudicating one to be in contempt is not final and is not reviewable" and should be dismissed "where no punishment has been imposed." *Valencia v. Valencia*, 71 Ill. 2d 220, 228, 375 N.E.2d 98, 102 (1978) (noting the appellate court "correctly observed that there was no issue before it because no punishment had been imposed" and therefore should have dismissed the appeal); *In re Estate of Hayden*, 361 Ill. App. 3d 1021, 1026, 838 N.E.2d 93, 98 (2005) ("contempt order that does not impose sanctions is not final and not reviewable"); *In re Marriage of Gutman*, 232 Ill. 2d 145, 153, 902 N.E.2d 631, 635 (2008) ("only contempt judgments that impose a penalty are final, appealable orders"). Moreover, respondent himself recognized without a sanction he could not appeal, when, at the December 19, 2013, hearing on his motion for clarification, he stated, "I guess there would have to be [sanctions] in order for it to become ripe for appeal."

¶ 16 The State does not cite any Illinois cases for the proposition we have jurisdiction to hear an appeal from a contempt finding where no punishment was imposed. The out-of-state cases relied on by the State—*Androscoggin & Kennebec R.R. Co. v. Androscoggin R.R. Co.*, 49 Me. 392 (1862); *Odom v. McDilda*, 155 Ga. 688 (1923); and *Local No. 181, Hotel & Restaurant Employees Union v. Miller*, 240 S.W.2d 576 (1951)—all predate our supreme court's decision in *Valencia*. Moreover, *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, 7 N.E.3d 741, a case relied on by the State, does not mention contempt, nor does it involve contempt. In *People ex rel. Scott v. Silverstein*, 87 Ill. 2d 167, 173, 429 N.E.2d 483, 486-87 (1981), another case cited by the State, the supreme court found the appellate court would have jurisdiction over the matter "only after *** a final order imposing sanctions and terminating contempt proceedings was entered." Further, the supreme court in *Gutman* cited *Silverstein* approvingly in stating the following: "the rule, which this court has consistently held, is that only a contempt judgment that imposes a sanction is a final, appealable order." *Gutman*, 232 Ill. 2d at 152, 902 N.E.2d at 635 (Emphasis omitted.) (citing *Silverstein*, 87 Ill. 2d at 172, 429 N.E.2d at 486).

¶ 17 Because the trial court never imposed contempt sanctions on respondent, we conclude no final and appealable order was entered in this case. Accordingly, we dismiss respondent's appeal for lack of appellate jurisdiction.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we dismiss respondent's appeal.

¶ 20 Appeal dismissed.