

NOTICE

Decision filed 05/21/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 130488-U

NO. 5-13-0488

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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<i>In re</i> MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
MARY C. SOMMER,	)	St. Clair County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 11-D-962
	)	
MICHAEL J. SOMMER,	)	
	)	
Respondent-Appellee	)	Honorable
	)	Stephen R. Rice,
(Ryan Sommer, Intervenor-Appellant).	)	Judge, presiding.

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JUSTICE CHAPMAN delivered the judgment of the court.  
Justices Welch and Schwarm concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the trial court had no authority to award economic damages pursuant to a petition for contempt, the court's order denying damages was correct.

¶ 2 Intervenor-appellant Ryan Sommer appeals from the trial court's denial of his request for compensatory damages. We affirm.

¶ 3 **FACTS**

¶ 4 This case began as a marriage dissolution case with Mary and Michael seeking a divorce. All assets of the marriage are located in Perry County, Illinois, and consist of a

farm, home, and farming equipment. Mary and Michael's son, Ryan, intervened in their dissolution case based on his claims of ownership interest in farm equipment and grain stored on the family farm. Michael and Ryan filed numerous contentious pleadings throughout the case directed at each other, resulting in numerous orders of protection. Although Mary Sommer is designated as an appellee in this appeal, none of the issues on appeal involve her. We will provide only those details of the petitions filed by Michael and Ryan relevant to an understanding of the issue presented on appeal.

¶ 5 After the court granted his petition to intervene, Ryan filed a motion for a temporary restraining order against Michael. Ryan alleged that he believed that Michael was planning to use some of the equipment Ryan owned. Ryan asked the court to prohibit Michael from using his equipment. On March 27, 2012, the court ordered Ryan and Michael not to contact each other, and specifically not to "harass, intimidate[ ], threaten, coerce, or stalk" each other. The court ordered Ryan to return a truck to the farm, and to move certain pieces of equipment out of a shed on the farm to an area designated by Michael. The court further ordered Ryan and Michael not to use, sell, repair, maintain, destroy, loan, encumber, or move any of the items listed in Ryan's appendix to his motion.

¶ 6 Michael filed a petition to hold Ryan in contempt of court because of incomplete compliance with the court's March 27, 2012, order. The court granted the petition and admonished Ryan to comply with the earlier order.

¶ 7 On April 9, 2012, Ryan filed a motion asking the court to vacate portions of the March 27, 2012, order. He requested a court order allowing him to use some of the

equipment stored on the farm so that he could farm his own properties. He also filed a motion asking the court to allow him to remove his corn and soybeans from grain bins on the farm. On April 11, 2012, the trial court denied both of Ryan's motions, stating that the March 27, 2012, order remained in effect.

¶ 8 On August 30, 2012, Ryan filed another motion with the court seeking access to his equipment in order to harvest his crops. He asked for an order allowing him to remove corn and soybeans from the grain bins on the farm that were the subject of grain sale contracts. The trial court granted the motion on September 11, 2012. The court ordered Ryan to deposit all grain sale monetary proceeds into his attorney's trust account. The court learned that Ryan did not deposit a \$20,076.70 check in the trust account, and ordered Ryan to appear in court on November 9, 2012. Ryan did not appear in court that date, and the court issued a body attachment. At the subsequent hearing, Ryan testified that he used that money to pay off his own expenses. The trial court held Ryan in contempt of court, and ordered him to be held in jail until he repaid the sum. Ryan paid the money back and bonded out of jail.

¶ 9 The parties' disputes continued. Michael and Ryan filed numerous motions from December 2012 through March 2013. Some of the motions involved ownership and location of farm equipment. Ryan sought an accounting and segregation of assets. Michael filed motions for rules to show cause about Ryan's sale of grain to unknown purchasers for unknown prices, and for entering his property without court order for the purpose of harassment and intimidation. Michael also sought an order of protection against Ryan in late January 2013, alleging that Ryan was verbally abusive and

threatened to kill him. While the court denied the order, the court ordered Ryan to stay away from the farm.

¶ 10 On April 8, 2013, Michael and Ryan entered a settlement agreement and stipulated order. Most of the equipment at issue was titled in both of their names. The court's order divided the equipment between the two men. If neither Ryan nor Michael could obtain financing on the equipment awarded, then the equipment would be sold at auction. The parties also agreed that a John Deere 9650 combine and three concaves would be awarded to Ryan upon his payment of \$108,000 to Michael. Other items of equipment—a round baler and a mower conditioner—were awarded to Ryan upon payment of \$5,000 to Michael. The court ordered Ryan to remove all items from the farm on or before May 8, 2013, to provide armed security to supervise his removal, and not to speak to Michael during the removal process.

¶ 11 On May 15, 2013, Michael filed a motion to show cause because Ryan did not complete the tasks on or before May 8, 2013, as directed by the court in the stipulated order. Michael further alleged that on the agreed date of May 4, 2013, when Ryan came to retrieve his property from the farm, he took two pieces of Michael's equipment.

¶ 12 On July 3, 2013, Ryan filed a *pro se* petition for rule to show cause. He alleged that although he paid Michael \$113,000 for the John Deere 9650, the round hay baler, and the mower conditioner, those items remained in Michael's possession. Ryan alleged that the title transfers would not take effect until the equipment was physically in his possession. He asked the court to award him damages for crop loss due to his inability to get the equipment from Michael's farm in a timely manner.

¶ 13 The court held a hearing on Michael's and Ryan's petitions to show cause. The court entered an order on July 22, 2013. The order authorized Ryan to enter Michael's property on July 30 to remove the three pieces of equipment included in his petition, plus two other items. The court's order contained contingency provisions for repair of the John Deere combine if the combine could not be removed from the farm on July 30. The court awarded Ryan \$200 for the loss or destruction of a chemical transfer pump. The court ordered Ryan to sign equipment titles to Michael in court on July 25. Ryan was ordered to show proof that he had scheduled the removal of his two grain bins at the July 25 court appearance. Additionally, the court order directed the Perry County sheriff's department to be present when Ryan was on Michael's farm, and to enforce the terms of this order. The court denied all other requests for rules to show cause, damages, and attorney fees.

¶ 14 On August 21, 2013, Ryan filed a *pro se* motion to reconsider numerous orders of the court. Ryan claimed multiple errors dating from his intervention in the case. Ryan alleged that the court committed error in several orders involving grain and his claimed ownership of the grain. He argued that the court did not award him the value of a chemical pump in addition to the damage to the chemical pump. He contended that the court should never have ordered the body attachment related to his failure to deposit a check for grain sales, because his ownership of that grain was not in dispute. Ryan also argued that the court committed error in ordering him to obtain a loan for the John Deere 9650 in excess of its actual value. Ryan additionally claimed that the trial court's denial of his request for attorney fees was improper.

¶ 15 Michael filed a motion to dismiss Ryan's motion to reconsider on jurisdictional grounds. Michael argued that the trial court's April 8, 2013, order resolved all then-pending issues in the case, and therefore all prior orders merged into the April 8 order.

¶ 16 On September 5, 2013, the trial court granted Michael's motion to dismiss Ryan's motion to reconsider. While Ryan raised numerous issues in his motion to reconsider, his notice of appeal considerably narrows the focus of his appeal. Ryan appeals challenging the court's denial of his July 3, 2013, motion for rule to show cause. He argues that the court abused its discretion in denying his request for damages for Michael's refusal to allow Ryan access to his grain bins and farm equipment. We disagree.

¶ 17 **LAW AND ANALYSIS**

¶ 18 Contempt of court is defined as "conduct calculated to embarrass, hinder, or obstruct a court in its administration of justice or to derogate from its authority or dignity or bring the administration of law into disrepute." *In re Estate of Melody*, 42 Ill. 2d 451, 452, 248 N.E.2d 104, 105 (1969) (citing *People v. Gholson*, 412 Ill. 294, 298, 106 N.E.2d 333, 335 (1952)); see also *People v. Simac*, 161 Ill. 2d 297, 305, 641 N.E.2d 416, 420 (1994). A contempt of court order is used as a means to control conduct either by punishing an offender who obstructs or embarrasses the court in its administration of justice or by coercing compliance with court orders. *People v. Budzynski*, 333 Ill. App. 3d 433, 438, 775 N.E.2d 275, 280 (2002).

¶ 19 Contemptuous conduct is characterized as either direct or indirect. Indirect contempt of court refers to contemptuous actions that occur outside of the courtroom. *In re Marriage of Charous*, 368 Ill. App. 3d 99, 107, 855 N.E.2d 953, 961 (2006). Indirect

contempt is established by extrinsic evidence. *Pryweller v. Pryweller*, 218 Ill. App. 3d 619, 628, 579 N.E.2d 432, 439 (1991). Indirect contempt involves conduct that obstructs a court in its administration of justice or lessens the authority and dignity of the court. *Marriage of Charous*, 368 Ill. App. 3d at 107, 855 N.E.2d at 961. Conversely, direct contempt of court occurs in the court's presence and therefore extrinsic evidence is not necessary because all elements of the offense are within the judge's personal knowledge. *Weglarz v. Bruck*, 128 Ill. App. 3d 1, 8, 470 N.E.2d 21, 26-27 (1984).

¶ 20 Courts also classify contempt of court as either civil or criminal. Both civil and criminal contempt involve conduct that is calculated to obstruct a court's authority. *People v. Goleash*, 311 Ill. App. 3d 949, 956, 726 N.E.2d 194, 199 (2000); *In re Marriage of Ruchala*, 208 Ill. App. 3d 971, 977, 567 N.E.2d 725, 729 (1991).

¶ 21 A civil contempt order is designed to obtain compliance by coercion. *In re Marriage of Depew*, 246 Ill. App. 3d 960, 966, 616 N.E.2d 672, 677 (1993); *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 279, 860 N.E.2d 539, 547 (2006). Civil contempt is not considered a punishment. *Marriage of Depew*, 246 Ill. App. 3d at 966, 616 N.E.2d at 677. There are two fundamental requirements for a civil contempt order. First, the person held in contempt must have the ability to do what the court asked—to purge the contemptuous conduct, and second, after he does so, the court cannot impose further sanctions. *Marriage of Sharp*, 369 Ill. App. 3d at 279, 860 N.E.2d at 547.

¶ 22 In contrast to an order of civil contempt that is designed to achieve compliance, the purpose of a criminal contempt order is punishment. *Goleash*, 311 Ill. App. 3d at 956, 726 N.E.2d at 199; *In re Marriage of Ruchala*, 208 Ill. App. 3d at 977, 567 N.E.2d

at 729. Criminal contempt requires intentional, willful conduct by the contemnor. *D'Agostino v. Lynch*, 382 Ill. App. 3d 960, 968, 887 N.E.2d 590, 597 (2008).

¶ 23 Here, Ryan and Michael agree that Ryan's petition asked the court to hold Michael in indirect civil contempt. We agree with that assessment. The contemptuous conduct Ryan alleged was Michael's refusal to allow Ryan to enter the farm, which occurred outside of the court's presence. Additionally, the conduct alleged by Ryan was civil in nature because Michael had the ability to purge the contempt by letting Ryan enter the farm and remove his equipment. Although the elements for an order of indirect civil contempt may have existed, the court did not enter an order of contempt against Michael. Instead, the trial court ordered a remedy that would reunite Ryan with his equipment. The court's order set up a specific time when Ryan could remove the property from Michael's farm with the aid of the Perry County sheriff's department. The court otherwise denied the contempt request.

¶ 24 The trial court's July 22, 2013, order also denied Ryan's request for compensatory damages. Ryan claimed that he sustained economic damages as a direct result of Michael's contemptuous conduct. Ryan argues that the court should have heard evidence on the issue of his damages. He claims that he sustained damages because Michael defied court orders that allowed him access to his grain and farm equipment. However, even if the court had concluded that Michael's conduct warranted a contempt order, the court lacked authority to award monetary damages:

"In a civil contempt proceeding, which means that the sanction imposed is strictly coercive [citation], a court may imprison or fine for contempt of its orders



but is without authority to recompense an aggrieved party for his damages." *Harper v. Missouri Pacific R.R. Co.*, 282 Ill. App. 3d 19, 30, 667 N.E.2d 1382, 1390 (1996).

The law in Illinois is well-settled on this issue. Civil contempt is not intended to be a private remedy. *Id.* Civil contempt is designed as punishment for an act of disrespect to the court's authority. *Id.* If the court awarded monetary damages as a result of civil contempt, the money would be payable to the public treasury, and not to the aggrieved party. *Id.*

¶ 25 We find the case of *Keuper v. Beechen, Dill & Sperling Builders, Inc.*, 301 Ill. App. 3d 667, 704 N.E.2d 915 (1998), to be illustrative of this principle. In *Keuper*, the circuit court awarded private damages in a civil contempt proceeding. The plaintiffs filed suit against the builders because the windows in their newly constructed house were leaking. *Id.* at 667, 704 N.E.2d at 916. The parties settled the case. *Id.* The builders agreed to replace the windows. *Id.* The trial court entered its order ratifying the parties' stipulated dismissal in October 1996. *Id.* at 668, 704 N.E.2d at 916. In March 1997, the plaintiffs filed a petition for rule to show cause, for sanctions, and for other relief alleging that the builders had yet to comply with the terms of the settlement. *Id.* The trial court held a hearing and entered an order finding that the builders were in breach of the settlement agreement by failing to replace the windows in a timely manner, holding the builders in indirect civil contempt. *Id.* at 668-69, 704 N.E.2d at 916-17. At two subsequent hearings, the court was advised that the builders had not yet replaced the windows. *Id.* at 669, 704 N.E.2d at 917. Plaintiffs provided the court with two estimates

for the replacement of the windows. *Id.* The court entered judgment in favor of the plaintiffs for the replacement cost of the windows. *Id.* On appeal, the court cited *Harper v. Missouri Pacific R.R. Co.* and stated that a sanction in a civil contempt proceeding is only meant to be coercive, and that the court has no authority to compensate the aggrieved party with damages. *Id.* at 670, 704 N.E.2d at 917 (citing *Harper*, 282 Ill. App. 3d at 30, 667 N.E.2d at 1389).

¶ 26 Ryan's rule to show cause sought economic damages as compensation for Michael's alleged contemptuous conduct. Because a court cannot award economic damages to an aggrieved party for indirect civil contempt in Illinois, the trial court correctly denied Ryan's request for damages, and correctly denied his motion to reconsider that ruling. *Harper*, 282 Ill. App. 3d at 30, 667 N.E.2d at 1389; *Keuper*, 301 Ill. App. 3d at 670, 704 N.E.2d at 917; see also *Round Lake Sanitary District v. Basic Electronics Manufacturing Corp.*, 60 Ill. App. 3d 40, 43, 376 N.E.2d 436, 440 (1978) (citing *Rothschild & Co. v. Steger & Sons Piano Manufacturing Co.*, 256 Ill. 196, 205, 99 N.E. 920, 923 (1912)).

¶ 27 CONCLUSION

¶ 28 For the foregoing reasons, the judgment of the St. Clair County circuit court is hereby affirmed.

¶ 29 Affirmed.