Commonwealth of Kentucky

Court of Appeals

NO. 2023-CA-0356-OA

AJIT K. BRAR — PETITIONER

v.

AN ORIGINAL ACTION
ARISING FROM JEFFERSON CIRCUIT COURT
CASE NO. 22-CI-500017

ANGELA J. JOHNSON — RESPONDENT

AND

JUGRAJ S. DHANOA, ET AL. — REAL PARTIES IN INTEREST

ORDER
GRANTING EMERGENCY RELIEF IN PART, DENYING IN PART,
AND DIRECTING RECALL OF ARREST WARRANT

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Petitioner Ajit K. Brar filed an original action pursuant to Kentucky Rule of Appellate Procedure (RAP) 60[1] seeking a writ of prohibition, as well as a motion for emergency relief. Having reviewed the record, including the response of the Real Party in Interest Jugraj S. Dhanoa, and being otherwise sufficiently advised; IT IS HEREBY ORDERED that the motion for emergency relief shall be,

[1] Formerly Kentucky Rule of Civil Procedure 76.36.

and hereby is, GRANTED in part and DENIED in part, as set forth more fully at page 7-8 herein. **It is ORDERED that Respondent SHALL immediately RECALL the March 23, 2023 bench warrant issued for Petitioner Ajit K. Brar.**

By her own account, Petitioner is involved in acrimonious divorce proceedings with the Real Party in Interest, Jugraj S. Dhanoa (Dhanoa). The crux of the instant motion is Petitioner's alleged failure to produce the parties' two children for Facetime or in person visitation. On February 23, 2023, following a hearing, the trial court found Petitioner in civil contempt of court, ordering that her "sentence is fixed at 180 days in the Jefferson County Jail." It further ordered that "this matter is passed to April 17, 2023, at 9:00 a.m. for Sentencing." The February 23, 2023, order also states that Petitioner "will be able to purge her contempt by following this Court's orders going forward." After additional motion practice by the parties, the court issued a warrant for Petitioner's arrest on March 23, 2023.

Specifically, on or about February 27, 2023, Dhanoa filed an "emergency motion to immediately serve suspended sentence," as well as a motion for immediate possession of the children, asserting that "[o]n the first occasion for [Petitioner] to comply with [his] parenting time, she refused to exchange the children . . ." and that "[r]ather than purging herself of Contempt, [Petitioner] has

doubled down." February 27, 2023, emergency motion, at p. 2. This motion was filed four days after the February 23 order which stated that Petitioner could purge herself of contempt pending the April 17, 2023, sentencing hearing. Following a February 28, 2023, hearing, the circuit court granted Dhanoa's emergency motion, issuing a "pick up order" relative to the children on March 15, 2023, and an arrest warrant for Petitioner on March 23, 2023.

Pursuant to RAP 60(H), a party to an original action may seek emergency relief on the ground that she will suffer immediate and irreparable injury before disposition of the petition may be had. In the context of an original action, "irreparable injury" is defined as "incalculable damage to the applicant . . . either to the liberty of his person, or to his property rights, or other far-reaching and conjectural consequences." *Hoskins v. Maricle*, 150 S.W.3d 1, 19 (Ky. 2004) (internal quotation marks and citation omitted). The injury must be "something of a ruinous nature." *Robertson v. Burdette*, 397 S.W.3d 886, 891 (Ky. 2013). The Court holds Petitioner has met this standard for the following reasons.

Contempt is "the willful disobedience of – or open respect for – the rules or orders of a court." *Newsome v. Commonwealth*, 35 S.W.3d 836, 839 (Ky. App. 2001) (citations omitted). It may be civil, such as the "failure of one to do something under order of a court[,]" or it may be criminal, meaning conduct "which amounts to an obstruction of justice and which tends to bring the court into

disrepute." *Id.* at 839 (citations and footnotes omitted). "Power to punish for contempt is inherent in every court." *Id.* The sanctions for civil contempt must be tailored to compelling the disobedient party's compliance with the court's orders or to compensating the opposing party for the losses occasioned by the contumacious actions. On the other hand, a sanction related to criminal contempt is punitive. Our Supreme Court has explained:

> Where . . . the contempt proceeding is civil, the sanction may serve either to coerce the contemnor to comply with a court order, to compensate a party for losses caused by the contempt, or both. *United States v. United Mine Workers of America,* 330 U.S. 258, 67 S. Ct. 677, 91 L. Ed. 884 (1947). Coercive sanctions, such as daily fines or incarceration, are punishments imposed until the contempt is purged by compliance with an order. For the punishment to retain its civil character, the contemnor must, at the time the sanction is imposed, have the ability to purge the contempt by compliance and either avert the punishment or at any time bring it to an end. *Shillitani v. United States,* 384 U.S. 364, 86 S. Ct. 1531, 16 L. Ed. 2d 622 (1966); *Lewis v. Lewis*, 875 S.W.2d at 862. The contemnor bears the burden of proving his or her inability to meet the purge condition, but in imposing that burden the court should be mindful of the contemnor's overriding interest in not being required to perform an impossible act. *Lewis*, 875 S.W.2d at 864.

Commonwealth, Cabinet for Health & Fam. Servs. v. Ivy, 353 S.W.3d 324, 334-35 (Ky. 2011).

In *Campbell v. Schroering*, 763 S.W.2d 145 (Ky. App. 1988), a witness appeared late for trial. The matter ended in a mistrial, and a second trial

scheduled. The trial court found the witness in contempt and ordered her incarcerated until the second trial, which was later continued. The trial court did not afford a sentencing hearing to the witness prior to imposing the sentence of incarceration. On the witness's motion, this Court granted intermediate relief directing "that petitioner be released pending consideration of the merits of th[e original] action." *Id.* at 147. We subsequently granted a writ prohibiting the respondent judge from enforcing the order of incarceration, explaining the trial court had erred in unconditionally incarcerating the witness pending the retrial, for she had no opportunity to appear or not appear at the second trial so long as she was in custody:

> Herein lies the flaw, as we see it, in respondent's order. The petitioner was ordered incarcerated on October 6, 1988, there to remain until the retrial on November 29, 1988, now by order of court on February 28, 1989. Between these two dates she had absolutely no opportunity to purge herself of contempt, if in reality contempt was the true basis of the incarceration. In essence, this was an unconditional jail sentence of 55 days, and now even more because of the continuance. Such imprisonment could be deemed punitive in character and in the nature of a proceeding for criminal contempt, quite possibly running afoul of the requirements of [constitutional due process].

Id. at 148 (internal quotation marks and citations omitted).

We agree with Petitioner that, in the case *sub judice*, the order of arrest must be recalled because the purportedly contemptuous conduct is

Petitioner's failure to produce the children. Petitioner asserts that Dhanoa currently has the children in his possession, consistent with the language of the trial court's orders, and therefore, "Petitioner is indeed in compliance and may not be incarcerated for civil contempt." Petition for writ, p. 11. Thus, there is no "means [for her] to purge after arrest" because she has already produced the children. *Id.* In his April 3, 2023, response filed herein, Dhanoa acknowledges that Petitioner delivered the children for in person timesharing on March 29, 2023.

Specifically, following the Jefferson Circuit Court's February 28, 2023, emergency order, Dhanoa filed a petition to domesticate the March 15, 2023 "pick up order" in the circuit court of Polk County, Florida, Case No. 53-2023-DR-002294-0000-00. By order entered March 29, 2023, the Florida court directed Petitioner to exchange the children through law enforcement at the Lakeland, Florida Police Department by 6:00 p.m. that evening. The March 29, 2023 order recited that both parties had appeared, with counsel, for a "contested hearing"; that the "Kentucky Court has continued to issue orders . . . including an Order of Arrest . . . issued on March 23, 2023"; and that the petition to domesticate the March 15, 2023 pick up order is granted. The Florida court further directed: "[Dhanoa] shall immediately notify this Court and the Jefferson Circuit Court of the children's return and compliance with the Court's Order." Florida March 29, 2023, order, at p. 3. From the limited record before this Court, it is unclear whether Dhanoa

complied with the directive that he notify the Jefferson Circuit Court and the Florida court of Petitioner's compliance with the March 29, 2023 order. But Dhanoa does not dispute that Petitioner complied, and notwithstanding this compliance, CourtNet continues to reflect an active bench warrant for Petitioner in the underlying Jefferson Circuit Court action.

WHEREFORE, it is ORDERED that the motion for emergency relief shall be, and hereby is, GRANTED IN PART and DENIED IN PART. **Respondent SHALL RECALL FORTHWITH the Arrest Warrant issued on March 23, 2023 for Petitioner Ajit K. Brar pending the April 17, 2023 sentencing hearing scheduled in the Jefferson Circuit Court**. Nothing herein shall preclude either party from filing a notice of appeal from any order entered following that hearing.

Petitioner's petition for a writ of prohibition shall be submitted to a three-Judge panel of this Court for decision following the response time provided in the Rules of Appellate Procedure. Petitioner's motion for emergency relief is DENIED in all other respects. The Clerk of Court SHALL email a copy of this Order to counsel of record and Respondent forthwith.

ENTERED: APR 0 3 2023

Pamela R. Goodwine
JUDGE, COURT OF APPEALS