

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Yuki Gilbert,
Appellant-Defendant,

v.

Ralph Townes,
Appellee-Plaintiff.

July 5, 2023

Court of Appeals Case No.
22A-SC-2302

Appeal from the
Elkhart Superior Court

The Honorable
Christopher J. Spataro,
Judge

Trial Court Cause No.
20D05-2201-SC-83

Memorandum Decision by Senior Judge Baker
Judges May and Bradford concur.

Baker, Senior Judge.

Statement of the Case

[1] In this small claims action, Ralph Townes requested assistance from the court in obtaining items of personal property from his former partner, Yuki Gilbert. Gilbert's lack of cooperation and feigned innocence resulted in the court finding her in indirect contempt and ordering her to pay a fine. Concluding the court acted within its discretion in finding Gilbert in contempt, we affirm.

Issues

- [2] Gilbert presents two issues for our review, which we restate as:
- I. Whether the trial court abused its discretion in finding Gilbert in contempt.
 - II. Whether the trial court erred when it denied Gilbert's request for a continuance.

Facts and Procedural History

- [3] At the end of his relationship with Yuki Gilbert, Ralph Townes had difficulty obtaining his belongings from the residence they had shared as well as from a storage unit where Gilbert had placed some items. Townes filed a small claims action requesting his property from the residence and access to the storage unit.
- [4] On March 15, 2022, the court heard testimony from the parties concerning Townes' property. The court ordered several smaller items to be delivered to the office of Townes' counsel that same afternoon as well as ordering Gilbert to deliver the larger items to counsel later in the month, which deadline was extended by a few days at Gilbert's request.

[5] Townes subsequently petitioned the court for a rule to show cause, alleging that Gilbert had violated the court's order by failing to deliver the smaller items to his counsel's office and failing to permit him access to the storage unit. Townes also claimed that Gilbert violated the court's order by delivering numerous large items to counsel's office, including a bed, a sofa, a large chair, a bicycle, golf clubs, and a dog, causing the law office to shut down and arrange for storage of all the items as well as care for the dog. The court issued a rule to show cause the same day. After a hearing on the matter, the court found Gilbert in indirect contempt and fined her \$750.00. Gilbert moved to correct error, which the court denied. This appeal ensued.

Discussion and Decision

I. Contempt Finding

A. Existence of Order

[6] Gilbert contends the trial court abused its discretion by finding her in contempt of an order that did not exist. The decision of whether a party is in contempt rests within the trial court's discretion, and we review its determination for an abuse of discretion. *Clary-Ghosh v. Ghosh*, 26 N.E.3d 986, 993 (Ind. Ct. App. 2015), *trans. denied*. We will reverse a court's contempt determination only if there is no evidence or inference therefrom to support it. *Reynolds v. Reynolds*, 64 N.E.3d 829, 832 (Ind. 2016).

[7] In its contempt order, the court referred to its order from the bench at the March 15 hearing and found, in part:

One of those verbal orders was that [Gilbert] deliver to [counsel]’s office “the clothes, shoes, work boots (if any), keys, humidor, other boxes TODAY [March 15, 2022] no later than 4:00 pm.” Based on her own testimony, [Gilbert] did NOT deliver the humidor (which she admitted was inside the Jeep when she delivered the Jeep on March 25th) and the keys (which she admitted she had in her possession on the morning of March 25th).

The Court has found that [Gilbert]’s memory throughout her first three court appearances has been somewhat “selective.” She has tended to remember things that benefit her while forgetting things that do not benefit her. The Court believes that [Gilbert] was well aware of the Court’s order of March 15, 2022 to deliver a small list of specific items that very day. In fact, she took steps to deliver “some items.” The Court finds that by failing to deliver multiple items on the small list of specific items, [Gilbert] should be, and is hereby, held in contempt of court.

Appellant’s App. Vol. 2, pp. 42-43. Gilbert argues that the court’s verbal order to deliver specific items on the day of the hearing was not an actual order because it was not included in the court’s subsequent written order file stamped March 17.

[8] A court’s order does not have to be in written form in order to have legal effect. Indeed, as our Supreme Court has stated, “Contempt of court generally involves **disobedience of a court** or court order that ‘undermines the court’s authority, justice, and dignity.’” *Reynolds*, 64 N.E.3d at 832 (quoting *In re A.S.*, 9 N.E.3d 129, 131 (Ind. 2014)) (emphasis added). The court heard testimony from both parties at the hearing on March 15 and ordered:

Ms. Gilbert, you are ordered to gather up and deliver to [Townes’ counsel]’s office the following items: [t]he humidor,

which you said was in storage; the 55-inch Samsung TV, which you said was in storage; the clothing, shoes, and work boots, which you said w[ere] in storage; any boxes that might be in storage that are Mr. Towns'[sic]. Those could in --- possibly include the MacBook Pro and the laptop. Um, if they're not in his boxes and you find them, the MacBook Pro and the laptop. The safe that might contain the firearm; and any keys that belong to Mr. Towns[sic]. You are to deliver them, um, within seven days of today. So no later than noon on March 22nd.

Tr. Vol. 2, p. 46. When the court asked the parties if they had anything else, Gilbert informed the court she was having a medical procedure the following day and requested an extension of the March 22 delivery date. The court extended the delivery date to March 25, and this discussion ensued:

THE COURT: 'Kay. Anything you could do today to get part of the stuff to show me good faith, Ms. Gilbert, to take the smaller items to [counsel]'s office this afternoon?

MS. GILBERT: Absolutely. Yes, Your Honor. I can do that.

THE COURT: Okay. Well, I will then indicate, uh, over Mr. Towns'[sic] and [counsel]'s objection – or at least Mr. Towns'[sic] objection, um, I will allow Ms. Gilbert to have until noon on Friday, March 25th, to, um – um, transport the larger items that I mentioned had to be physically transported to [counsel]'s office, uh, in exchange for her agreement to, um, provide some of the smaller items, such as the clothes, shoes, uh, work boots, if any, um, keys, humidior, uh, other boxes, um – um, to – today, no later than 4 p.m. 'Kay?

Anything else, Ms. Gilbert, for the record?

MS. GILBERT: No, Your Honor.

Id. at 53. We find the court’s directive to Gilbert from the bench on March 15 was a valid court order.

[9] Furthermore, Gilbert acknowledged her obligation at the show cause hearing. There, referring to the March 15 hearing, she testified in response to counsel’s questions:

Q. And in – from that hearing, did you understand that you were supposed to do certain things?

A. Yes.

Q. Were you supposed to do something on March 15th, 2022?

A. Yes.

Q. What were you – what did you understand you were supposed to do on March 15, 2022?

A. I was to take, um, items to Ralph’s attorney’s office, um, to show good faith by four o’clock that day.

Id. at 136-37. A party is guilty of indirect contempt when she knows about a lawfully entered court order and willfully disobeys it. *Matter of Paternity of T.M.-B.*, 131 N.E.3d 614, 621 (Ind. Ct. App. 2019), *trans. denied*.

[10] We also deem it prudent to note that the trial court has the inherent power to “maintain[] its dignity, secur[e] obedience to its process and rules, rebuk[e]

interference with the conduct of business, and punish[] unseemly behavior.” *Witt v. Jay Petroleum, Inc.*, 964 N.E.2d 198, 202 (Ind. 2012) (quoting *City of Gary v. Major*, 822 N.E.2d 165, 169 (Ind. 2005)). “Crucial to the determination of contempt is the evaluation of a person’s state of mind, that is, whether the alleged contemptuous conduct was done willfully.” *Witt*, 964 N.E.2d at 202. To that end, the contempt determination permits the court to consider matters which “may not, in fact cannot, be reflected in the written record.” *Id.* at 202-03. In other words, “[t]he trial court possesses unique knowledge of the parties before it and is in the best position to determine how to maintain its ‘authority, justice, and dignity’ and whether a party’s disobedience of the order was done willfully.” *Id.*

[11] The court mentioned at the March 15 hearing and in its order from the bench its belief that Gilbert was being deceitful. Addressing Gilbert at the hearing, the court stated:

I fear that you have been, um, playing a little loose with my order and my – my ruling. I clearly ordered you to cooperate in having [Townes] retrieve his items from the storage unit. I don’t believe you’ve cooperated. So I’m gonna make this more clear, okay?

Ms. Gilbert, now you’re ordered to physically go to the storage unit, get Mr. Towns’[sic] stuff out, and deliver it to his attorney’s office. Because you did not cooperate in the past month and seven days when I said cooperate. I believe fully, Ms. Gilbert, that the storage facility would not have told him he needed a court order if they had your word saying, “Yeah, you can let Mr. Towns[sic] get in. That’s what I am ordered to do, and that’s what I’m giving permission to do.” Tell me why that’s not the case, Ms. Gilbert.

. . . .

So I don't want to . . . hear all this extraneous information about "I didn't unpack his boxes." You moved his boxes. And I'm asking ya if they're his boxes and you didn't open them and you moved them to storage, is it possible that his stuff's in it, like the MacBook Pro and laptop? It's not a hard question for somebody who's not being evasive. You understand?

. . . .

Okay. Let me make a really clear order, then, Ms. Gilbert. And – and I – I really am very frustrated because my last order was designed to do this, and I fully believe that, with your good faith participation, we wouldn't need to be here today talking about it again. So listen really carefully and don't interrupt me in the middle of what I'm ordering.

Tr. Vol. 2, pp. 24, 44, 45. And the court noted in its contempt order that Gilbert's memory was "selective" in that she tended to remember things that benefitted her while forgetting things that did not and stated its belief that she was "well aware" of the court's order to deliver the specific items on March 15. Appellant's App. Vol. 2, p. 43.

[12] The trial court's March 15 verbal order from the bench was a valid court order, which Gilbert willfully violated. Thus, the trial court did not abuse its discretion by finding Gilbert in indirect contempt of court.

B. Clarity of Order

[13] It seems Gilbert is alternatively conceding that there was an order from the court but alleging that it was not clear that she should deliver the humidior and

the keys. *See* Appellant’s Br. p. 30. A court’s order must be clear and certain such that there is neither a question regarding what a party may or may not do nor a question regarding when the order is being violated. *Matter of Paternity of T.M.-B.*, 131 N.E.3d at 621. “A court may not hold a party in contempt for failing to comply with an ambiguous or indefinite order.” *Id.*

[14] Here, the court stated it would allow Gilbert to have until March 25 to transport the larger items in exchange for her agreement to provide the smaller items “such as the clothes, shoes, . . . work boots, if any, . . . keys, humidior, . . . other boxes, . . . today, no later than 4 p.m.” Tr. Vol. 2, p. 53. Gilbert claims the court’s use of the phrase “such as” indicates that the list is merely illustrative as to the types of items she could deliver rather than mandatory. We disagree because Gilbert was present when the court instructed her to “listen really carefully” and ordered:

Ms. Gilbert, you are ordered to gather up and deliver to [Townes’ counsel]’s office the following items: [t]he humidior, which you said was in storage; the 55-inch Samsung TV, which you said was in storage; the clothing, shoes, and work boots, which you said w[ere] in storage; any boxes that might be in storage that are Mr. Towns’[sic]. Those could in --- possibly include the MacBook Pro and the laptop. Um, if they’re not in his boxes and you find them, the MacBook Pro and the laptop. The safe that might contain the firearm; and any keys that belong to Mr. Towns[sic].

Tr. Vol. 2, pp. 45, 46. This was a clear directive issued to Gilbert by the court.

II. Denial of Continuance

[15] Gilbert next argues the trial court incorrectly denied her request for counsel at the March 15 hearing. However, Gilbert took no appeal from that court proceeding. Here, she is appealing the court’s finding of contempt, and she was represented by counsel at the contempt hearing.

[16] Moreover, although Gilbert frames her argument as a denial of her request for counsel, it is, in substance, a denial of a request for a continuance to obtain counsel. Small Claims Rule 9(A) provides that “[e]ither party may be granted a continuance for good cause shown.” Gilbert asserts that she did not receive service of Townes’ small claims complaint such that she was not aware she could have counsel. Appellant’s Br. p. 31. The record, however, shows that, initially, there was no service, but the parties all appeared at a second hearing date. It was at this hearing that the March 15 hearing date was set. Gilbert waited until the middle of the March 15 hearing to ask the court for “an opportunity to get counsel” because she did not want to pay storage fees for the storage of Townes’ belongings. Tr. Vol. 2, p. 23. Thus, even if this were a proper issue in this appeal, Gilbert failed to show good cause for a continuance.¹

¹ Gilbert also contends the trial court erred by not giving her an opportunity to cross examine Townes at the March 15 hearing. Yet, she took no appeal from that proceeding, and she concedes that “[n]o where in the transcript of the hearing[] did Gilbert ask permission for cross-examination.” Appellant’s Br. p. 33. Accordingly, we find no error.

Conclusion

[17] Based on the foregoing, we conclude the trial court was well within its discretion to find Gilbert in indirect contempt of its March 15 order from the bench.

[18] Affirmed.

May, J., and Bradford, J., concur.