

STATE OF MICHIGAN
COURT OF APPEALS

ELIZABETH ANN ELDRIDGE,

Plaintiff-Appellee,

v

WILLIAM ROBERT ELDRIDGE,

Defendant-Appellant.

UNPUBLISHED

October 28, 2008

No. 278470

Wayne Circuit Court

LC No. 04-4377504-PP

Before: Wilder, P.J., and Jansen and Owens, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order and judgment finding defendant in contempt for violation of a personal protection order (PPO). Defendant was sentenced to 35 days in jail and ordered to pay costs occasioned by plaintiff's show cause motion in this matter. We affirm in part and vacate the trial court's award of costs.

I. Facts

Plaintiff and defendant were formerly married. Plaintiff obtained a PPO against defendant on December 9, 2004, which was valid for two years. The PPO prohibited defendant from, among other things, entering plaintiff's property, contacting plaintiff by phone, mail, or other communications, and approaching or confronting plaintiff. Plaintiff filed a motion to show cause for violation of the PPO on December 6, 2006. The motion alleged that defendant violated the PPO by "multiple e-mail communications, drive bys, [and] telephone calls." A hearing was held on March 8, 2007. After hearing testimony from both parties and reviewing the submitted evidence, the court, relying on the e-mails and the voicemails, found that defendant was being manipulative and using family issues as a pretense to contact plaintiff and to request physical meetings. The court sentenced defendant to 35 days in jail, to be served two days per week. The court further required defendant to "pay [plaintiff's] out-of-pocket costs that are a direct, natural consequence of violation of the PPO."

II. Validity of PPO

Defendant first argues that the trial court lacked authority to issue a show cause order and to hold defendant in contempt with respect to a PPO that had expired at the time of the orders, but which was valid when the alleged violation happened. We disagree. We review questions of law de novo. *McDaniels v Hemker*, 268 Mich App 269, 272; 707 NW2d 211 (2005).

“Michigan courts of record have the inherent common-law right to punish all contempts of court. The Legislature has vested the Supreme Court, the circuit courts, and all other courts of record with contempt power.” *Steingold v Wayne Cty Probate Court Judge (In re Smith)*, 244 Mich App 153, 157; 624 NW2d 504 (2000). Further, refusal to comply with a PPO is subject to the criminal contempt powers of the court. MCL 600.2950(23); see also MCR 3.708 (procedure for contempt proceedings for violation of PPO). Criminal contempt is distinguished from civil contempt by its means of punishment and its purpose. *In re Contempt of ACIA*, 243 Mich App 697, 711; 624 NW2d 443 (2000). Civil contempt is intended to remedy noncompliance through coercive sanctions. *Id.* at 711-712. Criminal contempt “punishes the contemnor for past conduct that affronts the court’s dignity.” *Id.* at 713; see also *In re Contempt of Dougherty*, 429 Mich 81, 112 n 21; 413 NW2d 392 (1987) (“The courts of this state have ample authority to punish for past misconduct, but, in a *civil* contempt proceeding, they are not empowered to coerce an individual into compliance unless there is a present violation of the court order.” (emphasis added)). Thus, defendant’s argument that the trial court lacks the authority to punish past conduct is contrary to the express purpose of the criminal contempt power, which is statutorily authorized in the case of a PPO violation. MCL 600.2950(23).

Moreover, there is no indication in Michigan law that a court’s authority to apply sanctions for criminal contempt is limited by the present validity of the violated order. On the contrary, MCL 600.1715, which governs contempt sanctions, contemplates a sanction where it is no longer possible for the contemnor to comply with an order of the court. See MCL 600.1715(1) (“ . . . except in those cases where the commitment is for the omission to perform an act or duty which is still within the power of the person to perform. . . .”). In addition, this Court has held that a juvenile court that has lost jurisdiction over a party (because of his age) retains the authority to enforce orders made while it possessed jurisdiction, including by way of its contempt power. *In re Reiswitz*, 236 Mich App 158, 172; 600 NW2d 135 (1999). Further, we agree with the trial court that a contrary rule would allow a potential PPO violator to take advantage of the practical difficulties of getting to a court and obtaining a show cause order, and simply violate the PPO immediately prior to its expiration in the hopes of avoiding punishment. The trial court had clear authority to punish defendant’s PPO violation via its inherent criminal contempt power.

III. Costs and Attorney Fees

Defendant next argues that the court erred in ordering defendant to pay costs and attorney fees arising out of the show cause hearing. We agree.

Unpreserved errors are reviewed for plain error affecting substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000). Interpretation and application of statutes and court rules are reviewed de novo. *Spires v Bergman*, 276 Mich App 432, 436; 741 NW2d 523. (2007).

We first note that the trial court’s order only required defendant to pay “costs” arising out of plaintiff’s motion. There is no mention of attorney fees. Thus, it is not necessary to consider whether a trial court has the authority to award attorney fees in a case such as this.

Taxation of costs is generally not allowed absent authority flowing from a statute or court rule. *LaVene v Winnebago Industries*, 266 Mich App 470, 473; 702 NW2d 652 (2005). For

criminal contempt, the sanctions are limited to a sentence of 93 days and a fine of \$500, with no reference to the statutory sanctioning scheme. MCR 3.708(H)(5)(a). There is nothing in the sentencing scheme in MCR 3.708(H)(5) that expresses an abrogation of this general rule in the case of contempt as a result of a PPO violation. Moreover, the court rule distinguishes between the sentences available for criminal (subsection (a)) and civil (subsection (b)) contempt. In the case of civil contempt, the court rule explicitly adopts the sanctions provided in MCL 600.1715 and MCL 600.1721. MCR 3.708(H)(5)(b). The sanctions provided for criminal contempt are exclusive of the statutory sanctions referenced for civil contempt. See *Taylor v Currie*, 277 Mich App 85, 95-96; 743 NW2d 571 (2007) (expression of one thing is the exclusion of another). Therefore, criminal contempt sanctions under this rule do not include the indemnification provisions of MCL 600.1721. Accordingly, the court lacked authority in the court rules or statutes to tax a defendant for costs arising out of criminal contempt for violation of a PPO. *Haliw v City of Sterling Heights*, 471 Mich 700, 707; 691 NW2d 753 (2005).

We note that MCL 780.766, cited by plaintiff, provides restitution for victims in criminal prosecutions only. MCL 780.766(2). Criminal contempt is only a quasi-criminal proceeding. *In re Contempt of ACIA*, 243 Mich App 697, 713; 624 NW2d 443 (2000). Moreover, defendant was never found, beyond a reasonable doubt, to have violated the aggravated stalking statute cited by plaintiff, nor any other criminal offense. This statute is not applicable to this case.

Therefore, we vacate the trial court's award of costs.

IV. Incarceration

Defendant next argues that his sentence of 35 days of incarceration was excessive and constituted an abuse of the trial court's discretion. Defendant contends that incarceration was unnecessary because his violations did not involve threatening or violent behavior. We disagree.

A trial court's issuance of an order for contempt is reviewed for an abuse of discretion. *Steingold, supra* at 157. Likewise, issues of sentencing are reviewed for an abuse of discretion. *People v Hendrix*, 263 Mich App 18, 20; 688 NW2d 838 (2004).

The trial court had the opportunity at the hearing to hear plaintiff's testimony and read e-mails and listen to voicemails sent from defendant to plaintiff. The PPO prohibited defendant from engaging in any communication with plaintiff. The court stated that its sentencing decision was based on defendant's manipulation of plaintiff by attempting to maintain contact with her under the guise of discussing family matters, including appeals to the well-being of their joint children, in clear violation of the PPO. Defendant admitted making contact with plaintiff but protested that his conduct was non-threatening. The court never indicated that its sentencing decision was related to whether defendant was violent or threatening.

The court also concluded that plaintiff's failure to facilitate communication through counsel had a mitigating effect on defendant's sentence. Finally, the court ordered defendant's 35 days of incarceration to be served at a rate of only two days per week. Thus, the trial court heard and took into consideration a wide array of factors in its sentencing decision. Moreover, the punishment of criminal contempt is meant to be punitive rather than merely coercive. *In re ACIA, supra* at 713. The sanction need not have been directly designed to prevent defendant

from committing specific violent misconduct in the future. Accordingly, the court did not abuse its discretion by sentencing defendant to 35 days in jail.

Affirmed in part and vacated in part. We do not retain jurisdiction.

/s/ Kurt T. Wilder
/s/ Kathleen Jansen
/s/ Donald S. Owens