

Circuit Court for Baltimore City
Case No. 24-D-18-003097

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0192

September Term, 2019

LATARSHA MILLER

v.

CHARLES CHAPMAN, JR

Shaw Geter,
Wells,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: February 5, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On February 4, 2019, a judge sitting in the Circuit Court for Baltimore City found appellant, Latarsha Miller, in constructive civil contempt for violating a Final Protective Order. The order issued on September 28, 2018, prohibited her from contacting appellee, Charles Chapman, Jr. At the contempt hearing, the court ordered that appellant could purge herself of the contempt finding and avoid incarceration if she adhered to the terms of the Final Protective Order until a disposition hearing which was to be held in 30 days. Appellant timely filed this appeal and the disposition hearing was stayed as a result. Appellant presents the following questions for our review:

1. Did the trial court commit legal error by ordering that appellant be punished for past, completed conduct in the guise of a constructive civil contempt order?
2. Did the trial court commit legal error by including a “purge” clause in its constructive civil contempt order that did not identify any specific act or action that appellant could take to purge the contempt?
3. Did the trial court commit legal error by allowing text messages into evidence without text messages being properly authenticated under Md. R. Evid. 5-901?

For the reasons discussed below, we conclude that there was error, and thus, we shall vacate the order.

BACKGROUND

Appellant and appellee have a child in common. On September 11, 2018, after visiting with appellee, the child complained to appellant about injuries sustained during the visit. Appellee was charged with child abuse. On September 18, 2018, appellee petitioned the court for a protective order against appellant. On September 28, 2018, the trial court

conducted a hearing and granted appellee’s petition. The Final Protective Order ordered that appellant “SHALL NOT abuse, threaten to abuse, and/or harass” appellee.

On October 2, 2018, appellee filed a petition for contempt against appellant claiming appellant sent threatening text messages on October 1, 2018; November 26, 2018; and November 28, 2018, which violated the Final Protective Order. At a contempt hearing held on February 4, 2019, appellee offered evidence of the threatening text messages. Appellant’s attorney objected to the text messages being entered into evidence because they lacked authentication. The trial court however, overruled the objection and the text messages were admitted.

During closing argument, appellant’s counsel argued that a civil contempt hearing was an “improper venue” for the case because appellant was compliant with the protective order at the time of the hearing. According to him, the court could “only punish her. And because it’s punishment, [appellant] should [have] a criminal contempt hearing.” The court should “refer the [case] to the State’s Attorney’s Office for possible criminal charges”

The court found appellant in constructive civil contempt and ordered that disposition be postponed for 30 days. The order stated:

. . . [appellant] may purge herself of contempt finding and avoid incarceration if [appellant]:

1. Abides by the terms of the Final Protective Order and refrains from contacting and communicating with the [appellee].

STANDARD OF REVIEW

The power to hold one in contempt “is vested in the trial court.” *State v. Crawford*, 239 Md. App. 84, 111 (2018). Appellate courts will not disturb a trial court’s finding of contempt “absent an abuse of discretion or a clearly erroneous finding of fact upon which the contempt was imposed.” *Kowalczyk v. Bresler*, 231 Md. App. 203, 209 (2016). “Where the order involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court’s conclusions are ‘legally correct’ under a *de novo* standard of review.” *Walter v. Gunter*, 367 Md. 386, 392 (2002).

DISCUSSION

I. The trial court committed legal error by finding appellant in constructive civil contempt.

Appellant argues the trial court committed legal error when it found her in constructive civil contempt because the actions she was held in contempt for were completed actions. Thus, constructive civil contempt does not apply. We agree with appellant.

Contempt can be classified as civil or criminal and direct or constructive “[t]he various categories are not mutually exclusive and in fact the nomenclature assigned to a contempt involves both classes.” *State v. Roll*, 267 Md. 714, 727 (1973). Maryland Rule 15-202 defines both constructive and direct contempt as

- (a) “Constructive contempt” means any contempt other than a direct contempt.
- (b) “Direct contempt” means a contempt committed in the presence of the judge presiding in court or so near to the judge as to interrupt the court's proceedings.

MD. Rule 15-202. The goal of civil contempt is “to preserve and enforce the rights of private parties to an action and to compel obedience to orders entered primarily for their benefit.” *Bryant v. Howard Cty. Dep’t of Soc. Servs. ex rel. Costley*, 387 Md. 30, 46 (2005). Criminal contempt is intended to penalize the contemtor “for past misconduct, which may no longer be capable of remedy.” *Bradford v. State*, 199 Md. App. 175, 193 (2011) (quoting *Arrington v. Dep’t of Human Res.*, 402 Md. 79,93 (2007)). Criminal contempt is “punitive in nature and does not require a purging provision, but it must be determinate.” *Id.*

Civil contempt orders are to be “remedial” and “‘remedial’ in this context means to coerce compliance with court orders for the benefit of a private party or to issue ancillary orders for the purpose of facilitating compliance or encouraging a greater degree of compliance with court orders.” *Dodson v. Dodson*, 380 Md. 438, 448 (2004). In a civil contempt action purging is required. *State v. Crawford*, 239 Md. App. 84, 110 (2018) (internal quotations omitted). The purge provision affords one “the opportunity to exonerate him or herself, that is, to rid him or herself of guilt and thus clear himself of the charge.” *Jones v. State*, 351 Md. 264, 281 (1998) (internal quotations omitted).

In *Crawford*, we had to determine whether it is proper to find a party in civil contempt “when a party does not timely comply with a court order, but the party ultimately complies with the order prior to the contempt finding.” 239 Md. App. 84, 123–24. In that case, the trial court found the Maryland Department of Health (MDH) and several officials in constructive civil contempt because of a “failure to comply with court orders to admit the 11 appellees, individuals who had been charged with a crime, to a [MDH] hospital.” *Id.* at 90.

Prior to the contempt hearing MDH complied with the court order and the State argued they could not then be held in constructive civil contempt. *Id.* at 117. We noted the following language from *Dodson* as instructive:

Although we have repeatedly stated that the sanction in civil contempt actions is “remedial,” our opinions have explained that “remedial” in this context means to coerce compliance with court orders for the benefit of a private party or to issue ancillary orders for the purpose of facilitating compliance or encouraging a greater degree of compliance with court orders. We have not used the term “remedial” to mean a sanction, such as a penalty or compensation, where compliance with a prior court order is no longer possible or feasible.

Dodson v. Dodson, 380 Md. 438, 448 (2004). In *Dodson*, the Court determined that the sanction imposed on Mr. Dodson for his past action of failing to pay the insurance premium for his wife’s condominium as required by the trial court order, which resulted in the insurance not covering the damages of the fire, was to punish him and that a civil contempt was not appropriate. *Id.* at 452. Applying *Dodson*, we determined in *Crawford*

. . . at the time of the contempt findings, there was no way for the Department or its officials to do anything else to comply with the specific court orders at issue. The Department could not, at that point, admit appellees to a Department facility because they already had been admitted. And, as in *Dodson*, 380 Md. at 451, 845 A.2d 1194, where Mr. Dodson had no “*present* ability to comply with any requirement that the insurance premium due on November 1, 2000, be paid so that there would be no December 2000 cancellation of the insurance policy,” the Department, at the time of the hearing, similarly had no present ability to admit the appellees to a facility by the earlier date specified in the orders. At the point when the court made its contempt findings, there was no evidence that the Department had a current obligation under a court order. Rather, the civil contempt finding was based on a past failure to comply with the court orders.

State v. Crawford, 239 Md. App. 84, 123 (2018). We further held “that a party generally may not be held in constructive civil contempt for delayed compliance with a court order

if he or she has complied with the order prior to the contempt finding.” *Id.* at 125. We stated “[i]n a case where compliance with a court order is delayed, but there is ultimate compliance prior to the contempt hearing, a court generally is limited to proceeding against the party for criminal contempt, where punishment for a past violation of a court order is permissible.” *Id.* at 125–26.

Holding appellant in constructive civil contempt in the present case for her past completed actions is inconsistent with the holding in *Crawford*. Similar to *Crawford*, appellant, in the case at bar, was compliant at the time of the contempt hearing. The order was thus not “remedial” and could not provide appellant “the opportunity to exonerate . . . herself.” *Jones*, 351 Md. 264, 281.

We hold the circuit court committed legal error in finding appellant in civil contempt. We therefore, vacate the order and we decline to address the remaining issues.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY VACATED;
COSTS TO BE PAID BY APPELLEE.**