[Cite as *Ameritech Publishing, Inc. v. Mayo Bail Bonds & Sur., Inc.*, 2013-Ohio-831.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Ameritech Publishing, Inc.	Court of Appeals No. E-12-012
Appellee	Trial Court No. CVF-08-2938
v.	
Mayo Bail Bonds & Surety, Inc.	**DECISION AND JUDGMENT**
Appellant	Decided: March 8, 2013

* * * * *

Geoffrey L. Oglesby, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} Appellant, Peggy Mayo, appeals the judgment of the Sandusky Municipal Court, finding her in contempt and ordering her to pay a $250 fine. For the following reasons, we affirm.

A. Facts and Procedural Background

{¶ 2} On November 21, 2008, Ameritech Publishing, Inc. ("Ameritech") filed a complaint with the Sandusky Municipal Court against Mayo Bail Bonds & Surety, Inc. ("MBBS") stemming from MBBS' alleged breach of contract. In the complaint, Ameritech asserted that the parties entered into an advertising agreement on August 30, 2005. Ameritech alleged that MBBS breached that agreement by failing to pay for advertising services that were provided pursuant to the agreement. Along with the complaint, Ameritech filed a copy of the advertising agreement and a bill summarizing the outstanding balance for advertising services provided to MBBS.

{¶ 3} Ameritech raised four causes of action in its complaint: (1) breach of contract; (2) accounting; (3) quantum meruit; and (4) unjust enrichment. Each of the four causes of action stem from MBBS' failure to pay for Ameritech's advertising services. Finally, Ameritech's complaint requested judgment "on counts 1 through 4 in the sum of $6,069.69, plus interest at the agreed rate of 18.00% per annum from the date of [the] complaint, plus costs."

{¶ 4} Three months after filing the complaint, Ameritech moved for default judgment, stating that MBBS failed to file an answer. Ameritech supported its motion for default judgment with an affidavit from one of its employees setting forth the amount owed.

{¶ 5} On February 20, 2009, the trial court granted Ameritech's motion for default judgment. In its judgment entry, the trial court stated: "Judgment in favor of the Plaintiff

and against the Defendant, Mayo Bail Bond & Surety, on Counts One and Two in the sum of $6,069.69, plus interest at the agreed rate of 18.00% per annum from November 21, 2008, plus the cost of this action." The judgment entry was silent as to Ameritech's quantum meruit and unjust enrichment claims.

{¶ 6} After Ameritech unsuccessfully attempted to garnish MBBS' bank accounts, it moved the court to order MBBS to submit to a debtor's examination. On October 25, 2011, the court granted Ameritech's motion, set the debtor's examination for November 29, 2011, and instructed the bailiff to serve appellant, as MBBS' statutory agent, with notice of the debtor's examination.

{¶ 7} On the date of the debtor's examination, appellant appeared without counsel and without the information necessary to conduct the examination. Since appellant failed to supply the necessary information, the court rescheduled the debtor's examination for January 17, 2012. On that day, appellant again appeared without counsel and without the information. Accordingly, the court rescheduled the debtor's examination for January 31, 2012, and ordered appellant to bring several items with her on that day. The court informed appellant that, if she failed to bring the requested information to the January 31 hearing, she would be held in contempt.

{¶ 8} At the January 31 hearing, appellant appeared, this time with counsel, and filed an answer and a motion for judgment on the pleadings. However, appellant did not provide the requested information. After a hearing on the matter, the court found

appellant in contempt and imposed a $250 fine by judgment entry dated February 2, 2012.

B. Assignments of Error

{¶ 9} Appellant timely appeals, assigning the following errors for our review:

> 1. THE TRIAL COURT LACKED JURISDICTION TO ORDER A "DEBTOR'S EXAMINATION" WHEN THE "JUDGMENT" UPON WHICH THE EXAMINATION WAS PREDICATED WAS NOT A FINAL JUDGMENT PURSUANT TO CIVIL RULE 54(B).
>
> 2. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR AND ABUSED ITS DISCRETION WHEN THE COURT HELD A STATUTORY AGENT IN DIRECT CONTEMPT FOR ALLEGED MISBEHAVIOR THAT OCCURRED OUTSIDE OF THE COURT AND OUTSIDE OF THE ADJUDICATING JUDGE AND WHEN THERE IS NO JOURNAL ENTRY OR VALID COURT ORDER PRODUCED THAT WAS VIOLATED.

II. Analysis

A. Compliance With Civ.R. 54(B) Was Not Required

{¶ 10} In appellant's first assignment of error, she argues that the trial court was without jurisdiction to order a debtor's examination because the default judgment was not a final judgment under Civ.R. 54(B). Specifically, appellant argues that compliance with Civ.R. 54(B) was required since the order did not dispose of counts three and four of the

complaint. Further, appellant argues that the order was not final under Civ.R. 54(B) because the trial court failed to state that there was "no just reason for delay" as required by the rule.

{¶ 11} Civ.R. 54(B) provides:

> When more than one claim for relief is presented in an action * * * the court may enter final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay. In the absence of a determination that there is no just reason for delay, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

{¶ 12} In its order granting Ameritech's motion for default judgment, the trial court expressly disposed of the breach of contract and accounting causes of action, but was silent as to the remaining equitable causes of action. Ordinarily the trial court's failure to expressly dispose of the remaining causes of action would require compliance with Civ.R. 54(B) before the judgment could be deemed final. However, the Ohio Supreme Court, in addressing this issue, has stated: "[E]ven though all the claims or parties are not expressly adjudicated by the trial court, if the effect of the judgment as to

some of the claims is to render moot the remaining claims or parties, then compliance with Civ.R. 54(B) is not required to make the judgment final and appealable." *General Acc. Ins. Co. v. Ins. Co. of N.A.*, 44 Ohio St.3d 17, 21, 540 N.E.2d 266 (1989); *see also Wise v. Gursky*, 66 Ohio St.2d 241, 243, 421 N.E.2d 150 (1981) ("a judgment in an action which determines a claim in that action and has the effect of rendering moot all other claims in the action as to all other parties to the action is a final appealable order pursuant to R.C. 2505.02 and Civ.R. 54(B) is not applicable to such a judgment").

{¶ 13} Here, the relief granted to Ameritech on its breach of contract and accounting claim rendered the unjust enrichment and quantum meruit claims moot. *See Wells Fargo Fin. Leasing Inc. v. Gilliland*, 4th Dist. Nos. 05CA2993 & 05CA3006, 2006-Ohio-2756, ¶ 25 (holding that when a party is liable under an express contract, claims for unjust enrichment are rendered moot). Because the remaining claims were rendered moot, the trial court's order granting default judgment disposed of all claims contained in the complaint. Thus, we hold that compliance with Civ.R. 54(B) was not required. By extension, the trial court was not required to determine that there was no just reason for delay in order to make its order final. Accordingly, appellant's first assignment of error is not well-taken.

B. Finding of Contempt

{¶ 14} In her second assignment of error, appellant argues that the trial court abused its discretion when it held her in contempt for failing to provide the requested information at the January 31 hearing.

{¶ 15} A trial court has inherent as well as statutory authority to enforce its prior orders through contempt. *Dozer v. Dozer*, 88 Ohio App.3d 296, 302, 623 N.E.2d 1272 (4th Dist.1993); *see also* R.C. 2705.02(A). "Contempt of court is defined as the disregard for, or the disobedience of, an order of a court. It is conduct which brings the administration of justice into disrespect, or which tends to embarrass, impede or obstruct a court in the performance of its functions." (Internal citations and quotations omitted.) *Furlong v. Davis*, 9th Dist. No. 24703, 2009-Ohio-6431, ¶ 33.

{¶ 16} The classification of contempt is two-fold. First, contempt may be classified as either criminal or civil. The distinction between civil and criminal contempt centers on "the purpose and character of the punishment which is imposed upon the contemnor by the trial court." *Newcomer v. Newcomer*, 6th Dist. Nos. L-10-1299, L-10-1357, 2011-Ohio-6500, ¶ 45, citing *City of Cleveland v. Geraci*, 8th Dist. No. 64075, 1993 WL 526652 (Dec. 16, 1993). "The purpose of civil contempt proceedings is to secure the dignity of the courts and the uninterrupted and unimpeded administration of justice." *Windham Bank v. Tomaszczyk*, 27 Ohio St.2d 55, 58, 271 N.E.2d 815 (1971). Punishment is remedial or coercive and for the benefit of the complainant in civil contempt. *Brown v. Executive 200, Inc.*, 64 Ohio St.2d 250, 253, 416 N.E.2d 610 (1980). Further, the sentence is conditional in civil contempt, such that the contemnor will be freed from it if she complies with the order. *Id.*, citing *In re Nevitt*, 117 F. 448, 461 (8th Cir.1902). Criminal contempt, on the other hand, is usually characterized by an

unconditional prison sentence. *Id.* at 254. In order to be punished for criminal contempt, the contemnor must be proven guilty beyond a reasonable doubt. *Id.* at 251.

{¶ 17} Here, appellant was found in contempt and ordered to pay a $250 fine as a "purge condition" for the contempt. The judgment entry states that the fine "shall be rescinded if defendant provides to plaintiff's attorney either (a) the specific items previously ordered, or (b) an affidavit attesting to their non-existence. * * * If the purge conditions are met, the fine is waived." Since appellant has an opportunity to purge herself of the $250 fine by complying with the court order to provide the requested information, the sentence is conditional. Thus, the trial court's finding of contempt was civil in nature.

{¶ 18} Second, contempt may be classified as either direct or indirect. *Sano v. Sano*, 5th Dist. No.2010CA00252, 2011-Ohio-2110, ¶ 13, citing *In re Purola*, 73 Ohio App.3d 306, 310, 596 N.E.2d 1140 (3d Dist.1991). Direct contempt is defined by R.C. 2705.01, which states: "A court, or judge at chambers, may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice." Unlike direct contempt, indirect contempt may occur outside the presence of the court. *Newcomer* at ¶ 7. R.C. 2705.02 provides statutory authority for courts to punish contemnors for indirect contempt. As relevant here, R.C. 2705.02 states:

> A person guilty of any of the following acts may be punished as for a contempt:

(A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or an officer[.]

{¶ 19} Prior to imposing a punishment for indirect contempt, the contemnor must be afforded certain procedural safeguards, including a written charge, entry on the court's journal, an adversary hearing, and an opportunity for legal representation. R.C. 2705.03; *City of Xenia v. Billingham*, 2d Dist. No. 97-CA-124, 1998 WL 698356 (Oct. 9, 1998), citing *State ex rel. Seventh Urban, Inc. v. McFaul*, 5 Ohio St.3d 120, 449 N.E.2d 445 (1983).

{¶ 20} Here, appellant argues that the contempt should be classified as indirect contempt. Further, appellant argues that the trial court improperly found her in contempt without affording her the requisite procedural protections such as a hearing and a written charge. In support of her argument, appellant contends that her contemptuous conduct occurred outside the presence of the court. We disagree.

{¶ 21} The judgment entry from the January 31 hearing clearly indicates that the court, at the second debtor's examination hearing, instructed appellant to bring several pieces of information to the January 31 hearing.[1] Instead of complying, appellant

[1] Notably, appellant failed to provide copies of the transcripts from the first two debtor's examination hearings in order to contest this statement. Because appellant has failed to provide evidence that would suggest that she was not previously instructed to bring the information to the January 31 hearing, we must presume those instructions were given. *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980) ("When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors,

disregarded court instructions when she appeared in court on January 31 without the requested information. The contemptuous conduct (i.e. the disobedience of the court's instructions) occurred in the presence of the court. Since appellant's conduct occurred in the presence of the court, the court was justified in holding her in direct contempt. Further, the trial court was not required to provide a hearing and a written charge before holding appellant in direct contempt. *See State v. Local Union 5760, United Steelworkers of Am.*, 172 Ohio St. 75, 79, 173 N.E.2d 331 (1961) ("When the charge is direct contempt, that is, an act committed in the 'presence of the court,' the contemnor may be proceeded against summarily by the court without the necessity of a written charge or a hearing as is required in cases arising under the indirect contempt statute.")

{¶ 22} Therefore, we conclude that the trial court did not abuse its discretion in finding appellant in direct contempt and ordering her to pay a fine of $250. Accordingly, appellant's second assignment of error is not well-taken.

III. Conclusion

{¶ 23} Based on the foregoing, the judgment of the Sandusky Municipal Court is hereby affirmed. Costs are hereby assessed to the appellant in accordance with App.R. 24.

Judgment affirmed.

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the court has no choice but to presume the validity of the lower court's proceedings, and affirm.")

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE