

[Cite as *Contos v. Monroe Cty.*, 2004-Ohio-6380.]

STATE OF OHIO, MONROE COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

BRUCE CONTOS, et al.,)	
)	CASE NO. 04 MO 3
PLAINTIFFS-APPELLEES,)	
)	
- VS -)	OPINION
)	
MONROE COUNTY, et al.,)	
)	
DEFENDANTS-APPELLANTS.)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Common Pleas Court, Case No. 2003-083.
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JUDGMENT:	Reversed and Remanded.
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APPEARANCES:
For Plaintiffs-Appellees:

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For Defendants-Appellants:

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JUDGES:
Hon. Mary DeGenaro
Hon. Gene Donofrio
Hon. Joseph J. Vukovich

Dated: November 23, 2004

DeGenaro, J.

{¶1} This timely appeal comes for consideration upon the record in the trial court, Appellants' brief, and their oral arguments before this court. Appellants, Glen Schwaben and Attorney Randall Lambert, appeal the decisions of the Monroe County Court of Common Pleas that found them in contempt of court, imposed a fine, and conditionally ordered a jail term. Appellants argue the trial court abused its discretion when it found them in contempt of court. We agree.

{¶2} A party cannot be found in contempt if the contempt charge is premised on a party's failure to obey an order of the court and the order is not clear, definite, and unambiguous and is subject to dual interpretations. The order in question is unclear and subject to dual interpretations and the trial court erred when it found Appellants in contempt. Accordingly, the trial court's judgment is reversed and this matter is remanded for further proceedings.

Facts

{¶3} In April 2003, Bruce and Margery Contos sued the Monroe County Commissioners, Schwaben, and Curtis Shreves. They alleged that Shreves falsely accused Mr. Contos of various crimes while the two worked for the Monroe County Sheriff's Department and that those false accusations injured them. Schwaben was the Monroe County Sheriff at the time the Contoses filed the complaint. After a scheduling conference, the trial court ordered that the parties complete all discovery by January 2, 2004, and set the matter for a jury trial in April 2004.

{¶4} The Contoses submitted interrogatories and a request for the production of certain documents to both Schwaben and Shreves on September 25, 2003. Neither defendant replied to those discovery requests by the end of October 2003. At that time, the defendants deposed Mr. Contos and promised that they would provide the requested discovery within a week. They did not do so. The defendants were scheduled to be deposed at the end of November 2003. Since the Contoses' attorney still had not received the requested discovery by that time, the Contoses cancelled the scheduled depositions.

{¶5} In early December 2003, the Contoses moved to reschedule the deadlines

the trial court imposed earlier since Schwaben and Shreves had yet to respond to the Contoses' discovery requests. They later moved to compel discovery and for discovery sanctions.

{¶6} The two defendants responded to the discovery requests on December 30, 2003. Schwaben's answer responded in the negative to every interrogatory except for those requesting identification information and did not provide any of the requested documents. According to Schwaben's answers, he had not yet determined what documents he would use at trial and did not have access to the requested records. Schwaben did not answer the discovery requests on the forms provided by the Contoses. Instead, he created a new document containing those answers. That document was signed by Schwaben's attorney, but not by Schwaben himself. Shreves answered in a similar manner, but his answers to interrogatories were more detailed.

{¶7} The trial court heard the matter and found that the defendants' responses were "totally non-responsive" and appeared to contain false information. In a judgment entry filed on January 7, 2004, the trial court found the defendants' answers "to be wholly insufficient" and ordered that they "prepare proper responses" within fourteen days. It also granted the Contoses' motion for sanctions and fees and ordered that the defendants' counsel, Attorney Lambert, pay those attorney fees. Finally, the court made a new scheduling order.

{¶8} Both Schwaben and Shreves supplemented their responses to the original discovery requests within fourteen days, but they only supplemented their responses to the request for the production of documents. The defendants did not supplement their answers to the interrogatories. The Contoses' counsel felt these responses were inadequate and moved for a show cause order, discovery sanctions, and Civ.R. 11 sanctions.

{¶9} The trial court heard the matter and, in a February 12, 2004, entry, it once again concluded that Schwaben's responses to the discovery requests were "wholly insufficient." Although the trial court did not find that Shreves was in contempt, it found that both Schwaben and his counsel, Attorney Lambert, were in contempt of its January

7th order, fined each of them \$250.00, and ordered that they each serve thirty days in jail. But it suspended the jail term if Schwaben prepared proper responses to the discovery requests and paid the Contoses' counsel's attorney fees within seven days. Appellants timely appeal this judgment.

Final, Appealable Order

{¶10} There was some discussion at the end of the contempt hearing about whether the trial court would include Civ.R. 54(B) language. Both the parties and the trial court apparently believed that the contempt order would not be a final, appealable order without that language. The trial court did not include that language and specifically stated in its February 12th order "that this order is interlocutory in nature and does not constitute a final appealable order."

{¶11} Appellants have not raised any issue regarding their ability to appeal the trial court's order and Appellees have not participated in this appeal. But we must raise jurisdictional issues involving final appealable orders sua sponte if the parties do not raise them. *State ex rel. Wright v. Ohio Adult Parole Auth.* (1996), 75 Ohio St.3d 82, 84; *Collins v. Moran*, 7th Dist. No. 01-C.A.-127, 2002-Ohio-1536, ¶10. The trial court's belief that its order is not a final, appealable order is not binding on this court. *Ft. Frye Teachers Assn. v. Ft. Frye Local School Dist. Bd. of Edn.* (1993), 87 Ohio App.3d 840, 843, fn. 4; *In re Nichols*, 4th Dist. No. 03CA41, 2004-Ohio-2026, ¶6. Moreover, the trial court's conclusion is incorrect.

{¶12} The trial court is not required to include Civ.R. 54(B) language to make a contempt order final and appealable. "To constitute a final appealable order in a contempt proceeding, the order must contain both a finding of contempt and the imposition of a sanction." *McCree v. McCree*, 7th Dist. No. 01 CA 228, 2003-Ohio-1600, ¶21, citing *Chain Bike Corp. v. Spoke 'N Wheel* (1979), 64 Ohio App.2d 62, 64. The order at issue complies with this requirement. In that order, the trial court specifically found that both Schwaben and Attorney Lambert were in contempt of court, sentenced each of them to a conditional thirty-day jail sentence, and unconditionally fined each of them \$250.00. Accordingly, the order at issue is a final, appealable order.

Ambiguous Order

{¶13} In their first assignment of error, Appellants argue:

{¶14} “The trial court erred in finding Defendant Schwaben and Attorney Lambert in contempt.”

{¶15} Appellants claim the trial court could not find them in contempt of court since its original order was ambiguous. A party cannot be found in contempt if the contempt charge is premised on a party's failure to obey an order of the court and the order is not clear, definite, and unambiguous and is subject to dual interpretations. See *Chilcote v. Gleason Const. Co.* (Feb. 6, 2002), 5th Dist. No. 01COA01397; *Collette v. Collette* (Aug. 21, 2001), 9th Dist. No. 20423; *Marysville v. Wilson* (July 20, 1994), 3rd Dist. No. 14-94-8; *Smith v. Smith* (Jan. 13, 1994), 10th Dist. No. 93AP-958; *In re Contempt of Gilbert* (Dec. 16, 1993), 8th Dist. Nos. 64299, 64300. An order is not ambiguous merely because a party misunderstands the order and a misunderstanding of an unambiguous order is not a defense to a contempt proceeding. *Chilcote* at 2; *Gilbert* at 7. To be ambiguous, the order must be unclear or indefinite and subject to dual interpretations. *Id.*

{¶16} In *Wilson*, the Third District dealt with such an order. In that case, the trial court sentenced a man to a jail sentence for violating the terms of his probation. The sentencing order authorized work release for that man after he served three days in jail, but it did not order that the Sheriff actually release the man after three days. After serving ten days of his sentence, the man moved for the court to modify his sentence so he could be released from jail for work. He then moved for the Sheriff to show cause for failing to release him for work as authorized in the original sentencing entry. After a hearing, the trial court found the Sheriff in contempt of court. The appellate court reversed the trial court's decision because its original sentencing entry was ambiguous.

{¶17} “In the instant case the commitment order was subject to various interpretations and was, therefore, ambiguous. The commitment order did not mandate that the sheriff grant appellee the privilege of being released for work. Rather, it stated work release was ‘authorized’ after three days. Authorizing appellee's release and

ordering the sheriff to release appellee are not the same. The commitment order simply indicates the court's approval for the sheriff to grant appellee's release.

{¶18} “Further adding to the ambiguity of the order is the trial court's failure to provide guidelines for those individuals subject to the order. For example, there was no indication during what hours appellee was to be released from jail. Nor was there any indication what action should be taken if, as the sheriff suspected, appellee had no job. There was also testimony appellee, who was working outside Union County as a construction laborer, only worked when the weather was suitable. There was no indication whether the court intended appellee be released during inclement weather. Presumably the court's order would not mandate his daily release into the community if appellee was not working. In short, the court's order left many pertinent issues unresolved and was, therefore, ambiguous.” *Id.* at 2-3.

{¶19} In *Smith*, the Tenth District dealt with a different ambiguous order. In that case, the parties were divorced after they had children. The parties' were engaged in a post-decree custody battle when their minor daughter told the mother that the father “had rubbed her private parts.” The trial court denied a motion for an evaluation of the child. Instead, it ordered that the parents be evaluated by a psychologist. It further ordered that neither party discuss the matter “with either of the children of the parties, provided however, neither party shall be precluded from responding, in a normal parental manner, to concerns or issues expressed to such party by either child.” After this order, the child alleged that her father continued to rub her private parts and the mother discussed this with her. The trial court found the mother in contempt of its previous order for discussing the issue with her daughter.

{¶20} The trial court's finding was reversed on appeal. The appellate court found the trial court's order “contained within it a degree of potential confusion and misunderstanding.” Thus, the mother could honestly believe that she could listen and respond to any of her daughter's expressed concerns without violating the letter or spirit of the trial court's order.

{¶21} The order at issue in this case contains an ambiguity similar to those in both

Wilson and Smith. The January 7th order required both Schwaben and Shreves “to prepare proper responses” to the Contoses’ discovery requests. It did not describe how the responses already provided were improper or insufficient. Thus, the language of the trial court’s order was unclear and subject to dual interpretations.

{¶22} The trial court apparently found that it could hold Schwaben and Attorney Lambert in contempt since it told Attorney Lambert’s co-counsel some of the reasons it found Schwaben’s responses insufficient. But the trial court’s comments at the hearing leading to the January 7th order were far from specific. Instead of providing specific direction, such as ordering that Schwaben sign his answers to interrogatories, the trial court found that the answers were unresponsive, unhelpful, and possibly untrue. Furthermore, the Contoses did not raise the specific deficiencies that formed the basis of the motion to show cause at that hearing. Thus, the trial court’s comments to Attorney Lambert’s co-counsel would have impressed upon Attorney Lambert how seriously the trial court considered the matter, but gave no direction on how to cure the deficiencies in the responses already provided.

{¶23} In summary, the trial court’s January 7th order found the discovery responses insufficient and ordered that Schwaben provide “proper” responses, but failed to describe how they were insufficient or improper. At the hearing which gave rise to that order, the trial court informed Attorney Lambert’s co-counsel that the discovery responses were “totally non-responsive” and uncooperative, but failed to mention specific deficiencies. Appellants provided the Contoses with supplemental responses to discovery within the timeframe dictated by the January 7th order. Because of the lack of specificity the January 7th order was ambiguous.

{¶24} A trial court cannot impose contempt sanctions on a party if the party cannot know whether or not its actions violate the trial court’s order. Merely because the trial court knew what its order meant does not mean the parties knew what the order meant. In this case, Appellants could have legitimately believed that their discovery responses complied with the terms of the trial court’s January 7th order. The trial court abused its discretion when it found them in contempt of that order. Appellants’ first assignment of

error is meritorious.

Other Assignments of Error

{¶25} Appellants' remaining two assignments of error argue:

{¶26} "The trial court erred in ordering that a warrant would be issued for the arrest of Defendant Schwaben and Attorney Lambert upon without being advised by plaintiff's counsel that they had failed to cooperate, without the opportunity of a hearing or to provide a response."

{¶27} "The trial court erred in granting costs and sanctions to the plaintiff without a proper finding of contempt and without any evidence in support."

{¶28} Based on our resolution of Appellants' first assignment of error, their remaining assignments of error are rendered moot.

{¶29} According, the trial court's judgment is reversed and this cause is remanded for further proceedings.

Donofrio, J., concurs.

Vukovich, J., concurs.