

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR11-1102

OVA DEAN SUMMERS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 11, 2012

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT,
[NO. CR-2001-326]

HONORABLE GARY COTTRELL,
JUDGE

AFFIRMED

RITA W. GRUBER, Judge

This appeal is from an order finding Ova Dean Summers in criminal contempt for failure to pay restitution ordered by the court in various orders based on a 2001 conviction. We hold that substantial evidence supports the court's order and affirm.

In 2001, Summers was convicted under the Arkansas Hot Check Law. Her sentence included a suspended imposition of sentence and payment for restitution. The suspended sentence was revoked several times and additional restitution was ordered due to another conviction. On July 28, 2010, the State filed a petition to show cause why Summers should not be held in contempt for failure to make payments, alleging that the total balance owed was \$6,382.07.

At the hearing, the State introduced a ledger indicating that since 2006, Summers had made one restitution payment in May 2007; one payment in August 2008, after a petition to revoke based on failure to pay was filed in June 2008; and one payment in May 2010. The



balance due at the hearing on the petition for contempt was \$6,382.07.

Summers has been arrested numerous times for not paying her restitution. To explain why she had not been able to make any payments of restitution since 2007, she testified that her mother passed away in April 2010 and she had been helping her brother pay the funeral expenses. She said that she was incarcerated for sixty days in 2009. She also said that she had health issues: her stomach “collapsed” due to diabetes; she had a colonoscopy; and she had previously had liver cancer. She testified that she received a disability check each month in the amount of \$633. Although she said that her mother-in-law paid her rent, she testified that she used her disability check to pay some funeral expenses, food, and some of the electric bill, whenever she could. She admitted that she used this disability check to post a \$600 bond on another charge in April 2011.

The court found Summers in contempt at the hearing for willfully refusing to make payments. The court noted that Summers used her disability check to post a \$600 bond in April 2011 to get out of jail for another charge, suggesting that she could have been making payments toward her restitution. The court also found that she was able to make payments and had chosen not to for the last four years despite the State’s giving her “ample opportunity to take care of the situation.” The court’s order sentenced her to thirty days in jail and ordered her to resume payments of \$50 per month toward restitution beginning sixty days after her release. The court also forfeited her \$600 cash bond for payment on restitution.

Appellant’s point on appeal, and her argument in support of that point, is that the trial court erred in granting the State’s petition to revoke because there was insufficient evidence.



Appellant then argues that the State was required to prove that her failure to pay was inexcusable and was a “willful refusal” in order to revoke her probation. Summers is correct that, at the time of her hearing, the law required the court to find that the defendant “inexcusably failed to comply with a condition of his or her suspension or probation” in order to revoke that suspension or probation. Ark. Code Ann. § 5-4-309(d) (Repl. 2006). In this case, however, the trial court did not revoke Summers’ suspended sentence but found her in contempt for failure to make restitution payments.

A court may use its contempt power to punish a person for “[w]illful disobedience of any process or order lawfully issued or made by it.” Ark. Code Ann. § 16-10-108(a)(3) (Repl. 2010). Our standard of review for criminal contempt is whether the decision is supported by substantial evidence, viewing the evidence in the light most favorable to the trial court’s decision. *Bass v. Bass*, 2011 Ark. App. 753, at 7, 387 S.W.3d 218, 223; *Ellis v. State*, 36 Ark. App. 219, 222, 821 S.W.2d 56, 58 (1991). In this case, the trial court’s finding of contempt is supported by substantial evidence.

Several lawfully issued court orders obligated Summers to make monthly payments to satisfy the restitution ordered, which, at the time of the hearing, had a balance of \$6,382.07. The State introduced a payment ledger indicating that Summers had made only one payment in 2007, one payment in 2008, and one payment in 2010. Appellant presented no evidence to the contrary. Summers testified that she received a monthly disability check in the amount of \$633, that she used this disability check to post a \$600 bond on another charge in April 2011, that her mother-in-law paid her rent, and that she used the check to pay for food and



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some electricity expenses when she could. She also testified that she used the money to help her brother pay the funeral expenses for her mother, who passed away in April 2010.

The court did not believe that she was unable to make payments toward restitution for the past four years and found that her failure was willful. Matters of credibility are for the fact-finder. *Bass*, 2011 Ark. App. 753, at 8, 387 S.W.3d 218, 224. Viewing the record in the light most favorable to the trial court's decision, we hold that substantial evidence supports the court's determination that appellant willfully violated the court's orders requiring her to make restitution payments.

Affirmed.

MARTIN and HOOFFMAN, JJ., agree.

David L. Dunagin, for appellant.

Dustin McDaniel, Att'y Gen., by: *Nicana C. Sherman*, Ass't Att'y Gen., for appellee.