Cite as 2012 Ark. App. 660

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR12-354

EVA ETRIS APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** November 14, 2012 APPEAL FROM THE CRAWFORD COUNTY CIRCUIT COURT [NO. 17CR2011-509-2] HONORABLE MICHAEL MEDLOCK, JUDGE REVERSED

CLIFF HOOFMAN, Judge

Appellant Eva Etris appeals from the trial court's order finding her in contempt for violating a no-contact order. On appeal, she argues that the circuit court lacked jurisdiction and that she had no notice that the no-contact order was still in effect. We reverse.

On April 14, 2011, appellant pled guilty to harassing communications, a class A misdemeanor, in Crawford County District Court. The district court's "transcript of judgment" reflected that she received a thirty-day jail sentence suspended upon the following conditions: payment of $310 in fines and costs within thirty days; completion of five days of community service within thirty days; no contact whatsoever in any manner either directly or indirectly with Valorie Hubbs; no offensive contact with McKenzie Oliver and no inappropriate comments regarding Hubbs; a letter of apology to Hubbs due within seven days; and one month of supervised probation. The judgment stated that appellant could petition for expungement after one year upon compliance with all court orders. The judgment noted

on May 17, 2011, that appellant had met all conditions of probation and that the file was closed as complete.

On August 4, 2011, the City of Van Buren filed in district court a "petition to revoke/show cause." The City alleged that appellant violated the terms of her probation by having offensive contact with the victim and making inappropriate comments to the victim's daughter. The district court entered a judgment on October 27, 2011, finding appellant guilty of violating the conditions of her suspended sentence and sentencing her to thirty days in jail. Appellant appealed to the Crawford County Circuit Court.

On March 8, 2012, appellant filed in circuit court a motion to vacate the district court judgment and dismiss the petition to revoke. She alleged that the district court sentence had expired before the City filed its petition to revoke; thus, the district court had lost jurisdiction over her. On March 12, 2012, the circuit court held a hearing on appellant's motion. Appellant argued that the district court did not have jurisdiction to revoke her suspended imposition of sentence (SIS) because the time had run and she had met all of the conditions of her SIS. She argued that in order for a no-contact order to be effective, the defendant must have written notice of the conditions, and the State had provided no documentation that she was ever put on notice that the no-contact order would last beyond the thirty-day suspended sentence. Thus, appellant alleged that the circuit court did not have jurisdiction.

The State responded that appellant had notice of the no-contact order and that the opportunity to petition the court to expunge her record after one year gave the court the time to judge whether she violated any of the orders beyond her probation. The State also

requested to proceed on a contempt of court petition, not a petition to revoke. Appellant then argued that she was not given any notice that the no-contact order would last past the thirty days and that the circuit court had no jurisdiction to hear a contempt matter because the district court did not find her in contempt. The circuit court denied the motion to dismiss, stating that the "fact the case was closed for completion of probation didn't mean it was closed for completion of sentence which remains suspended."

The circuit court then held a hearing on the State's petition. Valorie Hubbs and one of her daughters testified that appellant initiated contact with Hubbs at a children's swim team party in July 2011. Appellant moved for dismissal, arguing that the State failed to prove by a preponderance of the evidence that she violated the terms and conditions of her SIS by having contact with Hubbs. Appellant also renewed her motion to vacate the district court judgment and dismiss the petition, arguing that the circuit court did not have jurisdiction to hear the matter because the conduct that was testified to occurred after her SIS had run. The trial court denied the motions.

Appellant's brother-in-law and three sisters-in-law all testified that they attended the party in July 2011 and saw no contact between appellant and Hubbs. Appellant again argued that the State had not met its burden to prove that some type of contact occurred, but the circuit court found that there was a violation of the no-contact order. On March 14, 2012, the Crawford County Circuit Court entered an order finding appellant "guilty of contempt for violating a no contact order with Valorie Hubbs." Appellant was sentenced to thirty days' confinement at the Crawford County Detention Center. She filed a timely notice of appeal.

Appellant argues that there was insufficient proof by the State to show that she should have reasonably known that the no-contact order was still in place even though she had completed all of the conditions of her probation and her case was closed in district court. She argues that the circuit court lost jurisdiction to revoke her probation when her probation period expired without her having been arrested for a probation violation and without an arrest warrant having been issued for violation of probation. *Carter v. State*, 350 Ark. 229, 85 S.W.3d 914 (2002). She argues that the State's petition should have been dismissed as the trial court was without jurisdiction to revoke her probation or hold her in contempt.

Appellant was sentenced to thirty days' probation and SIS on April 14, 2011. She was not arrested for a probation violation and an arrest warrant was not issued for a probation violation before the expiration of the thirty days; the petition to revoke was not filed until August 4, 2011. Thus, we agree that there was no jurisdiction to revoke under Arkansas Code Annotated section 5-4-309(e) (Repl. 2006). *Carter*, *supra*. The circuit court's order, however, found appellant guilty of contempt instead of revoking her probation or SIS.

Appellant argues that the terms of her probation/SIS were not explicitly provided to her in writing and that courts have no power to imply and subsequently revoke on conditions that were not expressly communicated in writing to a defendant as a condition of his suspended sentence. *See Ross v. State*, 268 Ark. 189, 594 S.W.2d 852 (1980). Appellant argues that in district court, her thirty-day jail sentence was suspended upon completion of terms and conditions of her probation, which she completed, and that nowhere was it stated that she would be under probation for a period of one year. She

claims that the fact that she was given the option to file a petition to have her record expunged after twelve months did not mean that the terms of probation lasted beyond thirty days and that she was given no notice that the no-contact order lasted beyond thirty days.

When we review a case of criminal contempt, we view the record in a light most favorable to the trial judge's decision and will sustain the decision if supported by substantial evidence. *Farr v. Farr*, 101 Ark. App. 315, 276 S.W.3d 734 (2008). However, before one can be held in contempt for violating a court order, the order must be definite in its terms and clear as to what duties it imposes. *Id.* When there is no express order prohibiting the conduct, we reverse the contempt finding. *Id.* The State argues that the fact that the no-contact order came into being simultaneously with a thirty-day term of probation does not mean that the no-contact order would only last thirty days. We agree with appellant, however, that the judgment of conviction setting out the no-contact order was not clear that the no-contact order lasted beyond thirty days. Thus, there was no express order prohibiting contact with Hubbs in July 2011. It was error for the circuit court to find appellant in contempt, and we reverse.

Reversed.

ROBBINS and WYNNE, JJ., agree.

Brimhall and Lunde Law Firm, PLLC, by: *Douglas Brimhall*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Valerie Glover Fortner*, Ass't Att'y Gen., for appellee.