

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA10-478

NORMAN E. BUNDY, JR.
APPELLANT

V.

PAT MOODY
APPELLEE

Opinion Delivered MARCH 9, 2011

APPEAL FROM THE JACKSON
COUNTY CIRCUIT COURT
[NO. DR-08-178]

HONORABLE PHILIP G. SMITH,
JUDGE

REVERSED

RAYMOND R. ABRAMSON, Judge

In a December 2010 opinion, we ordered the record settled and the addendum supplemented in this case. *Bundy v. Moody*, 2010 Ark. App. 823 (*Bundy I*). The appellant has complied, and this case is now primed for a merits decision.

Again, the facts are these. Norman Bundy, Jr., and Pat Moody were divorced by a decree entered in June 2009. The circuit court found, in part, that Bundy and Moody were equal owners in a cattle operation and that Bundy had sold the cattle a few months earlier. The circuit court calculated Moody's share of the proceeds to be \$12,332.14. In the decree, the circuit court gave Moody a judgment against Bundy in that amount. If Bundy paid the judgment within sixty days from May 4, 2009, then no interest would accrue. But if Bundy failed to pay within those sixty days, then the judgment was to bear interest at a rate of 5.5% per annum beginning from May 4, 2009 until paid. Bundy did not pay.

Moody filed a contempt petition in October 2009. She pointed to what she considered were Bundy's failures to comply with the terms of the divorce decree, including his failure to satisfy the \$12,332.14 judgment within the sixty-day period. The circuit court held a hearing in November 2009 and entered an order on December 16, 2009, finding Bundy in contempt and ordering him to serve 180 days in the Jackson County jail. However, the circuit court suspended the jail sentence until January 7, 2010. If Bundy paid the judgment in full by that date, then he would not have to serve his jail sentence.

Bundy filed a motion for a new trial the same day the circuit court entered its order. The circuit court, in a January 2010 order, took Bundy's motion under advisement and stayed his impending jail sentence "pending further consideration and rulings by the Court." Bundy filed his notice of appeal on February 12, 2010. As we explained in *Bundy I*, Bundy's appeal is timely, and there is no finality problem here.

On the merits, even if we assume, for purposes of this appeal, that contempt was a proper remedy under these circumstances,¹ we must reverse. The standards of review for civil and criminal contempt are different. In reviewing a finding of civil contempt, we decide whether the circuit court's finding is clearly against the preponderance of the evidence. *Holifield v. Mullenax Financial & Tax Advisory Group, Inc.*, 2009 Ark. App. 280, at 2, 307 S.W.3d 608, 610. In reviewing a finding of criminal contempt, however, we

¹Bundy argues, in one of his points on appeal, that "the trial court erred in applying equitable remedies to enforce a money judgment due to merger of the earlier judgment."

determine whether the circuit court's decision is supported by substantial evidence, viewing the record in the light most favorable to the circuit court's decision. *Id.* Indeed, there are significant (and much written about) differences in the nature of the two types of contempt. *See, e.g., Applegate v. Applegate*, 101 Ark. App. 289, 275 S.W.3d 682 (2008).

But the substantive rules on contempt, whether civil or criminal, are the same. *Holifield*, 2009 Ark. App. 280, at 2, 307 S.W.3d at 610. In order to be found in contempt, the alleged contemtor must willfully disobey a valid court order. *Id.* But before the alleged contemtor can be held accountable for his disobedience, the order must have been "definite in its terms, clear as to what duties it imposes, and express in its commands." *Id.* at 3, 307 S.W.3d at 610. It is on this basis—a lack of definiteness and clarity—that we reverse.

We quote the paragraph from the parties' divorce decree, which lays out Bundy's obligation regarding the money from the cattle sale, in full. The circuit court found

5. That the parties were the owners, in equal shares of a cattle operation located in Jackson County, Arkansas; that the Plaintiff liquidated said cattle on or about the 3rd day of March, 2009; that after giving the Plaintiff credit for cows owned by him prior to this marriage, the Defendant's interest in the proceeds of said liquidation sale is \$12,332.14; that the Defendant should have judgment against the Plaintiff in said amount, and that if said judgment be paid within sixty (60) days from the 4th day of May, 2009, said judgment shall bear no interest; however, if said judgment be not paid within sixty days from May 4, 2009, said judgment shall bear interest at the rate of 5.5% per annum from and after the 4th day of May, 2009 until paid.

Under the terms of this paragraph, Bundy had to pay Moody \$12,332.14. If he did not pay her within sixty days of May 4, 2009, then interest would begin to accrue starting from May

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4, 2009 until Bundy finally paid. Not contained in the paragraph, however, were any definite terms about Bundy having to pay Moody by a date certain.

The parties' divorce decree was not "definite in its terms, clear as to what duties it imposes, and express in its commands" as to any pay-by date. Indeed, under the terms of the divorce decree, Bundy's penalty for not paying within sixty days was that interest would begin to accrue retroactively. In short, the circuit court's contempt order, whether civil or criminal, was error. *Applegate*, 101 Ark. App. at 294, 275 S.W.3d at 686. We therefore reverse. Because we are reversing on this ground, we decline to address Bundy's other arguments for reversal.

Reversed.

GLOVER and HOOFFMAN, JJ., agree.