

Cite as 2023 Ark. App. 151
ARKANSAS COURT OF APPEALS
DIVISION IV
No. CV-21-354

ANNA KNESEK

APPELLANT

V.

LARRY KNESEK

APPELLEE

OPINION DELIVERED MARCH 15, 2023

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT
[NO. 17DR-19-94]

HONORABLE MARC MCCUNE,
JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

This is an appeal from an order entered by the Crawford County Circuit Court finding appellant Anna Knesek (“Anna”) in contempt for her failure to abide by previous orders of the court. The order on appeal sentenced Anna to two concurrent sentences of thirty days’ imprisonment for two counts of contempt. Anna asserts that the circuit court erred by finding her in contempt and, furthermore, that the court’s findings were not supported by substantial evidence. We affirm.

I. *Background Facts*

Anna and the appellee, Larry Knesek (“Larry”), were married on June 14, 2010, and separated on February 22, 2019. On October 6, 2020, Larry was granted an absolute divorce from Anna by the Crawford County Circuit Court. The decree set forth custody and visitation schedules; determined property rights; and set forth provisions related to the

parties' personal property, including but not limited to, personal hard drives in Anna's possession, which are the greatest source of contention in this case. Specifically, the decree held that the hard drives were to be examined by a mutually acceptable qualified person who was to download Larry's information onto a new drive.

Additionally, Anna was to provide Larry with an affidavit attesting that she had not disclosed or allowed anyone to access any of the intellectual property or confidential information belonging to Larry's business; Larry was awarded his businesses and the parties were to return one another's business records; Anna was to transfer any and all information regarding www.thorvacationclub.com to Larry; and Larry was to receive copies of all family photo books and family photos. The court made further findings that are not relevant to this appeal. The decree was approved by each party's counsel and signed by both Anna and Larry.

On December 14, 2020, Larry filed a motion for contempt alleging that Anna had failed to comply with certain provisions of the decree and requested that she be held in contempt. Anna was served with the motion for contempt on December 23, 2020; however, she did not file a timely response. On February 23, 2021, the circuit court found Anna in contempt for her willful and wanton disregard of the court's order. Furthermore, the court ordered Anna to "return the hard drives; sign the affidavit; provide the Plaintiff's business records; transfer information for the website www.thorvacationclub.com; and provide copies of the family photo books and photos" within seven days from entry of the order. The court held that if Anna failed to comply, she was ordered to appear for a show-cause hearing on

April 21. Finally, the court held that it would determine “fines, Court costs, jail time, and attorney’s fees” on that date if Anna did not comply with the order.

The court held the show-cause hearing on April 21, and Anna appeared pro se. The court acknowledged that Anna had failed to comply with the order of contempt and inquired as to why she failed to do so; Anna stated that she provided all the documents to the attorney who handled her divorce. Regarding the hard drives, Anna explained that they were no longer in her possession because “they got thrown away,” and they “didn’t work.” She also alleged that she did not turn the drives over because she was waiting for a “qualified person” pursuant to the divorce decree, and she just put them inside some old boxes and they got thrown away. When the court pressed Anna on why she threw the hard drives away, she responded, “Because I thought it’s over with the divorce decree signed.”

Additionally, Anna admitted that she never signed the affidavit she was ordered to sign; that she transferred the domain name www.thorvacationclub.com to Larry but that she did not have access to download the website itself; that she did not have in her possession any of Larry’s business records; and that she provided Larry all the family photos she had in her possession. Finally, the circuit court inquired as to whether Anna was going to hire an attorney, to which she replied no and that she could represent herself. The court did not proceed with testimony; rather, it continued the show-cause hearing until May 14 and further advised Anna to hire an attorney because she was potentially facing jail time.

Subsequent to the April 21 hearing, Anna hired an attorney who filed an untimely response to the motion for contempt and a motion to set aside default judgment, motion

for extension of time to file belated response and motion for continuance. Anna's new counsel requested that the court allow a continuance to prepare a defense. Larry objected to the continuance; however, it was granted, and the court rescheduled the hearing for May 28. At the May 28 hearing, the court heard testimony from both parties as well as two witnesses who were called to testify by Larry. At the conclusion of the hearing, the court took the matter under advisement, stating that it wanted to review the statements made by Anna at the April 21 hearing and compare those—particularly with regard to the hard drives—with her testimony at the May 28 hearing prior to issuing a ruling on contempt.

On June 2, the court entered an order finding Anna in contempt for the following: (1) failing to provide for the transfer of thorvacationclub.com; (2) failing to return Larry's business records—located in a suitcase according to testimony—that Anna removed from Larry's place of business; and (3) failing to return the hard drives and information thereon. Consequently, Anna was ordered to pay \$3,000 to Larry within ninety days for her failure to provide for the transfer of the website; sentenced to serve thirty days in the Crawford County Detention Center for failing to return said business records; and sentenced to thirty days in the detention center for failing to return the hard drives and information thereon. The court ordered that the sentences were to run concurrently. In addition, the court held that the sentences would be suspended if Anna turned the hard drives and business records over to Larry's attorney before June 4 at 5:00 p.m. Otherwise, Anna was to begin her sentence on June 4.

Anna filed a motion for reconsideration on June 3, asking the circuit court to reconsider its contempt ruling. Anna noted that she was in the process of providing the business documents in question; therefore, she was not seeking reconsideration on that issue. Further, she asserted that she was made to appear at the hearing “without any notice to her of the allegations of criminal contempt, the possible fines, the possible jail time, and any other punishment that might be meted out against her.” No order was entered on the motion for reconsideration; thus, it is deemed denied. Anna filed a timely notice appealing the contempt order entered on June 2.¹ This appeal followed.

II. *Standard of Review*

“Disobedience of any valid judgment, order, or decree of a court having jurisdiction to enter it may constitute contempt, and punishment for such contempt is an inherent power of the court.” *Balcom v. Crain*, 2016 Ark. App. 313, at 3, 496 S.W.3d 405, 407. Contempt can be either civil or criminal. *Id.* at 3-4, 496 S.W.3d at 407. Criminal contempt imposes an unconditional penalty that is “solely and exclusively punitive in character.” *Id.* at 4, 496 S.W.3d at 407. “A conditional penalty, by contrast, is civil because it is specifically designed to compel the doing of some act.” *Id.* Furthermore, “[b]ecause civil contempt is designed to coerce compliance with the court’s order, the civil contemnor may free himself or herself by

¹Anna also states that she is appealing “the Order of this Court from the Motion for Contempt hearing on April 28, 2021”; however, we note that there was no contempt hearing held on April 28.

complying with the order.” *Id.* To establish civil contempt, there must be willful disobedience of a valid court order. *Id.*

We will not reverse a circuit court’s finding of civil contempt unless that finding is clearly against the preponderance of the evidence. *Omni Holding & Dev. Corp. v. 3D.S.A., Inc.*, 356 Ark. 440, 449, 156 S.W.3d 228, 234 (2004). A finding is clearly against the preponderance of the evidence if, although there is evidence to support it, the reviewing court on the entire evidence is left with a firm conviction that a mistake has been committed. *Wyatt v. Wyatt*, 2018 Ark. App. 149, at 6, 541 S.W.3d 504, 507. Issues of credibility, however, are for the fact-finder. *NAACP v. Bass*, 2017 Ark. App. 166, at 8, 519 S.W.3d 336, 341.

III. *Points on Appeal*

On appeal, Anna argues (1) that the circuit court erred by indefinitely suspending her sentence of contempt and (2) that there was no substantial evidence of contempt. Regarding her second point on appeal, Anna specifically argues that (a) she was entitled to notice of specific accusations and a reasonable time to defend before the court decided the contempt issue, and (b) the divorce decree from which the contempt is alleged was not definite in its terms, clear as to duties, and express in commands.

IV. *Discussion*

A. *Civil Versus Criminal Contempt*

Anna argues that the nature of the order on appeal amounts to criminal contempt; thus, she was entitled to the higher beyond-a-reasonable-doubt standard of proof. Specifically, she alleges that the circuit court’s order demonstrated an intent to punish rather

than coerce her compliance. We disagree. As a preliminary matter, we hold that the circuit court found Anna in civil contempt. The order demonstrates that the circuit court intended to compel compliance with its prior order. A circuit court may use imprisonment as punishment for civil contempt, *see Albarran v. Liberty Healthcare Mgmt.*, 2013 Ark. App. 738, at 7, 431 S.W.3d 310, 314, and the court here did not order immediate incarceration, giving Anna until the close of business on June 4, 2021, to comply with the directives of the court.

B. Suspension of Sentence

Next, the circuit court did not indefinitely suspend Anna's contempt sentence, as she contends on appeal. Rather, the court held that Anna could avoid jail time if she turned the hard drives and business records over to Larry's attorney as required by court orders. Alternatively, the court held that if Anna completed her thirty-day sentence in the detention center, it would deem the hard drives and business records no longer in her possession, and the contempt action would be satisfied. While we acknowledge the case law presented by Anna establishing that a court may not indefinitely suspend execution of a sentence for contempt of court, those cases are not applicable to these facts. The court's order was definite: comply with the orders of the court by June 4 or spend thirty days in jail after which the court would deem the contempt satisfied. The mere fact that the circuit court gave Anna a few days to comply with its order before reporting to the detention center to begin her sentence did not invalidate the order.

C. Evidence of Contempt

Anna further argues that there was no substantial evidence of contempt. Specifically, she contends (1) that she was entitled to notice of the specific accusations and a reasonable time to defend before the court decided the contempt issue and (2) that the divorce decree was not definite in its terms, clear as to duties, and express in its commands. We note, however, that the standard of review for civil contempt is whether the finding of the circuit court is clearly against the preponderance of the evidence, not whether the decision is supported by substantial evidence. See *Holifield v. Mullenax Fin. & Tax Advisory Grp., Inc.*, 2009 Ark. App. 280, 307 S.W.3d 608. Nonetheless, Anna's arguments do not challenge the weight of the evidence presented but rather set forth reasons why the court erred by entering the contempt order.

1. Notice

Here, Anna refers to the allegations in the motion for contempt filed by Larry on December 14, 2020. She asserts that she responded to the motion stating that she was no longer in possession of the hard drives; had already sent the link to the family photos; that no affidavit had been presented to her for signature; and that she was not in possession of any of Larry's business records. While a response to the motion was ultimately filed, Anna's response was considerably untimely as it was filed nearly three months after the circuit court found her in contempt and scheduled the show-cause hearing.

On appeal, Anna argues that the contempt motion was unclear as to what she was alleged to be in contempt of regarding her divorce decree. This argument, however, is not

preserved for our review. Anna did not allege at the April 21 hearing that she was unclear as to how she could comply with the terms of the court's order. Similarly, she did not raise notice issues and lack-of-specific-accusations allegations at the May 28 hearing; therefore, the court did not issue a ruling on those issues. "It is well-established that an appellant has the burden to obtain a ruling on an issue in order to preserve the issue for appeal." *Sloop v. Kiker*, 2016 Ark. App. 125, at 4, 484 S.W.3d 696, 699. This court will not reach an issue in the absence of a ruling, nor will it presume a ruling from the circuit court's silence. *Id.* Therefore, when an order specifies particular grounds for the court's decision, only those grounds are subject to the court's review. Accordingly, this court is precluded from reaching the merits of Anna's lack-of-notice argument and assertions that she lacked knowledge of the specific accusations of contempt.

2. *Divorce decree*

Finally, Anna argues that the divorce decree—from which contempt is alleged—was not definite in its terms, clear as to duties, and express in its commands. This argument, however, is being raised for the first time on appeal. Anna never argued before the circuit court that the terms of the divorce decree were indefinite or that the court was unclear as to what duties it imposed on the parties. On the contrary, Anna signed the divorce decree, thereby agreeing to its terms as written. It is axiomatic that this court will not consider arguments raised for the first time on appeal; therefore, a party is bound by the scope and nature of the arguments made at trial. See *Boellner v. Clinical Study Ctrs., LLC*, 2011 Ark. 83, 378 S.W.3d 745. Accordingly, we are precluded from reaching this issue on appeal.

V. *Conclusion*

For the reasons stated above, we affirm the circuit court's order on appeal.

Affirmed.

ABRAMSON and THYER, JJ., agree.

Lisa-Marie Norris, for appellant.

Wahlmeier Law Firm, P.A., by: *Gentry C. Wahlmeier*, for appellee.