

DISTRICT OF COLUMBIA COURT OF APPEALS

In re Sobin

934 A.2d 372 (D.C. 2007) · Decided October 18, 2007

SUMMARY

The District of Columbia Court of Appeals affirmed a criminal contempt conviction based on violation of a civil protection order prohibiting direct or indirect contact with the defendant’s son. The court held that the evidence was sufficient to establish that the defendant willfully attempted to contact his son through a third party, his son’s attorney.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Chief Judge Washington; Farrell; Schwelb; Washington
JURISDICTION	District of Columbia
DECIDED	October 18, 2007
DISPOSITION	affirmed
PROCEDURAL POSTURE	Dennis P. Sobin appealed his conviction for criminal contempt based on his violation of a civil protection order prohibiting contact with his son.
STANDARD OF REVIEW	Evidentiary sufficiency review is necessarily deferential; findings of a civil protection order violation will not be reversed unless without evidentiary support or plainly wrong. Whether the proven acts constitute criminal contempt is reviewed de novo.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Dennis P. Sobin

TOPICS

- criminal procedure
- domestic violence
- appellate procedure
- standard of review

PRACTICE AREAS

- criminal procedure
- domestic violence
- appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support Sobin's criminal contempt conviction for violating the civil protection order.
2. Whether Sobin's communication with his son's attorney was permissible because it occurred in the context of separate litigation.

HOLDINGS

1. The evidence was sufficient beyond a reasonable doubt to establish that Sobin willfully violated the written civil protection order by attempting to contact his son indirectly through a third party.
2. Contact with the son's attorney was not permissible because the civil protection order was written and expressly prohibited indirect contact through a third party.

KEY QUOTATIONS

“To establish a violation of a CPO, the government must present evidence beyond a reasonable doubt that the defendant engaged in (1) willful disobedience (2) of a protective court order.” (934 A.2d at 374)

“By speaking with Ms. Riedy, a third party, about a matter unrelated to the matter of the lawsuit, appellant violated the CPO.” (934 A.2d at 375)

“As a result, appellant willfully violated the CPO because he was aware of the CPO provision that prevented him from contacting his son through a third party such as his son’s attorney.” (934 A.2d at 375)

FACTUAL BACKGROUND

The Superior Court issued a civil protection order prohibiting Sobin from contacting his son, Darrin Sobin, directly or indirectly through a third party. Although aware of the order, Sobin approached Darrin's attorney after an unrelated lawsuit was dismissed and asked her to tell Darrin about an upcoming press conference and attempted to give her a brochure for delivery to Darrin. The trial court credited the attorney's testimony, found that the communication was unrelated to the litigation, and convicted Sobin of criminal contempt.

PROCEDURAL HISTORY

The District of Columbia Superior Court issued a civil protection order prohibiting Sobin from contacting his son directly or indirectly through a third party. After Sobin asked his son's attorney to relay an invitation and attempted to give her material for his son, the Superior Court found him guilty of criminal contempt. The District of Columbia Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Fields v. United States, 793 A.2d 1260, 1264 (D.C. 2002)
- Ba v. United States, 809 A.2d 1178, 1182 (D.C. 2002)

- Davis v. United States, 834 A.2d 861, 866 (D.C. 2003)
- Jones v. Harkness, 709 A.2d 722, 724 (D.C. 1998)
- Hager v. District of Columbia Department of Consumer & Regulatory Affairs, 475 A.2d 367, 368 (D.C. 1984)
- Smith v. United States, 677 A.2d 1022, 1031-32 (D.C. 1996)

OPINION

WASHINGTON, J.

WASHINGTON, Chief Judge: Dennis P. Sobin (“appellant”), appeals the trial court’s judgment finding him guilty of criminal contempt for violating the terms of a Civil Protection Order (“CPO”) which prohibited any contact with his son, Darrin Sobin.

We affirm. I. This case stems from a long-standing, contentious family situation. For a number of years, appellant sought to re-establish regular contact with his son. For reasons too numerous to recite here, Darrin Sobin did not want any contact with his father. He ultimately sought a CPO from the District of Columbia Superior Court, Domestic Violence Unit.

The parties engaged in two mediation sessions to see if they could reach some agreement regarding a future relationship. Mediation failed, and Darrin Sobin again sought entry of the CPO. On March 9, 2004, the Superior Court granted Darrin Sobin’s request for a CPO against appellant.

The CPO stated in relevant part that appellant: shall not contact [Darrin Sobin] in any manner, including but not limited to: by telephone, in writing, in any manner, either directly or indirectly through a third party. No e-mail, electronic mail, or other communication devices. Appellant was served with a copy of the CPO.

On November 19, 2004, appellant filed a lawsuit¹ against Darrin Sobin regarding an inheritance claim; however, appellant failed to serve the complaint on his son. At a status conference, Marian Riedy represented Darrin Sobin and requested that the court dismiss the case due to appellant’s failure to serve Danin Sobin.

The trial court dismissed the case. As the parties left the courtroom, appellant approached Ms. Riedy and asked for her name and business address. In addition, appellant asked Ms. Riedy to tell Darrin Sobin that he would be giving a press conference the following morning and that he wanted his son to attend. Appellant also attempted to give Ms. Riedy a brochure about an organization he was associated with, asking her to deliver it to his son.

At the same time, appellant said nothing to Ms. Riedy about the case that had just been dismissed, and Ms. Riedy had not represented Darrin Sobin at all in the CPO proceeding. On November 21, 2004, appellant sent a follow-up e-mail to Ms. Riedy discussing their encounter and the press

conference. Appellant testified that he was aware of the CPO when he communicated with Ms. Riedy and he acknowledged that he encountered Ms. Riedy after the court hearing.

Appellant *374 had no other contact "with his son or any other individual mentioned in the CPO. The trial court found appellant guilty of criminal contempt because he knowingly and voluntarily asked Darrin Sobin's counsel, Ms. Riedy, to contact his son for him in violation of the CPO. II. Appellant asserts that the evidence was insufficient to support his conviction of criminal contempt.

We disagree. This court's standard of review when assessing evidentiary sufficiency is "necessarily deferential," *Fields v. United States*, 793 A.2d 1260, 1264 (D.C.2002), and this court "may not reverse the trial court's findings of a CPO violation unless they are without evidentiary support or plainly wrong." *Ba v. United States*, 809 A.2d 1178, 1182 (D.C.2002) (internal quotation marks and other citation omitted).

We "view the evidence in the light most favorable to sustaining the judgment." *Davis v. United States*, 834 A.2d 861, 866 (D.C.2003). However, "[w]hether the acts in which the defendant was found to have engaged constitute criminal contempt... is a question of law, and we review the trial court's resolution of that question de novo." *Fields*, supra, 793 A.2d at 1264.

D.C.Code § 16-1005® (2001) provides that a "[violation of any temporary or final [civil protection] order issued under this subchapter... shall be punishable as contempt." To establish a violation of a CPO, the government must present evidence beyond a reasonable doubt that the defendant engaged in (1) willful disobedience (2) of a protective court order. *Davis*, supra, 834 A.2d at 866. "The offense requires both a contemptuous act and a wrongful state of mind." *Id.* Willful, however, "means, no more than that the person charged with the duty knows what he is doing." *Jones v. Harkness*, 709 A.2d 722, 724 (D.C.1998) (citing *Hager v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 475 A.2d 367, 368 (D.C.1984)) (internal quotation and citation omitted).

Applying the foregoing standards to the evidence in this case, we conclude that there was sufficient evidence to support the trial court's finding beyond a reasonable doubt that appellant violated the CPO. The CPO stated that appellant could not initiate contact with Darrin So-bin through a third party. Appellant acknowledged that he was aware of the CPO when he spoke with Ms. Riedy and he had also received a copy of the CPO in court.

Thus, appellant was on notice that he could not attempt to contact his son directly or indirectly through a third party. See *Smith v. United States*, 677 A.2d 1022, 1031-32 (D.C.1996). The trial court found that appellant did not discuss the just dismissed litigation with Darrin Sobin's attorney, Ms. Riedy.

The court credited Ms. Riedy's testimony regarding what appellant said to her, finding her to be "very credible." In contrast, the court did not credit appellant's testimony.² The court found that

there had been no discussion of settlement, of how appellant could serve his son, about the appellant's mother's estate, or any other matters related to the litigation.

The court concluded that appellant's comments inviting his son to a press conference "had nothing to do with anything other than his *375 desire to circumvent this court's order... by having contact with a third party." Given the record, we cannot disagree with the trial court's findings. See *Ba*, supra, 809 A.2d at 1182. By speaking with Ms. Riedy, a third party, about a matter unrelated to the matter of the lawsuit, appellant violated the CPO.³ Appellant contends that his discussion as a pro se litigant with his son's attorney was a permissible contact.

Appellant's reliance on *Smith*, supra, 677 A.2d at 1082, in support of this contention, however, is misplaced. In *Smith*, this court held that a verbal order to stay away from third parties was neither sufficiently clear nor specific enough to serve as a guide for appellant's conduct. *Id.* at 1031.

We agreed with appellant that "any order to stay away from third parties had to be in writing." *Id.* As a result, we concluded that appellant could not reasonably infer from a general oral instruction that she could not have contact with appellee's attorney.⁴ *Id.* *Smith* is readily distinguishable because in this case the CPO was in writing and stated that appellant could not contact his son either directly or indirectly through a third party.

Moreover, Ms. Riedy had not been counsel for Darrin Sobin in the CPO proceedings; her representation of him began months later as his counsel in the inheritance litigation. Thus, unlike in *Smith*, the special "context of domestic stay away orders" and the recognized role "of third parties[, particularly attorneys,] in facilitating communication between the principals" during such disputes, *id.* at 1031-32 n. 6, gave appellant no reason to think he could properly contact his son through her, contrary to the ban against direct or indirect contact.

As a result, appellant willfully violated the CPO because he was aware of the CPO provision that prevented him from contacting his son through a third party such as his son's attorney. See *Jones*, supra, 709 A.2d at 724 ("[W]illful means no more than that the person charged with the duty knows what he is doing. It does not mean that, in addition, he must suppose that he is breaking the law.") (internal quotation and citation omitted).

Accordingly, for the foregoing reasons, the appellant's criminal contempt conviction is Affirmed.. Previously, in January 2004, appellant had filed a lawsuit against Darrin Sobin concerning an inheritance claim. The Superior Court dismissed the claim for failure to serve the complaint.. Appellant's credibility was further undermined by the consistent testimony of both his son, Darrin Sobin, and a licensed therapist, that during mediation sessions between appellant and his son, the issue of inheritance never came up.

Appellant, however, stated that it had.. By contrast, had appellant attempted to communicate with his son, through Ms. Riedy, about the pending lawsuit, we would likely have been unable to find a

clear violation of the CPO. Nonetheless, under these circumstances where the contact was unrelated to the present litigation, appellant's conviction must be sustained..

The trial judge's instruction stated in part: “[ylou’re to have no contact whatsoever verbal, by letter or directing others to provide contact.” Smith, *supra*, 677 A.2d at 1031.