

[Cite as *State v. Dorman*, 2015-Ohio-3057.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MIAMI COUNTY**

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2014-CA-32
	:	
v.	:	T.C. NO. 21440052
	:	
LORI DORMAN	:	(Juvenile appeal from Miami County
	:	Probate/Juvenile Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 31st day of July, 2015.

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DONOVAN, J.

{¶ 1} This matter is before the Court on the Notice of Appeal of Lori Dorman, filed November 4, 2014. Dorman appeals from the October 9, 2014 Judgment Entry of the Miami County Court of Common Pleas, Juvenile Division, finding Dorman in contempt of court and sentencing her to ten days in the Miami County Jail, suspended, “upon the condition that she comply with all future court orders.” The contempt finding arose from

Dorman's failure to complete a court-ordered psychological evaluation scheduled for June 20, 2014. The date of the court order is April 22, 2014.

{¶ 2} On July 23, 2014, the court advised Dorman of the charge against her, namely a violation of R.C. 2705.02, which governs acts in contempt of court, and Dorman pled not guilty. At the October 3, 2014, hearing on the charge, counsel for Dorman advised the court as follows: "Your Honor, we'll stipulate that yes, Ms. Dorman was court ordered to attend the psychological and that, yes, she missed the psychological as scheduled on June 20th of 2014."

{¶ 3} Also at the hearing, Elizabeth Yingst, a probation officer with Miami County Juvenile Court, testified that Dorman's son was placed on probation in April, 2014. Yingst testified that Dorman missed appointments in the past, namely "there was a failure to follow through in February with a drug program and there has been a court order that's been placed for parenting classes in August of 2013, which * * * she was court ordered to attend the next group which would've been October; she didn't complete that parenting group until April of 2014." Yingst stated that she set up the psychological evaluation with Dr. Liptak after ascertaining Dorman's availability. She stated that she heard from Dorman twice after the missed appointment. According to Yingst, the "first time [Dorman] called and stated that she had missed the appointment and that she had put it on her monthly calendar but not her weekly calendar * * * and that she missed it." Yingst described Dorman's attitude in that call as "[v]ery nonchalant." After Dorman received the contempt charge, Yingst testified that she received another call from her and that "she seemed upset on the phone. * * * she stated that she had a lot going on, * * * and gave other excuses for missing the appointment."

{¶ 4} Yingst stated that the psychological evaluations are difficult to schedule and that she was unable to re-schedule the appointment for several weeks, until August 8, 2014. Yingst stated that after an evaluation is completed, it “takes about a month to even get the reports back; a month or so.” She stated that it was difficult to schedule the first evaluation because Dorman “reported that she has a lot of * * * baseball with her other children and her own medical appointments * * *.” According to Yingst, “the first time in scheduling she only gave me a few dates * * * and I was at her house when we were discussing this and * * * I told her that, well this is a doctor who also has a busy schedule, you’ve gotta give me more * * * dates and times * * *.” Yingst stated that Dorman then “gave me like a handful” of dates when she was available.

{¶ 5} Dorman testified that in early May, 2014, she attempted to schedule her own psychological evaluation without success. She stated that she called the doctor’s office twice and left messages, and that she also sent two emails without response. Dorman stated that she advised Yingst that she was available on Fridays from 1:00 to 3:00. In the week leading up to her initial Friday appointment, Dorman stated that there was an electrical storm on Wednesday night while she visited her son at a treatment facility, and that “half my house did not have electric, so * * * I just went and got some extension cords and it was just a hassle but the next day I couldn’t take care of it because” her son “had appointments for his counseling and his psychiatry appointment.” She stated that Thursday night she checked her schedule as she always does and determined that she had nothing scheduled for Friday. Dorman stated that on the day of the appointment, she talked to “AT&T for about two hours” about cell phone service, and that she also spoke to her mother on the phone from “about 1:00 to 3:00” in the afternoon.

{¶ 6} Dorman stated on the following Sunday night she realized she had missed the appointment. She stated that she was “upset,” and that she called Yingst Monday morning at 7:00 but “the court’s weren’t open,” and then at 8:04 to apologize. Dorman stated that she went to Dr. Liptak’s office on Tuesday and “talked to their secretary and said I need to schedule this appointment as soon as possible, I accidentally missed it, I’m really sorry, she said, ‘Well, since you missed it, I don’t know that the doctor will see you again.’ And, I said but it’s court ordered and I have to see your doctor. I said, ‘Can you talk to him and just tell him I . . . it was an accident?’”

{¶ 7} Dorman stated that she was not happy about being ordered to complete the psychological evaluation, and when asked why not, she responded as follows:

Because I’ve jumped through hoops; feeling like trying to get [Dorman’s son] the help, it seems like I had to prove to the teachers that he needed help, then prove to the principal, then prove to the police, then to the courts, then prove to the . . . to Children’s Services that I’m okay, then prove to, um, the counseling now and I’m just . . . I just wanna know when it’s going to stop being my blame, so yes, I was upset. * * * I do have depression anxiety; I was worried that they were gonna say well she has depression/anxiety, she has to go to counseling now and I am being treated for that. * * * I was eager to get it over with so that * * * I could prove that I wasn’t crazy because I don’t feel I am and he didn’t either.

Dorman denied that her displeasure with the court order caused her to disregard the appointment.

{¶ 8} The following exchange occurred on cross-examination:

PAUL WATKINS: And if you were so eager to show up and have such a good memory, why didn't you remember this appointment?

LORI DORMAN: I have appointments every single day almost and I . . . you can see my calendar and I . . . I can't remember every appointment, a four o'clock appointment, a five o'clock appointment, your kids have baseball games, you have to go to visitation for [Dorman's son], there are a million . . . sometimes it's ten appointments . . . I mean, seriously, sometimes it's . . .

PAUL WATKINS: No, I understand . . .

LORI DORMAN: . . . I have ten things in a day; I have four children, I'm a single mother.

* * *

LORI DORMAN: . . . it was . . . it was just . . . I looked on the calendar with my phone because my electric was out, I just missed it. I knew it was on a Friday, but I didn't know which date during the Friday. . .

* * *

LORI DORMAN: . . . and I just missed it, it was a . . . purely an accident.

* * *

LORI DORMAN: That's why I'm fighting this.

{¶ 9} Francine Lowe, Dorman's mother, testified that she spoke to Dorman on the phone on the day of the appointment and that Dorman "was in a good mood" because she believed she had a day free of appointments.

{¶ 10} The court's Judgment Entry provides as follows:

* * *

The parties stipulated that defendant missed her psychological evaluation appointment scheduled for June 20, 2014, as ordered by the court.

State presented evidence of previous missed appointments for other court-ordered services.

Defendant acknowledged that she did not initially want the psychological evaluation but that she eventually understood it would help with the long-term goals of her and her son. While she wrote the date on her calendar, because of various excuses and her busy schedule, she missed the appointment saying that she made a mistake. She testified that [she] contacted the court by the next work day to advise probation of the failure and the appointment was re-scheduled.

All parties acknowledge the difficulty of obtaining and scheduling the appointment with Dr. Liptak.

* * *

It is clear that defendant did not comply with the order to appear; she says she forgot. In the case of Home Savings and Loan Co. of Youngstown v. Eichenberger, [10th Dist. Franklin No. 12AP-1], 2012-Ohio-5662,¹ the court held that a "memory lapse (of a forgotten and

¹ In *Eichenberger*, Appellant was sanctioned pursuant to local rule for failing to attend a final pretrial conference, and the Tenth District found no abuse of discretion in the trial court's determination that "memory lapse was not a reasonable excuse for his absence."

missed court conference) was not a reasonable excuse for” an absence.

Defendant is found in contempt. She is sentenced to ten days in the Miami County [J]ail which sentence is suspended upon the condition that she comply with all future court orders.

{¶ 11} Dorman asserts one assignment of error herein as follows:

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FINDING DEFENDANT-APPELLANT IN CONTEMPT.

{¶ 12} Dorman asserts as follows:

* * *

In Home Savings and Loan Co. of Youngstown, the Court noted that local rule 39.05(D) for Franklin County Court of Common Pleas, General Division, provides that a trial judge can impose sanctions for failure to comply with local rules and or case scheduling without reasonable excuse or legal justification. In said case, a party to a civil case was found in contempt² for failing to attend a pretrial conference as he was out of town and first claimed to not have gotten notice of the pretrial, and then claimed to have forgotten. *Id.*

The trial court in the instant case abused its discretion in making its finding of contempt. For the finding of contempt to have been proper, the court must have found that Ms. Dorman deliberately and intentionally engaged in the contemptuous conduct. The Supreme Court of Ohio has

Id., ¶ 32.

² There was no finding of contempt in *Eichenberger*.

spoken on this issue stating that “in cases of criminal, indirect contempt, it must be shown that the alleged contemnor intended to defy the court.” [Midland Steel Products Co. v. U.A.W. Local 486, 61 Ohio St.3d 121, 127, 573 N.E.2d 98 (1991)]. In Whitman v. Whitman-Norton, [3rd Dist. Hancock No. 5-2000-10, 2000 WL 1785021 (Nov. 20, 2000)], the Court of Appeals upheld a finding of contempt based on this argument, stating that the record in said case was replete with evidence with which the trial court could properly infer that the appellant intentionally defied the court’s orders. *Id.*

In the instant case, the record does not establish Ms. Dorman intentionally defied the court’s order. In fact, to the contrary, the trial court noted in its entry that Ms. Dorman acknowledged she did not initially want the psychological evaluation, but understood it would help with her long term goals with her and her son. Ms. Dorman’s history shows that she was in fact extremely cooperative with the terms and orders put upon her for her son’s issues and requirements. * * *

{¶ 13} The State responds as follows:

The Court heard testimony that this was not the first Court set appointment missed by Appellant and that she had a history of missed appointment[s] involving the probation department. * * * Probation Officer Yingst testified to the nonchalant demeanor of Appellant when she called Officer Yingst to report that she missed the appointment. * * * Further, Appellant admitted that she was worried that the doctor might order counseling. * * * The record is sufficient to show that the Appellant was in

contempt of court. Therefore, the decision of the trial court was not an abuse of discretion.

{¶ 14} As this Court has previously noted: “Common pleas courts have ‘both inherent and statutory power to punish contempts.’ *Burt v. Dodge*, 65 Ohio St.3d 34, 35, 599 N.E.2d 693 (1992), * * *.” *Preston v. Shutway*, 2013-Ohio-185, 986 N.E.2d 584, ¶ 29 (2d Dist.). R.C. 2705.02 provides: “A person guilty of any of the following acts may be punished as for a contempt: (A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or officer.”

{¶ 15} “We review a trial court's contempt ruling for an abuse of discretion. *State v. Brandon*, 2d Dist. Greene No. 06 CA 137, 2008-Ohio-403, ¶ 6.” *Preston, id.* As this Court has noted:

“Abuse of discretion” has been defined as an attitude that is unreasonable, arbitrary, or unconscionable. *Huffman v. Hair Surgeons, Inc.*, 19 Ohio St.3d 83, 482 N.E.2d 1248 (1985). A decision is unreasonable if there is no sound reasoning process that would support that decision. *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 553 N.E.2d 597 (1990). *Feldmiller v. Feldmiller*, 2d Dist. Montgomery No. 24989, 2012–Ohio–4621, ¶ 7.

Johnson v. Ulmer, 2d Dist. Greene No. 2013 CA 9, 2013-Ohio-4240, ¶ 21.

{¶ 16} As this Court further noted in *Preston*:

“Contempt falls within two general categories—civil and criminal—based on the character and purpose of the sanction.” *State v. Dean*, 2d Dist. Clark Nos. 2006 CA 61, 2006 CA 63, 2007-Ohio-1031, ¶ 15.

“Sanctions for criminal contempt are punitive in nature and unconditional.” *State v. Montgomery*, Montgomery App. No. 20036, 2004-Ohio-1699, at ¶ 18. They are intended to punish the offender for past disobedience of a court order or other contemptuous conduct and to vindicate the authority of the court. *Id.* “Civil contempt sanctions, on the other hand, are remedial and are intended to coerce the contemnor into complying with the court's order.” *Id.* The punishment for civil contempt is conditional, and the contemnor has an opportunity to purge himself of the contempt and avoid the punishment by complying with the court's order. *Id. Dean* at ¶ 15.

Contempt is also classified as being either direct or indirect, and the distinction lies in where the conduct occurs. Direct contempt involves “misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice.” R.C. 2705.01. “Direct contempt usually involves some misbehavior which takes place in the actual courtroom.” *In re Purola*, 73 Ohio App.3d 306, 310, 596 N.E.2d 1140 (3d Dist.1991). In contrast, indirect contempt involves actions that occur outside the presence of the court, but demonstrate a lack of respect for the court or its lawful orders. *Brandon* at ¶ 7; see R.C. 2705.02.

Preston v. Shutway, 2013-Ohio-185, 986 N.E.2d 584, ¶ 30-31 (2d Dist.).

{¶ 17} “A prima facie case of civil contempt is made when the moving party proves both the existence of a court order and the nonmoving party’s noncompliance with the terms of the order. * * *.” *Jenkins v. Jenkins*, 2d Dist. Clark No. 2011 CA 86,

2012-Ohio-4182, ¶ 12. “Clear and convincing evidence is the standard of proof in civil contempt proceedings. * * *.” *Id.* Significantly, “[c]ivil contempt can be found even when the offending party claims his actions were unintentional. * * *.” *Juhas v. Juhas*, 2d Dist. Montgomery No. 26186, 2014-Ohio-5364, ¶ 11.

{¶ 18} Counsel for Dorman stipulated to the existence of the court order and Dorman’s failure to comply with it. Dorman’s conduct in failing to comply occurred outside the presence of the court, and it is clear that the primary purpose of Dorman’s sentence was to provide incentive for ongoing compliance with court orders, given the delay caused by her failure to complete the psychological evaluation, and her failure to comply with previous orders. In other words, although the court did not so specify, we conclude that the court found Dorman guilty of indirect civil contempt. Contrary to Dorman’s assertions, civil contempt can be found when, as here, the contemnor claims that her conduct is unintentional. We note that in *Whitman*, unlike the matter herein, the Appellant was found in contempt and sentenced to 90 days in jail for denying Appellee visitation with the parties’ child, and the Third District determined as follows: “A review of the record herein reveals that the purpose of the contempt sanction was to punish Appellant for her noncompliance with the visitation and companionship schedule agreed to by the parties. Additionally, the contempt sanction was punishment for Appellant’s prior contemptuous conduct. Therefore, the contempt sanction was criminal in nature.” *Id.*, *3.

{¶ 19} For the foregoing reasons, an abuse of discretion is not demonstrated. Dorman’s assigned error is overruled, and the judgment of the trial court is affirmed.

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HALL, J. and WELBAUM, J., concur.

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