COURT OF APPEALS OF THE SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

SMSC RESERVATION **STATE OF MINNESOTA**

James Van Nguyen,

Appellant,

vs. File No. Ct. App. 046-19

Amanda Gustafson,

Appellee.

OPINION AND ORDER

PER CURIAM

This matter was commenced on July 20, 2017, when the Appellee petitioned for dissolution of the parties' marriage and for determination of custody of the parties' minor child. The parties ultimately were divorced by order of the Trial Court on May 3, 2019, and as we noted in our opinion in *James Van Nguyen v. Amanda Gustafson*, File No. Ct. App. 045-19 (August 10, 2020), most of the history of the litigation between the parties, before the Shakopee Mdewakanton Sioux Courts and in other jurisdictions, was detailed in our opinion in *James Van Nguyen v. Amanda Gustafson*, File No. Ct. App. 045-19 (Jan. 21, 2020).

The particular proceedings that are pertinent to this appeal began after the filing of the Trial Court's divorce decree when the Appellee filed a motion for sanctions and a change of custody. In response to that motion, the Trial Court conducted three days of evidentiary hearings. The third of those hearings took place on November 26, 2019, and seventeen days after that hearing the Appellant sent the following email to the Clerk of Court:

From: James Nguyen [mailto:jamesisgolden@gmail.com]
Sent: Friday, December 13, 219 1019 a.m.
To Lynn McDonald; Jonathan D. Miller
Subject: Re: Rule 34

Lynn,

I'm hoping we can move forward here with a better understanding of one another. On the last day of trial we recently had in court file 867-17 you made me feel very uncomfortable. When Ms. Gustafson was on the stand and Mr. Miller was playing the video where I was being assaulted by strangulation and with a weapon, you kept staring at me with a creepy smile. My attorney noticed this as well. I found this to be profoundly inappropriate, unprofessional, and outside your official duties of a court clerk. Perhaps you are attracted to me and somehow a video of me being beaten created some sick pleasure in you which is interesting as I'm guessing you're in your 70s. This would make you as old as my mother and I am just going to have to stop the buck right here and let you know I am in no way attracted to you and please don't be sad or mad that you and I will never be anything more than pals at best. Please know whether your behavior was in an effort to be a sexual advance or simply that of a bully, both circumstances are upsetting, disgusting and repulsive and I hope you can exercise better judgement in the future. I ask that you please keep your behavior professional in nature. That being said, can you explain to me why Rule 34 states a filing fee of $100 but you want me to pay $200? You made your position clear that you won't advise me as the court clerk if a form is approved by the tribal court or not and that I must pay @200 contrary to the Rules of Civil Procedure. I will pay the $200 and I will address the matter with the judge.

In response to that e-mail, on December 18, 2019, the Trial Court issued a summons for a show cause hearing, to take place on December 23, 2019, to determine if Appellant should be held in contempt of court. Appellant and his counsel filed affidavits on December 20, 2019, describing scheduling conflicts that would prevent their presence on December 23rd. The Trial Court nonetheless held a hearing on December 23rd, at which Ms. Gustafson and her attorney were present and Appellant and his attorney were not. On December 30, 2019, the Trial Court issued the following order, holding Appellant in contempt:

1. The Court finds the Respondent in Contempt of Court for his communication to the Clerk of Court on December 13, 2019.

2. The Respondent is prohibited from sending or engaging in any communication to the Court or to any court personnel regarding the same or similar matters addressed in his December 13, 2019, email to the Clerk of Court other than through the proper process and procedures of this Court and then only in a manner that is lawful and respectful of both the [sic] judicial process and judicial officials.

3. The Respondent shall submit a letter of apology delivered to the Clerk of Court no later than the close of business on January 2, 2020.

4. The Respondent is fined in the amount of $500.00 to be paid to the court within 30 days of the date of this order.

In issuing its order, the Trial Court concluded that it had the inherent power to require the respect and decorum that is necessary to the orderly and expeditious disposition of cases and proceedings, and it concluded that the Appellant's email was not a good faith effort to resolve a complaint about a court employee, but instead was designed to humiliate and harass a court official, personally and professionally. With respect to the timing of its hearing, the Trial Court stated it was acting to protect the integrity of the judicial process and judicial personnel from unfounded and unwarranted allegations and to deter further actions that disrespect the Court.

In this appeal, Appellant contends: (i) that Chapter IV, Section 4(m) of the Domestic Relations Code of the Shakopee Mdewakanton Sioux Community, which the Trial Court cited in its December 18, 2019 Contempt of Court Summons, relates to a party's actions that disregard "lawful orders", and that his actions violated no order; (ii) that his actions did not threaten the Trial Court's "immediate ability to conduct its proceedings" and therefore, there was no justification for the compressed timeframe established by the Trial Court's Contempt of Court Summons; (iii) that, given the fact that his actions did not take place in open court, the Trial Court did not afford him appropriate procedural safeguards by way of an opportunity to call witnesses and present evidence in his defense; (iv) that the Trial Court improperly invoked its inherent authority to impose contempt of court sanctions, because the Appellant's conduct did not take place "within a court proceeding"; (v) that the Trial Court did not find that the Appellant's action defamed the Court or its personnel because there was no evidence that he had "published" a statement that was false and that had damaged the Court's reputation, and (vi) that the $500.00 penalty imposed by the Trial Court was a criminal penalty, because the Appellant had not opportunity to purge himself of it. We address these contentions seriatim.

1. The Court's Inherent Authority. Although Chapter IV, Section 4(m) of the Domestic Relations Code of the Shakopee Mdewakanton Sioux Community was cited by the Trial Court in its Contempt of Court Summons as a potential source of authority for a contempt order, it is not the only source the Community's judiciary has to ensure that its processes and its personnel are

protected. The Trial Court correctly noted, in its Summons and in its December 30, 2019 Order, that inherent authority exists, beyond the terms of the Community's ordinances, for such protection, and it was that authority which the Trial Court ultimately invoked. Given the nature of the Appellant's actions, and his failure to deny them or to ameliorate them in any way, the exercise of that authority was entirely appropriate.

2. The Direct and Immediate Threat to the Court's Processes. The Appellant's actions – which, again, he does not deny – could very properly be regarded as a direct and immediate threat to the Court and to its personnel. The fact that the Appellant's message was delivered to the Court's offices digitally rather than during an in-court proceeding is immaterial to its potential effect. As the United States District Court for the Western District of Virginia noted, in *United States v. Henry*, 2008 WL 2625359 (W.D. Va. 2008), where an e-mail was sent by a litigant to the Court's law clerk and was held to be an appropriate ground for a contempt proceeding:

> While the invective in the email is not directed at the court, it was communicated directly to the court's law clerk. Plainly, such statements would be contemptuous if uttered in open court. The court sees no difference in making such statements in an email sent to the court's law clerk as they are plainly disrespectful and constitute an insult to the dignity of the court and an affront to our system of justice.

Here, in its December 30, 2019 Order, the Trial Court reached a similar conclusion –

> Here the Court finds the Respondent's communication to be backhanded allegations and improper personal attacks on a court official in this proceeding. Further, [Appellant's] communication was nothing more than a thinly veiled effort to vent his anger, to disparage this Court, and to harass and humiliate the Clerk both as an official of this Court and personally. It was not an effort to lodge a good-faith complaint in the appropriate manner about any particular way in which this case has been handled or about the conduct of a judicial official. This Court is the proper forum for raising, through a motion or other filing, any complaint or allegation about how this matter is proceeding or about the conduct of a judicial official in this courtroom. The Court will not countenance self-help efforts, especially those involving rude and disrespectful comments directed toward court officials personally.

We agree. The Appellant's direct communication to the Court's clerk was an affront to the Court and its processes, to which prompt and decisive response was appropriate.

3. The Timing of the Trial Court's Actions. We also conclude that the timing of the Trial Court's response was appropriate. The Appellant was given notice, a show cause order, and a chance to respond to the contempt charges. He was represented by counsel. In the materials Appellant and his counsel filed on December 20th, describing scheduling conflicts, no request was made for the Trial Court to permit participation by telephone conference. Had he chosen to participate on December 23rd, the Appellant could have sought to persuade the Trial Court that sanctions were not warranted, and/or that his behavior would not be repeated, and/or that he recognized the inappropriateness of what he had done, thus potentially purging his contempt. Under these circumstances, the requirements that attend the imposition of a civil contempt order – simple notice and an opportunity to be heard – were met. *Hicks v. Feiock,* 485 U.S. 624 (1988).

4. Inherent Authority for Actions Outside of Court Proceedings. As we note above, the fact that the Appellant was not present in a courtroom when he did what he did and said what he said on December 13, 2019 is immaterial to the damage that his actions could work if they were left unaddressed. Therefore, that fact also is immaterial to the ability of the Trial Court to address them. The judiciary of the Shakopee Mdewakanton Sioux Community has a profound obligation to protect its personnel from harassment, and to ensure that court processes – administrative and judicial – are respected. Therefore, again, what the Trial Court did in response to the Appellant's actions was appropriate.

5. Immateriality of the Definition of Defamation. Simply put, there is no legal basis for the Appellant's contention that the Trial Court was obliged to find that his actions would support a civil judgment of defamation – that he had "published a statement of fact" concerning the Court which "damaged [its] reputation and lowered its estimation in the community" – as a precondition to the Trial Court's finding him in contempt of court. In considering the Appellant's e-mail to the clerk, the Trial Court said –

> Here the Court finds Respondent's communication to be back-handed allegations and improper personal attacks on a court official in this proceeding. Further, the Respondent's communication was nothing more than a thinly veiled effort to vent his anger, to disparage this Court, and to harass and humiliate the Clerk both as an official of this Court and personally.

These findings certainly are sufficient to support an exercise of the Trial Court's inherent authority to protect its personnel and its processes by contempt of court proceedings.

6. Nature of the Penalty Imposed. The Trial Court did not specify, in its Contempt of Court Summons or in its December 30, 2019 Order, whether its proceedings were in the nature of civil contempt or criminal contempt, but in its December 30 Order the Trial Court explicitly said –

> Had they appeared and participated in the Show Cause hearing Respondent and his counsel would have had the opportunity to rebut information calling into question the veracity of their allegations.
>
> . . .
>
> The Respondent and his counsel chose their course of action regarding a possible contempt finding. They disregarded a lawful order of this Court at their own peril. No one other than the Respondent himself is responsible for why the hearing was necessary.

(Emphasis added.)

From this we conclude that the Trial Court's proceedings were civil. The Appellant had the opportunity to purge himself of contempt, and to thus avoid the penalty. So, given the Appellant's failure to purge, or even attempt to purge, the offensive conduct, we conclude that imposing the $500.00 penalty was, and continues to be, appropriate.

For the foregoing reasons, the appeal is dismissed and the Trial Court's decision is affirmed.

Dated: September 1, 2020

Chief Judge John E. Jacobson

Judge Terry Mason Moore

Judge Jill E. Tompkins