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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0430**

In re the Marriage of:
Andrew Jay Redleaf, petitioner and judgment debtor,
Appellant,

vs.

Elizabeth Grace Redleaf, judgment debtor,
Respondent.

**Filed October 22, 2012
Reversed and vacated
Hooten, Judge**

Hennepin County District Court
File No. 27-FA-07-3480

Alan C. Eidsness, Stuart T. Williams, Henson & Efron, P.A., Minneapolis, Minnesota
(for appellant)

Mark J. Briol, Morgan R. Smock, Briol & Associates, PLLC, Minneapolis, Minnesota;
and

Nancy Zalusky Berg, Allison Maxim, Walling, Berg & Debele, P.A., Minneapolis,
Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Hooten, Judge; and
Toussaint, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant challenges the district court's order holding him in contempt for failing to comply with a discovery order, claiming that the district court lacked subject matter jurisdiction and failed to afford him required criminal protections. Respondent agrees that the district court's contempt order improperly held appellant in constructive criminal contempt and must therefore be reversed and vacated. Respondent requests the matter be remanded to permit the district court to fashion a conditional contempt order based upon a likelihood that she will have to obtain future judgments against appellant. Because respondent has conceded that she is no longer seeking discovery from appellant and the district court has already denied respondent's request for a conditional contempt order, we reverse and vacate the district court's order of contempt against appellant and deny respondent's request for a remand to the district court.

FACTS

Appellant Andrew Jay Redleaf and respondent Elizabeth Grace Redleaf were married in April 1984 and were divorced in February 2008 after entering into a marital termination agreement (MTA) setting forth the terms of a property settlement. The underlying facts pertaining to the dissolution are set forth in prior decisions of this court. At the time of their dissolution, appellant was chief executive officer and owner of Whitebox Advisors, LLC (Whitebox). The MTA provided that "respondent would waive her interest in the businesses in exchange for \$140,750,000 in cash payments." *Redleaf v. Redleaf*, 807 N.W.2d 731, 732 (Minn. App. 2011). Respondent was to receive two lump-

sum payments totaling \$20,750,000 on or before February 15, 2008, and one lump-sum payment of \$30,000,000 on March 15, 2013, with the remainder being paid in “monthly installments of \$1,500,000 over a five-year period beginning on March 15, 2008.” *Id.* Appellant personally guaranteed the property settlement. *Id.*

After paying respondent monthly installments from March 15, 2008 to January 2009, appellant moved to reopen the judgment because of a change in his financial circumstances. *Id.* We affirmed the district court’s decision to deny appellant’s motion to reopen the dissolution judgment because appellant failed to show that prospective application of the MTA was inequitable. *See Redleaf v. Redleaf*, Nos. A09-1805, A09-2360, A10-10, 2010 WL 3543458 (Minn. App. Sept. 14, 2010).

Thereafter, appellant missed additional monthly payments. *Redleaf*, 807 N.W.2d at 732. On October 4, 2010, judgment was entered against appellant in the amount of \$4,500,000 with the statutory interest rate of ten percent. *Id.* at 732–33. Respondent obtained additional judgments totaling \$4,500,000 for October through December 2010, \$3,000,000 for January and February 2011, and \$1,500,000 for March 2011, all with the statutory post-judgment interest rate of ten percent. *Id.* at 733. As of August 25, 2011, judgments against appellant had been entered in favor of respondent in the principal amount of \$8,985,429.87, with interest due on the judgments totaling \$160,442.99.

On March 21, 2011, respondent served appellant with requests for documents and interrogatories in aid of execution pursuant to Minn. R. Civ. P. 69. Appellant failed to fully respond to these requests and respondent filed a motion to compel discovery.

On August 3, 2011, the district court signed an order compelling appellant to comply with discovery by August 26, 2011, finding that respondent's discovery requests sought information relevant to the enforcement of the judgments against appellant, as well as other related issues such as whether appellant had attempted to hide or dissipate money by transferring it to third persons or used his business entities as an alter ego. The district court also noted that the requests were relevant to determine whether appellant's financial disclosures violated Minn. Stat. § 550.011.¹ However, on August 26, 2011, the parties filed a stipulation and order representing that:

Respondent received a check from [appellant] in the amount of \$9,145,872.86 which the parties agree shall satisfy in full the remaining amounts owed, including accrued interest thereon through August 25, 2011, on the judgments entered on August 3, 2009, June 21, 2010, July 27, 2011 (all three), and also shall satisfy the \$1,500,000.00 payment which [appellant] was obligated to make to [r]espondent on August 5, 2011, which he has not yet made, plus accrued interest thereon through August 25, 2011.

Respondent filed a satisfaction of judgment for each of these judgments in compliance with this agreement, but did not request immediate enforcement of the discovery order.

¹ “[I]f a judgment has been docketed in district court for at least 30 days, and the judgment is not satisfied, the judgment creditor’s attorney . . . may or the district court . . . shall, upon request of the judgment creditor, order the judgment debtor to mail . . . to the judgment creditor information as to the nature, amount, identity, and locations of all the debtor’s assets, liabilities, and personal earnings.” Minn. Stat. § 550.011 (2010). Failure to comply “may result in a citation for civil contempt of court.” *Id.* Respondent argues that the stipulation would not have had any effect upon the mootness of the discovery order as it relates to the allegation that appellant failed to identify assets in financial disclosures under section 550.011. Even if this were correct, there has been no appropriate proceeding to hold appellant in civil contempt with regard to this issue in district court. Respondent also does not argue that this issue would be addressed in any manner on remand.

Thereafter, on November 8, 2011, after obtaining attorney fees as sanctions pursuant to Minn. R. Civ. P. 37.01(d), respondent filed a motion for additional sanctions pursuant to Minn. R. Civ. P. 37.02 due to appellant's noncompliance with the discovery order. Respondent requested an

order, as a sanction under Rule 37.02, that if [appellant] reverts to his old ways while still in noncompliance with the discovery order, he will then pay a daily fine to the Court of \$10,000 until he complies with the discovery order, and will face a civil contempt proceeding if such fines do not prove sufficient to induce his compliance.

In response, appellant filed a motion for a declaration that his satisfaction of the outstanding judgments rendered the discovery order unenforceable. He argued that the district court lacked jurisdiction and authority to grant respondent's motion for additional sanctions because she had executed and filed satisfactions of judgment relative to any previously unpaid property settlement installments due and owing under the MTA.

The district court imposed sanctions under Minn. R. Civ. P. 37.02, noting appellant's history of failing to make timely payments under the MTA and his failure to produce any of the ordered documents and interrogatory answers in direct contravention of the discovery order. The district court concluded that the discovery order was not rendered moot by the stipulation but refused to issue an order imposing future sanctions as requested by respondent. Rather, the district court concluded that appellant was in "civil contempt" given the admission of his attorney that he did not comply with the discovery order and the previous finding that such failure was not substantively justified. The district court concluded that the only purge condition was for appellant to "make

contributions to a philanthropic charity or charities benefitting children, education, or medical research of [respondent's] choice, in the amount of \$25,000" no later than March 15, 2012. This appeal by appellant followed.

DECISION

I. Improper Contempt Order

"When reviewing a contempt order, the appellate court may reverse or modify only if it finds the trial court abused its discretion." *Time-Share Sys., Inc. v. Schmidt*, 397 N.W.2d 438, 441 (Minn. App. 1986). A district court abuses its discretion by misapplying the law. *Ekman v. Miller*, 812 N.W.2d 892, 895 (Minn. App. 2012).

The parties agree that the district court's order finding appellant in "civil contempt" for his past failure to respond to discovery was actually a constructive criminal contempt order. In Minnesota, contempt is organized into two classifications: criminal contempt with a punitive purpose and civil contempt with a remedial purpose. *State v. Tatum*, 556 N.W.2d 541, 544 (Minn. 1996). If the court's purpose is to coerce future compliance by imposition of a sanction of indefinite duration terminable on compliance or inability to comply, it is civil contempt. *In re Welfare of A.W.*, 399 N.W.2d 223, 225 (Minn. App. 1987). If the court's purpose is to punish the charged person for past misconduct, it is criminal contempt. *Id.*

Contempts may also be either direct or constructive. *Tatum*, 556 N.W.2d at 544. "Direct contempts occur in the immediate view and presence of the court" and "*may* be punished summarily." *Id.* at 544–45 (emphasis in original); see Minn. Stat. § 588.03 (2010) (providing that a direct contempt may be summarily punished). "In contrast,

constructive contempts are those not committed in the presence of the court, of which the court has no personal knowledge, and may arise from a variety of conduct.” *Tatum*, 556 N.W.2d at 545. “Constructive contempts *may not* be punished summarily.” *Id.*; see Minn. Stat. § 588.04 (2010) (providing that an affidavit of the facts constituting the contempt shall be presented to the court or officer, who may either issue a warrant, a notice of hearing, or an order to show cause which is to be served on the party charged with contempt); Minn. Stat. § 588.09 (2010) (providing for a hearing allowing for the examination of the charged person and the witnesses for and against the person).

Constructive criminal contempt is punishable by a fine, imprisonment, or both. See Minn. Stat. § 588.10 (2010). Persons charged with constructive criminal contempt are entitled to criminal procedural safeguards. See *Welfare of A.W.*, 399 N.W.2d at 225 (outlining required criminal procedural safeguards, including a written complaint, the right to counsel, and the right to a jury trial).

The parties agree that the district court failed to comply with the required criminal procedures in issuing the constructive criminal contempt order in the instant case. Accordingly, such order must be reversed and vacated.

II. Mootness of Discovery Order

While the parties agree that the contempt order and sanction must be reversed and vacated, they disagree over the appropriate procedural response to the unlawful contempt order. Appellant argues that this court should simply reverse and vacate the contempt order while respondent urges this court to remand so that the district court can fashion a sanction against appellant for future missed payments or noncompliance with discovery

requests. Respondent concedes that she is not currently seeking any discovery under the district court's discovery order and that she did not appeal from the district court's denial of her prior request for a conditional contempt order against appellant.

We conclude that under the circumstances of this case, including the parties' stipulation and the fact that respondent is not currently attempting to enforce the discovery order, appellant's failure to respond to discovery requests is rendered moot. "A case is moot if there is no justiciable controversy." *City of W. St. Paul v. Kregel*, 748 N.W.2d 333, 338 (Minn. App. 2008), *aff'd*, 768 N.W.2d 352 (Minn. 2009). A justiciable controversy is one that involves definite and concrete assertions of right and allows for specific relief by a decree or judgment of a specific character as distinguished from an advisory opinion predicated on hypothetical facts. *Id.* (quotations and citations omitted). The doctrine of mootness requires that appellate courts "decide only actual controversies and avoid advisory opinions." *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999). Respondent fails to articulate an appropriate legal basis upon which to continue her efforts to hold appellant in contempt for noncompliance with a discovery order that she is not currently seeking to enforce.

We also reject respondent's argument that she may pursue a conditional contempt order under an exception to the mootness doctrine. A matter will not be dismissed as moot if (1) the issue raised is capable of repetition yet evading review or (2) collateral consequences attach to the otherwise moot ruling. *Kregel*, 748 N.W.2d at 338. The first exception applies if the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration and there was a reasonable expectation that the same

complaining party would be subjected to the same action again. *Id.* at 339. “The rationale for this exception is that to ‘abandon the case at an advanced stage may prove more wasteful than frugal.’” *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 322 (Minn. App. 2007) (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 192, 120 S. Ct. 693, 710 (2000)).

In support of her claim that she is entitled to a conditional contempt order on remand, respondent cites *Mut. Serv. Cas. Ins. Co. v. Midway Massage, Inc.*, 695 N.W.2d 138 (Minn. App. 2005). In that case, the insureds filed for no-fault arbitration after they were denied payment for treatment by allegedly improperly incorporated health clinics. The insurer responded by filing a complaint for relief in district court requesting a declaration that payment was not required under the no-fault act for treatment of its insureds by such clinics. At the same time, arbitration proceedings continued and the insureds prevailed. After the district court dismissed the insurer’s declaratory judgment action, the insurer satisfied the insureds’ arbitration awards in full, but appealed the dismissal of the district court declaratory judgment action. On appeal, the issue of whether the insurer was required to pay the insureds’ treatment expenses was deemed to be moot, but this court examined whether the legal issue raised by the insurer with regard to treatment by improperly incorporated health clinics fell within an exception to the mootness doctrine. In determining that the issue fell within an exception to the mootness doctrine, we explained:

[W]ithout a decision on the merits, future insureds may have to bear the expense of litigating their no-fault benefits. Thus, the issue of whether [the insurer] is liable for expenses

incurred at clinics that are alleged to be improperly incorporated is capable of repetition but likely to evade review.

Id. at 141. Based upon this reasoning, the insurer's legal issue was addressed on appeal.

Respondent argues that the current matter is analogous because of her ongoing financial relationship with appellant under the MTA and appellant's history of failing to timely satisfy his installment payments, which indicates a likelihood of recurring behavior. However, she fails to explain how future noncompliance with the MTA or discovery orders will evade review, especially in light of the extensive litigation and multiple appeals that have occurred in this case. The district court retains authority to implement, enforce, or clarify the provisions of a decree, so long as it does not change the parties' substantive rights. *See Redmond v. Redmond*, 594 N.W.2d 272, 275 (Minn. App. 1999). Respondent may also seek appropriate costs and expenses, as well as any other remedies as allowed by law, in the event appellant fails to comply with the remaining installment payments and fails to comply with any future discovery pursuant to Minn. R. Civ. P. 37 and 69.

We agree with the parties that the constructive criminal contempt order is unlawful and that it must be reversed and vacated. In light of respondent's stipulation that appellant is current in his obligations under the MTA and her concession that she is no longer seeking any discovery under the district court's discovery order, there is no need to remand this matter to the district court for the issuance of a conditional contempt order imposing sanctions for any potential future noncompliance by appellant.

Reversed and vacated.