STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1992

Town of West Lakeland,
Respondent,

vs.

Karl E. Auleciems,
Appellant,

Susanne M. Auleciems,
Appellant,

Ethan Auleciems, et al.,
Defendants.

Filed January 11, 2021
Reversed and remanded
Johnson, Judge

Washington County District Court
File No. 82-CV-18-2962

Viet-Hanh Winchell, Andrea B. McAlpine, Galowitz Olson P.L.L.C., Lake Elmo, Minnesota (for respondent)

Karl E. Auleciems and Susanne M. Auleciems, Lake Elmo, Minnesota (*pro se* appellants)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Karl E. Auleciems and Susanne M. Auleciems own a large home on a large lot in the Town of West Lakeland, which they have rented out on a short-term basis on numerous occasions without obtaining a permit. The township commenced this action to stop the Auleciemses from doing so. The township initially obtained a temporary restraining order and a temporary injunction, and it later obtained a permanent injunction after a court trial. The district court's orders prohibited the Auleciemses from renting out their property without obtaining a permit from the township. But they continued to do so. The district court found the Auleciemses in civil contempt of court. We conclude that the district court erred by imposing sanctions that are criminal in nature based on a finding of civil contempt. Therefore, we reverse and remand.

FACTS

The Auleciemses own a home with seven bedrooms, nine bathrooms, and 14,000 square feet of space, which is located on a cul de sac in the Town of West Lakeland, in Washington County. Beginning in 2017, the Auleciemses advertised the home for short-term rentals on websites such as HomeAway and VRBO. On several occasions in 2017 and 2018, the Auleciemses rented the home to persons hosting special events with large numbers of guests, such as weddings and family reunions. The Auleciemses' neighbors frequently complained to the township about large numbers of people on the property and on the roads leading to and from the property.

The applicable West Lakeland zoning ordinance allows property owners in the Auleciemses' neighborhood to rent out their property only if they apply for and obtain a permit. The Auleciemses did not apply for a permit before starting to rent out the property in June 2017, and they never have obtained a permit. In February 2018, the chair of the township board sent an e-mail message to Karl Auleciems stating that he had received complaints from the Auleciemses' neighbors and that the Auleciemses must cease renting out the home without a permit. An attorney for the township followed up a week later with a cease-and-desist letter, which was sent by certified mail. Karl Auleciems responded with a letter stating that the property had been rented out to KEASons Enterprises L.L.C. for the entire 2018 calendar year, that the township should direct future correspondence to that company, and that the company was informing the township that it should not trespass on the property.

In June 2018, the township commenced this action against Karl Auleciems, Suzanne Auleciems, and KEASons Enterprises L.L.C. The township sought relief in the form of an order enjoining the Auleciemses from "operating and using any property in [the applicable zoning district] for anything other than single family use pursuant to Town Code," an order "compelling [the Auleciemses] to comply with the Town Code," and damages.

In early July 2018, the township moved for a temporary restraining order (TRO) to compel the Auleciemses to remove all advertisements for the property and cancel all existing rental agreements and to restrain them from renting out the property. The district court granted the motion on an *ex parte* basis. In doing so, the district court scheduled a hearing for late July 2018 on the township's request for a temporary injunction. The

Auleciemses did not attend that hearing. In early August 2018, the district court issued a temporary injunction that reiterated the terms of the TRO.

In September 2018, the township moved to find the Auleciemses in "civil and criminal" contempt of court for violating the TRO and temporary injunction by renting out their home on six occasions since July 2018. The district court issued show-cause orders requiring Karl Auleciems and Suzanne Auleciems to appear for a hearing in early November 2018. In October, the Auleciemses answered the complaint and asserted counter-claims and moved for summary judgment and to dissolve the temporary injunction. The township's appellate brief states that the district court conducted an "initial" show-cause hearing in November 2018 and again in February 2019 and April 2019, but it appears that no evidence was offered or received on those three dates.

In May 2019, the district court conducted a court trial on the merits of the township's complaint and, it appears, jointly conducted an evidentiary hearing on the township's September 2018 contempt motion. In June 2019, the district court filed a 49-page order in which it found that the Auleciemses had violated the township's zoning ordinances and concluded that the township was entitled to declaratory relief and a permanent injunction. Specifically, the district court enjoined the Auleciemses from "renting/leasing the property"; required the Auleciemses to "immediately and permanently remove all listings and/or advertisements that the property . . . is for rent or lease from all rental websites, including but not limited to HomeAway, VRBO, AirBNB etc."; and "restrained [the Auleciemses] from creating new listings to rent/lease the property."

In the same order, the district court also granted the township's September 2018 contempt motion and found the Auleciemses in civil contempt for violating the TRO and the temporary injunction between July 2018 and June 2019. The district court reserved ruling on the township's request that the Auleciemses be jailed and stated that its ruling on that request would depend on the Auleciemses' compliance with its latest order. The district court required the Auleciemses to certify their compliance with the district court's post-trial order by, within ten days, submitting a sworn statement that they had removed all advertisements for rentals of their home. The district court further ordered that, if the Auleciemses did not submit such certification, they would be required to pay $118,890 to the township within 11 days of the post-trial order. In addition, the district court awarded the township attorney fees and costs pursuant to section 588.11 of the Minnesota Statutes in the amount of $35,386.

The Auleciemses appealed from the district court's June 2019 order. This court considered and rejected the Auleciemses' argument that they did not violate the West Lakeland zoning ordinance and their argument that the district court erred by awarding attorney fees to the township. *Town of West Lakeland v. Auleciems*, No. A19-1211, 2020 WL 1130318, at *1-4 (Minn. App. Mar. 9, 2020), *review denied* (Minn. May 27, 2020). This court did not consider the Auleciemses' argument that the district court's order violated their Fourth Amendment rights on the ground that the issue was not ripe. *Id.* at *3. This court did not consider other arguments that had not been preserved or were not adequately briefed. *Id.* at *3-4. The Auleciemses did not challenge the district court's finding of civil contempt. *See id.* at *1-4.

Meanwhile, the Auleciemses timely filed a sworn statement that they had complied with the district court's permanent injunction by removing all advertisements for rentals of their home. But the township questioned the veracity of the statement because it had received additional reports of weekend rentals. The district court filed an order scheduling another show-cause hearing. The district court conducted the show-cause hearing on two days in August and September of 2019. The township called six witnesses—a neighbor and five police officers. The township's evidence showed that the Auleciemses had rented out their home for weddings on numerous occasions since the May 2019 trial. Karl Auleciems testified that he had removed all listings for his property from the internet, as required by the district court's post-trial order, and testified further that he had not leased out the home since the trial, but he also testified that he had "shared" the home with guests, in exchange for compensation, while he or another resident remained on the property.

In October 2019, the district court filed a 21-page order in which it again found the Auleciemses in civil contempt of court. The district court found that the Auleciemses had rented out their home on 13 weekends between the conclusion of trial in May 2019 and September 2019. Based on this finding, the district court imposed three primary sanctions. First, the district court ordered the Auleciemses to pay a fine of $81,870. The district court calculated the amount of the fine by finding that the Auleciemses had received at least $21,870 in income from three rentals and by estimating that they had received an additional $60,000 from the other ten rentals (by assuming a rental fee of $1,500 per night, a cleaning fee of $1,000 per rental, and a refundable deposit of approximately $2,000 per rental). Second, the district court ordered the Auleciemses to pay the township's costs and attorney

fees related to the second show-cause order and gave the township 14 days to submit evidence of the amount of its costs and fees. But the district court record indicates that the township did not submit such evidence and that the district court never entered a money judgment for the township's costs and fees. Third, the district court ordered the Auleciemses to serve a jail term of 180 days, unless they fully paid the $81,870 fine, the township's attorney fees and costs related to the second show-cause order, and the previously ordered $118,890 fine.

The Auleciemses appeal from the October 2019 order. We construe their *pro se* brief to make three arguments: (1) the district court erred by finding them in civil contempt of court but imposing criminal punishment based on findings that they had violated court orders in the past, not a finding that they were in ongoing noncompliance with court orders; (2) the district court erred by admitting the testimony of a police officer to the extent that it contained hearsay and to the extent that it referred to matters disclosed by alleged violations of their Fourth Amendment rights; and (3) the district court erred by imposing criminal punishment that is not authorized by law and not supported by the evidence.[1]

[1]The Auleciemses also request that this court award them the attorney fees and costs they incurred in defending against the contempt charges. But the Auleciemses did not preserve the argument by seeking attorney fees and costs in the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *Doe 175 v. Columbia Heights Sch. Dist.*, 842 N.W.2d 38, 42-43 (Minn. App. 2014). In addition, the Auleciemses have not cited any legal authority that might justify such an award of attorney fees and costs, which is a necessary prerequisite of such an award. *See Van Vickle v. C.W. Scheurer & Sons, Inc.*, 556 N.W.2d 238, 242 (Minn. App. 1996), *review denied* (Minn. Mar. 18, 1997); *Gerdin v. Princeton State Bank*, 414 N.W.2d 765, 768 (Minn. App. 1987).

DECISION

As stated above, the Auleciemses argue that the district court erred by finding them in civil contempt of court but imposing criminal punishment based on findings that they had violated court orders in the past, not a finding that they were in ongoing noncompliance with court orders. The Auleciemses contend that "[c]ivil contempt proceedings are designed to induce future performance of a valid court order, not to punish for past failure to perform." They contend further that a district court may not "punish past nonperformance in a civil contempt proceeding."

A.

By statute, there are "two kinds" of contempt in Minnesota: "direct and constructive." Minn. Stat. § 588.01, subd. 1 (2018). A finding of contempt is direct in nature if it "occur[s] in the immediate view and presence of the court, and arise[s] from" either "disorderly, contemptuous, or insolent behavior toward the judge while holding court, tending to interrupt the due course of a trial or other judicial proceedings" or "a breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the business of the court." *Id.*, subd. 2. "A direct contempt may be punished summarily, for which an order shall be made reciting the facts as occurring in the immediate view and presence of the court or officer, and adjudging the person proceeded against to be guilty of a contempt, and that the person be punished as therein specified." Minn. Stat. § 588.03 (2018). On the other hand, a finding of contempt is constructive in nature if it is "not committed in the immediate presence of the court, and of which it has no personal knowledge" and if it arises from any one of 11 specified "acts or omissions." Minn. Stat.

§ 588.01, subd. 3. The third of the specified acts or omissions is "disobedience of any lawful judgment, order, or process of the court." *Id.*, subd. 3(3).

In addition, the caselaw recognizes another dichotomy based on the purpose of a contempt order: civil contempt and criminal contempt. *See State v. Tatum*, 556 N.W.2d 541, 544 (Minn. 1996); *see also* D.D. Wozniak & Cynthia L. Lehr, *Dealing with a Double-Edged Sword: A Practical Guide to Contempt Law in Minnesota*, 18 Wm. Mitchell L. Rev. 7, 9-12 (1992). A finding of contempt is civil in nature if it "impos[es] a sanction that will be removed upon compliance with a court order that has been defied." *Tatum*, 556 N.W.2d at 544. "Civil contempt proceedings are designed to induce future performance of a valid court order, not to punish for past failure to perform." *Mahady v. Mahady*, 448 N.W.2d 888, 890 (Minn. App. 1989). Accordingly, "compliance with the order allows [the contemnor] to purge himself and end the sanction." *Id.* In civil contempt cases, "the only objective is to secure compliance with an order." *Hopp v. Hopp*, 156 N.W.2d 212, 216 (Minn. 1968). "When the duty is performed, the concern of the court is satisfied." *Id.* A civil contempt order is intended to be "remedial rather than punitive because its purpose is to coerce compliance with [a court] order, not to vindicate the authority of the court." *Mower Cnty. Human Servs. v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996); *see also Minnesota State Bar Ass'n v. Divorce Assistance Ass'n, Inc.*, 248 N.W.2d 733, 741 (Minn. 1976).

On the other hand, a finding of contempt is criminal in nature if it "punish[es] the contemnor for past behavior." *Tatum*, 556 N.W.2d at 544. In this sense, criminal contempt is an "offense[] against the dignity of the state as a whole." *Peterson v. Peterson*,

153 N.W.2d 825, 830 (Minn. 1967). If a person is alleged to be in constructive criminal contempt of court, the matter should be prosecuted by attorneys representing the state. *Id.*; *see also Tatum*, 556 N.W.2d at 545 n.3; *In re Cascarano*, 871 N.W.2d 34, 38 (Minn. App. 2015). In addition, a person charged with constructive criminal contempt is entitled to the protections ordinarily due a criminal defendant, such as a written complaint stating the allegations of criminal conduct. *See Peterson*, 153 N.W.2d at 827; Wozniak & Lehr, *supra*, at 22 (citing Minn. R. Crim. P. 2.01). A "prerequisite for an adjudication of constructive criminal contempt" is "a clear definition of the acts to be performed." Wozniak & Lehr, *supra*, at 21. In addition, the accused is entitled to a trial by jury. *See Peterson*, 153 N.W.2d at 830. And the person has a right to give testimony in his or her defense. *Krmpotich v. Krmpotich*, 35 N.W.2d 810, 811 (Minn. 1949). As in other criminal cases, the state must prove the elements of contempt beyond a reasonable doubt. *State v. Binder*, 251 N.W. 665, 668 (Minn. 1933).

Upon a finding of guilt of constructive criminal contempt, "the person shall be punished by a fine of not more than $250, or by imprisonment in the county jail, workhouse, or work farm for not more than six months, or by both." Minn. Stat. § 588.10 (2018); *see also Tatum*, 556 N.W.2d at 545-46. If the contempt has caused "actual loss or injury to a party in an action or special proceeding," the district court may, in addition to ordering a fine or imprisonment, order the guilty person "to pay the party aggrieved a sum of money sufficient to indemnify the party and satisfy the party's costs and expenses, including a reasonable attorney's fee incurred in the prosecution of such contempt." Minn. Stat. § 588.11 (2018); *see also Bowman v. Bowman*, 493 N.W.2d 141, 144-45 (Minn. App.

1992); *In re Marriage of Nelson*, 408 N.W.2d 618, 622-23 (Minn. App. 1987); *Time-Share Sys., Inc. v. Schmidt*, 397 N.W.2d 438, 441-42 (Minn. App. 1986).

B.

In this case, the district court stated in its October 2019 order that the Auleciemses were in "civil contempt." As stated above, "Civil contempt proceedings are designed to induce future performance of a valid court order, not to punish for past failure to perform." *Mahady*, 448 N.W.2d at 890. But the district court did not find that the Auleciemses were in ongoing noncompliance with its prior orders. In fact, the district court specifically found that the Auleciemses *had* complied with the order that they remove all advertisements for rentals. Rather, the conduct for which the district court found the Auleciemses in civil contempt had occurred in the past. Specifically, the district court found that the Auleciemses had, on 13 occasions between May and September 2019, violated court orders by renting out their home without a permit.

After finding the Auleciemses in civil contempt, the district court ordered them to comply with the temporary injunction and the permanent injunction. Such an order is consistent with the objective of a civil contempt proceeding, which is "to secure compliance with an order." *Hopp*, 156 N.W.2d at 216. But the district court also imposed on the Auleciemses a fine of $81,870 and a 180-day jail term that could be lifted only by paying the $81,870 fine as well as a previously imposed fine. The district court's characterization of its contempt finding as "civil" in nature is in conflict with the sanctions that it ordered, which actually are criminal in nature. *See Minnesota State Bar Ass'n*, 248 N.W.2d at 741; *Hopp*, 156 N.W.2d at 216.

The district court did not follow the procedures required for either a finding of constructive criminal contempt or for criminal penalties, beginning with the initiation of contempt proceedings. Such a proceeding must be prosecuted by an attorney representing the state with authority to prosecute crimes. *Peterson*, 153 N.W.2d at 830. In this case, the township's attorney was the *de facto* prosecutor at all times. But under Minnesota law, an attorney representing a township is not authorized to prosecute a misdemeanor offense; rather, such an offense must be prosecuted by a county attorney. *See* Minn. Stat. § 484.87, subd. 3 (2018); Minn. Stat. § 588.20, subd. 2(4) (2018). If the district court was inclined to consider allegations of constructive criminal contempt and to consider the corresponding penalties, the district court should have referred the matter to the county attorney. *See Peterson*, 153 N.W.2d at 830; *State v. Tayari-Garrett*, 841 N.W.2d 644, 649 (Minn. App. 2014), *review denied* (Minn. Mar. 26, 2014). In addition, the district court should have empaneled a jury, unless the Auleciemses waived their right to a jury trial. *See River Towers Ass'n v. McCarthy*, 482 N.W.2d 800, 805 (Minn. App. 1992), *review denied* (Minn. May 21, 1992). Thereafter, the district court should have followed the rules and procedures that apply to criminal prosecutions. *See id.*

The district court's contempt order relies in part on the concept of inherent authority. The district court cited two of this court's opinions in support of that reasoning, but neither opinion supports the district court's analysis. In *Buscher v. Montag Development, Inc.*, 770 N.W.2d 199 (Minn. App. 2009), the district court imposed a monetary sanction on attorneys pursuant to rules 11 and 56 of the rules of civil procedure and, in addition, its inherent authority. *Id.* at 208, 210. This court concluded that the monetary sanctions were

justified by rules 11 and 56 and expressly stated that it was unnecessary to consider whether the sanctions also could be justified by the district court's inherent authority. *Id.* at 208-12 & nn. 3-4. In *Cascarano*, the district court relied solely on inherent authority when it required an attorney to pay $100 in court costs because the attorney had failed to appear for a hearing. 871 N.W.2d at 36. This court reversed, stating that "'the judiciary is not to resort to inherent authority when doing so would not respect the equally unique authority of another branch of government.'" *Id.* at 37 (quoting *State v. Ali*, 855 N.W.2d 235, 254 (Minn. 2014) (quotation omitted)). We reasoned that the district court violated that principle because the legislature had enacted the contempt statute, which provides the substantive and procedural standards that apply to constructive criminal contempt. *Id.* at 37-39; *see also State v. Expose*, 872 N.W.2d 252, 259 (Minn. 2015) (holding that district courts do not have inherent authority to create exception to statutory therapist-patient privilege). The *Cascarano* opinion cannot be distinguished for purposes of this case. Thus, the district court's error in ordering criminal penalties based on a finding of civil contempt is not cured by its reference to inherent authority.

In sum, the sanctions that the district court ordered were constructive and criminal in nature. Those sanctions are incompatible with a finding of civil contempt and incompatible with the procedures utilized during the contempt proceeding. Thus, the district court erred by imposing contempt sanctions on the Auleciemses that are criminal in nature based on a finding of civil contempt. Accordingly, we reverse the district court's October 2019 contempt order, including the fine of $81,870 and the 180-day jail term. We remand the matter to the district court for any further proceedings that may be appropriate,

including but not limited to proceedings related to civil sanctions or a referral to the county attorney.[2] In light of that resolution of the Auleciemses' primary argument, we need not consider their two other arguments.

Reversed and remanded.

[2]This opinion has no effect on the district court's orders preceding the October 2019 contempt order. The Auleciemses previously appealed from the district court's June 2019 post-trial order, in which the district court issued a declaratory judgment and a permanent injunction and found the Auleciemses in civil contempt for the first time. In that appeal, the Auleciemses did not make the meritorious argument that they are making in this appeal, that the district court erred by finding them in civil contempt but by imposing criminal punishment for their past conduct. In the prior appeal, this court rejected each of the Auleciemses' arguments and affirmed the district court's June 2019 order. *Town of West Lakeland*, 2020 WL 1130318, at *1-4. The Auleciemses sought further review of that opinion, but the supreme court denied their petition. *Town of West Lakeland v. Auleciems*, A19-1211 (Minn. May 27, 2020) (order). Accordingly, the district court's June 2019 order is binding on the parties.