

STATE OF MICHIGAN  
COURT OF APPEALS

---

In re Contempt of ROBERT RUSSELL BAKER,  
JR.

---

ROBERT RUSSELL BAKER, JR.,

Appellant,

v

WAYNE CIRCUIT JUDGE,

Appellee.

---

UNPUBLISHED  
November 21, 2013

No. 311466  
Wayne Circuit Court  
LC No. 12-006198-AS

Before: SAWYER, P.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

Appellant appeals of right the trial court's order finding him in contempt of court and sentencing him to five days in jail. This case arises from a show cause hearing wherein appellant was held to have violated MCL 600.1346(e) when he failed to appear for the afternoon court session of jury selection in a criminal matter. We affirm.

Appellant first argues that the trial court erred in finding him to be in contempt because the court failed to advise him of the charge against him and failed to allow him the opportunity to provide a defense. We disagree. This Court reviews the trial court's decision regarding a contempt action for an abuse of discretion and the court's factual findings for clear error. *DeGeorge v Warheit*, 276 Mich App 587, 591; 741 NW2d 384 (2007). Our review of questions of law related to the holding of contempt is de novo. *Id.*

MCL 600.1711(2) requires that before a court may punish by imprisonment or fine a contempt committed other than in the immediate view and presence of the court, there must be proof of the facts charged by affidavit or other means and a meaningful opportunity to be heard. Appellant asserts that he was not advised of the charge against him and did not receive a meaningful opportunity to be heard. An order to show cause in this matter was entered by the court on June 28, 2012, which stated that appellant was scheduled to perform jury service on June 18, 2012, and that he failed to appear. The order to show cause was accompanied by an affidavit, which stated that appellant was a member of a jury panel and ordered to reappear after a lunch break and that he failed to do so.

Pursuant to the show cause order, appellant appeared at the hearing and was represented by counsel. At the show cause hearing, the court stated the charge against him, namely that appellant left before his jury service was completed and that he had been subject to a court order to appear. Appellant's own counsel acknowledged that appellant understood that he had been instructed to reappear and had not done so. Thus, appellant clearly had been advised and was aware of the charge against him when he appeared at the contempt hearing.

Further, although appellant and his counsel were interrupted at times by the trial court, appellant's explanation that he thought his service was completed and that a jury was already selected was placed on the record. It should be noted that appellant does not state what additional explanation he would have liked to make but was prevented from doing so. Accordingly, we find that appellant was both advised of the charge against him and allowed to provide a defense.

Appellant next argues that the court erred in finding him summarily in contempt because his alleged contempt was not committed in the immediate view and presence of the trial court, which had to rely on the testimony of the court's clerk that he had failed to appear for the afternoon court session. Here, the affidavit of the trial court's clerk and the statements on the record established proof of appellant's failure to reappear after a lunch break as alleged and, as stated above, appellant was afforded the opportunity to offer his defense.

Next, appellant argues that the trial court failed to state any findings of facts or conclusions of law on the record or in a written opinion. Although the court did not designate its factual findings and conclusions of law specifically as such, such findings and conclusion were made. The court stated that appellant failed to appear for the afternoon session of jury selection after being directed to do so, that his appearance was subject to a court order, and that he had not been dismissed from jury service at the time he failed to reappear.

Appellant's final argument is that the court's contempt order cannot stand since it was not established that his failure to appear after lunch was willful rather than accidental or as the result of a misunderstanding. There was no argument made that appellant's absence was accidental or that he was in any way prevented from appearing. As for appellant's claim that he misunderstood that he needed to return after lunch, the trial court found that claim to lack credibility. We will not substitute our judgment for that of the trial court on the issue of credibility.

Affirmed.

/s/ David H. Sawyer  
/s/ Peter D. O'Connell  
/s/ Kirsten Frank Kelly