

Circuit Court for Baltimore City
Case No. 24-C-19-002608

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND**

No. 280

September Term, 2022

OMID ILKHAN

v.

CRITICAL CARE
PROFESSIONALS, INC., ET AL.

Arthur,
Reed,
Albright,

JJ.

Opinion by Arthur, J.

Filed: May 9, 2023

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

**At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

The Circuit Court for Baltimore City held appellant Omid Ilkhan in contempt because he failed to comply with a judgment that required him to turn over an automobile and the title to that automobile. In an earlier decision, we reversed that judgment and remanded for further proceedings.

Before us now is Ilkhan’s appeal from the order holding him in contempt. Because we have reversed the judgment that was the basis for the contempt finding, we must vacate the order holding Ilkhan in contempt. For guidance on remand, we shall address a number of related matters.

FACTUAL AND PROCEDURAL BACKGROUND

In October of 2021, the Circuit Court for Baltimore City found that Ilkhan had converted a Ferrari that belongs to appellee Critical Care Professionals, Inc. In the first of two orders, the court awarded compensatory and punitive damages for the wrongful detention of the Ferrari and ordered Ilkhan to transfer the title and to return the car. In a second order, in December of 2021, the court ordered Ilkhan to pay the costs, expenses, and reasonable attorneys’ fees that his adversaries had incurred in prosecuting the claims against him.

The court’s orders were, however, ambiguous. By its terms, the first order awards compensatory and punitive damages to Critical Care’s controlling shareholder, Ricardo Muscolino, and not to Critical Care itself. In addition, the order requires Ilkhan to transfer the title to Muscolino and to deliver the Ferrari to Muscolino’s nephew. Yet, in an earlier lawsuit, the circuit court had determined that Muscolino had no interest in the Ferrari and that it belonged to Critical Care.

On the other hand, the court’s first order also invited the “Plaintiffs[],” which included Critical Care, to petition for their attorneys’ fees. Moreover, the court’s second order required Ilkhan to pay “Plaintiffs’ costs” and “Plaintiffs’ attorneys[’] fees,” which obviously include Critical Care’s costs and fees. Hence, it was unclear from the orders whether and to what extent the court intended to enter judgment in favor of Critical Care.

Ilkhan noted timely appeals of both of the circuit court’s orders. In an unreported opinion, this Court affirmed the judgment in part, reversed the judgment in part, and remanded the case for further proceedings. *Ilkhan v. Critical Care Profs., Inc., et al.*, No. 1483, Sept. Term 2021, 2022 WL 17176786 (Md. App. Ct. Nov. 23, 2022) (*Ilkhan I*). Most notably, this Court held that the circuit court had erred in entering judgment in favor of Muscolino, because the earlier litigation had established that he had no interest in the car. But because it was unclear from the ambiguous orders whether the court had intended to enter judgment in favor of the car’s true owner, Critical Care, we remanded the case and directed the court to “clarify the extent of Critical Care’s rights under the judgment.” *Id.* at *5.¹

While that appeal was pending, Muscolino and Critical Care asked the court to hold Ilkhan in contempt because he had failed to comply with the order requiring him to transfer the title to Muscolino and to deliver the Ferrari to Muscolino’s nephew. In a

¹ In addition to reversing the judgment in favor of Muscolino and remanding for clarification about the extent of Critical Care’s rights, we provisionally affirmed the award of punitive damages. We also remanded for a reevaluation of the award of attorneys’ fees. Both of those rulings are contingent upon a decision by the circuit court, on remand, that the judgment for compensatory and punitive damages should be in Critical Care’s favor.

written order that was docketed on May 27, 2022, the court found that Ilkhan had transferred the title, but that he had not yet delivered the car. Consequently, the court determined that Ilkhan was in constructive civil contempt.

The court imposed no sanction for the contempt. Nonetheless, it included what purported to be purge provisions, which stated Ilkhan could purge himself of his contempt in either of two ways: (1) he could do what he was already required to do (i.e., deliver the Ferrari to Muscolino’s nephew) by June 25, 2022; or (2) he could pay \$80,000.00 to Muscolino.

Ilkhan took a timely appeal from that order. We shall vacate.

STANDARD OF REVIEW

“[T]his Court will not disturb a contempt order absent an abuse of discretion or a clearly erroneous finding of fact upon which the contempt was imposed.” *Breona C. v. Rodney D.*, 253 Md. App. 67, 73 (2021) (quoting *Kowalczyk v. Bresler*, 231 Md. App. 203, 209 (2016)). “A trial court abuses its discretion when its decision encompasses an error of law, which this Court reviews without deference[.]” *Id.* (citations omitted).

DISCUSSION

In light of our decision in *Ilkhan I*, we must vacate the judgment. The circuit court found Ilkhan in constructive civil contempt of an order that we have reversed on appeal.

The contempt judgment has no more validity than the underlying judgment on which it is based.²

Even apart from our decision in *Ilkhan I*, however, the contempt judgment would have to be reversed, because the court’s order violates several basic tenets of the law of constructive civil contempt.

“[T]he purpose of civil contempt is to coerce present or future compliance with a court order, whereas imposing a sanction for past misconduct is the function of criminal contempt.” *Breona C. v. Rodney D.*, 253 Md. App. at 73 (quoting *Dodson v. Dodson*, 380 Md. 438, 448 (2004)). “The coercive mechanism of an order of constructive civil contempt is the imposition of a sanction that the contemnor is able to avoid by taking some definite, specified action of which the contemnor is reasonably capable.” *Id.* at 74. A sanction may involve incarceration or the imposition of a fine for each day in which the contemnors fail to “purge” their contempt by coming into compliance with the court order. *See id.* at 75. When the sanction involves incarceration, the contemnors are said to “carry ‘the keys of their prison in their own pockets’” (*State v. Roll*, 267 Md. 714, 729 (1973) (quoting *Shillitani v. United States*, 384 U.S. 364, 368 (1966))), because they can secure their release by purging their contempt and doing what the court has previously ordered them to do.

² It is possible that, on remand from the decision in *Ilkhan I*, the court will clarify its earlier order to state that judgment should be entered in favor of Critical Care. We express no opinion on what position the court should take on that matter. If, however, the court does clarify its order to state that judgment should be entered in favor of Critical Care, then Critical Care will have the remedies available to all judgment-creditors under Maryland law.

“[T]o serve the coercive purpose of civil contempt, the sanction must be distinct from the purge provision and the valid legal requirement the court seeks to enforce.” *Breona C. v. Rodney D.*, 253 Md. App. at 74. “If the sanction imposed is a requirement to take the very action the court says will purge the contempt, then undertaking the purge action necessarily completes, rather than avoids, the sanction.” *Id.* “And if the sanction imposed is to act in accord with the same legal requirement with which the court seeks to coerce compliance, there is no coercive mechanism at all.” *Id.* “Instead, there is just a second order directing compliance with an existing order.” *Id.* at 74-75.

“In sum, an order holding a person in constructive civil contempt is not valid unless it: (1) imposes a sanction; (2) includes a purge provision that gives the contemnor the opportunity to avoid the sanction by taking a definite, specific action of which the contemnor is reasonably capable; and (3) is designed to coerce the contemnor’s future compliance with a valid legal requirement rather than to punish the contemnor for past, completed conduct.” *Id.* at 74. The order in this case does not satisfy these requirements.

Most notably, the order fails to impose any sanction, or at least a sanction that differs in any way from the purported purge provision. The order does not require that Ilkhan be jailed or that he pay a daily fine until he brings himself into compliance with the court’s previous order by turning over the car. Instead, the order simply pronounces that he is in contempt and that he can “purge” himself of his contempt by doing what he was already required to do – turning over the car. Thus, the contempt order “is just a second order directing compliance with an existing order.” *Id.* at 74-75. It is not a valid order of civil contempt.

Furthermore, the order decrees that Ilkhan can “purge” himself of his contempt not just by doing what he is already required to do, but also by paying \$80,000.00, which is presumably the value of the car. Under a valid contempt order, Ilkhan would purge himself of his contempt (and avoid the sanction that the court failed to impose) by turning over the car. In other words, under a valid contempt order, Ilkhan would purge himself of his contempt by doing what the court had previously ordered him to do. Ilkhan could not purge himself of his contempt by paying money, because he was not violating an order that required him to pay money. By giving Ilkhan the ability to pay money to get out of contempt, the court seems to have imposed something resembling an optional fine or a penalty for a violation of the court’s order – i.e., an order of criminal contempt, which prescribes “a sanction for past misconduct.” *Breona C. v. Rodney D.*, 253 Md. App. at 73 (quoting *Dodson v. Dodson*, 380 Md. at 448).

In short, even if the underlying judgment remained in effect, we would still have to reverse the contempt order in several respects.

Ilkhan argues that a court has no power to hold a person in contempt for failing to comply with an order in a detinue action, as he is alleged to have done. In Ilkhan’s view, the sole method to enforce a judgment awarding possession of property is set forth in Md. Rule 2-647. That rule provides:

Upon the written request of the holder of a judgment awarding possession of property, the clerk shall issue a writ directing the sheriff to place that party in possession of the property. The request shall be accompanied by instructions to the sheriff specifying (a) the judgment, (b) the property and its location, and (c) the party to whom the judgment awards possession. The clerk shall transmit the writ and the instructions to the sheriff. When a judgment awards possession of property or the payment of its value, in the

alternative, the instructions shall also specify the value of the property, and the writ shall direct the sheriff to levy upon real or personal property of the judgment debtor to satisfy the judgment if the specified property cannot be found. When the judgment awards possession of real property located partly in the county where the judgment is entered and partly in an adjoining county, the sheriff may execute the writ as to all of the property.

In summary, under Rule 2-647, “the holder of a judgment awarding possession of property” may obtain a writ “directing the sheriff to place that party in possession of the property.” Presumably, the sheriff employs the writ to seize the property and to deliver it to the holder of the judgment. In some instances, however, the judgment may “award[] possession of property or the payment of its value, in the alternative.” In those instances, the writ shall “specify the value of the property” and “direct the sheriff to levy upon real or personal property of the judgment debtor to satisfy the judgment if the specified property cannot be found.”

According to Ilkhan’s counsel, the Ferrari is at a repair shop in Doral, Florida.³ The Baltimore City Sheriff’s Department, however, has no power to levy upon real or personal property outside of the State of Maryland. Thus, if Ilkhan is correct, then the court would have little power to enforce its judgment, even if the judgment were clarified to state that it should run in favor of Critical Care.⁴

³ Because Ilkhan has complied with the order requiring him to transfer the title to Muscolino, Critical Care presumably could recover the Ferrari from the shop in Florida. According to Ilkhan’s counsel, however, the Ferrari is subject to garagemen’s liens in some undisclosed amount.

⁴ At oral argument, we asked Ilkhan whether Critical Care could record a judgment in Florida, where the Ferrari is evidently located, and use Florida’s post-judgment remedies to take possession of the Ferrari. Ilkhan was unable to answer that question.

Critical Care responds that, even in a detinue action, the court has the power to hold a defendant in contempt for failing to comply with an order requiring the return of property. It cites Rule 2-648(a), which concerns the enforcement of judgments prohibiting or mandating action. Rule 2-648(a) provides, in pertinent part, as follows: “When a person fails to comply with a judgment prohibiting or mandating action, the court may order the seizure or sequestration of property of the noncomplying person to the extent necessary to compel compliance with the judgment and, in appropriate circumstances, may hold the person in contempt pursuant to Rules 15-206 and 15-207.”

So, is Rule 2-647 the exclusive remedy for a judgment-creditor who has an order commanding that the defendant return property in a detinue action, as Ilkhan argues? Or can the judgment-creditor also resort to Rule 2-648, as Critical Care argues?

This case is not the vehicle to answer that question, because the judgment does not comply with the requirements for a judgment in a detinue action. Rule 12-602(d)(1), governing judgments for the plaintiff in detinue actions, states:

A judgment for the plaintiff shall award possession of the property or, in the alternative, payment of its value. The judgment shall separately set forth the value of the property and any amount awarded for damage to or detention of the property. Unless the court orders otherwise for good cause or the plaintiff agrees on the record to accept the value of the property as fixed by the judgment instead of return of the property, the plaintiff may enforce return of the property pursuant to Rules 2-647 or 3-647. The plaintiff may also seek enforcement of any damages awarded pursuant to the rules contained in Chapter 600 of Title 2 or Title 3, as appropriate.

In other words, under Rule 12-602(d)(1), a judgment for the plaintiff in a detinue action should either award possession of the property to the plaintiff or award the plaintiff the value of the property. Unless the court (for good cause) orders the plaintiff to accept

the value of the property or the plaintiff agrees to accept the value, the plaintiff may obtain a writ of possession under Rule 2-647. The writ of possession, as previously discussed, empowers the sheriff to seize the property. The order itself does not, need not, and should not require the defendant to turn over anything.

Here, however, the judgment did not simply award possession of the property (as an alternative to awarding the value of the property). Instead, the judgment affirmatively ordered Ilkhan to deliver the Ferrari to Muscolino’s nephew and to transfer the title to Muscolino himself. Thus, the judgment, in form and substance, contains an order that mandates action, which can be enforced through Rule 2-648. The judgment may be defective, in that it does not comply with the substantive requirements of a judgment in a detinue action, but neither party complained of that defect in the earlier appeal. Hence, that complaint is waived. Because the contempt proceedings are collateral to and separate from the underlying action, “‘appellate review is normally limited to the contempt order itself.’” *Blake v. Blake*, 341 Md. 326, 332 (1996) (quoting *Unnamed Attorney v. Attorney Grievance Comm’n*, 303 Md. 473, 483 (1985)).

In conclusion, we must reverse the judgment because it held Ilkhan in contempt for violating an order that we have previously reversed. Because the judgment mandated action and did not simply award the possession of property, the judgment would have been enforceable by contempt had it not been reversed. But the contempt order had substantive defects that made it subject to reversal even if the judgment had not been reversed.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY VACATED.
COSTS TO PAID BY APPELLEES.**