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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2027**

State of Minnesota,
Respondent,

vs.

Marilyn Boyd Knudsen,
Appellant.

**Filed September 7, 2010
Reversed and remanded
Bjorkman, Judge**

Ramsey County District Court
File Nos. 62-CR-09-16662, 62SU-CR-09-9525, 62-CR-09-15518

Lori Swanson, Attorney General, St. Paul, Minnesota (for respondent)

Daniel L. Gerds, Minneapolis, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Bjorkman, Judge; and
Muehlberg, Judge.*

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant attorney challenges her contempt conviction based on her failure to appear in court. Because appellant is entitled to a trial, we reverse and remand.

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

FACTS

At 9:00 a.m. on October 28, 2009, appellant Marilyn Boyd Knudsen was scheduled to appear for trial on behalf of two clients. According to appellant, after meeting with her clients around 9:20 that morning, she informed the judge's law clerk that she would not be making her scheduled appearances because she had filed a notice to remove the judge the previous day. Appellant served opposing counsel with the removal notices around the same time that she spoke with the law clerk. The record is unclear whether the notices were filed and served within the required time period.

Later that morning, the law clerk contacted appellant by telephone and conveyed the district court's order that she appear "for the purpose of having the matter reassigned to another judge." Appellant told the law clerk that she would not appear. Appellant later informed the court that the law clerk had not told her the reason for the appearance. The content of this conversation is disputed.

Appellant's clients' cases were called for trial. The district court noted appellant's absence and found her in contempt, stating that she "was obligated to appear at nine o'clock. Based on the information I have, she failed to do so. She's also failed my direction through my clerk to appear in court, so she's in contempt. I will issue an order for her arrest." The hearing transcripts and written contempt order suggest that the contempt determination was based on appellant's failure to comply with the two trial orders and the verbal order to appear.

Appellant appeared before the district court later that day and requested a jury trial on the contempt allegations. The district court denied her request on the basis that the court considered appellant's actions direct contempt. The district court ordered appellant to pay a \$100 fine on each of the underlying criminal cases. This appeal follows.

D E C I S I O N

A district court has discretion to hold a person in contempt. *Crockarell v. Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001). We review a district court's decision to invoke its contempt power for an abuse of discretion. *Mower Cnty. Human Servs. v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996).

There are two kinds of contempt: remedial (civil) and punitive (criminal). *State v. Tatum*, 556 N.W.2d 541, 544 (Minn. 1996). The type of contempt depends on the court's purpose. *State v. Martin*, 555 N.W.2d 899, 900 (Minn. 1996). Civil contempt seeks to compel future compliance with a court order. *Id.* Criminal contempt is designed "to preserve [the court's] authority by punishing past misconduct." *Id.* Here, the contempt orders punished appellant for her past conduct in failing to comply with court orders to appear.

Having determined that this case involves criminal contempt, we consider whether the alleged contempt was direct or constructive. As defined by statute:

Subd. 2. Direct. Direct contempts are those occurring in the immediate view and presence of the court, and arise from one or more of the following acts:

(1) disorderly, contemptuous, or insolent behavior toward the judge while holding court, tending to interrupt the due course of a trial or other judicial proceedings;

(2) a breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the business of the court.

Subd. 3. Constructive. Constructive contempts are those not committed in the immediate presence of the court, and of which it has no personal knowledge, and may arise from any of the following acts or omissions:

....
(3) disobedience of any lawful judgment, order, or process of the court[.]

Minn. Stat. § 588.01, subds. 2, 3(3) (2008). Direct criminal contempt may be punished summarily. Minn. Stat. § 588.03 (2008). But “[c]riminal procedural safeguards are applicable in constructive criminal contempt cases.” *In re Welfare of A.W.*, 399 N.W.2d 223, 225 (Minn. App. 1987). These safeguards include the right to receive a written complaint, legal representation, and a jury trial. *Id.*

Appellant argues that this is a case of constructive contempt. We agree. The supreme court has held that where an attorney did not appear on time for a hearing, the alleged contempt was constructive. *Knajdek by Knajdek v. West*, 278 Minn. 282, 284, 153 N.W.2d 846, 848 (1967). The *Knajdek* court reasoned that while the judge was personally aware of the attorney’s failure to appear, “[i]t was the reasons for the failure[] which would render [the behavior] either contemptuous or excusable, and the court could have no firsthand knowledge as to these reasons.” *Id.* (footnote omitted).

Similarly, this court held that a defendant who lied during a sentencing hearing was subject to a constructive contempt charge because the court did not discover the lie until after the hearing. *State v. Garcia*, 481 N.W.2d 133, 138 (Minn. App. 1992). Citing *Knajdek*, this court stated that “[c]ontempt is direct only if the judge has personal

knowledge, at the time the contumacious conduct occurs, of *all* the operative facts which constitute the offense of contempt and are necessary for a proper adjudication of appellant's guilt." *Id.* at 137.

It is undisputed that the conduct on which appellant's contempt convictions are based did not take place in court and did not involve "a breach of the peace" or a "violent disturbance." *See* Minn. Stat. § 588.01, subd. 2. Rather, the alleged contemptuous behavior is appellant's failure to comply with court orders to appear. As in *Knajdek*, the district court had no personal knowledge of the reason for appellant's failure to appear. *See Knajdek*, 278 Minn. at 284, 153 N.W.2d at 848. Appellant thus has a right to a jury trial and the other procedural safeguards applicable to constructive criminal contempt cases. *See A.W.*, 399 N.W.2d at 225. The district court abused its discretion by concluding otherwise.

Accordingly, we reverse and remand this case for further proceedings. On remand, the district court must first make a legal determination as to whether the orders to appear were valid. *River Towers Ass'n v. McCarthy*, 482 N.W.2d 800, 803 (Minn. App. 1992) ("Before a party may be held in criminal or civil contempt, the [district] court must find that the underlying order is valid and that the alleged contemnor had sufficient notice of the restraints imposed on his behavior."), *review denied* (Minn. May 21, 1992). Appellant urges us to conclude that the orders were not valid because the district court lacked jurisdiction due to the removal notices. But the record is not sufficiently developed for us to determine whether appellant timely filed and served the notices to

remove. If the district court determines that the orders were valid, appellant is entitled to a jury trial on the remaining issues.

Reversed and remanded.