

Conditionally Granted and Opinion Filed February 10, 2025



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-24-01007-CV

IN RE MICHAEL A. RUFF, Relator

**Original Proceeding from the Probate Court No. 2
Dallas County, Texas
Trial Court Cause No. PR-11-02825-2**

MEMORANDUM OPINION

Before Justices Garcia and Breedlove¹
Opinion by Justice Garcia

In this original proceeding, relator Michael Ruff raises five issues challenging a trial court's judgment holding him in contempt. We sustain his third issue and hold that the contempt judgment is void because one of the underlying orders being enforced is too ambiguous to be enforced by contempt. Accordingly, we conditionally grant mandamus relief.

¹ Justice Bill Pedersen, III was originally a member of this panel, but he did not participate in this opinion because his term expired on December 31, 2024.

I. BACKGROUND

A. The Underlying Proceedings

Some of the history of the underlying case is recounted in our opinion in *Ruff v. Ruff*, No. 05-18-00326-CV, 2020 WL 4592794, at *2–4 (Tex. App.—Dallas Aug. 11, 2020, pet. denied) (mem. op.). For present purposes, it suffices to note that in 2011 real party in interest Suzann Ruff (referred to herein as RPI) sued relator in Dallas County probate court for torts that relator allegedly committed while he was trustee for the Ruff Management Trust. *Id.* at *1–2. RPI’s claims went to binding arbitration, and she obtained an arbitration award against relator for \$49 million plus attorneys’ fees and costs. *Id.* at *3. The trial court confirmed the award, and in 2020 we affirmed the trial court’s judgment. *Id.* at *4, 15.

While the appeal progressed, postjudgment proceedings continued to unfold. The mandamus record shows the following events:

January 12, 2018	Trial judge Brenda Thompson signed an order prohibiting relator from moving certain assets.
January 24, 2018	Judge Thompson signed an order requiring relator to identify certain banks and financial institutions.
February 26, 2018	Relator served responses to RPI’s interrogatories and requests for production of documents. The responses consisted almost entirely of objections.
March 19, 2018	Judge Thompson signed an order sustaining RPI’s contest to relator’s declaration of net worth. The order set the amount of security needed to supersede the monetary portion of the judgment at \$24,500,000.

April 10, 2018	Judge Thompson signed a modified and corrected final judgment based on the arbitration award.
August 27, 2019	Relator served responses to RPI's interrogatories and supplemental responses to RPI's requests for production.
January 28, 2021	Judge Thompson signed an order compelling relator to produce certain documents by February 15, 2021.
March 23, 2021	Judge Thompson signed an order compelling relator to produce certain documents and take certain other actions.
November 4, 2021	Judge Thompson voluntarily recused herself.
March 2, 2022	Senior Statutory Probate Judge Polly Jackson Spencer was appointed to preside over this case.
March 29, 2022	Judge Spencer signed a clarification order that changed relator's deadlines to comply with Judge Thompson's orders of January 28 and March 23, 2021, to 5:00 p.m. on April 22, 2022.

On April 27, 2022, RPI filed a Motion for Civil Contempt Order. RPI argued that relator had failed to comply with Judge Thompson's orders of January 28, 2021, and March 23, 2021, as well as Judge Spencer's clarification order of March 29, 2022. On April 28, 2022, RPI filed a second Motion for Civil Contempt Order in which she corrected a typographical error.

On May 18, 2022, Judge Spencer set RPI's April 28 contempt motion for hearing on June 13, 2022. The order required relator to appear at the hearing by Zoom. Relator appeared at the hearing and was called to testify. He invoked his Fifth Amendment rights and refused to answer any questions. One of RPI's attorneys,

Randal Mathis, also testified at the hearing. Mathis testified that relator failed to comply with Judge Thompson's discovery orders by the deadline set in Judge Spencer's March 29, 2022 clarification order.

On August 4, 2024, Judge Spencer signed a Judgment of Civil Contempt and Order of Commitment. In that judgment, she recited that "the ninth in person hearing" of RPI's contempt motion had "resumed" on July 31, 2024. She further found that relator was in civil contempt of court for intentionally refusing to comply with four provisions of the January 28, 2021 discovery order and three provisions of the March 23, 2021 discovery order (each order having been modified by Judge Spencer's March 29, 2022 order). She ordered a single punishment for relator's several violations, stating, "IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Michael A. Ruff be confined until he purges himself of his contempt by complying with this Court's Orders as set forth above." She further ordered that the order of commitment was abated until September 4, 2024, and that a capias would be issued on that date if relator had not purged himself of contempt. The capias would command the sheriff of Dallas County to jail relator for six months or until relator purged himself of his contempt of court, whichever came first.

B. This Original Proceeding

On August 22, 2024, relator filed in this Court a petition for writ of habeas corpus or, alternatively, writ of mandamus, in which he challenged Judge Spencer's

contempt judgment. The petition was supported by a five-volume appendix. Relator also filed an emergency motion for temporary relief.

We granted relator's emergency motion, stayed the contempt judgment, and requested RPI to file a response to relator's petition. We also ordered relator to (i) supplement the record with properly authenticated reporter's records from the contempt proceedings and (ii) file an amended petition that contained appropriate citations to the record or appendix. *See* TEX. R. APP. P. 52.3(g), (h). We set a deadline of September 17, 2024, for relator to comply with these requirements. We later extended relator's deadline to October 7, 2024.

On October 7, 2024, relator filed his amended petition for writ of habeas corpus or, alternatively, writ of mandamus. On that same day, he also filed three more volumes of appendices containing various reporter's records.

On November 4, 2024, we received electronic reporter's records from three more hearings in the case.

On November 20, 2024, RPI filed a response to relator's amended petition.

II. ISSUES PRESENTED

Relator presents the following five issues in his petition:

1. Whether the contempt order is void because it fails to state how the court's order was violated and how relator can purge himself.
2. Whether the motion for enforcement can support a finding of contempt with jail time when the motion was never served on relator, the motion fails to describe how relator violated the underlying order, and the motion fails to request jail time.

3. Whether the order RPI sought to enforce is specific enough to support contempt.
4. Whether there was any evidence that relator failed to comply with the orders.
5. Whether the conditions for relator to purge his contempt are impossible to perform.

III. ANALYSIS

A. Mandamus or Habeas Corpus?

Because contempt orders are not appealable, they are reviewable only by mandamus or habeas corpus. *In re Villarreal*, No. 05-23-00803-CV, 2023 WL 5317969, at *1 (Tex. App.—Dallas Aug. 18, 2023, orig. proceeding) (mem. op.). If the relator is being restrained, habeas corpus is the proper remedy; otherwise, the proper vehicle to challenge a contempt order is a petition for writ of mandamus. *Id.*

We have held that an order for the issuance of *capias* is insufficient to show the restraint necessary to support habeas corpus relief. *Ex parte Nixon*, No. 05-16-00979-CV, 2016 WL 4437135, at *1 (Tex. App.—Dallas Aug. 22, 2016, orig. proceeding [mand. denied]) (mem. op.); *see also* TEX. R. APP. P. 47 cmt. (“All opinions and memorandum opinions in civil cases issued after the 2003 amendment have precedential value.”) (comment to 2008 change). Because the record shows only that Judge Spencer has ordered relator to be confined as of September 4, 2024, and that a *capias* should issue to that effect, we conclude that relator has not shown that he is currently restrained. Accordingly, we treat relator’s filing as a petition for writ of mandamus.

B. Law of Contempt and Requirements for Mandamus Relief

Civil contempt is the process by which a court exerts its judicial authority to compel obedience to one of its orders. *In re Coppock*, 277 S.W.3d 417, 419 (Tex. 2009) (orig. proceeding). It is considered remedial and coercive in nature. *In re Chaumette*, 439 S.W.3d 412, 415 (Tex. App.—Houston [1st Dist.] 2014, orig. proceeding). Criminal contempt, by contrast, is imposed as punishment for a completed act that affronted the court’s dignity and authority. *In re S.C.*, No. 05-19-01343-CV, 2021 WL 3671197, at *5 (Tex. App.—Dallas Aug. 18, 2021, orig. proceeding) (mem. op.). The contempt judgment in this case is solely for civil contempt.

A contemnor must show that the trial judge abused her discretion in order to obtain mandamus relief. *Id.* at *3; *see also In re Lowry*, 511 S.W.3d 256, 256 (Tex. App.—Dallas 2015, orig. proceeding) (mem. op.) (“In an original proceeding challenging a contempt order, the relator has the burden to show that the order is void.”). A contempt order is void if the underlying order being enforced does not set out the terms of compliance in clear and unambiguous terms. *See Coppock*, 277 S.W.3d at 418; *see also In re Luther*, 620 S.W.3d 715, 722 (Tex. 2021) (orig. proceeding) (per curiam) (“[T]o be enforceable by contempt, the [previous] order must clearly, specifically, and unambiguously state the conduct required for compliance.”). The order must not require inferences or conclusions about which reasonable people could differ. *Luther*, 620 S.W.3d at 722.

C. Issue Three: Is the contempt order void because the underlying orders are not specific enough to support contempt?

Because relator's third issue is dispositive, we address it first—whether the underlying orders that Judge Spencer sought to enforce by contempt are specific enough to support a contempt judgment.

Relator complains about all three previous orders referenced in the contempt judgment, but we focus on one provision in Judge Thompson's March 23, 2021 order that Judge Spencer found that relator violated. In the March 23, 2021 order, Judge Thompson said:

[It is] **ORDERED, ADJUDGED, AND DECREED** that Michael Ruff organize by each request for production, each and every box and documents contained therein that he previously produced in response to this Court's November 29, 2018 Order and any other documents responsive to such Order. He is further ordered to identify whether or not the documents have been previously produced and, if so, specifically reference Bates labels and dates of production for such documents. He is ordered to produce and deliver the documents, organized and identified as aforesaid, to Suzann Ruff's Counsel's office by no later than 5:00 P.M., April 6, 2021 [extended to 5:00 P.M. on April 22, 2022, by Judge Spencer's subsequent March 29, 2022 order].

In paragraph g of the contempt judgment, Judge Spencer found that relator intentionally refused to comply with this provision, but she did not explain how relator violated it. In this proceeding, relator argues that this provision is "hopelessly ambiguous and confusing." RPI responds that relator's argument is without merit because (i) relator repeatedly testified that he did organize his document production according to the requests for production and (ii) Texas Rule of Civil Procedure 196.3(c) says that a party producing documents has the options of producing them

as they are kept in the usual course of business or of organizing and labeling them to correspond with the categories in the request.

We agree with relator that the above-quoted provision of the March 23, 2021 order is too ambiguous and unclear to be enforced by contempt. The first sentence of the provision requires him to “organize” both (i) boxes and documents that he previously produced in response to the court’s November 29, 2018 order and (ii) any other documents responsive to that order. It is unclear how relator is supposed to “organize” the category (i) materials because those materials—boxes and documents that he previously produced in response to a specific court order—are by definition no longer in his possession. And category (ii) of this first sentence is ambiguous because it is not clear whether this category of “other documents responsive” to the court’s November 29, 2018 order is limited to documents that relator had previously produced in this litigation or whether it also extends to unproduced documents.

Finally, the last sentence of the provision requires relator to “produce and deliver the documents, organized and identified as aforesaid.” This requirement is also unclear. As noted above, the provision directs relator to organize the boxes and documents that relator had already produced in response to the court’s November 29, 2018 order. Those are specific, existing materials that by definition are no longer in his possession. But the last sentence of the provision implies, contrary to the first sentence, that relator is supposed to produce and deliver a new collection of “organized and identified” materials to RPI’s attorney.

In sum, reasonable people could come to different conclusions as to what relator was supposed to do in order to comply with this provision of the March 23, 2021 order. Consequently, that provision is too unclear to support a judgment of contempt.

We further conclude that this defect entitles relator to relief. If, as in this case, one punishment is assessed for multiple acts of contempt and one of those acts is not punishable by contempt, the entire civil-contempt judgment is void. *See In re Henry*, 154 S.W.3d 594, 598 (Tex. 2005) (orig. proceeding) (per curiam); *Ex parte Jordan*, 787 S.W.2d 367, 368 (Tex. 1990) (orig. proceeding) (per curiam). Accordingly, the contempt judgment is void, and we need not consider any of relator's other arguments or issues. *See* TEX. R. APP. P. 47.1, 52.8(d).

IV. CONCLUSION

We conditionally grant relator's alternative request for mandamus relief. We order the trial judge to vacate her August 4, 2024 Judgment of Civil Contempt and Order of Commitment. We lift the stay imposed by our order of September 3, 2024.

/Dennise Garcia/

DENNISE GARCIA

JUSTICE