

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2513
No. 92-2726
Summary Calendar

ALLEN JAMES, ET AL.,

Plaintiffs,

VERSUS

SUZANNE FRAME, ET AL.,

Defendants.

In Re: SUZANNE FRAME,

Appellant.

Appeals from the United States District Court
for the Southern District of Texas
(CA H-86-4589)

(November 23, 1992)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Suzanne Frame appeals two sets of contempt and commitment orders, relating to post-judgment discovery.² She is presently

¹ Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

² The two sets of orders were appealed separately, but have been consolidated here. Frame's first appeal challenges seven orders of the district court, all entered in 1992: the May 12 Order for deposition and production of documents, the May 28 Judgment of Contempt, the May 28 Order of Commitment, the May 29 denial of the First Motion to Vacate Commitment Order, the June 1 denial of the

imprisoned each weekend in the Harris County Jail in Houston, Texas, pursuant to 18 U.S.C. § 1826. Because the district court did not abuse its discretion, we **AFFIRM**.

I.

This appeal arises out of protracted litigation involving an investment scheme propounded by Frame for importing "grey market" perfumes. Numerous investors sued Frame on various grounds, including state and federal securities infringements, violations of the Racketeer Influenced and Corrupt Organizations Act, common-law fraud, and violations of the Texas Deceptive Trade Practices Act.³ In April 1991, the investors obtained a default judgment against Frame in excess of \$10 million, pursuant to Fed. R. Civ. P. 37(b)(2), for failure to comply with discovery. This court affirmed in part, reversing on the issue of damages. See **Frame v. S-H, Inc.**, 967 F.2d 194 (5th Cir. 1992).

A full explanation of the litigation's tortured and protracted history appears in this court's prior opinion, see *id.* at 194-202, and we will not repeat it here. It suffices to say that "[i]t is

Second Motion to Vacate Order of Commitment, the June 3 Order of Conditional Release, and the June 3 findings that certain entities were fiscal agents of Frame. The second appeal challenges the September 18 Judgment of Contempt, the September 18 Order of Civil Commitment, the September 24 Revised Judgment of Contempt, and the September 24 Revised Order of Civil Commitment.

³ Frame and two of her businesses initiated the suit in late 1986, but when numerous investors intervened, alleging that Frame's original lawsuit was merely an attempt to obscure the true nature of the relationships between the parties, the district court realigned the parties. Frame thus became a defendant, and the intervenors plaintiffs. See **Frame v. S-H, Inc.**, 967 F.2d 194, 196-96 (5th Cir. 1992).

a story of gross abuse of discovery procedures tolerated much too long by the district court", including deliberate destruction of financial ledgers and other documents, repeated manipulation of the district court's tolerance, and abuse of bankruptcy proceedings in efforts to avoid discovery. *Id.* at 196-202. This appeal springs from the post-judgment discovery process, which appears to include more of the same behavior.

Post-judgment discovery began in November 1991, when the district court gave the Appellees permission to propound interrogatories, and requests for admission and for production of documents and things upon Frame. On May 11, 1992, the court held a hearing on the adequacy of Frame's responses to the discovery requests, at which it concluded that her excuses for not responding to certain requests were "completely unbelievable" and "wholly incredible". Its May 12 order compelled Frame to appear for deposition and produce the requested documents, warning that "[i]f Frame fails to produce any of the records or answer any of the [Appellees'] questions completely and truthfully, she will be held in contempt of court." The court specifically asked Frame's counsel: "[A]re there any questions about what your client[] is supposed to do?" They responded in the negative.

On May 28, the day set for the deposition and production, however, Frame still made only partial production. That afternoon, the court held her in contempt and ordered her committed until she complied. It stated:

What I have come to learn is that I may not trust Ms. Frame; that she has had inconsistent under oath

explanations for a number of things.... It has come to the point where she apparently has never taken the authority of the court particularly seriously. In a crunch, she has done the minimal. It has consumed an inordinate amount of court's time It has run up the costs of opposing counsel; and yet today, given one more chance, after I tried to make it clear and I tried to limit the scope of the production and the time period covered, we're back to the same thing: The lawyer has it; the trustee has it; I threw it away; I forgot which bank account I had; it was all cash.... The time has long since passed that Ms. Frame needs to obey the simplest rules She has been disingenuous on her good days and duplicitous consistently.

Following further partial compliance, the court conditionally released Frame on June 3, 1992, requiring her to produce the remaining documents. During the next months, however, Frame continued to defy the court's orders; and on September 18, the court again held Frame in contempt and ordered her committed. The orders of contempt and commitment were revised on September 24, and Frame remains incarcerated under those orders.⁴

II.

Frame contends that (1) the burden of proof was improperly shifted to her, (2) the court's orders are impermissibly vague and ambiguous, (3) there is insufficient evidence that she violated those orders, (4) she has no real opportunity to purge the contempt, and (5) the contempt orders were criminal, rather than civil, requiring the district court to employ additional procedures, which it did not do.

⁴ On October 19, the district court issued an order releasing Frame from 10:00 a.m. Mondays to 3:00 p.m. Fridays "for the sole purpose of assisting counsel". Several restrictions apply to her release.

An order of civil contempt must be based upon clear and convincing evidence that (1) a court order was in effect, (2) the order required certain conduct by the respondent, and (3) the respondent failed to comply with the order. ***Martin v. Trinity Industries, Inc.***, 959 F.2d 45, 47 (5th Cir. 1992). We review a civil contempt order only for an abuse of discretion, ***id.*** at 46; the underlying factual findings only for clear error. ***Id.*** at 46-47; Fed. R. Civ. P. 52(a).

1.

The burden of proof was not improperly shifted to Frame. The court's rejection of her testimony and other evidence at the May 11 hearing regarding why she had failed to produce documents did not constitute a shift in the burden of proof. Rather, the district court simply found, as a matter of fact, that the evidence was not credible.

At the May 28 hearing, the court began by stating to counsel for the Appellees: "you have gone over the [material] that was produced this morning and had your conversations in the deposition with Ms. Frame, would you characterize for me those things which you believe were not produced in response to my order." Appellees' counsel responded by explaining, in detail, that gaps existed in the checks and deposit records produced on Frame's bank accounts; that no credit cards, charge slips, or monthly credit card statements were produced; that the tax returns produced were incomplete; and that no documents reflecting her relationship with the various corporations involved were produced. This was the

requisite clear and convincing evidence that Frame had not satisfied the May 12 order.

Once the elements necessary to support the contempt order were established, the burden properly shifted to Frame to prove either compliance with the order or the inability to comply. ***Petroleos Mexicanos v. Crawford Enterprises, Inc.***, 826 F.2d 392, 401 (5th Cir. 1987). As noted, the court rejected Frame's excuses. Furthermore, it stated that to the extent her testimony could be believed, her excuses went not to the impossibility of production, but to inconvenience and difficulty. The proof was properly developed; Frame simply failed to carry her burden.

2.

The orders were not vague and ambiguous. The first contempt finding was based on Frame's violation of the May 12 order, which required her to produce the following documents for the period January 1, 1990, through May 28, 1992:

- A. Copies of all deposits made by Frame to any bank account.
- B. Copies of all checks signed by Frame for any account.
- C. Complete records for every credit card Frame has used.
- D. Complete tax return records, including corporate, personal, and franchise.
- E. Any other document reflecting whether Frame is an officer, director, or employee of any entity, including any contracts signed by her or executed by her.
- F. Records of travel expenses, including hotel, rental car, and airline for Frame's travel in any capacity.

G. The documentary history of her personal and business expenses.

The order was neither vague nor ambiguous.

Frame's release on June 3 was conditioned on her producing the remaining documents "exhibiting the consumption or manipulation of economic resources from January 1, 1990, to June 1, 1992," including "all documents in her possession as well as those in the possession of her fiscal agents, including Chazare, Inc., and her brother." The September 18 contempt order provided that she could "rid herself of her contempt by complying with this court's order to disclose all documents that reflect her personal and financial activities." That order was revised on September 24 to further explain this scope of discovery; it stated that "Frame must turn over documents relating to financial conduits that the court knows about as well as those that have not been disclosed by Frame." The original and revised September civil commitment orders stated that Frame was required to "disclose all documents that reflect her personal and financial activities, including sources and application of all [resources] consumed, directed, disbursed, acquired, negotiated, or held by her in any capacity." The September 24 revised civil commitment order broadened the time period to include documents covering July 1, 1985 to the present.

Although broad, these orders are not ambiguous, especially when considered in the context, and against the backdrop, of the entire discovery process. The clear purpose of the post-judgment discovery is to locate Frame's assets in order to execute judgment against her. The court orally explained that Frame was to "produce

the records that will tell her creditors where the sources of her funds and nature of her expenses have been so that they can ... recover the money she took from them." The record contains several volumes of transcripts from the various hearings discussing the specific information sought by the Appellees.

It is sufficient that contempt orders be framed "so that those who must obey them will know what the court intends to require and what it means to forbid." ***International Longshoreman's Ass'n Local 1291 v. Philadelphia Marine Trade Ass'n***, 389 U.S. 64, 76 (1967). As the district court noted: "She knows what she is supposed to produce. She has had plenty of time to seek clarification. She's had plenty of time to seek assistance. She has not done it. She has sat here and dissembled." There is no clear error in these findings.

3.

There was the requisite clear and convincing evidence that Frame violated the court's orders. Among many other things, the district court found that Frame destroyed her passport or put it beyond the Appellees' reach, that she failed to disclose the existence of over five corporations under her control as well as several personal bank accounts, and that she failed to provide information on financial transactions discovered by the Appellees totaling over \$1 million. The record is replete with other findings regarding Frame's evasive tactics. And, needless to say, the district court judges Frame's credibility. It stated: "To find that Miss Frame has not been candid in the disclosure of her

affairs is one of the easiest findings I would ever have made." The district court has devoted an incredible amount of time to these proceedings. It has a complete and most impressive grasp of the various transactions and documents in issue. Its findings of fact are not clearly erroneous.

4.

Frame can purge the contempt. The district court set the standard of compliance as "[s]ubstantial production that indicates a reasonable effort to produce documents disclosing the location or path of monies that Frame and her associates have controlled" Frame has failed to this, and has failed to prove an inability to comply.

Her contention appears to be that producing the documents sought is impossible because they do not exist. The district court, however, specifically found that such documents do exist and that it is within Frame's power to produce them. In light of the sheer volume of Frame's financial activity, the relative absence of documentation of that activity, and her history of misleading, to say the least, the district court in order to conceal her assets, the district court's inferences were more than reasonable. We find no clear error in its findings.

Frame destroyed her credibility with the district court through her repeated abuses of the judicial process and evasive tactics. The district court is not now required to accept her self-serving assertion that the documents do not exist, when indications exist to the contrary. As the district court

explained, her only options at this final juncture are to produce the long-awaited documents, to admit that she has destroyed them, or to suffer the consequences of contempt.

5.

Finally, the contempt orders were civil, not criminal. They were designed only to coerce compliance with the court's discovery orders, not to punish Frame. Although the district court discussed several times the possibility of seeking criminal prosecution against Frame, it repeatedly rejected that avenue, emphasizing that it desired only to coerce her into compliance with its orders. Moreover, the district court made clear that it would make itself available "at any time day or night" to determine whether Frame made any progress toward substantial compliance, recognizing the severity of the commitment orders.⁵

Expressions of the district court's understandable frustration with Frame do not require the conclusion that it ordered contempt in an effort to punish her. Furthermore, Frame's contention that "[t]he order serves no remedial purpose beneficial to the plaintiffs" ignores that imprisonment for contempt has proven fruitful in getting Frame to comply. Both her initial imprisonment and her present imprisonment have led to further, albeit still limited, document production.

⁵ As noted, the district court modified the commitment order on October 19 in an effort to facilitate Frame's compliance by allowing her to assist her counsel in locating the remaining documents.

III.

Because the district court did not abuse its discretion in holding Frame in civil contempt and ordering her committed, the orders and judgments in issue, including the Revised Judgment of Contempt, are

AFFIRMED.