

**FOURTH DIVISION
BROWN, C. J.,
McFADDEN, P. J., and WATKINS, J.**

**NOTICE: Motions for reconsideration must be received no later than 4:30 pm on the 10th day after the decision was issued to be deemed timely filed.
<https://www.gaappeals.gov/rules>**

October 23, 2026

In the Court of Appeals of Georgia

A26A1433. IN THE INTEREST OF ERICA SUTTER.

BROWN, Chief Judge.

After attending a motions hearing on behalf of an interested non-party where confidential documents subject to a protective order were displayed, Erica Sutter was held in contempt of court by the trial court for her alleged failure to identify herself as an attorney representing the non-party. Sutter appeals, arguing that the record cannot sustain the contempt judgment, she was denied due process, and the contempt judgment imposes an impermissible sanction.¹ Because the trial court abused its discretion in its finding of contempt, we reverse.

¹ No other party filed an appellate brief.

Procedural Background. In 2024, Asbury Automotive Group, Inc. filed a verified complaint for damages and declaratory and injunctive relief against CDK Global, LLC in the Superior Court of Gwinnett County (the “Asbury lawsuit”). According to the verified complaint, Asbury, a franchised automotive retailer, entered into a contract with CDK for CDK to provide technology support services and data management technology for Asbury’s dealerships. Pursuant to an exception to an exclusivity term in the contract, Asbury entered into a contract with Tekion Corporation, a competitor of CDK that offers dealership management technology, for a pilot program and announced that it would move its dealerships to Tekion if the pilot program was successful. Because CDK allegedly failed to transfer Asbury’s client data from select dealerships, Asbury sought specific performance and declaratory and injunctive relief against CDK. Tekion is not a party to the Asbury lawsuit.

The Hearing. The trial court held a hearing on several motions filed by the parties in the Asbury lawsuit, including Asbury’s motion to modify the preliminary injunction, CDK’s emergency motion for sanctions due to spoliation, and CDK’s motion to compel and for attorney fees.² Sutter attended the hearing as a spectator on

² A magistrate judge, sitting by designation, presided over the hearing.

behalf of her client, Tekion, whom she represented in an antitrust case pending in California against CDK. Tekion and CDK were also adverse parties in a pending action in Delaware, although Sutter did not represent Tekion in that matter.

At the start of the hearing, the trial court requested to “go through the list and see who’s representing who” and had the attorneys for the parties to the case identify which party they were representing.³ The trial court did not request that any spectator in the courtroom identify themselves. Prior to the presentation of argument and evidence, the trial court asked whether either party wanted to “invoke the rule” to sequester any witnesses. Neither party responded and the hearing proceeded.

During the examination of a witness, counsel for CDK sought to display the “Platform Subscription Agreement” between Asbury and Tekion as an exhibit. Counsel for Asbury objected to the exhibit being displayed in open court because it

³ At the hearing, Asbury was represented by three attorneys and CDK was represented by six attorneys.

had been designated as confidential under a protective order.⁴ Thereafter, the following exchange occurred:

THE COURT: ... [T]he protective order was to make sure that this information was not disseminated outside of this hearing. *I will note we have several people in the hearing right now. Is there—and I thought everybody was covered as being either an attorney or a client. Is there someone in the courtroom that you think shouldn't be hearing any of this information going forward?* Because I'm sure this is not the last document we'll talk about under the protective order.

[COUNSEL FOR ASBURY]: Your Honor, on behalf of Asbury we don't have an issue with him being questioned about it. It was just the publishing of the document on the screen. So I have no issue with him being questioned about it.

THE COURT: Well, publishing on the screen isn't an issue with the attorneys. Y'all are all, you know, as officers of the [c]ourt and for your clients have access to the document. *What I'm concerned about is people in the audience. No one ... sequestered any witnesses or invoked the rule, so I assume they're okay for purposes of this hearing. If they are not, I need you to mention that now* and we can correct that if you're concerned about any of the protective order provisions being violated by this being published during examinations.

[COUNSEL FOR ASBURY]: Okay.

THE COURT: So I'm asking you directly, since you made the objection.

[COUNSEL FOR ASBURY]: Thank you. *No, I don't think anybody needs to leave at this time, Your Honor.*

⁴ Prior to the hearing, Asbury and CDK entered a stipulated protective order for the “production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted.”

THE COURT: That's outstanding. Same direction to you, [Counsel for CDK]. You know what you're putting up. *So is there anybody in here that you think should not be—should not see this as you're questioning the witness?* [COUNSEL FOR CDK]: *No, Your Honor. Everyone who's here has a right to be here.*

THE COURT: Awesome. Good, good. You may proceed. And now he can look at it on the screen and actually see it.

(Emphasis added). The hearing proceeded and multiple exhibits were displayed to the courtroom on the screen.

Following testimony from a second witness, counsel for CDK brought to the trial court's attention that Sutter was present within the courtroom and had not identified herself. CDK's counsel expressed concern that Sutter, who was not representing a party in the case and was not subject to the protective order, had been listening to information about the confidential documents in the case and requested that she "be excluded." He also noted that her client, Tekion, had failed to provide documents in response to a subpoena served by CDK, and there was a hearing in Delaware in two days regarding that issue.

The trial court called Sutter to the bench and questioned her as follows:

THE COURT: Ms. Sutter, how long have you been practicing law?

MS. SUTTER: I've been practicing for nine years now.

THE COURT: You have been practicing long enough to know that when information is being discussed as confidential, it's only for attorney's

eyes only and their client, that includes just them and not you. Why didn't you identify yourself when I made that announcement?

MS. SUTTER: Absolutely, Your Honor. And I apologize. I don't recall or didn't understand that to be what was being asked. I'm used—I have gone to and observed plenty of hearings in the past as a—just an observer. And I'm used to the courtroom, you know, mentioning this is a closed courtroom and sending everyone out. And I apologize. I just thought that the parties had decided to take the information off the screen. And I believe that [Counsel for CDK] said everyone here is supposed to be here.

THE COURT: I recall me, because it was on the screen, specifically making sure that everybody involved in this courtroom was part of the case as the client, witness, or the attorneys. And those people in this case are CDK Global, LLC, and, Asbury Auto Group. They don't include Tekion. So are you the lead counsel in the case in Delaware?

MS. SUTTER: I am not. I was just asked on—I believe it was Thursday or Friday to fly down to attend this.

THE COURT: So the [c]ourt is going to direct you not to share any information that you heard here today. I'm going to have the counsel for CDK put that in the order for me to sign, so that you have that with you. If you will, *you could be considered in contempt of [c]ourt*. We could bring you back here. Do you understand that?

MS. SUTTER: I understand that, Your Honor.

(Emphasis added).

At the prompting of CDK's counsel, the trial court asked Sutter whether she had communicated what she observed to any of her colleagues, and she confirmed that she did not share any substantive information. The trial court stated:

Well, in any event[,] I'll have you not share any more information. *That'll be my sanction for you in this matter.* I'm going to have you

share—and you don't have to tell me on the record, but any information they need to put in their order, such as your name and bar number, to make sure it's correctly spelled, so when the court gets it in Delaware, they'll understand why you won't be actively involved in that hearing.

(Emphasis added). The trial court also instructed Sutter to turn over the notes she had taken from the hearing and informed the parties that he would have them shredded.

Sutter explained to the court that she was attending the hearing from out-of-state because Tekion was trying to identify the relevancy of information in advance of the hearing in Delaware. The court explained to Sutter:

So here's the situation you find yourself in. I'm going to allow you to leave my courtroom. *We're not going to do a contempt hearing*, because that's normally what I do to other attorneys that just ignore what I say. Because I truly believe ... that was an inadvertent error on your part. If ... any information that was discussed in this hearing is used in either the Delaware or the California one, *we will have a hearing for sanctions*. And you will have to come back, and you'll have to answer to me. Are we clear on that?

(Emphasis added). Sutter indicated that she understood and counsel for CDK was directed to prepare an order for signature. The trial court excused Sutter from the hearing and wished her a “nice trip.”

The Contempt Order. The day after the hearing, the trial court entered an order holding Sutter in contempt of court.⁵ The order states that the trial court “made an announcement at the beginning of the proceedings for any individual in the courtroom who was not an attorney or representative of CDK or Asbury to identify themselves so the [c]ourt could take appropriate measures to protect the parties’ confidential information” and no one identified themselves in response. The order goes on to find that although Sutter represented non-party Tekion in a lawsuit in another jurisdiction, she “failed to disclose her presence in the courtroom after hearing the [c]ourt’s directive[,]” observed the presentation of documents and information during the hearing that were marked “Confidential and/or Attorneys’ Eyes Only,” took handwritten notes, and “reported details about the hearing to her colleagues” that also represented Tekion. The trial court then found Sutter to be “in contempt of [c]ourt for violating the [c]ourt’s directive,” and provided the following sanctions:

⁵ The order was prepared by counsel for CDK. When submitting the proposed order to the trial court, CDK’s counsel did not include Sutter in the list of the e-mail’s recipients but did copy counsel for Asbury. Upon receipt of the proposed order, counsel for Asbury responded that “[t]he statements and findings in the order are not consistent with our recollection of the events from yesterday,” and offered to confer with CDK’s counsel to revise the order. The trial court’s staff attorney responded that the trial court was “aware of both parties’ concerns” and would file the order that afternoon.

1. That [Sutter] shall not disclose or communicate either orally or in writing any information about CDK or Asbury observed or learned during the hearing to any person, including but not limited to any employee or representative of Tekion or [Sutter's law firm];
2. That [Sutter] provide her handwritten notes from the hearing to the [c]ourt, which she did on May 27, 2025, and which the [c]ourt destroyed;
3. That [Sutter] shall immediately destroy any other written materials, documents, notes, photographs, or recordings from or about the hearing; and
4. That [Sutter] shall not participate as counsel for Tekion in *CDK Global, LLC v. Tekion Corp.*, No. K24M-12-010 AMF (Delaware Superior Court) or *Tekion Corp. v. CDK Global, LLC*, No. 3:24-cv-08879 (N.D. Cal.).⁶

Sutter moved for reconsideration and to vacate the contempt order, arguing that the order did not reflect the trial court's findings from the hearing, the record failed to show that Sutter violated any order or instruction of the trial court, and she was

⁶ Counsel for CDK provided copies of the contempt order to the courts in Delaware in *CDK Global, LLC v. Tekion Corp.*, C.A. No. K24M-12-010 AMF and California in *Tekion Corp. v. CDK Global, LLC*, Case No. 3:24-cv-08879-JSC.

denied due process.⁷ CDK filed a response in opposition.⁸ Before the superior court ruled on the motion, Sutter filed a timely notice of appeal.⁹

1. Sutter argues that the trial court abused its discretion by holding her in wilful contempt for failing to identify herself as counsel for non-party Tekion during the motions hearing. She argues that the record does not support a finding that the trial court made any directive for her to identify herself. We agree.

Inherent within every court is the “power to compel obedience to its orders and to control the conduct of persons connected with a judicial proceeding.” *In re Syvertson*, 368 Ga. App. 865, 866 (891 SE2d 424) (2023). “The discretion of the judges of the superior courts in all matters pertaining to contempt of their authority

⁷ Prior to filing the motion for reconsideration and to vacate, Sutter filed an emergency motion to release the transcript of the proceedings. Sutter’s counsel requested a copy of the transcript from the parties and proposed signing an acknowledgment to the stipulated protective order. Counsel for Asbury agreed but counsel for CDK declined this proposal. The trial court granted the motion to release the transcript.

⁸ In its response in opposition, counsel for CDK noted that the transcript of the hearing was not available at the time the contempt order was entered.

⁹ Sutter filed an emergency application for supersedeas pursuant to OCGA § 5-6-13(a) on July 3, 2025, which the trial court denied. This Court granted Sutter’s emergency motion to stay the superior court’s contempt order pending appeal.

and mandates will never be controlled unless grossly abused.” *MTN Investment v. D. Magen*, 369 Ga. App. 576, 577(1) (894 SE2d 149) (2023) (punctuation omitted).
Nevertheless,

before a person may be held in contempt for violating a court order, the order should inform him in definite terms as to the duties thereby imposed upon him, and the command must therefore be express rather than implied. Furthermore, the very nature of the proceeding in either civil or criminal contempt for an alleged disobedience of a court order requires that the language in the commands be clear and certain.

McCloskey Int’l v. GJ&L, Inc., 379 Ga. App. 44, 45(2) (927 SE2d 596) (2026) (punctuation omitted).

Here, the contempt order indicated that the trial court “made an announcement at the beginning of the proceedings for any individual in the courtroom who was not an attorney or representative of CDK or Asbury to identify themselves,” and that Sutter “failed to disclose her presence in the courtroom after hearing the [c]ourt’s directive.” However, the transcript of the hearing does not support a finding that the trial court made such an announcement. At most, the transcript shows that at the beginning of the hearing, the trial court stated it would “go through the list and see who’s representing who.” Although the trial court did note midway through the

hearing that there were several people in the audience, at no point during that colloquy did the trial court direct the spectators to identify themselves. Even if the trial court meant to imply that the spectators in the audience should identify themselves if they were representing a non-party to the litigation, “a party may not be punished for failure to comply with the terms of [an] order unless those terms are set forth in definite terms that are express rather than implied.” *McCloskey*, 379 Ga. App. at 46(2) (punctuation omitted). Because the trial court’s directives at the hearing “did not clearly and definitely inform” Sutter that she needed to identify herself, she “cannot be held in contempt on this basis” and the “judgment of contempt must be reversed.” *Id.* (punctuation omitted).

2. In light of our holding in Division 1, we need not address Sutter’s remaining enumerations of error.

Judgment reversed. McFadden, P. J., and Watkins, J., concur.