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Contempt of Trial Court -- Effect of Appeal

Donald I. Bierman

CASES NOTED

CONTEMPT OF TRIAL COURT—EFFECT OF APPEAL

The plaintiff initiated a paternity suit in chancery.[1] The jury returned a verdict against the defendant and the court ordered a schedule of support payments.[2] The defendant filed an appeal but did not remit any of the court-ordered payments or post a supersedeas bond.[3] The plaintiff moved to dismiss the appeal on the ground that the defendant had been adjudged in contempt[4] by the trial court for disregarding its order to pay support.[5] *Held,* dismissed: when an appellant has been adjudged in contempt of a lower court for violating its order in the cause appealed from, then the appellate court *may* dismiss the appeal without considering the merits of the decision of the court below. *Morris v. Rabara,* 145 So.2d 265 (Fla. 2d Dist. 1962).

It is well settled that when an appellant disobeys an *appellate* court order, his appeal will be dismissed.[6] When an appellant disobeys a *trial* court order, however, the decisions are not uniform with respect to disposal of a subsequent appeal. Some jurisdictions have dismissed the appeal[7] whereas others have permitted it,[8] and a few states have conflicting results within their own courts.[9] Florida cannot be considered to

1. FLA. STAT. § 742.011 (1961) states: "Any unmarried woman who shall be pregnant or delivered of a bastard child, may bring proceedings in the circuit court, in chancery, to determine the paternity of such child."

2. FLA. STAT. § 742.031 (1961), provides for a trial by jury on the issue of paternity and empowers the chancellor to order support payments.

3. FLA. STAT. § 59.13(1)(1961), provides for the setting and posting of supersedeas bond in order to stay the execution of the lower court's decree while an appeal is pending.

4. In addition appellee moved to strike appellant's brief for failure to include any part of the original transcript in the appendix and also moved to quash and affirm, claiming the appeal was frivolous. Both motions were denied for being without merit. The shotgun use of these motions indicates that counsel for appellee may have inadvertently stumbled upon what turned out to be the deciding factor in this case. Morris v. Rabara 145 So. 2d 265, 266 (Fla. 2d Dist. 1962).

5. The appellee's first motion to dismiss was denied because the appellant had not yet failed to meet the court-ordered schedule of payments. The court said that the "record here does not demonstrate that the defendant is in contempt." *Ibid.*

6. *E.g.,* Stewart v. Stewart, 91 Ariz. 356, 372 P.2d 697 (1962); Creel v. Creel, 29 So.2d 838 (Miss. 1947); Larkin v. Larkin, 192 Okla. 144, 134 P.2d 590 (1943).

7. *E.g.,* Casebolt v. Butler, 175 Ky. 381, 194 S.W. 305 (1917); Closset v. Closset, 71 Nev. 80, 280 P.2d 290 (1955); Flakal Corp. v. Krause, 269 Wis. 310, 70 N.W.2d 8 (1955).

8. *E.g.,* Aderholt v. Aderholt, 218 Miss. 808, 67 So.2d 505 (1953); Hazard v. Durant, 11 R.I. 195 (1875); Wolfe v. Wolfe, 120 W. Va. 389, 198 S.E. 209 (1938).

9. California held dismissal to be proper in MacPherson v. MacPherson, 13 Cal. 2d 271, 89 P.2d 382 (1939); Knoob v. Knoob, 192 Cal. 95, 218 Pac. 568 (1923). But California held dismissal improper in Borenstein v. Borenstein, 11 Cal. 2d 255, 79 P.2d 91 (1938); Hosford v. Henry, 107 Cal. App. 2d 765, 238 P.2d 91 (1951). Illinois has held dismissal to be proper in Garrett v. Garrett, 341 Ill. 232, 173 N.E. 107 (1930); Lindsay v. Lindsay, 255 Ill. 442, 99 N.E. 608 (1912). It was held improper in People v. Horton, 46 Ill. App. 434 (1892).

have conflicting decisions since dismissal is *discretionary* with the appellate court.[10]

The contempt-appeal[11] cases arise most often from domestic relations disputes involving alimony, support payments and child custody.[12] When the case law in this area is analyzed according to factual situations involved, a distinct pattern can be discerned. The overwhelming majority of the states which dismiss contempt-appeal cases do so only when the appellant has purposely left the jurisdiction of the court or has caused a child, whose custody is in dispute, to do so. The rationale for dismissing these appeals is that the court has lost its power to enforce its final decision[13] and has lost power to punish contempt through fine or incarceration.[14] The courts which dismiss appeals of fugitive appellants are unlikely to do so unless contempt proceedings have begun in the court below.[15] In *National Union of Marine Cooks & Stewards v. Arnold*[16] the United States Supreme Court held that a state court's action in dismissing a contempt-appeal did not violate the "due process" clause of the fourteenth amendment because appeal is not a right granted by the Constitution.[17] The high tribunal relied upon the reasoning used by the courts in criminal-appeal cases, in which there exists a long-standing precedent of dismissing appeals of fugitives.[18]

10. The Florida court did not dismiss the appeal in Palmer v. Palmer, 28 Fla. 295, 9 So. 657 (1891) but it did not state that it was without power to do so. The instant case indicated that dismissal is within the judicial *discretion* of the appellate court.

11. Hereinafter the term *contempt-appeal* will refer to civil cases in which an appellant is disobeying a trial court order while the appeal is pending.

12. *E.g.*, McHan v. McHan, 59 Idaho 41, 80 P.2d 29 (1938) (alimony); Stewart v. Stewart, 91 Ariz. 356, 372 P.2d 697 (1962) (support payments); Burns v. Burns, 35 Ill. App. 2d 34, 181 N.E.2d 605 (1962) (custody).

13. *E.g.*, MacPherson v. MacPherson, 13 Cal. 2d 271, 89 P.2d 382 (1939) (appellant went to Mexico); Lindsay v. Lindsay, 255 Ill. 442, 99 N.E. 608 (1912). These cases generally follow the rationale used in criminal fugitive dismissals—that when a party is without the court's jurisdiction he may choose to accept the court's decision by returning or reject an unfavorable decision by remaining a fugitive. Because of this "option" in the appellant, these courts have refused to hear the appeal. It is suggested that the "full faith and credit" clause limits this "option" in the appellant since the final decision of the appellate court can be executed in other states within the United States.

14. Fine and imprisonment are standard devices used for coercing compliance to a court order. They are also used as a means of punishing contempt when the courts find this necessary. THOMAS, PROBLEMS OF CONTEMPT OF COURT 4 (1934).

15. Hosford v. Henry, 107 Cal. App. 2d 765, 238 P.2d 91 (1951); Palmer v. Palmer, 28 Fla. 295, 9 So. 657 (1891); Ruhl v. Ruhl, 24 W. Va. 279 (1884). *Contra*, Tobin v. Casaus, 128 Cal. App. 2d 588, 275 P.2d 792 (1954). These cases discuss the possibility of violating the "due process" clause of the Constitution by denying an appeal before contempt is adjudged.

16. 348 U.S. 37 (1954). In this case the appellant failed to make payments on a money judgment and failed to post bond in lieu thereof. He was adjudged in contempt and his appeal dismissed.

17. The court pointed out that statutory review is important and must be exercised without discrimination, but that it is not a requirement of due process. *Id.* at 43. The "right of appeal [is not] essential to due process." Reetz v. Michigan, 188 U.S. 505, 508 (1903).

18. Allen v. Georgia, 166 U.S. 138 (1896); Smith v. United States, 94 U.S. 97 (1876).

The predominant rationale of courts which refuse to dismiss contempt-appeal cases is that appeal is a right which should not be interfered with when there are alternative methods of punishing for contempt.[19] The factual pattern that most frequently emerges in this area of contempt-appeal cases concerns an appellant who has failed to make payments ordered by the court, yet remains in its jurisdiction. Generally, the courts do not dismiss these appeals because they may, by use of coercive methods, achieve compliance with the lower court's order.[20]

In *Woodson v. State*,[21] decided in 1882, Florida adopted the procedure in criminal cases of dismissing appeals of fugitive appellants. The court reasoned that it should not spend its time entertaining proceedings when the successful execution of its judgment remained subject to the inclination of the fugitive.[22] The instant case cites *Woodson* and *Bronk v. Bronk*[23] with approval. The *Bronk* case, a divorce action, dealt with an appellant who escaped from the sheriff's custody in order to avoid a writ of ne exeat.[24] In denying the appellant's right to be heard on five counts of his appeal the court said:

> The right to be heard upon appeal or writ of error has not been held to be one which a party can not deprive himself of by his voluntary act of putting himself in contempt of court . . . . The court will not . . . determine the correctness of the action of the lower court . . . while the appellant, in defiance of the court and of its writs, remains beyond its jurisdiction and renders it powerless to enforce any decree . . . it might render.[25]

The only other Florida civil case in this area, *Palmer v. Palmer*,[26] did not give a precise ruling on dismissal of a contempt-appeal; rather, it held that it was not proper to dismiss an appeal when contempt was not formally *adjudged*.[27]

The court in the instant case admitted that it had no precedent

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The court analogized between the *Arnold* case and criminal cases, suggesting that in these situations the "subject matter of litigation" is no longer in the courts jurisdiction. See note 16 *supra* at 43.

19. Hovey v. Elliot, 167 U.S. 409 (1896); McHan v. McHan, 59 Idaho 41, 80 P.2d 29 (1938); National Union of Marine Cooks & Stewards v. Arnold, 348 U.S. 37 (1954) (dissent).

20. THOMAS, *op. cit. supra* note 14.

21. 19 Fla. 549 (1882).

22. See note 13, *supra*.

23. 46 Fla. 474, 35 So. 870 (1903).

24. "A writ which forbids the person to whom it is addressed to leave . . . the jurisdiction of the court. . . . Sometimes . . . it is issued against a person who is removing or attempting to remove property beyond the jurisdiction." BLACK, LAW DICTIONARY (4th ed. 1951).

25. Bronk v. Bronk, 46 Fla. 474, 476-77; 35 So. 870, 871 (1903).

26. 28 Fla. 295, 9 So. 657 (1891).

27. There must be a *hearing* on a rule to show cause why a party should not be adjudged in contempt before he is thus adjudged. Palmer v. Palmer, 36 Fla. 385, 18 So. 720 (1895).

"precisely in point"[28] for deciding civil contempt-appeal cases. The decision adopted one of the prevailing reasons for dismissal when it stated that "it is contrary to the principles of justice to permit one who has flounted [*sic*] the orders of the court to demand judicial assistance."[29] The instant case places Florida with the majority of states, which dismiss appeals when the appellants voluntarily absent themselves from the court's jurisdiction.[30] However, the court's rationale indicates that Florida may go beyond this position and dismiss any action[31] in which the appellant has flouted the orders of the court. The court reduces the harsh impact[32] of the dismissal to a degree by allowing the appellant thirty days to purge himself of contempt. This provision, which has become common in similar cases,[33] is a significant benefit to the appellant who is not wilfully in contempt or who is able to purge himself of contempt without undue hardship.

The Florida Constitution grants the *right* of appeal in *all* cases.[34] The courts have the power to punish for contempt so that the judicial system will not become meaningless because of disrespect for and disobedience of its orders.[35] The *Morris* case places the court in a dilemma between these two important principles. It is submitted that the constitutional right to appeal should be zealously guarded by the courts and that the more equitable solution would be to stay the appeal until the appellant purges himself of contempt, allowing him thirty days without cause and one year with cause.[36] Since the *Morris* case was at the district court level it is hoped that when similar facts reach the Florida Supreme Court, it will see fit to solve this dilemma by protecting the right of appeal.

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28. Morris v. Rabara, 145 So.2d 265, 267 (Fla. 2d Dist. 1962).

29. *Ibid.*

30. "[T]he judgment of contempt has not been executed for the reason that the defendant *cannot be found* in Palm Beach County." *Id.* at 266 (emphasis added.) See cases cited note 13 *supra.*

31. A California court dismissed the appeal of a party who was a fugitive in a case totally different from the one at bar because the court said he was flaunting the judicial system. *In re* Scott's Estate, 150 Cal. App. 2d 590, 310 P.2d 46 (1957).

32. Dismissal of appeal differs from other coercive methods of the court in that once an appeal is dismissed it is lost forever, whereas with other means of coercion the party may be relieved of punishment by complying with the court order.

33. *E.g.*, Burns v. Burns, 35 Ill. App. 2d 34, 181 N.E.2d 605 (1962) (30 days); Henderson v. Henderson, 329 Mass. 257, 107 N.E.2d 773 (1952) (30 days); White v. White, 132 N.Y. Supp. 1043, 148 App. Div. 883 (1911) (10 days).

34. Appeals from trial courts in each appellate district . . . may be taken to the court of appeal of such district, *as a matter of right*, from *all* final judgments or decrees except those from which appeals may be taken directly to the supreme court or to a circuit court. FLA. CONST. art V, § 5(3). (Emphasis added.)

35. FLA. STAT. § 38.23 (1961) provides that the courts shall be empowered to punish for contempt. The refusal to obey a court order or decree is specifically mentioned as contempt.

36. This is similar to the rule dealing with default judgments and decrees pro confesso. FLA. R. CIV. P. 1.38 (b).