

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

In the matter of: M. K.

Court of Appeals No. E-10-028

Trial Court No. 2009-JB-31

DECISION AND JUDGMENT

Decided: June 3, 2011

* * * * *

Beverly Newell Hancock, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} In this appeal from a judgment of the Erie County Court of Common Pleas, Juvenile Division, we are asked to determine whether the trial court abused its discretion in finding appellant, Beverly Newell Hancock, in contempt of court.

{¶ 2} This cause was instituted by appellant, who is an attorney licensed in the state of Ohio, on behalf of her client, D.H. D.H. requested visitation rights with his daughter, M.K. During the proceedings below, the mother of M.K. and D.H. reached an agreement as to visitation, and, apparently, the magistrate verbally ordered Attorney

Newell Hancock to submit a judgment entry reflecting this agreement within ten days.

This order was not journalized, and appellant never filed said entry.

{¶ 3} On December 9, 2009, the trial court judge, appellee, the Honorable Robert Delamatre¹, made the following journal entry:

{¶ 4} "**NOTICE**

{¶ 5} "Pursuant to previous notice by the Court, you were to have submitted a JUDGMENT ENTRY. Unless said JUDGMENT ENTRY is submitted within ten (10) days of the date thereof, the Court will on its own motion, dismiss the motion/case."

{¶ 6} Appellant failed to timely file the requested judgment entry. Appellee did not, however, dismiss this cause. Instead, on January 26, 2010, the judge filed the following "ORDER TO APPEAR":

{¶ 7} "This matter came before the court for hearing on October 27, 2009. Whereas, a Judgment Entry was to be submitted by Attorney Hancock to reflect the agreement reached by [the] parties on said hearing date. Further, numerous notices were sent to Attorney Hancock to submit said entry and to date, said entry has not been received.

{¶ 8} "IT IS THEREFORE ORDERED that attorney, Beverly Newell Hancock, shall appear before this court on February 19, 2010 at 11:00 a.m. to show cause, if any, why she should not be held in contempt."

¹Appellee failed to file a brief on appeal, and we have consequently accepted appellant's statement of facts. See App.R. 18(C).

{¶ 9} On February 1, 2010, appellant filed a "Motion to Dismiss." She argued that the court's "action" constituted an "abuse of discretion" because it was her client, not the court, who had the right to seek a remedy. She also argued waiver by estoppel and, lack of notice, and the lack of a certain and definite decree.

{¶ 10} On April 14, 2010, the court below held a hearing upon the motion to show cause and appellant's motion to dismiss. On April 16, 2010, the trial court entered a written judgment in which it acknowledged the fact that the original verbal order to submit a judgment entry was never reduced to writing and journalized. The judge therefore ordered that the January 26, 2010 motion to show cause be dismissed, without prejudice. The judge further ordered appellant to submit, within 14 days of its judgment, an entry reflective of the parties' agreement as read into the record on October 27, 2009.

{¶ 11} Once again, appellant failed to file the ordered judgment entry. Therefore, on May 10, 2010, appellee issued an order for appellant to appear on June 3, 2010 at 1:30 p.m. and to show cause, if any, why she should not be held in contempt of court. Appellant appeared and filed a motion to dismiss the contempt proceeding based upon res judicata and a motion to recuse. On June 21, 2010, the trial court entered its judgment finding appellant in contempt of court, ordering her to spend three days in jail and to pay a \$150 fine. The court, however, suspended this sentence if appellant filed a judgment entry reflective of the holdings made at the October 27, 2009 hearing within 14 days of the file-stamped date of its order. Newell Hancock appeals this judgment and asserts the following assignments of error:

{¶ 12} "TRIAL COURT ERRED, AND ABUSED ITS DISCRETION IN FINDING THAT APPELLANT COMMITTED WILFUL [sic] CONTEMPT OR IN THE ALTERNATIVE WAIVED ANY CITATION FOR CONTEMPT BY ISSUING A NOTICE THAT WAS COMPLIED WITH BY THE ATTORNEY.

{¶ 13} "THE TRIAL COURT ERRED, AND ABUSED ITS DISCRETION BY FILING AND FINDING THE ATTORNEY GUILTY OF A SECOND CONTEMPT CITATION BASED UPON THE SAME ISSUES IN THE PREVIOUSLY HEARD CONTEMPT HEARING."

{¶ 14} In her first assignment of error, appellant asserts that the trial court abused its discretion in finding her in contempt because she complied with the December 9, 2009 judgment by not filing an entry within ten days of the trial court's order. In other words, Newell Hancock argues that the trial court should have dismissed this cause.

{¶ 15} R.C. 2705.02 provides, in material part:

{¶ 16} "A person guilty of any of the following acts may be punished as for a contempt:

{¶ 17} "(A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or officer;"

{¶ 18} "To support a contempt finding, the moving party must establish, by clear and convincing evidence, the existence of a valid court order, that the offending party had knowledge of the order and that the offending party violated such order." *Hueber v. Hueber*, 12th Dist. Nos. CA2006-01-004, CA2006-02-019, CA2006-02-020,

2007-Ohio-913, ¶ 16. A reviewing court will not disturb a lower court's finding of contempt absent an abuse of discretion; consequently, appellant must demonstrate that the trial court's finding was arbitrary, unreasonable, or unconscionable. *Willis v. Willis* (2002), 149 Ohio App.3d 50, 59.

{¶ 19} It is well established that a trial court speaks only through its journal entries and not by oral pronouncement. *State v. King* (1994), 70 Ohio St.3d 158, 162; *Glick v. Glick* (1999), 133 Ohio App.3d 821, 831. Here, the trial court's December 9, 2009 judgment was journalized. That journal entry provided appellant and her client with an option—either file a judgment entry or allow this cause to be dismissed. According to Newell Hancock, both she and her client wanted the motion to be dismissed. Therefore, she did not file a judgment entry. Thus, appellant did comply with the trial court's order. Accordingly, the trial court's finding of contempt was unreasonable and arbitrary, and appellant's first assignment of error is found well-taken. Her second assignment of error is thereby rendered moot.

{¶ 20} On consideration whereof, this court finds that substantial justice was not done the party complaining and the judgment of the Erie County Court of Common Pleas, Juvenile Division, is reversed. The costs of this appeal are waived.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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