

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|------------------------|------------------------------|
| DANIEL MUMFORD, | § |
| | § No. 152, 2003 |
| Respondent Below- | § |
| Appellant, | § Court Below: Family Court |
| | § of the State of Delaware |
| v. | § in and for Sussex County |
| | § File Nos. CS95-04504 and |
| DCSE/BARBARA CLEMENTS, | § CS93-5044 |
| | § Petition Nos. 02-32772 and |
| Petitioner Below- | § 02-33301 |
| Appellee. | § |

Submitted: March 20, 2003

Decided: March 31, 2003

Before **HOLLAND**, **BERGER**, and **STEELE**, Justices.

ORDER

This 31st day of March 2003, it appears to the Court that:

(1) The appellant, Daniel Mumford, has filed a notice of appeal from a Family Court Commissioner's order, dated February 20, 2003, which found him in contempt for failure to pay child support. The Commissioner committed Mumford to the custody of the Department of Correction at supervision Level IV Work Release or, alternatively, ordered him to pay \$2000 to the Division of Child Support Enforcement to purge the contempt.

(2) This Court does not have jurisdiction to hear an appeal directly from a Commissioner's order.¹ A party's right of review from a Commissioner's order is to a judge of the Family Court in the first instance.² In this case, Mumford should have filed his appeal to a judge of the Family Court within ten days of the Commissioner's order.³ If Mumford filed his appeal to a Family Court judge now, it would be untimely and therefore would not be considered on its merits. Nonetheless, for the reasons set forth more fully below, we conclude that a Family Court judge should consider the merits of Mumford's appeal notwithstanding its untimeliness under the rules.

(3) It appears that, after the State of Delaware Division of Child Support Enforcement initiated contempt proceedings against Mumford for failing to pay child support, Mumford responded by filing a motion to be declared a pauper and to have counsel appointed to represent him. A Family Court Commissioner denied Mumford's motion on December 27, 2002. Mumford sought review of the Commissioner's December 2002 order by filing a notice of appeal to a judge of the Family Court. On January 29, 2003, the Family Court judge held that review of the Commissioner's

¹ See *Redden v. McGill*, 549 A.2d 695 (Del. 1988).

² DEL. CODE ANN. tit. 10, § 915(d).

³ DEL. FAM. CT. CIV. R. 53.1(b).

December 2002 order was not available under Family Court Civil Rule 53.1(a) because the December 2002 order was neither “[a]n interim or final order” as required by Rule 53.1.⁴

(4) Although Mumford did not file an appeal to this Court from the Family Court’s January 29, 2003 order, the interests of justice nevertheless require us to note the error in the Family Court’s holding. Family Court Civil Rule 53.1(a) provides, “An interim or final order of a commissioner may be appealed to a judge of the Court by any party, except a party in default of appearance before such commissioner.” The Family Court rejected Mumford’s appeal because, in the judge’s view, the Commissioner’s order was neither interim nor final. In our view, this is a logical impossibility. The word “interim,” as used in Rule 53.1(a), means “not final.” Thus, the phrase “interim or final order” connotes the entire universe of possible orders, such that an order must fall into either category. In other words, *any* order entered by a Commissioner, whether it is final or not final (i.e., interim), may be appealed to a judge of the Family Court.

(5) The Family Court’s refusal to review the Commissioner’s order denying counsel to Mumford not only was erroneous but potentially had a

⁴ The judge noted, however, that the Commissioner’s order denying counsel had failed to set forth any reasons for the denial and encouraged the Commissioner to give reasons for her decision in the event of a later appeal.

substantive impact on the outcome of the contempt proceedings, which ultimately resulted in Mumford's commitment to the Department of Correction.⁵ Moreover, the Family Court judge's erroneous refusal to consider Mumford's appeal from the Commissioner's order denying counsel most likely contributed to Mumford's failure to properly appeal the Commissioner's contempt order to a Family Court judge instead of improperly filing his appeal directly to this Court.

(5) Although we must dismiss Mumford's appeal to this Court for lack of jurisdiction, we conclude, in the interests of justice, that our dismissal must include instructions to the Family Court to conduct further proceedings in this matter. Under the circumstances, we find it appropriate for the Family Court to excuse the untimeliness of Mumford's appeal and to consider, on a priority basis, the merits of his appeal from the Commissioner's contempt order as well as the Commissioner's order denying the appointment of counsel.⁶

⁵ See *Black v. DCSE*, 686 A.2d 164 (Del. 1996) (holding that an indigent defendant is presumed to have a right to court-appointed counsel when faced with possible incarceration for failure to pay court-ordered child support). See also *Walt v. State*, 727 A.2d 836 (Del. 1999) (holding, in part, that a sentence to be served in a Level IV halfway house constitutes a sentence of imprisonment).

⁶ See *Riggs v. Riggs*, 539 A.2d 163, 164 (Del. 1988) (holding that the jurisdictional defect created by an untimely appeal may be waived if the defect is attributable to court personnel).

NOW, THEREFORE, IT IS ORDERED that the within appeal is DISMISSED with directions for the Family Court to conduct further proceedings, on a priority basis, consistent with this Order.

BY THE COURT:

/s/ Carolyn Berger
Justice