

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002089-MR

SEAN DELAHANTY, JUDGE,
JEFFERSON DISTRICT COURT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 01-CI-005411

THOMAS CLAY, ESQUIRE

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, DYCHE, AND KNOPF, JUDGES.

DYCHE, JUDGE: Sean Delahanty, a judge of the Jefferson District Court, appeals from a writ prohibiting him from proceeding with contempt of court proceedings against Thomas Clay, an attorney practicing before Delahanty. We affirm.

Clay represented a juvenile in a public offender action (KRS 635.010-.545) before Judge Delahanty in the Jefferson District Court. The juvenile was acquitted of the charges against him, and following the conclusion of the action, Judge Delahanty became aware that a video tape of the proceedings had been made available to a television station in the Louisville

area. Judge Delahanty apparently believed that Clay had shared his statutorily-authorized (KRS 610.342) copy of the tape with the station, in violation of KRS 610.340(1)(a), which provides that all juvenile court records are confidential, and "shall not be disclosed except to the child, parent, victims, or other persons authorized to attend a juvenile court hearing . . . unless ordered by the court for good cause." It is undisputed that no such order had been issued in this case. Judge Delahanty called the television station and threatened its employees with punishment if the tape was aired again.

He also, *sua sponte*, issued an order for Clay to appear before him and "show cause why he should not be held in contempt for illegally disclosing the confidential records from the case of juvenile R.M. contained in court file 01-FJ-0235." Clay made an initial appearance in obedience to Judge Delahanty's order on July 26, 2001. He contested the court's jurisdiction to conduct any hearing in the matter, asserted that he had the right to proper written notice of the charges against him and their factual basis, and moved Judge Delahanty to disqualify himself as fact-finder on the ground that the Judge, himself, had made the accusation against him.

Judge Delahanty indicated that he would provide written notice as requested, but scheduled a full hearing on the contempt charge for August 31, 2001. Clay then obtained the writ from which this appeal is prosecuted, and Judge Delahanty appealed.

On appeal, Judge Delahanty first asserts that the trial court applied an incorrect standard in deciding to issue the

writ. We find this argument unpersuasive, as there really is no disagreement between the parties on the proper standard: that the lower court (Judge Delahanty, in this case) is proceeding or about to proceed outside its jurisdiction, and there is no adequate remedy by appeal. *Tipton v. Commonwealth, Ky.*, 770 S.W.2d 239 (1989). We do not believe that the Supreme Court of Kentucky changed this standard in *Cape Publications, Inc. v. Braden, Ky.*, 39 S.W.3d 823 (2001), but rather indicated that, just as in this case, a chilling threat to the exercise of First Amendment rights provides that "no remedy by appeal" prong of the standard. It is unquestioned that Clay's First Amendment rights were, or were about to be, abridged by Judge Delahanty's actions. Whether the exercise of those rights puts him in conflict with some penal statute is a matter for future determination, not prior restraint.

Although Judge Delahanty gamely maintains that he was possessed of jurisdiction to conduct the contempt proceedings, we are not persuaded. The adjudication of the juvenile matter was closed, and Judge Delahanty had lost jurisdiction over the proceedings. Although the statute involved seems to prohibit the disclosure of the tape, it also contains its own penalty provision for such disclosure; that penalty is not criminal contempt.¹ Although the violation of a penal statute can be contempt, not every violation of such a statute is contemptuous.

¹We must add at this point that from our viewing of the July 26 "hearing," it appears that Judge Delahanty has a misconception of the difference between civil and criminal contempt.

There were no grounds upon which he could conduct these proceedings.

Even if he possessed such jurisdiction, the clearly adversarial role that Judge Delahanty had assumed made conduct of the hearing inadvisable. He indicated that the proceedings were a result of "my" motion; on more than one occasion he stated that some allegation was his "belief" which he thought the facts would later "show" or "develop." Every indication was given by the court that it had prejudged the matter before it.

We can find no error in the writ issued by the Jefferson Circuit Court, and it is affirmed.

ALL CONCUR.

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