

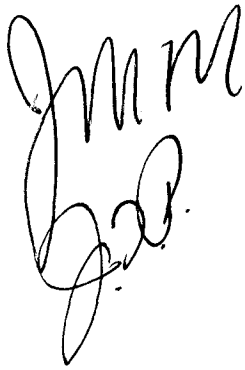
NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 0996



LANGE WALKER ALLEN

VERSUS

SUSAN TAYLOR ALLEN

Judgment Rendered: DEC 29 2014

APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ST. TAMMANY
STATE OF LOUISIANA
DOCKET NUMBER 2011-14151, DIVISION "K"

HONORABLE MARY C. DEVEREUX, JUDGE

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BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ

McCleendon, J. concurs in the result reached by the majority. (by JMM)

McDONALD, J.

Lange Walker Allen and Susan Taylor Allen were married August 18, 1998 in Madisonville, Louisiana. Mr. Allen and Ms. Allen were divorced on April 4, 2012. The parties had a separate property agreement. However, claims for spousal support, reimbursement of separate funds, and return of separate property were made in the divorce proceedings. This is an appeal from a ruling finding Mr. Allen in contempt of court and imposing sanctions.¹

Mr. Allen and Ms. Allen agreed by consent judgment signed on May 17, 2012, that Ms. Allen would have the exclusive use of a 2008 Toyota Land Cruiser until further order of the court.² At a hearing on Thursday, October 4, 2012, the parties agreed to set the value of the vehicle at \$43,000.00, and the trial court stated that the vehicle was allocated to Ms. Allen. The trial court ordered Mr. Allen to execute the title to the vehicle and send the title to Ms. Allen's attorney "by Tuesday" [October 9, 2012]. Mr. Allen's attorney stated "Certainly, your Honor."

On October 18, 2012, Ms. Allen filed a rule for contempt, requesting that the trial court hold Mr. Allen in contempt of court for willfully and intentionally failing to deliver the executed title for the 2008 Toyota Land Cruiser to Ms. Allen by October 9, 2012. Ms. Allen requested that the trial court order Mr. Allen and his attorney (she maintained his attorney possessed the executed title) to immediately deliver the executed title to Ms. Allen's counsel, along with all keys to the vehicle in their possession, and that Mr. Allen be ordered to pay her court costs and attorney fees associated with the rule for contempt.

On October 25, 2012, the trial court ordered that Mr. Allen appear and show cause on January 16, 2013: why he should not be held in contempt for intentionally and willfully violating the trial court's order of October 4, 2012; why he should not

¹ A related case, **Allen v. Raymond Childress, et al.**, 2014-0879 (La. App. 1 Cir. __/__/__), is pending in this court.

² The consent judgment also provided for other matters not pertinent to this appeal.

be ordered to immediately deliver the executed title to Ms. Allen's counsel, along with all keys to the 2008 Toyota Land Cruiser; and why he should not be ordered to pay Ms. Allen's court costs and attorney fees associated with the rule for contempt. On October 25, 2012, Mr. Allen filed notice of intent to file an application for supervisory writ with this court, "regarding [the] Court's oral orders of October 4, 2012."

On November 13, 2012, in response to a supplemental petition filed by Mr. Allen, Ms. Allen filed a peremptory exception raising the objection of no cause of action, or alternatively, a dilatory exception raising the objection of vagueness, asking that the trial court sustain her exceptions and dismiss the supplemental petition. A hearing on Ms. Allen's exceptions was set for December 19, 2012.

On December 11, 2012, Mr. Allen filed a peremptory exception raising the objection of no cause of action to Ms. Allen's rule for contempt, asserting that Ms. Allen was attempting to enforce an order that had never been reduced to writing. He also maintained that the order that Ms. Allen sought to enforce was subject to an application for supervisory writ pending in this court.³ Mr. Allen asked that his exception be sustained and that Ms. Allen's rule for contempt be dismissed. The hearing on Mr. Allen's exception was set for December 19, 2012.

At the hearing on the morning of December 19, 2012, the trial court and the attorneys for Mr. Allen and Ms. Allen discussed the fact that there was a hearing officer conference set for 1 p.m. that afternoon on Ms. Allen's rule for contempt, but that Mr. Allen had filed an exception to that rule. Ms. Allen's attorney then requested that the trial court hear Ms. Allen's contempt rule at the same time as Mr. Allen's exception, and the trial court agreed to do so.

When court reconvened that afternoon, the trial court proceeded to hear Ms.

³ The writ was denied in *Allen v. Allen*, 2012 CW 1833 (La. App. 1 Cir. 2/13/13) (unpublished writ action).

Allen's contempt rule. Again, no objection to hearing Ms. Allen's contempt rule was made by Mr. Allen.

After the hearing, the trial court ruled: denying Mr. Allen's peremptory exception raising the objection of no cause of action; finding Mr. Allen in contempt for willfully and deliberately violating the trial court's order of October 4, 2012 to deliver the signed and executed certificate of title for the 2008 Toyota Land Cruiser to Ms. Allen on or before October 9, 2012; ordering Mr. Allen to deliver the signed and executed title and all keys to the vehicle in their (his and his attorney's) possession to the office of Ms. Allen's attorney by 5:00 p.m. on December 19, 2012; ordering Mr. Allen to pay Ms. Allen \$5,553.00 in attorney fees and \$340.00 in court costs by December 28, 2012 at 4:00 p.m.; and ordering Mr. Allen to pay \$1,000.00 to the Twenty-Second Judicial District Court Judicial Expense Fund by December 28, 2012 at 4:00 p.m. Mr. Allen was sentenced to serve thirty days in the parish jail if he failed to timely comply with the judgment.⁴

The judgment also sustained Ms. Allen's dilatory exception raising the objection of vagueness, finding that specific enumerated paragraphs of Mr. Allen's petition were vague, and sustained Ms. Allen's peremptory exception raising the objection of no cause of action as to paragraph 29 of the supplemental petition. Mr. Allen filed an appeal from that judgment, assigning as error only that portion of the judgment that found him in contempt of court and imposed sanctions against him.

Ms. Allen filed a motion to dismiss the appeal, asserting that the judgment was not final and appealable. This court, on its own motion, issued a rule to show cause whether the appeal is from a final appealable judgment or a non-appealable, interlocutory ruling. The rule to show cause and Ms. Allen's motion to dismiss were referred to this panel.

⁴ Mr. Allen informed this court by letter dated November 7, 2014, that his \$1000.000 fine paid to the Twenty-

THE RULE TO SHOW CAUSE AND THE MOTION TO DISMISS THE APPEAL

In **Robinson v. Harlan**, 2011-0703 (La. App. 1 Cir. 11/9/11), 79 So.3d 1034, 1036-1037, this court found that a judgment of contempt that does not impose sanctions under La. C.C.P. art. 191, 863, or 864 or La. C.E. art. 510G was not immediately appealable under La. C.C.P. art 1915(A)(6), and dismissed the appeal. Thereafter, the supreme court granted writ of certiorari, and reinstated the appeal. **Robinson v. Harlan**, 2012-0363 (La. 4/9/12), 85 So.3d 131. In **Capital City Press, LLC v. Louisiana State University Bd. of Sup'rs**, 2013-1994 (La. 8/28/13), 120 So.3d 250, the supreme court denied writs, finding that the relator, aggrieved by a judgment imposing sanctions for contempt, had an adequate remedy by suspensive appeal.

Based upon these rulings by the supreme court, we find that the judgment herein, finding Mr. Allen in contempt and imposing sanctions, is a final and appealable judgment. The appeal is maintained. The motion to dismiss the appeal is denied.

THE APPEAL

Mr. Allen makes the following assignment of error:

1. The trial court erred in hearing and determining [Ms. Allen's] Rule for Contempt when that court's oral order of October 4, 2012, which [Mr.] Allen was alleged to have violated, was *ultra vires* and contrary to law.
2. The trial court erred in holding [Mr.] Allen in contempt of its unlawful order to turn over to [Ms. Allen] sole ownership of the parties' jointly-owned Toyota SUV, without compensation to him or any security for compensation, and without the court's taking of any evidence, when the element of willful disobedience was absent because the court's unlawful oral order was then subject to an application to the court of appeal for a supervisory writ.
3. The trial court erred in holding [Mr.] Allen in contempt of an order which was purely oral, which had never been reduced to written form although the court had directed that it be so reduced, and where the lack of a written form of order was solely due to the refusal of [Ms.

Second Judicial District Court Judicial Expense Fund has been refunded to him.

Allen's] counsel to prepare one despite their having been directed by the trial court to do so.

4. The trial court erred in hearing and determining [Ms. Allen's] Rule for Contempt that had been filed in Case No. 2011-14151 when the oral order he was alleged to have violated had been rendered in Case No. 2011-15433 and where there had never been entered in Case No. 2011-14151 any order, oral or written, that [Mr.] Walker could have been charged with violating.

5. The trial court erred on December 19, 2012 by holding a dispositive hearing on [Ms. Allen's] Rule for Contempt when the only proceeding related to that Rule that had been scheduled and noticed for that day was a preliminary conference before the trial court's hearing officer and no prior notice had been given to [Mr.] Allen that the rule hearing set for January 16, 2013 was being accelerated by four weeks.

6. The trial court erred on December 19, 2012 by holding a dispositive hearing on [Ms. Allen's] Rule for Contempt, when that dispositive hearing had previously been set and noticed for January 16, 2013, where no prior notice had been given of the four weeks' acceleration of that hearing, and where the purpose of that acceleration of the hearing was to deprive [Mr.] Allen of the opportunity to apply to the court of appeal for a stay of the proceedings in the trial court pending the resolution of [Mr.] Allen's then-pending application to the First Circuit for a supervisory writ.

7. The trial court erred on December 19, 2012 by holding a no-notice *ex parte* hearing on Susan Martin's Rule for Contempt against [Mr.] Allen, especially when its expressed reasons for doing so were false, as shown by the trial court's affirmative, deliberate misrepresentations of fact to the Court of Appeal, First Circuit in that trial court's "Amicus Curiae Brief".

8. The trial court erred on December 19, 2012 by holding a no-notice hearing on [Ms. Allen's] Rule for Contempt, a proceeding that is criminal in its procedural nature, in the absence of the accused.

9. The trial court erred on December 19, 2012 by converting its *instanter* hearing on [Ms. Allen's] Rule for Contempt *in medias res* and without notice from one for a constructive civil contempt into one for a constructive criminal contempt.

10. The trial court erred on December 19, 2012 by fining [Mr.] Allen for criminal contempt in a sum that is in excess of the amount permitted by statute.

11. The trial court erred on December 19, 2012 by fining [Mr.] Allen for criminal contempt for attorneys' fees to be paid to the movant's counsel.

12. The trial court erred on December 19, 2102 by awarding [Ms.

Allen's] attorney six hours' attorneys' fees for two lawyers' time when the court and those attorneys well knew that (a) no hearing on the Rule for Contempt had been set for that day; (b) those attorneys had come to the courthouse that morning for a hearing on their own Exception and not on the rule for Contempt; (c) the only matter set that day that related to the Rule for Contempt was a preliminary hearing before a hearing officer, not a dispositive hearing on the Rule itself; (d) those attorneys were "double dipping", having come to the courthouse for another motion hearing in another case entirely; and (e) the Rule, even had it been properly heard that day, was a simple matter which required, at most, the services of one attorney, not two.

13. The trial court erred on December 19, 2012 by using coercive means, including the imminent threat of incarceration, to confiscate [Mr.] Allen's ownership interest in the parties' jointly- and separately-owned Toyota SUV, without compensation, without any security for or assurance of payment (from a woman who has declared under oath that her total income is approximately \$5,000 a year, which if true would be wholly inadequate to permit her to pay for [Mr.] Allen's co-ownership interest), where the court had no authority to order a private sale or "allocation" of that separately-owned asset and where its expressed reasons for doing so--formed upon [no] evidence whatever--were merely that [Ms. Allen] "wanted" the vehicle more than [Mr.] Allen did.

14. The trial court erred on December 19, 2012 by using coercive means, including the imminent threat of incarceration, to "allocate" the parties' jointly-owned Toyota SUV to [Ms.] Allen as her sole property, where [Mr.] Allen objected to that "allocation".

15. The trial judge erred on December 19, 2012 by failing to recuse herself and, instead, proceeding to hear and determine [Ms. Allen's] Rule for Contempt against [Mr.] Allen, when that judge's behavior since October 4, 2012 had evidenced such a pattern of bias and prejudice, marked by serious violations of law and profound deprivations of constitutionally-guaranteed due process to the point of amounting to judicial misconduct that rendered her liable to judicial discipline.

DISCUSSION

Mr. Allen essentially asserts in his assignments of error that the trial court order of October 4, 2012 was not enforceable, that he was not in contempt of court, and that the hearing on the rule for contempt was invalid.

A contempt of court is any act or omission tending to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority. La. C.C.P. art. 221. The wilful disobedience of any lawful

judgment, order, mandate, writ, or process of the court is a type of constructive contempt of court. La. C.C.P. art. 224(2).

To find a person guilty of constructive contempt, it is necessary to find that he or she violated the order of court intentionally, knowingly, and purposely, without justifiable excuse. The trial court is vested with great discretion in determining whether a party should be held in contempt for disobeying a court order, and its decision will be reversed only when the appellate court discerns an abuse of that discretion. **Mill Creek Homeowners Ass'n, Inc. v. Manuel**, 2004-1386 (La. App. 1 Cir. 6/10/05), 916 So.2d 271, 272.

As noted above, a consent judgment between the parties signed on May 17, 2012, provided that Ms. Allen would have the exclusive use of the 2008 Toyota Land Cruiser. On October 4, 2012, Mr. Allen was ordered by the trial court, and agreed in open court, to deliver the executed title to the vehicle to Ms. Allen's attorney by October 9, 2012. Ms. Allen filed her rule for contempt of court against Mr. Allen on October 18, 2012.

At the hearing on the morning of December 19, 2012, Ms. Allen's attorney requested that the trial court hear Ms. Allen's contempt rule at the same time as Mr. Allen's exception to the contempt rule, and the trial court agreed to do so. When court reconvened that afternoon, the trial court proceeded to hear Ms. Allen's contempt rule. Mr. Allen made no objection to the trial court hearing Ms. Allen's contempt rule.

At the hearing on the contempt rule, the trial court found that Mr. Allen "violated the order intentionally, purposely, and without a justifiable excuse and he is guilty of contempt." The contempt hearing took place more than two months after Mr. Allen was ordered by the trial court, and agreed on the record, to deliver the executed title to the vehicle to Ms. Allen within the next five days.

After a thorough review of the record, we find we find no merit to Mr. Allen's assignments of error. We find no abuse of discretion by the trial court in finding Mr. Allen in contempt of court and imposing sanctions against him.

Thus, for the foregoing reasons, the trial court judgment, dated January 9, 2013, is affirmed. Costs are assessed against Mr. Allen.

**APPEAL MAINTAINED; MOTION TO DISMISS DENIED.
JUDGMENT AFFIRMED.**