

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

H. A. F.

Appellee

v.

J. F. F.

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1756 EDA 2013

Appeal from the Order Entered May 21, 2013
In the Court of Common Pleas of Lehigh County
Civil Division at No(s): 2010-FC-0234

BEFORE: GANTMAN, J., SHOGAN, J., and PLATT, J.*

MEMORANDUM BY GANTMAN, J.:

FILED NOVEMBER 22, 2013

Appellant, J.F.F. ("Father") appeals from the order dismissing without a hearing his petition to hold the court reporter in contempt of the court's March 13, 2013 order, which ordered the court reporter to transcribe the notes of testimony of the abbreviated custody hearing by April 2, 2013. We quash.

The relevant facts and procedural history of this appeal arose from an underlying custody matter. On February 20, 2013, the court conducted an abbreviated custody hearing; at the request of Father's counsel, the court allowed each party no more than (4) hours to present evidence at the hearing. At that time, the parties were still living in the marital home; but Mother planned to move to a home nearby once a custody order was in place. The abbreviated custody trial procedure was designed to permit the

*Retired Senior Judge assigned to the Superior Court.

entry of an interim custody order by the end of the day. Father appealed that order as a "fast track" appeal. So, on March 13, 2013, the court ordered the notes of testimony from the hearing to be transcribed by April 2, 2013. In its order dismissing the petition for contempt, the trial court wrote:

Unbeknownst to this [c]ourt, the record was forwarded to the Superior Court without the transcript. Prior to this appeal, the court reporter had been ordered to transcribe the testimony of other matters, including an extensive civil jury trial for purposes of post-trial motions, as well as other criminal matters. It is anticipated that she will file the previously ordered transcripts forthwith and proceed onto the transcription of this custody matter. Counsel has made a bold demand for counsel fees. On the contrary, he is unreasonably expending the finite resources of his own client, opposing party, as well as of this court.

(Trial Court Order, filed May 21, 2013, at 1 n.1). The court summarily dismissed the petition without a hearing. Father appealed this order on June 6, 2013. The court reporter filed the transcript at issue on June 20, 2013, which was forwarded to this Court as a supplemental certified record. The court ordered Father on June 26, 2013, to file a concise statement of errors complained of on appeal, per Pa.R.A.P. 1925. Also on June 26, 2013, this Court removed the Children's Fast Track designation from this appeal. Father filed his concise statement on July 10, 2013. At Mother's request, we listed the matter consecutive to Father's appeal, docketed at No. 773 EDA 2013, from the interim custody order. This Court ultimately quashed the custody appeal as interlocutory because the record remained open, the court

expressly anticipated further proceedings to consider additional testimony and evidence, and the court stated it did not intend its interim custody order to be a complete resolution of the pending custody claims.

Father raises the following issues for review:

DID THE COURT BELOW COMMIT AN ERROR AT LAW AND ABUSE ITS DISCRETION IN DISMISSING [FATHER'S] PETITION FOR CONTEMPT WITHOUT A HEARING?

SHOULD THIS HONORABLE COURT RECUSE THE TRIAL JUDGE FROM HEARING THE PETITION FOR CONTEMPT?

(Father's Brief at 4).

In his issues combined, Father insists the court failed to explain its reason for dismissing his contempt petition without a hearing. Father further claims the trial judge "has been obstreperous" as she refused to place this case on a fast track disposition, refused to enforce her order for transcription of testimony, and "libeled counsel" by saying in the May 21st order that counsel is wasting his client's money in pursuing the appeal. Father wants us to remand for a hearing on the contempt petition, "recuse" the trial judge and order another judge appointed to ensure Father has an impartial hearing on his contempt petition. Father concludes the court abused its discretion in making a contempt determination on a record devoid of testimony or evidence. Under the circumstances of this case, we quash the appeal.

This Court has held, where a civil contempt petition alleges noncompliance with a court order, and the court denies the petition, the

denial order is appealable. **Chrysczanavicz v. Chrysczanavicz**, 796 A.2d 366, 367 n.1 (Pa.Super. 2002); **Bashim v. Bashim**, 713 A.2d 673, 674 (Pa.Super. 1998). Nevertheless, more recently, this Court explained:

[T]he following is an accurate, complete statement of the law: “[t]he refusal of a lower court to enter an order holding someone in contempt may be a ‘final order,’ **but only if** the refusal is tantamount to denying to the party requesting the order relief to which that party has a right **under an earlier final order.**” **Commonwealth v. Guardiani**, 310 A.2d 422, 424 ([Pa.Super.] 1973)...(emphasis added).

Examination of the underlying precedent cited in **Basham, supra**, confirms that its statement that an order denying a petition for contempt is *ipso facto* appealable, is incomplete. Rather, such orders are only final when they are entered in relation to a prior final order. **See Davidyan v. Davidyan**, 333 Pa. 465, 3 A.2d 921 (1939) (entertaining appeal from order denying petition for contempt where petitioner sought to compel compliance with earlier final decree); [*In re*] **Braunschweiger's Estate**, 322 Pa. 394, 185 A. 753 (1936) (reviewing lower court's refusal to issue attachment where fiduciary refused to make distribution mandated by earlier, final decree); **State Grand Lodge of Pennsylvania v. Morrison**, 277 Pa. 41, 120 A. 769 (1923) (noting that orders denying petitions for contempt are immediately appealable only in “certain civil actions” where “denial of this relief necessary to the enforcement of a decree is tantamount to a denial of the decree”); **Guardiani, supra** (quashing appeal because “there is no final order the effectiveness of which has been denied by the order of the court below”).

* * *

Consistent with the precedent of our Supreme Court and this Court, we clarify **Basham, supra**, and specifically hold that an order refusing to find an individual in contempt is appealable only where the respondent failed to comply with a prior final order.

Schultz v. Schultz, 70 A.3d 826, 828 (Pa.Super. 2013) (holding court's order refusing to find husband in contempt for violating order regarding marital property was not immediately appealable, where court had not entered equitable distribution order and divorce decree).

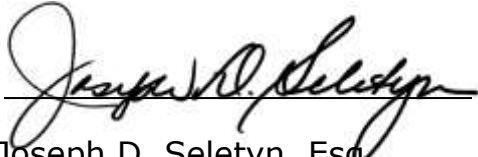
Instantly, the court's interim custody order of February 20, 2013, was not a final, appealable order or an interlocutory order reviewable as of right or permission. Thus, the court's order for a transcript, which was wholly derivative of Father's improper interlocutory appeal from a provisional order, and the temporary noncompliance of the court reporter did not impact or impair enforcement of any final order. Because there was no final order to appeal, the effectiveness of which had been denied by the court's May 21, 2013 order dismissing Father's petition for contempt against the court reporter, the court's May 21st order is likewise unappealable.¹ ***See id.*** Accordingly, we quash this appeal.

Appeal quashed.

¹ Moreover, we observe the transcript was filed of record, so the issue is moot. We further observe this Court expressly removed the Children's Fast Track designation from the case. Also, a recusal request at this juncture is inappropriate. Finally, we deny all requests for counsel fees, without prejudice to Mother to apply for fees and costs in the trial court.

J-A29046-13

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 11/22/2013