

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs November 7, 2003

STATE OF TENNESSEE, ET AL. v. SHANNA HALL, ET AL.

Appeal from the Juvenile Court for Dickson County
No. 03-03-026-CC A. Andrew Jackson, Judge

No. M2003-01328-COA-R9-JV - Filed December 16, 2003

Appellants challenge the refusal of the trial judge to recuse himself in a contempt proceeding. The case is before this Court on a Tennessee Rule of Appellate Procedure rule 9 application, and upon consideration, we find no basis for the contempt citation and remand the case to the trial court with instructions to dismiss the contempt citation.

**Tenn. R. App. P. 9 Interlocutory Appeal; Judgment of the Juvenile
Affirmed and Remanded**

WILLIAM B. CAIN, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, and FRANK G. CLEMENT, JR., JJ., joined.

Steve D. Gibson, Lebanon, Tennessee, for the appellants, Shanna Hall and Christopher Hall.

John Reese Holley, Dickson, Tennessee, Guardian Ad Litem, Pro Se.

Craig Hargrow, Clarksville, Tennessee; Douglas Earl Dimond, Nashville, Tennessee, for the appellees, State of Tennessee, Department of Children's Services.

OPINION

Appellants, Christopher and Shanna Hall, are the parents of K.H., age 1, and Shanna Hall is the mother of M.P., age 3. These four persons resided together at 1401 Highway 96, Burns, Tennessee 37029.

On March 20, 2003, DCS received a referral stating that the child, K.H., had been taken to a hospital for a weight gain check and that swelling had been discovered in her lower left extremity. DCS advised her parents to take the child to Vanderbilt Hospital for treatment of a possible leg fracture. When the parents did not go immediately to Vanderbilt, representatives of DCS went to the home of the parties on the afternoon of March 20, 2003, spoke to the mother and saw the child's leg. The mother signed a safety plan providing that she and her husband would take the child to

Vanderbilt for x-rays. Upon checking with Vanderbilt Hospital at 6:15 p.m. that same afternoon, DCS representative Shonda Heflin found that the child had not arrived. Thereupon, Kim Moore of DCS contacted the mother instructing her that, if the child was not at the emergency room within the hour, DCS would take custody of the child. The family arrived at the hospital about 7:30 p.m. and x-rays showed a fracture of the child's leg as well as several past fractures. The doctor refused to release the child to the parents, and DCS went to the hospital and spoke again to the parents seeking a place for the children to go for the evening. The parents agreed to let the children go to the paternal grandmother.

When attempts were made to contact the children at the grandparents' home on March 21, 2003, no one was home. Again, on March 24, 2003, DCS representatives made attempts to locate the family and were unsuccessful. When paternal grandparents were finally located, they reported that Chris Hall had taken the children to the home of the maternal grandparents. The maternal grandparents were located in Lebanon. DCS and law enforcement officers arrived later on the evening of March 24 at the home of the maternal grandparents to take custody of the children, but the parents, with their attorney present, refused to allow the children to leave with DCS and instructed DCS and law enforcement officials to leave the property. DCS and law enforcement complied with this instruction, left the property without the children and, on March 25, 2003, filed a Petition for Temporary Custody and Emergency Removal in the Juvenile Court at Dickson County. The Juvenile Court of Dickson County, on that same date, issued a Protective Custody Order reciting the above facts, ordering the two children to be taken into protective custody by the Department of Children's Services, and setting a preliminary hearing at 1:00 p.m. March 26, 2003.

The preliminary hearing was held on March 26 and 27, 2003, and an Interim Order was thereafter entered, finding in pertinent part:

[T]hat there is probable cause to believe that the children are dependent and neglected due to the severe physical abuse by the mother against the child, [K.H.], as well as the father's exposure of the child to such risk and further, the Court finds that there are reasonable grounds to believe that the sibling, [M.P.], is at serious risk of abuse by the parents due to the injuries to [K]; that removal was the least drastic alternative available; that this is an appropriate case for the issuance of an interlocutory order placing said children in the temporary care and custody of the State of Tennessee, Department of Children's Service, pending the final hearing or other order of the Court; that it is contrary to the children's welfare to remain in the care, custody, or control of the parents;

The Order, thereafter, provided that the children will be placed in the temporary custody of the Department of Children's Services. The Order also provided: "5. That the Court shall hold a contempt hearing on April 16, 2003 in order to determine if the parents violated the Court's order to remove the children when the Department first attempted to take the children into custody." This Interim Order was entered April 2, 2003.

On April 9, 2003, Christopher and Shanna Hall filed a Motion requesting the trial judge to recuse himself from hearing the contempt citation asserting in part:

3. Here, the Tennessee Department of Children's Services "Petition for Temporary Custody and Emergency Removal," filed March 25, 2003, states in pertinent part regarding events alleged to have occurred the previous evening of March 24, 2003: "When DCS and law enforcement arrived later that evening to take custody of the children, the parents' attorney was present and refused to allow the children to leave with DCS and told DCS and law enforcement to leave the home and property. The parents are noncompliant with DCS as well as the maternal and paternal grandparents." (Section I, p. 3).

4. On March 26, 2003, at the court's initial hearing following the removal of the children, Judge Andrew Jackson stated and testified from the bench in rebuttal to defense testimony that the DCS workers in question did not produce a written court order when they first appeared to take custody of the children. Namely, Judge Jackson recounted the oral communications that had occurred back and forth between himself and the social workers and testified that he had given them oral authorization to remove the children and orally ordered them to appear at the home as his agents.

The Motion to Recuse was heard on May 7, 2003 resulting in the entry of an Order on May 16, 2003 providing:

This cause came on to be heard on May 7, 2003, on the Defendants' "Motion to Recuse." Present were the Defendant parents Christopher Hall and Shanna Hall and their attorney Steve D. Gibson, as well as attorney Craig Hargrove representing the Tennessee Department of Children's Services. Based on the pleadings, the arguments of counsel, and the entire record in this cause, the court finds that the Defendant parents' "Motion to Recuse" is not well-taken and should therefore be denied. The court further finds that its oral command for DCS social workers to remove the subject children on March 24, 2003, was authorized pursuant to T.C.A. 37-1-113(3) and 37-1-114(a)(2). The court further finds that its order was effective when rendered on March 24, 2003, prior to its entry as part of a formal writing on March 25, 2003. The court further finds that Judge Andrew Jackson is not disqualified, nor should he have to recuse himself, from hearing Defendant parents' response that they show cause why they should not be held in contempt for failing to obey the court's orders and agents by refusing to turn the subject children over to DCS on March 24, 2003.

A second order of the court was also issued on May 16, 2003 and provided:

This cause came on to be heard on May 7, 2003, on the Defendant parents' oral "Motion for Permission to file Interlocutory Appeal" which followed immediately upon the court's denial of the Defendant parents' "Motion to Recuse."

Present were the Defendant parents Christopher Hall and Shanna Hall and their attorney Steve D. Gibson, as well as attorney Craig Hargrove representing the Tennessee Department of Children's Services. Based on the pleadings, the arguments of counsel, and the entire record in this cause, the court finds that the Defendant parents' "Motion for Permission to file Interlocutory Appeal" is well-taken and should be granted. The court further finds that proceedings should be ended for the day and that the Defendant parents should not again be required to appear and show cause why they should not be held in contempt (for disobeying the court's oral orders and designated agents by failing to turn their children over to DCS social workers on March 24, 2003) until the Court of Appeals has had opportunity to rule on their interlocutory appeal from this court's denial of their "Motion to Recuse" Judge Andrew Jackson from presiding over said contempt hearing. The court further finds that proceeding with the contempt hearing before Judge Andrew Jackson would be an "irreparable" decision vitiating appeal of the defendant parents' "Motion to Recuse," and that the situation thus justifies an interlocutory appeal (Tenn.R.App.P., Rule 9(a)(1)). The court further finds that there is need for a "uniform body of law" reconciling any "inconsistent orders of other courts" in regard to the oral orders of judges within a Juvenile court setting, thus justifying an interlocutory appeal (Tenn.R.App.P., Rule 9(a)(3)).

Christopher and Shanna Hall then filed their Application for Interlocutory Appeal by Permission from the Trial Court in this Court on May 30, 2003, which application was granted by this Court by Order of June 13, 2003.

On September 8, 2003, counsel for the Department of Children's Services advised the court that the state took no position on the pending appeal and would file no brief.

While the application for interlocutory appeal is limited to the refusal of the trial court to recuse itself in the contempt proceeding, the record before the Court provides a more compelling reason for disposing of the contempt citation itself.¹ No valid order of the trial court had been rendered on March 24, 2003 when the events involved in the contempt citation occurred. Indeed, no proceeding of any kind was pending on March 24, 2003. It was not until after the events occurring on the evening of March 24, 2003 that the initial petition was filed and the Protective Custody Order of March 25, 2003 was issued in this case. The trial court, at the conclusion of the May 7, 2003 hearing on the Motion to Recuse, stated:

¹ Tennessee Rule of Appellate Procedure 13(b) provides:
Consideration of Issues Not Presented for Review. – Review generally will extend only to those issues presented for review. The appellate court shall also consider whether the trial and appellate court have jurisdiction over the subject matter, whether or not presented for review, and may in its discretion consider other issues in order, among other reasons: (1) to prevent needless litigation, (2) to prevent injury to the interests of the public, and (3) to prevent prejudice to the judicial process.

THE COURT: 37-1-113 provides that a child may be taken into custody, pursuant to the order of the Court, or of Human Services or duly authorized officer of the Court, if there are reasonable grounds to believe that the conditions specified in 37-1-114A2 exists. 37-1-114 A2 says if neglected or abused child in either case the child protection shall be carried to a child shelter subjective to immediate threat, a child's health or safety to the extent to the delay for a hearing would be likely resolve to fear or severe irreparable harm.

The orders of the Court are effective when rendered not entered. This is a case where the allegations was the child was neglected and the Court entered the order as a verbal order of the Court. Under what your argument is sir, any time anybody disobeys an order of the Court there is a matter of disrespect to the Court. How can one refuse to obey a court order and then say that is not some type of disrespect or lack of it? There is a whole lot of difference in the case in hand and the case in bar. Particularly involving the neglect of children and the Court's inherent authority to remove children form the neglected situations.

The trial court construes Tennessee Code Annotated section 37-1-113 to provide that an oral order of the court, in which no proceeding is then pending, can form the basis for holding parties in a subsequently filed proceeding to be in contempt of court. Tennessee Code Annotated section 37-1-113 is not susceptible to such a construction. It provides in its entirety:

37-1-113 Taking into custody - Grounds. - (a) A child may be taken into custody:

- (1) Pursuant to an order of the court under this part;
- (2) Pursuant to the laws of arrest;
- (3) By a law enforcement officer, social worker of the department of human services, or duly authorized officer of the court, if there are reasonable grounds to believe that the conditions specified in § 37-1-114(a)(2) exist; or
- (4) By a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that the child has run away from the child's parents, guardian or other custodian.

(b) The taking of a child into custody is not an arrest, except for the purpose of determining its validity under the Constitution of Tennessee or the Constitution of the United States.

Only subsection (1) of Tennessee Code Annotated section 37-1-113 contemplates a court order. Subsection (2), (3) and (4) do not contemplate a court order but rather actions by law enforcement officials and DCS personnel independent of a court order, which is, in fact, what occurred in this case. The Halls had no means of even being aware of the oral communications between the trial judge and representatives of the Department of Children's Services that had occurred March 24, 2003, before any court action was ever pending. Such oral pronouncings of the trial judge are ineffective for any purpose.

“However formal and full those proceedings may have been, not having reached the minutes of the court, they do not constitute any valid action upon its part. Courts of record and legislative bodies—and quarterly courts partake somewhat of the nature of both, and in this particular matter that of Robertson county was acting in its legislative capacity—speak only through their records. The law requires records to be made of their proceedings, and that they be signed. That a judgment or decree was pronounced, or an order made or a motion carried, if it be not spread upon the minutes of the court required to be kept for that purpose, avails nothing, and is as if no such proceeding was ever had. The action of a court or legislative body is not complete or effective for any purpose until the record evidencing it has been made and duly authenticated. The records of courts and legislative bodies are the sole witnesses of their proceedings, and they can only be proven by duly certified copies of such records. Parol evidence cannot be heard for this purpose. These are well established rules, and every principle of public policy imperatively forbids any departure from them. *Brooks v. Claiborne County*, 8 Baxt., 46; *Fraker v. Brazelton*, 12 Lea, 280, 281.”

Wilkinson v. Shale Brick Corp., 299 S.W. 1056, 1057 (Tenn.1927)(quoting *State v. True*, 95 S.W. 1028, 1032 (Tenn.1906)).

This Court has held that “a judgment orally pronounced cannot be appealed from, and is not binding on the parties for any purpose.” *Hickle v. Irick*, 300 S.W.2d 54, 57 (Tenn.Ct.App.1956); *see also Hines v. Thompson*, 148 S.W.2d 376 (Tenn.Ct.App.1940); *Sparkle Laundry and Cleaners, Inc. v. Kelton*, 595 S.W.2d 88, 93 (Tenn.Ct.App.1979); *Envtl. Abatement v. Astrum R.E.*, 27 S.W.3d 530 (Tenn.Ct.App.2000).

While Tennessee Code Annotated section 37-1-113, in the absence of a court order, leaves to the discretion of law enforcement officers, DCS representatives, and duly authorized officers of the court the decision to make an emergency preliminary judgment that a child should be taken into immediate custody, section 37-1-114(b) also limits to 24 hours the time for detention prior to a detention hearing.

Appellants cannot be held to be in contempt of DCS representatives, authorized officers of the court or law enforcement officers for their conduct on the evening of March 24, 2003. Whatever effect their conduct on the evening of March 24, 2003 may have on the ultimate disposition to be made by the trial court, it cannot form the basis for a contempt citation or a contempt holding when, at that time, no action was pending before the court and no court order had been entered.

The case is remanded to the trial court with instructions to dismiss the contempt citation and proceed with the orderly disposition of the issues raised by the Petition of DCS filed March 25, 2003.

Costs of this cause are assessed to the State of Tennessee.

WILLIAM B. CAIN, JUDGE