[Cite as *In re Contempt of Scaldini*, 2011-Ohio-822.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94893

IN RE:
CONTEMPT OF RICHARD SCALDINI

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CV- 640795, CV-644109, and CV-657592

BEFORE: Jones, J., Blackmon, P.J., and Sweeney, J.

RELEASED AND JOURNALIZED: February 24, 2011

ATTORNEYS FOR APPELLANT

Dale A. Nowak
Gerald B. Chattman
Buckingham, Doolittle & Burroughs
1375 East Ninth Street
One Cleveland Center, Suite 1700
Cleveland, Ohio 44114

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Charles E. Hannan, Jr.
Saundra J. Curtis-Patrick
Lisa Reitz Williamson
Assistant Prosecuting Attorneys
The Justice Center, 8th floor
1200 Ontario Street
Cleveland, Ohio 44113

LARRY A. JONES, J.:

{¶ 1} Appellant, Richard Scaldini, appeals the March 1, 2010 trial court judgment entry, which, among other things, vacated the trial court's finding of contempt against him.

We affirm.

I. Procedural History and Facts

{¶ 2} The history and facts of this case, as summarized from this court's opinion in

In re Contempt of Richard A. Scaldini, Cuyahoga App. No. 90889, 2008-Ohio-6154,[1] are as follows. The underlying action, *Lee v. Scaldini*, Case No. CV-644109, was initiated on December 10, 2007, by 15 plaintiffs against nine defendants, including Scaldini, then president of David N. Meyers University ("Meyers University"). The complaint alleged that, in an attempt to force the closure of Meyers University, 11 members of the University's Board of Trustees were wrongfully and illegally removed.

{¶ 3} The day after the action was filed, December 11, the trial court issued the following "gag order": "All parties to this action are hereby restrained from issuing any public comments about the pending status of this litigation. This court will enforce said order with both the civil and criminal contempt powers of the court."

{¶ 4} On December 13, a letter to the editor from Scaldini appeared in the Cleveland Plain Dealer. A show cause hearing was held that same day; Scaldini appeared at the hearing with counsel. Scaldini maintained that the letter was in response to an accusation by the Plain Dealer against his character, written out of concern for his family, and did not comment on the litigation. The trial judge, however, found that the letter addressed issues relative to the case, in violation of the "gag order," and held Scaldini in contempt of court.

{¶ 5} Scaldini indicated to the court that he was prepared to resign his position as president at the end of the week, but sought severance pay. As a sanction for the contempt finding, the court offered Scaldini the option of doing 24 hours in jail or

[1]Id. at ¶2-10.

resigning his position, effective immediately. Initially, Scaldini opted to resign. As this court previously found, "Scaldini later asked the court if he could change his choice, whereupon the trial court imposed a sanction of 24 hours in jail. Although the trial court's journal entry set forth only a sanction of 24 hours in jail upon the finding of contempt, the transcript reflects that the trial court stated Scaldini also was to be removed as president." *In re Contempt of Richard A. Scaldini* at ¶10.

{¶ 6} Scaldini appealed the judgment entry finding him in contempt, challenging the issuance of the "gag order" and the finding that he violated the order. This court found the issuance of the order proper, but that it "lacked the specificity necessary to find Scaldini's conduct violated [it]." Id. at ¶15, 19. Accordingly, this court "affirmed in part, reversed in part and remanded to the lower court for further proceedings consistent with this opinion." Id.[2]

{¶ 7} On remand, Scaldini filed a motion to reinstate the case to the active docket, a motion for an order vacating his termination, and a request that the original trial judge be removed from the case. The request for recusal was granted, and the case was transferred to the docket of another common pleas judge. Scaldini then sought an oral hearing on his motion for an order vacating his termination. The court denied the request for an oral hearing, but held an in-chambers hearing with counsel. In a March 1, 2010 judgment entry, the court granted Scaldini's motions to vacate his termination and reinstate the case "only to the extent the court of appeals has remanded for order vacating the finding of

[2]The Ohio Supreme Court declined to accept jurisdiction. *In re Contempt of Scaldini*, 122 Ohio St.3d 1454, 2009-Ohio-3131, 908 N.E.2d 945.

contempt by the trial court." The trial court further ruled that "Scaldini's request for reinstatement for purposes of relitigation of any other issues is denied as res judicata. Accordingly, the trial court's finding of contempt against Richard Scaldini is hereby vacated."

{¶ 8} Scaldini has assigned the following four assignments of error for our review:

> "[I.] The trial court committed reversible error when it considered and accepted arguments and evidence put forth by the special master in the underlying civil action, who lacked standing to participate in this case involving criminal contempt.
>
> "[II.] The trial court committed reversible error under the law of the case doctrine and the mandate rule when it failed to conduct further proceedings pursuant to the mandate of this court in Cuyahoga County Court of Appeals Case No. 90889.
>
> "[III.] The trial court committed reversible error when it decided appellant's pending motion without an oral hearing.
>
> "[IV.] The trial court committed reversible error when it denied appellant's motion seeking vacation of his termination as president of Myers University as a sanction for criminal contempt."

II. Law and Analysis

{¶ 9} We consider Scaldini's assignments of error together. The gravamen of Scaldini's challenge in this appeal is that, on remand from the first appeal, the trial court did not vacate its "order" terminating him as president of Myers University.

{¶ 10} It is well-settled law that a court speaks through its journal entries. *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 1995-Ohio-278, 656 N.E.2d 1288; *Gaskins v. Shiplevy*, 76 Ohio St.3d 380, 1996-Ohio-387, 667 N.E.2d 1194. Thus, where a journalized order and the trial judge's comments from the bench are contradictory, the journalized order controls. *Economy Fire & Cas. Co. v. Craft Gen. Contrs., Inc.* (1982),

7 Ohio App.3d 335, 455 N.E.2d 1037; see, also, *Scarbrough v. Scarbrough* (July 18, 2001), Summit App. No. 00CA007743 (a trial court speaks through its journal entry and an oral pronouncement of judgment is not binding).

{¶ 11} The contempt judgment in this case ordered a sole sanction — that Scaldini be jailed for 24 hours. It made no mention of termination of his position at the university. Thus, the pronouncement by the trial judge at the contempt hearing relative to Scaldini resigning his position at the university was not binding.

{¶ 12} In regard to Scaldini's contention that the trial court improperly relied on evidence from the special master who was appointed in the underlying civil action, we review for an abuse of discretion. *Beard v. Meridia Huron Hosp.*, 106 Ohio St.3d 237, 239, 2005-Ohio-4787, 834 N.E.2d 323, ¶20. The term "abuse of discretion" implies that the court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140. "A decision is unreasonable if there is no sound reasoning process that would support that decision." *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161, 553 N.E.2d 597.

{¶ 13} Further, even where an abuse of discretion occurs, a trial court's improper evidentiary ruling constitutes reversible error only when the error affects the substantial rights of the adverse party or the ruling is inconsistent with substantial justice. *Beard* at ¶35, citing *O'Brien v. Angley* (1980), 63 Ohio St.2d 159, 164-165, 407 N.E.2d 490. In determining whether an evidentiary ruling is inconsistent with substantial justice, a reviewing court must weigh the prejudicial effect of those errors and also determine

whether, if those errors had not occurred, the same decision probably would have been made. Id., citing *Hallworth v. Republic Steel Corp.* (1950), 153 Ohio St. 349, 91 N.E.2d 690, paragraph three of the syllabus.

{¶ 14} To the extent that the trial court may have relied on evidence from the special master, it was not an abuse of discretion. The special master was appointed in the underlying action, from which this contempt proceeding was bourne, to, among other things, "operate and manage the businesses of Myers University, * * * supervise employees and independent contractors of Myers University, including [ ] hir[ing] and fir[ing] [of] employees and terminat[ing] independent contractors, regardless of the position or rank each might hold, as he deems prudent in his sole discretion."[3]

{¶ 15} Moreover, the record indicates that the trial court would have made the same decision it made even without consideration of the special master's report. As already stated, the judgment entry from the original trial judge only ordered 24 hours of jail for Scaldini as a contempt sanction, and thus, that sanction was the only item for review for this court in the first appeal and the replacement trial judge on remand.

{¶ 16} We likewise find no merit to Scaldini's contention that the "law of the case" dictated that the trial court vacate the termination of his employment. In the first appeal, the only mention of termination of Scaldini's employment was that the trial judge mentioned it on the record but did not order it in its journal entry. See *In re Contempt of*

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[3]Indeed under this section of the order appointing the special master, the special master determined "in his sole discretion that Scaldini should be terminated[,] * * * signed a letter terminating Scaldini's employment for cause, which was delivered to Scaldini's lawyers[,] [and] [t]hereafter, a new interim President was selected." Special master's report.

Richard Scaldini, supra, at ¶10. The journalized order controls. Thus, the "law of this case" relates only to the journalized entry, which ordered jail as a contempt sanction.

{¶ 17} Further, Scaldini's contention that the language in the first appeal remanding the case to the trial court "for further proceedings consistent with this opinion" meant that a hearing was required is without merit. When a reviewing court remands a case for further proceedings, that does not necessarily mean that a hearing must be held on remand. *Lorain v. Pendergrass*, Lorain App. No. 04CA008437, 2004-Ohio-5688, ¶10. "Rather, this language simply designates that the case is to return to the trial court to 'take further action in accordance with applicable law.' *Chapman v. Ohio State Dental Bd.* (1986), 33 Ohio App.3d 324, 328, 515 N.E.2d 992. See *State v. Chinn* (Aug. 21, 1998), [Montgomery App.] No. 16764 (Grady, J., concurring and dissenting) (stating that '[w]hen a court of appeals reverses for error and remands for further proceedings, "the court of appeals may or may not specify the nature of the further proceedings, and should not do so if the trial court has discretion as to the nature of the further proceedings'"), quoting Whiteside, Ohio Appellate Practice (1998), Author's Note to App.R. 12(D)." *Pendergrass* at id.

{¶ 18} Thus, absent a mandate from this court to have a hearing, it was in the trial court's discretion to not have one. On this record, the trial court did not abuse its discretion.

{¶ 19} In light of the above, Scaldini's four assignments of error are overruled and the trial court's judgment is affirmed.

It is ordered that appellee recover of appellant their costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, JUDGE

PATRICIA A. BLACKMON, P.J., and
JAMES J. SWEENEY, J., CONCUR