

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 2133

SUCCESSION OF HARRY EDWIN NOBLES

DATE OF JUDGMENT: MAY 13 2009

ON APPEAL FROM THE SIXTEENTH JUDICIAL DISTRICT COURT
NUMBER 15,890, DIV. G, PARISH OF ST. MARY
STATE OF LOUISIANA

THE HONORABLE CHARLES PORTER, JUDGE

Walter Antin, Jr.
Hammond, Louisiana

Appellant
Pro Se

Nathan J. Hochman
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and

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United States of America

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BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.

Disposition: SHOW CAUSE ORDER RECALLED; JUDGMENT VACATED.

Kuhn, J.

Appellant, Walter Antin, Jr., appeals a September 12, 2007 judgment finding him guilty of contempt. We vacate the judgment, because the record demonstrates that Antin was not individually charged, served, or otherwise named or noticed as a party in the contempt proceedings as required by La. C.C. P. art. 225(A).

I. PROCEDURAL AND FACTUAL BACKGROUND

Before his death in 1987, Harry Edwin Nobles (“Nobles”) had accumulated a number of substantial unpaid debts. In 1985, the United States of America through the Internal Revenue Service (“the United States”) made assessments against him for unpaid federal taxes and recorded federal tax liens related to these assessments in St. Mary Parish. In relation thereto, in December 1985, Nobles hired the law firm of Antin & Lorenz, A Professional Law Corporation (“Antin & Lorenz”), to represent him. Antin & Lorenz also represented Nobles in connection with a Longshore and Harbor Workers’ Compensation Act (“LHWCA”) claim. Before the LHWCA claim was resolved, Nobles executed a partial assignment of the LHWCA claim in favor of Antin & Lorenz, to secure payment for legal services rendered to him.¹

In 1987, Nobles’ LHWCA claim was settled for \$65,913.95, but Nobles died before the proceeds were distributed. Walter Antin, Jr., a partner of Antin & Lorenz, filed a petition for probate of Nobles’ statutory testament in the Sixteenth Judicial District Court, Parish of St. Mary. Thereafter, Antin, as testamentary

¹ See *Succession of Nobles*, 96-0468, p. 3 (La. App. 1st Cir 6/20/97), 709 So.2d 1088 (table) (unpublished opinion), *writ denied*, 97-2322 (La. 11/26/97), 703 So.2d 649.

executor, commenced a concursus proceeding in the Twenty-First Judicial District Court, Parish of Tangipahoa, by placing the settlement proceeds into the trial court's registry. The competing claims to the settlement proceeds included a federal tax claim totaling \$202,480.10 and claims by Antin & Lorenz relating to attorneys' fees for representing Nobles in various legal matters.

Thereafter, the concursus proceeding filed in the Twenty-First Judicial District Court was transferred and consolidated with the succession proceeding filed in the Sixteenth Judicial District Court. Antin was removed as executor, and the settlement proceeds were transferred to the Sixteenth Judicial District Court. In 1995, the trial court granted in part Antin & Lorenz's motion for summary judgment, declaring that the claims of Antin & Lorenz for services rendered in the federal tax matter were to be paid in preference and priority to the United States' tax liens. The United States devolatively appealed that decision.

During the pendency of the appeal, the Clerk of Court for the Sixteenth Judicial District released the funds in the court registry in the amount of \$81,928.39 to Antin & Lorenz. These funds were placed into an attorney trust account for Antin & Lorenz but were paid out almost immediately. A portion of the funds was paid to Antin Law Firm² and another portion was paid to Antin, as a shareholder of Antin & Lorenz. Although Antin & Lorenz had discontinued operations in 1992, when Rainer Lorenz left the firm, Antin continued to represent Antin & Lorenz in this matter. Thereafter, this court, in an unpublished opinion, reversed the trial court's summary judgment granted in Antin & Lorenz's favor,

² The record establishes that when Antin & Lorenz discontinued operations in 1992, Mr. Antin continued to practice law as a proprietorship named Antin Law Firm, which was housed at the same physical address where Antin & Lorenz previously had its office.

finding that the firm's claim did not prime the tax lien. ¹ See *Succession of Nobles*, 96-0468, p. 3 (La. App. 1st Cir 6/20/97), 709 So.2d 1088 (table) (unpublished opinion), *writ denied*, 97-2322 (La. 11/26/97), 703 So.2d 649. On March 9, 2000, the trial court signed a judgment granting the United States' motion for entry of judgment in its favor, which ordered Antin & Lorenz to return to the court registry the amount disbursed to it, plus the interest that would have accumulated if the amount had remained in the court registry.

When Antin & Lorenz failed to return the funds, the United States, in August 2000, and again in May 2006, moved to hold Antin & Lorenz in contempt for failing to return the funds it had previously received. In response, Antin & Lorenz filed exceptions, urging the objections of insufficiency of service of process and prematurity.

In a September 12, 2007 judgment, the trial court signed a "Judgment On Contempt," which denied Antin & Lorenz's exceptions and further found Walter Antin, Jr. (not the firm of Antin & Lorenz) guilty of contempt of court, as follows:

The court finds attorney Walter Antin, Jr. guilty of Contempt of Court, by a preponderance of the evidence, for willfully and unreasonably failing to return \$81,928.39 (together with legal interest) to the registry of the court, in these succession and concursus proceedings in favor of the tax lien of the United States (Internal Revenue Service). Walter Antin, Jr. is ordered to pay a fine of five hundred dollars (\$500.00) and serve three months in the St. Mary Parish jail. The sentence will become executory on January 31, 2007, if Walter Antin, Jr. does not deposit \$81,928.39 (together with legal interest from January 9, 1997) to the registry of the court on or before January 30, 2007.³

Walter Antin, Jr. has suspensively appealed this judgment, urging the trial court

³ Although the judgment provides the executory date was January 30, 2007, we note the trial court apparently intended this date to be January 30, 2008.

erred in holding him in contempt because the court was without jurisdiction to enter a judgment against him because he was not named as a party in these proceedings, he was not charged with contempt, he was not individually served with a motion or rule for contempt, and he was not tried for contempt. Antin urges he was improperly held in contempt for Antin & Lorenz's failure to comply with an order directed to the corporate firm rather than to him individually.⁴

On October 29, 2008, this court issued a rule to show cause order, which stated, "The rulings at issue appear to be NON-APPEALABLE rulings." The parties were further ordered to show cause by briefs why the appeal should not be dismissed.

II. ANALYSIS

A. Rule to Show Cause

A judgment that specifically holds a non-party to the litigation in contempt of court and imposes sanctions is a final appealable judgment, notwithstanding the fact that a similar judgment against a party to the litigation would have been a non-appealable interlocutory judgment. *Albritton v. Fidelity Nat'l Bank Trust*, 619 So.2d 1170, 1172 (La. App. 1st Cir. 5/28/93). While a party litigant so cast in judgment may obtain relief upon appellate review of the merits, a non-party so cast has no such certain remedy, and his legal status in such an instance should not depend upon the outcome of litigation to which he is not a party. *Id.* Accordingly, we find the instant judgment, which finds Walter Antin, Jr., a non-party, in contempt of court and orders him to pay a fine of \$500.00 and serve three

⁴ Because we vacate the trial court's order of contempt, we pretermitt other assignments of error raised by Antin.

months in the St. Mary Parish jail, is a final appealable judgment. Thus, we recall our rule to show cause order, and we maintain the appeal.

Validity of the Contempt Judgment

Louisiana courts are empowered to sanction acts and omissions of contempt. La. C.C.P. arts. 221-227; La. R.S. 13:4611. Contempts of court are classified in two categories – direct and constructive. La. C.C.P. art. 221. A direct contempt is a contempt committed in the immediate view and presence of the court. La. C.C.P. art. 222. A constructive contempt of court is any contempt other than a direct one. La. C.C.P. art. 224. The “[w]ilful disobedience of any lawful judgment, order, mandate, writ, or process of the court” constitutes constructive contempt of court. La. C.C.P. art. 224(2).

“[A] person charged with committing a constructive contempt of court may be found guilty thereof and punished therefor **only** after the trial by the judge of a rule against **him** to show cause why **he** should not be adjudged guilty of contempt and punished accordingly.” (Emphasis added.) La. C.C.P. art. 225. The rule to show cause shall state the facts alleged to constitute the contempt. *Id.* A certified copy of the motion, and of the rule to show cause, shall be served upon the person charged with contempt in the same manner as a subpoena at least forty-eight hours before the time assigned for the trial of the rule. *Id.* The requirements set forth in La. C.C.P. art. 225 are mandatory. *Lang v. Asten, Inc.*, 05-1119, p. 4 (La. 1/13/06), 918 So.2d 453, 455; *Succession of Bell*, 06-1710, p. 7 (La. App. 1st Cir.

6/8/07), 964 So.2d 1067, 1072-73.⁵

In *Seaward v. City of Hammond*, 01-0770 (La. App. 1st Cir. 6/21/02), 822 So.2d 38, this court vacated a trial court's ruling of contempt against a non-party for failing to respond to a *subpoena duces tecum* and remanded the matter for further proceedings because the record did not show that the non-party had been properly served with either the original *subpoena duces tecum* or the motion for contempt. In so holding, this court noted that because the party had not been served, it was irrelevant that the non-party had received actual notice through other means insofar as the "mailed request for production of documents was not a jurisdiction-accomplishing device." *Id.* at p. 40. Also, in *Geo-Je's Civic Ass'n, Inc. v. Reed*, 525 So.2d 192 (La. App. 1st Cir. 1988), this court reversed a contempt judgment because the person charged with contempt never received the proper notice of the charges against him, as required by La. C.C.P. art. 225A.

Although Antin appeared before the trial court in the representative capacity as counsel for Antin & Lorenz and participated in the trial court proceedings, he expressly reserved all rights and challenges to the procedures employed at each stage of the proceedings. Antin is a non-party to these proceedings, and he was not individually charged, served, or otherwise named or noticed as a party in the contempt proceedings as required by La. C.C. P. art. 225(A). The trial court had no jurisdiction to render a contempt judgment against Antin, in his individual capacity, and accordingly, the September 12, 2007 judgment is an absolute nullity. La. C.C.P. art. 2002(A)(2). Thus, we hereby vacate the judgment.

⁵ La. C.C.P. art. 2594 states, "Citation and service thereof are not necessary in a summary proceeding. A copy of the contradictory motion, rule to show cause, or other pleading ... and of any order of court assigning the date and hour of the trial thereof, shall be served upon the defendant."

III. CONCLUSION

For these reasons, the trial court's September 12, 2007 judgment is vacated. Appeal costs in the amount of \$1,681.00 are assessed against appellee, the United States of America.

SHOW CAUSE ORDER RECALLED; JUDGMENT VACATED.