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Marilyn Hinkins v. Al Santi : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

MARILYN HINKINS,

Plaintiff-Respondent,

vs.

AL SANTI,

Defendant-Appellant.

Case No.

12067

RESPONDENT'S BRIEF

Appeal from minute entry adjudging contempt of
District Court of Salt Lake County, Utah,
Honorable Merrill C. Faux, presiding

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IN THE SUPREME COURT OF THE STATE OF UTAH

MARILYN HINKINS,

Plaintiff-Respondent,

vs.

AL SANTI,

Defendant-Appellant.

Case No.

12067

APPELLANT'S BRIEF

NATURE OF THE CASE

Contempt of Court for violating restraining order.

DISPOSITION IN LOWER COURT

Defendant was found to be in contempt of Court and sentenced to 15 days in the County Jail, 10 of which was suspended upon payment of \$100.00 attorney fees to Plaintiff. No written Findings, Conclusions or Judgment have been entered.

RELIEF SOUGHT ON APPEAL

Dismissal of appeal as premature.

STATEMENT OF FACTS

Plaintiff adopts statement of facts contained in Defendant's brief.

ARGUMENT

POINT I

SUPREME COURT LACKS JURISDICTION TO CONSIDER APPEAL SINCE NO FINDINGS, CONCLUSIONS OR JUDGMENT HAVE BEEN ENTERED FROM WHICH AN APPEAL WILL LIE.

Defendant's brief asks that the "judgment" of contempt be vacated because the Court failed to make Findings of Fact and Conclusions of Law as required by Rule 52(a), URCP, however no "judgment" #2 exists from which an appeal will lie. Rule 54(a); Rule 72 (a), URCP;

Rule 52(a), URCP, requires that the Court to "find the facts specifically" and to "state separately its conclusions of law thereon." Tardy entry of findings of fact and conclusion of law does not affect the validity of judgment based thereon. *Mower v. McCarthy*, 122 U.1, 245 P.2d 224. Rule 54(a), URCP, defines a "judgment" as "any order from which an appeal lies." Rule 72(a), URCP, permits an appeal to the Supreme Court from "all final judgments." An appeal may not be taken from an order or judgment reflected by the record or minute entries and not yet reduced to a written judgment, since minute entries do not constitute a judgment. *Robison v. Fillmore Commercial & Savings Bank*, 61 U. 398, 213 P. 790; *Lukich v. Utah Const. Co.*, 46 U. 317, 150 P. 298. A case cannot be appealed until final judgment is entered therein. *Ketchum Coal Co. v. Dist. Ct. of Carbon County*, 48 U. 342, 159 P. 737.

Plaintiff agrees with the cases cited by Defendant in his brief concerning the necessity of the Court making findings of fact, conclusions of law, and entering a written judgment in a contempt proceeding. Defendant then proceeds to the unwarranted conclusion that because he filed his notice of appeal before written findings, conclusions and judgment were entered that he should somehow escape the consequences of his willful disobedience of the restraining order by constant harrasment of the Plaintiff. Defendant's obvious remedy for delay in making written findings, conclusions and judgment is to (1) request the opposing party or the Court to prepare those instruments, or (2) to prepare such instruments and present them to the Court for approval, or (3) bring a writ of mandamus to compel entry of findings, conclusions and judgment. *Wasatch Oil Refining Co. v. Wade*, 92 U. 50, 63 P. 2d 1070. Defendant has no remedy by appeal until written findings of fact, conclusions of law and judgment have been entered. By filing the appeal Defendant deprived the District Court of jurisdiction to make and enter findings of fact, conclusions of law and a judgment in this matter. *Petersen v. Ohio Copper Co.*, 71 U 444, 266 P. 132. The appeal should accordingly be dismissed and the case remanded to the District Court so that proper findings of fact, conclusions of law and judgment may be entered. Defendant does not assert in his brief that the court erred in finding that he is guilty of contempt of court. If Defendant disagrees with the findings, conclusions and judgment which the court enters he can then appeal to this court in the usual manner.

CONCLUSIONS

Defendant's appeal should be dismissed as premature and the case should be remanded to the District Court for entry of Findings of Fact, Conclusions of Law and Judgment.

Respectfully submitted,

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