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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0917-15T3

KELLEE WILSON,

Plaintiff-Respondent,

v.

DAVID WILSON,

Defendant-Appellant.

Submitted March 7, 2017 – Decided April 6, 2017

Before Judges Koblitz and Summers.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Essex County,
Docket No. FM-07-1883-14.

Mark S. Guralnick, attorney for appellant.

Respondent has not filed a brief.

PER CURIAM

Defendant appeals from the provision in a September 4, 2015
order finding him in contempt and immediately incarcerating him
in jail for seven days. No opposition brief was filed by
plaintiff, who did not seek a finding of contempt. The contempt

finding occurred at a pendent lite custody motion when the judge summarily transferred residential custody of the parties' then-seven-year-old daughter based on a recent report from plaintiff's evaluator and without a hearing. Plaintiff was represented, but defendant appeared without counsel. Although defendant has completed the service of the jail time, he seeks to cleanse the record of the contempt citation. Finding the matter is not moot and the judge erred, we reverse.

The parties had been married fourteen years before plaintiff left the home, leaving the two children with their father. The then-fifteen-year-old son has remained in the physical custody of defendant.

Oral argument on plaintiff's motion to transfer residential custody began with this interchange between the judge and defendant:

THE COURT: [S]o, Mr. Wilson, you don't believe there's anything in the literature known as parental alienation, is that true?

MR. WILSON: No, Your Honor, that's not true. I do believe that there are things in the literature about parental alienation. But what I believe is that it's also very often used to put the child in the hands of the wrong person.

THE COURT: Oh, so [all three experts] and this court are all wrong that you've been guilty of alienation with regard to [your children]. We're all wrong. Where did you get your psychological degree, sir?

MR. WILSON: I don't have one, sir.

THE COURT: Okay. Where'd you get your law degree?

MR. WILSON: I don't have a law degree, sir.

When defendant interrupted the judge's opinion by arguing that he was not alienating the child from her mother, "I'm not alienating anybody, sir," the judge said: "Okay, stop. Stop. One more word when I'm making my decision, you^[1] have the authority to remand him to the Essex County Jail for seven days this time."

After the judge completed his custody decision and began to discuss child support, defendant interrupted again, saying, "Your Honor -- I -- I really just want to address the -- the situation with [my daughter]. I -- I -- I can't allow that to -- to transpire. There has been no alienation and it was based--." The following interchange then occurred:

THE COURT: You -- you -- sir! You can't allow it to transpire?

MR. WILSON: It's -- it's -- Your Honor --

THE COURT: Wait a minute, are you telling me right now that you are going to violate my order?

MR. WILSON: No, no, that's not what I'm saying. What I'm saying is I'm begging you to reconsider because the fact is it's not in the best interest--

¹ The judge may have been speaking to the court officer who later handcuffed defendant.

THE COURT: Sir!

MR. WILSON: Please.

THE COURT: Remand him to the Essex County Jail.

Rule 1:10-1, "Summary contempt in presence of court," states:

A judge conducting a judicial proceeding may adjudicate contempt summarily without an order to show cause if:

- (a) the conduct has obstructed, or if continued would obstruct, the proceeding;
- (b) the conduct occurred in the actual presence of the judge, and was actually seen or heard by the judge;
- (c) the character of the conduct or its continuation after an appropriate warning unmistakably demonstrates its willfulness;
- (d) immediate adjudication is necessary to permit the proceeding to continue in an orderly and proper manner; and
- (e) the judge has afforded the alleged contemnor an immediate opportunity to respond.

The order of contempt shall recite the facts and contain a certification by the judge that he or she saw or heard the conduct constituting the contempt and that the contemnor was willfully contumacious. Punishment may be determined forth with or deferred. Execution of sentence shall be stayed for five days following imposition and, if an appeal is taken, during the pendency of the appeal, provided, however, that the judge may require bail if reasonably necessary to assure the contemnor's appearance.

[(Emphasis added).]

The judge referred to having incarcerated defendant previously, saying "I threw you in jail for a weekend, right? .

. . . [b]ecause I found alienation." Later in the proceedings when defendant attempted to apologize after disagreeing with the judge, the judge asked defendant if he had brought his toothbrush (in preparation for jail). The judge did not stay this seven-day jail sentence as required by the Rule, nor recite his findings in the September 4 order. R. 1:10-1. The applicable provision of the order states merely: "Defendant is hereby remanded to the Essex County Jail for seven (7) days due to contempt of this Court, to be released Friday, September 11, 2015 at 9:00 a.m." Plaintiff's lawyer signed her consent to the form of this order, while above defendant's signature line is hand-written, "not signed-in custody."

When discussing contempt proceedings against an attorney, our Supreme Court said:

Necessity not only justifies the summary contempt power, but also limits that power by defining both settings for its exercise and procedural safeguards. With few exceptions, every contempt calls for an explanation. Thus, even in summary contempt proceedings against an attorney, the attorney should be informed of the charge and given an opportunity either to dispel any possible misunderstanding or to present any exculpatory facts that are not known to the court. The provision for de novo appellate review of summary contempt convictions is a fail-safe mechanism for assuring that the contempt power is not abused.

[In re Daniels, 118 N.J. 51, 62 (citations omitted.), cert. denied, 498 U.S. 951, 111 S.

Ct. 371, 112 L. Ed. 2d 333 (1990).]

The judge's failure to stay the seven-day sentence for the required five days deprived defendant of immediate de novo appellate review.

More recently our Supreme Court has stated: "We have described [contempt] as an extraordinary power, to be exercised sparingly against those whose conduct 'has the capacity to undermine the court's authority and to interfere with or obstruct the orderly administration of justice.'" Amoresano v. Laufgas, 171 N.J. 532, 549-50 (2002) (quoting In re Daniels, supra, 118 N.J. at 61). "The essence of the offense is defiance of public authority." Id. at 549 (quoting In re Yengo, 84 N.J. 111, 120 (1980), cert. denied, 449 U.S. 1124, 101 S. Ct. 941, 67 L. Ed. 2d 110 (1981)).

In this case the deprivation of liberty without due process is contrary not only to the Court Rules but to our constitution and the federal constitution. See In re Daniels, supra, 118 N.J. at 65-66. A judge's frustration with a self-represented parent who decries the removal of his or her child should not result in this extraordinary outcome.

Reversed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION