

SUPREME COURT OF NEBRASKA

McCullough v. McCullough

299 Neb. 719 (2018) · No. Nos. S-16-1086, S-16-1187, S-17-037 · Decided April 26, 2018

SUMMARY

The Nebraska Supreme Court considered three consolidated appeals arising from post-dissolution contempt proceedings. It affirmed orders finding Wallace R. McCullough in contempt for failing to pay childcare expenses, property equalization installments, and child support, as well as related attorney fees, and dismissed the appeal concerning the amount of a supersedeas bond.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	April 26, 2018
DOCKET	Nos. S-16-1086, S-16-1187, S-17-037
DISPOSITION	other
PROCEDURAL POSTURE	In three consolidated appeals arising from a marital dissolution proceeding, the husband appealed two civil contempt orders, related attorney-fee awards, an order denying recusal and reconsideration, and an order setting a supersedeas bond.
STANDARD OF REVIEW	In a civil contempt proceeding seeking remedial relief, legal issues are reviewed de novo, factual findings for clear error, and the determination of contempt and the sanction imposed for abuse of discretion. Attorney-fee decisions are reviewed for abuse of discretion; a jurisdictional question not involving a factual dispute is reviewed as a matter of law; and denial of a recusal motion is affirmed unless the record establishes bias or prejudice as a matter of law.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	Wallace R. McCullough v. Michelle A. McCullough

TOPICS

- contempt
- dissolution of marriage
- appellate jurisdiction
- final judgment rule
- attorney fees

PRACTICE AREAS

family law

appellate procedure

civil procedure

remedies

QUESTIONS PRESENTED

1. Whether the district court properly found Wallace in willful civil contempt for failing to pay childcare expenses and property-division equalization payments while his modification counterclaim remained pending.
2. Whether the property-equalization judgment had become dormant because Michelle allegedly failed to execute on it within five years.
3. Whether the district court properly found Wallace in contempt for failing to pay child support while his request to modify child support remained pending.
4. Whether the attorney-fee awards entered in the contempt proceedings were proper.
5. Whether the district court erred in denying Wallace's motion for judicial recusal based on alleged bias or prejudice.
6. Whether an order setting the amount of a supersedeas bond was separately appealable and whether the bond issue remained justiciable after affirmance of the underlying contempt order.
7. Whether the district court could be reviewed for failing to grant Wallace's motion for judgment on his modification counterclaim or for judgment in the contempt proceedings.

HOLDINGS

1. The pendency of an application or counterclaim to modify a dissolution decree does not suspend the decree or excuse compliance with its existing payment obligations. Unless and until the court enters a modification order, the original decree remains valid and enforceable.
2. Civil contempt requires willful disobedience, meaning an intentional violation committed with knowledge that the act violated the court order; failure to comply is not willful if compliance was impossible. The complainant must prove the elements of contempt by clear and convincing evidence unless a statute provides otherwise.
3. The property-equalization judgment had not become dormant because the record showed that Michelle had pursued collection efforts, and there had not been a five-year period during which she failed to attempt execution.
4. An order of contempt entered in a postjudgment proceeding to enforce a prior final judgment is a final, appealable order because it affects a substantial right and is made upon a summary application after judgment.
5. An order setting the amount of a supersedeas bond is not separately appealable. Issues concerning the bond may be raised in the appeal from the underlying appealable order, but the bond issue became moot after the underlying contempt order was affirmed.
6. Reasonable attorney fees may be awarded as costs in a civil contempt proceeding, and the attorney-fee awards were not an abuse of discretion because the contempt findings were proper and Wallace did not

challenge the proof or reasonableness of the amounts.

7. The denial of Wallace's recusal motion was proper because the record did not establish bias or prejudice as a matter of law.
8. The Supreme Court could not review the alleged denial of a motion for judgment on the modification counterclaim because the district court had not ruled on that motion. A motion for judgment is also not a recognized filing in a civil contempt proceeding, which is a summary application after judgment.

KEY QUOTATIONS

"The order setting the amount of the supersedeas bond was not an appealable order in its own right" (733)

"a "motion for judgment" is not a recognized filing in a contempt proceeding." (739)

FACTUAL BACKGROUND

The parties' marriage was dissolved in 2010, and the decree awarded Michelle custody while requiring Wallace to pay \$3,005 per month in child support, a share of childcare expenses, and \$552,124.89 to equalize the property division. Michelle later filed contempt proceedings alleging that Wallace had failed to make the required payments. The district court found Wallace in willful contempt for failing to pay childcare expenses, property-equalization installments, and child support, imposed purge plans, and awarded Michelle attorney fees and costs. Wallace also sought modification of the decree, recusal of the judge, and review of a supersedeas bond.

PROCEDURAL HISTORY

The Sarpy County District Court entered a 2010 decree dissolving the parties' marriage and requiring Wallace McCullough to pay child support, childcare expenses, and property-division equalization payments. In 2016 and 2017, the district court entered orders finding Wallace in contempt for failing to make the required payments, imposing purge plans, and awarding Michelle attorney fees; it also set a supersedeas bond, denied recusal and reconsideration motions, and addressed filings concerning a pending modification proceeding. The Nebraska Supreme Court consolidated the appeals, affirmed the contempt-related judgments in Nos. S-16-1086 and S-17-037, and dismissed No. S-16-1187 for lack of jurisdiction.

DISPOSITION

other

CASES CITED

- State on behalf of Mariah B. & Renee B. v. Kyle B., 298 Neb. 759, 906 N.W.2d 17 (2018)
- In re Estate of Forgey, 298 Neb. 865, 906 N.W.2d 618 (2018)
- Ginger Cove Common Area Co. v. Wiekhorst, 296 Neb. 416, 893 N.W.2d 467 (2017)
- Kalkowski v. Nebraska Nat. Trails Museum Found., 290 Neb. 798, 862 N.W.2d 294 (2015)
- Smeal Fire Apparatus Co. v. Kreikemeier, 279 Neb. 661, 782 N.W.2d 848 (2010)

- Hossaini v. Vaelizadeh, 283 Neb. 369, 808 N.W.2d 867 (2012)
- Martin v. Martin, 294 Neb. 106, 881 N.W.2d 174 (2016)
- Johnson v. Johnson, 290 Neb. 838, 862 N.W.2d 740 (2015)
- Green v. Morse, 57 Neb. 798, 78 N.W. 395 (1899)
- Waite v. City of Omaha, 263 Neb. 589, 641 N.W.2d 351 (2002)
- Buffalo County v. Kizzier, 250 Neb. 180, 548 N.W.2d 757 (1996)
- The Exchange Bank v. Mid-Nebraska Computer Services, Inc., 188 Neb. 673, 199 N.W.2d 5 (1972)
- Edwards v. Edwards, 16 Neb. Ct. App. 297, 744 N.W.2d 243 (2008)
- World Radio Lab. v. Coopers & Lybrand, 2 Neb. Ct. App. 747, 514 N.W.2d 351 (1994)
- Folgers Architects v. Kerns, 262 Neb. 530, 633 N.W.2d 114 (2001)
- Goeke v. National Farms, Inc., 245 Neb. 262, 512 N.W.2d 626 (1994)
- Anderson v. Anderson, 5 Neb. Ct. App. 22, 554 N.W.2d 177 (1996)
- In re Estate of Sehi, 17 Neb. Ct. App. 697, 772 N.W.2d 103 (2009)
- Sickler v. Sickler, 293 Neb. 521, 878 N.W.2d 549 (2016)

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