

SUPREME COURT OF ARKANSAS

Omni Holding & Development Corp. v. 3D.S.A., Inc., 356 Ark. 440

156 S.W.3d 228 (2004) · No. No. 03-841 · Decided March 25, 2004

SUMMARY

The Supreme Court of Arkansas reviewed contempt findings arising from an order requiring Omni Holding and Development Corporation to return leased aircraft and related equipment to 3D.S.A., Inc. The court held that Omni and its managing officer, Tom Papachristou, were properly subject to civil contempt for failing to deliver the property as ordered, but modified the order so that Papachristou's release could not be conditioned on payment by Omni. The court also upheld a \$75,000 civil contempt award against Omni and rejected challenges concerning the clarity of the delivery order and Papachristou's lack of party status.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Robert L. Brown, Justice
JURISDICTION	Arkansas
DECIDED	March 25, 2004
DOCKET	No. 03-841
DISPOSITION	affirmed
PROCEDURAL POSTURE	Omni and Papachristou appealed from a circuit-court contempt order arising from a replevin action. The order held Omni in civil contempt, held Papachristou in criminal contempt, awarded 3D.S.A. \$75,000, and imposed a sixty-day jail sentence on Papachristou.
STANDARD OF REVIEW	A civil-contempt finding is reviewed under the clearly-against-the-preponderance-of-the-evidence standard. Factual findings following a bench trial are reviewed for clear error, and evidentiary rulings are reviewed for abuse of discretion with a showing of prejudice.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Omni Holding and Development Corporation, Tom Papachristou v. 3D.S.A., Inc.

TOPICS

contempt

replevin

appellate procedure

civil procedure

commercial litigation

PRACTICE AREAS

Civil procedure

Contempt

Replevin

Appellate procedure

Commercial litigation

QUESTIONS PRESENTED

1. Whether the circuit court properly held Omni and Papachristou in contempt for violating the order of delivery.
2. Whether the order of delivery was sufficiently definite and clear to support a contempt finding.
3. Whether a \$75,000 award payable to 3D.S.A. was a permissible civil-contempt fine and whether Papachristou's ability to purge contempt could be conditioned on Omni's payment of that amount.
4. Whether Papachristou could be held in contempt despite not having been formally made a party to the replevin action.
5. Whether the circuit court improperly awarded 3D.S.A. possession of an aircraft allegedly owned by a nonparty.
6. Whether Arkansas Code Annotated section 18-60-819 was preserved for constitutional review.
7. Whether FAA inspection reports were inadmissible hearsay or improperly admitted expert opinions.

HOLDINGS

1. The contempt findings were supported because Omni and Papachristou failed to deliver the specified aircraft and related equipment in the condition and assembled form required by the order.
2. Both Omni and Papachristou were actually held in civil contempt because the relief was remedial and could be avoided or purged through compliance with the delivery order.
3. Papachristou's ability to purge his civil contempt could not be conditioned on payment by Omni, a third party.
4. The \$75,000 award payable to 3D.S.A. was a civil-contempt fine, despite the circuit court's characterization of it as punitive damages, and could be measured in part by the damage to 3D.S.A.'s property.
5. Papachristou could be held in contempt because he had actual notice and full knowledge of the order of delivery, even though he was not formally made a party.
6. The circuit court did not clearly err in finding that the aircraft marked N731SS was actually the Cessna N60711 belonging to 3D.S.A., based on evidence that the aircraft data plates had been switched.
7. The constitutional challenge was not preserved for appellate review because it was stated generally, unsupported by authority, and not fully developed in the trial court or on appeal.
8. The circuit court properly admitted the FAA inspection reports under Arkansas Rule of Evidence 803(8).

KEY QUOTATIONS

“criminal contempt punishes while civil contempt coerces.” (234)

“The keys to the jail in civil contempt must rest in the hands of the contemnor and not a third party.” (238)

FACTUAL BACKGROUND

3D.S.A. leased nine aircraft and related aviation equipment to Omni under a lease that expired on December 31, 2002. After Omni refused to return the property, the circuit court ordered delivery of specified aircraft, parts, logbooks, and equipment, including certain aircraft in assembled condition. Evidence showed that Omni and Papachristou failed to deliver property as ordered and that aircraft data plates and engine components had been switched or altered.

PROCEDURAL HISTORY

3D.S.A. filed a replevin action seeking possession of aircraft, logbooks, equipment, and parts leased to Omni. After the circuit court ordered delivery of the property, 3D.S.A. petitioned for contempt, alleging that Omni and its officers failed to comply and altered or substituted property. The circuit court entered a contempt order, denied post-order motions including a constitutional challenge, and the Supreme Court of Arkansas affirmed the order as modified.

DISPOSITION

affirmed

CASES CITED

- Johnson v. Johnson, 343 Ark. 186, 33 S.W.3d 492 (2000)
- Baggett v. State, 15 Ark. App. 113, 690 S.W.2d 362 (1985)
- Fitzhugh v. State, 296 Ark. 137, 752 S.W.2d 275 (1988)
- Penfield Co. v. S.E.C., 330 U.S. 585 (1947)
- In re Nevitt, 117 F. 448 (8th Cir. 1902)
- Hicks ex rel. Feiock v. Feiock, 485 U.S. 624 (1988)
- Gompers v. Buck's Stove & Range Co., 221 U.S. 418 (1911)
- Michaelson v. United States ex rel. Chicago, St. P., M. & O.R. Co., 266 U.S. 42 (1924)
- Gatlin v. Gatlin, 306 Ark. 146, 811 S.W.2d 761 (1991)
- City of Benton v. Arkansas Soil & Water Conservation Commission, 345 Ark. 249, 45 S.W.3d 805 (2001)
- East v. East, 148 Ark. 143, 229 S.W. 5 (1921)
- Hubbard v. Fleet Mortgage Co., 810 F.2d 778 (8th Cir. 1987)
- C.R.T., Inc. v. Brown, 269 Ark. 114, 602 S.W.2d 409 (1980)
- Hickinbotham v. Williams, 228 Ark. 46, 305 S.W.2d 841 (1957)
- Arkansas Department of Human Services v. R.P., 333 Ark. 516, 970 S.W.2d 225 (1998)
- Burke v. Elmore, 341 Ark. 129, 14 S.W.3d 872 (2000)

- Raymond v. State, 354 Ark. 157, 118 S.W.3d 567 (2003)
- Harris v. State, 320 Ark. 677, 899 S.W.2d 459 (1995)
- Drummond v. State, 320 Ark. 385, 897 S.W.2d 553 (1995)
- Barnes v. Everett, 351 Ark. 479, 95 S.W.3d 740 (2003)

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