

SUPREME JUDICIAL COURT OF MAINE

Splude v. Dugan

2003 ME 88 (Supreme Judicial Court of Maine 2003) · Decided July 16, 2003

SUMMARY

The Maine Supreme Judicial Court vacated a contempt judgment against James E. Dugan because the Superior Court authorized alternative service of the contempt subpoena based on an outdated affidavit and therefore provided insufficient notice and opportunity to be heard. The court held that, at a minimum, current evidence of diligent efforts to effect personal service was required before authorizing alternative service in a contempt proceeding. The court also noted that coercive imprisonment for failure to pay a compensatory fine requires separate findings that the defendant failed or refused to pay and had the ability to do so.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Clifford, J.; Rudman, J.; Dana, J.; Alexander, J.; Calkins, J.; Levy, J.
JURISDICTION	Maine
DECIDED	July 16, 2003
DISPOSITION	vacated
PROCEDURAL POSTURE	Dugan appealed from a contempt judgment entered by the Superior Court awarding Splude \$16,389.67 and ordering Dugan's incarceration until payment.
STANDARD OF REVIEW	The interpretation of the service requirement in Maine Rule of Civil Procedure 66(d)(2)(C) is reviewed de novo.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Judicial Court of Maine.
PARTIES	James E. Dugan v. Kathleen M. Splude

TOPICS

- contempt
- service of process
- procedural due process
- civil procedure
- real estate

PRACTICE AREAS

- civil procedure
- constitutional law
- contempt
- real estate
- remedies

QUESTIONS PRESENTED

1. Whether the Superior Court's authorization of alternative service of a contempt subpoena and hearing notice provided constitutionally sufficient notice under Maine Rule of Civil Procedure 66(d)(2)(C) and due process.
2. Whether the Superior Court could order coercive imprisonment for failure to pay a compensatory contempt judgment without making the findings required by Maine Rule of Civil Procedure 66(d)(2)(D) (i) and (ii).

HOLDINGS

1. Before authorizing service other than in hand to notify a party of a contempt hearing, the court must have sufficient evidence of a current diligent effort to effect personal service on the alleged contemnor. Reliance on an outdated affidavit did not provide sufficient notice or satisfy due process in this case.
2. A compensatory fine or judgment entered under Maine Rule of Civil Procedure 66(d)(3)(C) cannot support coercive imprisonment unless, after notice to the defendant, the court separately finds that the defendant failed or refused to pay and that payment was within the defendant's power.

KEY QUOTATIONS

“At a minimum, Rule 66 and due process require that before a court authorizes service, other than in hand, to notify a party about a hearing on a motion for contempt, sufficient evidence of a current diligent effort to effectuate personal service on the alleged contemnor must exist.” (at 775)

“Failure to pay the compensatory fine, or judgment provided for, cannot be the basis of coercive imprisonment unless and until there is a separate finding by the court, after notice to the defendant, that (1) the defendant has failed or refused to pay the judgment, and (2) it is within the defendant's power to do so.” (at 776)

FACTUAL BACKGROUND

Splude and Dugan jointly owned property in Wales, and Splude obtained a default judgment ordering partition after Dugan failed to appear. Following alleged violations of an order requiring Dugan to vacate and alleged malicious damage to the property, Splude sought contempt sanctions and alternative service of the contempt subpoena and hearing notice. The Superior Court relied on a March 26, 2001 affidavit concerning difficulty serving Dugan, authorized service by leaving documents at two residences, and later entered a \$16,389.67 judgment with incarceration until payment.

PROCEDURAL HISTORY

Splude obtained a default judgment partitioning jointly owned property after Dugan failed to appear. After alleged noncompliance with subsequent orders, Splude sought contempt sanctions and authorization for alternative service of the contempt subpoena and hearing notice. The Superior Court authorized alternative service, held a contempt hearing after Dugan failed to appear, entered a monetary judgment and coercive incarceration order, and Dugan appealed. The Supreme Judicial Court of Maine vacated and remanded.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Remanded to the Superior Court for further proceedings consistent with the opinion.

CASES CITED

- Blanchard v. Sawyer, 2001 ME 18, ¶ 5, 769 A.2d 841, 843
- Int'l Union, United Mine Workers of Am. v. Bagwell, 512 U.S. 821, 827 (1994)
- Bd. of Overseers of the Bar v. Lefebvre, 1998 ME 24, ¶ 15, 707 A.2d 69, 73
- Estate of Wilson, 2000 ME 49, ¶ 20, 747 A.2d 582, 587
- Alexander v. Sharpe, 245 A.2d 279, 284 (Me. 1968)