



In re Jones

1997 | Cited 0 times | Court of Appeals of Texas | November 6, 1997

Original Proceeding on Petition for Writ of Habeas Corpus

OPINION

Relator, Patricia Jones, seeks habeas corpus relief from a September 16, 1997 order finding her in contempt and committing her to jail.

Facts

The court dissolved the marriage of Gary Wayne Jones (Gary) and relator by signing an "Agreed Final Decree of Divorce" on June 3, 1997.

On August 1, 1997, Gary, the real party in interest, filed a motion for contempt that alleged relator had violated child possession and access provisions contained in a court order of May 16, 1997, supposedly attached to the motion as Exhibit A. In reality, the document attached as Exhibit A was the June 3, 1997 divorce decree.

Paragraph five of the motion alleged:

"On the 16th day of May, 1997, this Court entered an order, which appears in the minutes of this Court, attached as Exhibit "A" and states in relevant part as follows:

"3.B. Possession and Access

"IT IS ORDERED that GARY WAYNE JONES shall have possession of the child at all times as the party may mutually agree, and the absence of mutual agreement, as follows . . . : "Weekends - On weekends, beginning at 6:00 P.M. on the first, third, and fifth Friday of each month, and ending at 6:00P.M. on the following Sunday."

"'Father's Day' Each year beginning at 6:00 p.m. on the Friday preceding Father's Day and ending at 6:00 p.m. on Father's Day, provided, that if he is otherwise entitled under this Standard Possession Order to present possession of the child, he shall pick up the child from PATRICIA BETANCOURT JONES' residence and return the child to that same place."

A comparison of this quoted material with the contents of the divorce decree that actually



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constitutes Exhibit A reveals both differences and similarities. The divorce decree contains no paragraph "3.B Possession and Access." The weekend visitation provision quoted in the motion as coming from the May 16, 1997 order is much less detailed than the weekend visitation provisions contained in the decree. It just specifies that Gary have visitation starting at 6:00 p.m. on the first, third, and fifth weekends, regardless of when in the year the weekends fall, whereas the visitation provisions contained in the decree allow Gary to pick up the child when school is dismissed during the school year. The Father's Day provisions are the same. There is nothing in the quoted material from the alleged May 16 order regarding visitation during the summer, whereas the decree contains detailed provisions relative to summer visitation.

The docket sheet shows that no order was signed on May 16, 1997.

On September 16, 1997, the court signed the contempt order, in which it found as follows:

"The Court finds that Respondent is guilty of separate violations of the order signed on June 3, 1997, . . . [that] states in relevant part as follows:

"3.B Possession and Access

"IT IS ORDERED that GARY WAYNE JONES shall have possession of the child at all times as the parties may mutually agree, and the absence of mutual agreement, as follows . . . :"

"Weekends when regular School Term is not in Session"

On weekends, beginning at 6:00 p.m. on the first, third, and fifth Friday of each month, and ending at 6:00 p.m. on the following Sunday." "Wednesdays - On Wednesday of each week during the regular school term beginning at 6:00 P.M. on the first, third, and fifth Friday of each month, and ending at 8:00 P.M.

"Father's Day" Each year, beginning at 6:00 P.M. on the Friday preceding Father's Day and ending at 7:00 p.m. on Father's Day, provided, that if he is not otherwise entitled under this Standard Possession Order to present possession of the child, he shall pick up the child from PATRICIA BETANCOURT JONES' residence and return the child to that same place."

The Court further finds that Respondent has failed to comply with and has violated the provisions of the order as follows:

"Violation 2. On Friday, June 6, 1997, the first weekend of the month, Patricia Jones failed to surrender the Minor Child to Gary Wayne Jones at Patricia Jones' residence at 6 p.m. and Movant was not allowed to pick up the child until later on Friday night.



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"Violation 3. On Friday, June 13, 1996, Father's Day weekend Patricia Jones failed to surrender the Minor Child to Gary Wayne Jones at Patricia Jones' residence at 6 p.m. and further refused visitation for the whole weekend.

"Violation 5. On Tuesday, July 1, 1997, Patricia Jones failed to surrender the Minor Child to Gary Wayne Jones at Patricia Jones' residence for summer visitation at 6:00 p.m."

It further held:

"IT IS ADJUDGED that Respondent, PATRICIA JONES, is in contempt for each separate violation enumerated above

"IT IS ORDERED that punishment for each separate violation is assessed at confinement in the county jail of Harris County, Texas, for a period of 41 days, with sentences to run concurrently.

"IT IS THEREFORE ORDERED that Respondent is committed to the county jail of Harris County, Texas, for a period of 41 days for each separate violation enumerated."

Relator was incarcerated from September 16, 1997, until September 19, 1997, when this Court released her on bond, pending a hearing on her petition for writ of habeas corpus.

Violation of Non existent Order

As her first ground for release, relator asserts that her due process rights under the Fourteenth amendment to the federal constitution were violated because she was not given adequate notice and an opportunity to defend against the contempt charges against her. See *Ex parte Blanchard*, 736 S.W.2d 642, 643 (Tex. 1987).

To insure due process, the Texas Family Code specifies those things that must be contained in a motion for contempt:

"(a) A motion for enforcement must, in ordinary and concise language:

"(1) Identify the provision of the order allegedly violated and sought to be enforced." Tex. Fam. Code Ann. section 157.002 (Vernon 1996).

Gary's motion for enforcement did not comply with section 157.002 because it did not accurately identify the provisions of the order allegedly violated and sought to be enforced. It referred to a nonexistent May 16, 1997 order. While the violations found may also have been violations of the divorce decree, we cannot uphold a contempt judgment for violations of a nonexistent order.



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Accordingly, we sustain relator's first ground for release. See *Ex parte Barlow*, 899 S.W.2d 791, 795 (Tex. App.--Houston [14th Dist.] 1995, orig. proceeding) (quoting *Ex parte Edgerly*, 441 S.W.2d 514, 516 (Tex. 1969) (orig. proceeding)).

In light of our disposition of this ground for release, it is not necessary to address relator's second complaint.

We grant relator's petition for writ of habeas corpus, and order her discharged from custody.

Tim Taft

Do not publish.

Tex. R. App. P. 47.

Opinion issued November 6, 1997

True Copy Attest:

Margie Thompson, Clerk

