Michigan Law Review

Volume 43 | Issue 6

1945

CONTEMPT-RIGHT OF COURT TO DISMISS ATTORNEY FROM TRIAL-HARDSHIP ON CLIENT

John Dobson
University of Michigan Law School

CONTEMPT—RIGHT OF COURT TO DISMISS ATTORNEY FROM TRIAL—HARDSHIP ON CLIENT—Petitioner asked for a writ of mandamus to have himself reinstated as counsel in a trial. The petitioner had represented two defendants in a criminal action, up until the time the judge presiding in the trial, respondent here, ordered him dismissed from the court as the attorney of record for the defendants. The respondent had called on the various counsel in the case to explain a certain matter, which seemed, "prima facie at least," to show contempt of court. When the petitioner was called on he did not confine himself to the matter in question, but proceeded to attack the character of the respondent as a judge, and to justify an impeachment petition which he had recently filed, for the removal of the respondent from the bench. Later the respondent offered a copy of the petition for impeachment for the record, and

called on the petitioner to show cause why he should not be dismissed from further participation in this case as counsel for the defendants. Following the petitioner's answer, the respondent ordered him dismissed from the trial. The petitioner had already been punished twice during the proceedings for acts of contempt. *Held*, petition for writ of mandamus is denied. The respondent was exercising the "elementary right of a court to protect its pending proceedings, which includes the right to dismiss from them an attorney who cannot or will not take part in them with a reasonable degree of propriety." [1] *Laughlin v. Eicher*, (App. D.C., 1944) 145 F (2d) 700.

The importance of maintaining the confidence of the community in our courts and in the administration of justice is everywhere recognized.[2] Attorneys, of course, have the right to question the decisions of the courts and to criticize them, but when such criticisms go beyond the limits of permissibility the attorney making them will be guilty of professional misconduct.[3] It is difficult to state exactly where the limits are. In the principal case, the petitioner stated that the respondent was favoring his opponents, that it was granting every wish and whim of theirs; and he went on to ask the respondent to consider the case of Judge Manton, who was sent to the United States Penitentiary. This certainly was going beyond an attorney's right to criticize the court. Such language used by an officer of the court would have a very great tendency to bring the court into disrepute.[4] To protect itself against such attacks the court has several weapons at its disposal, including the right to punish for contempt by fine or imprisonment, to institute proceedings for disbarment, or to do, as the respondent did in this case, order the dismissal of the attorney from the trial.[5] In view of the fact that two previous punishments for contempt had failed to force a compliance of the attorney with the proprieties of the occasion, the removal of him from the trial seemed to be an effective way to handle the situation.[6] It would appear that the method used here was far more lenient

[1] Laughlin v. Eicher, (App. D.C., 1944) 145 F (2d) 700 at 702.

[2] 7 C.J.S. § 18, p. 732; Matter of Murray, 11 N. Y. S. 336 (1890); Matter of Rockmore, 127 App. Div. N.Y. 499 at 502, 111 N. Y. S. 879 (1908), where the court said, "While we recognize the inherent right of an attorney in a case decided against him, or the right of the public generally, to criticise the decisions of the courts, or the reasons announced for them, the habit of criticising the motives of judicial officers in the performance of their official duties when the proceeding is not against the officers whose acts or motives are criticised, tends to subvert the confidence of the community in the courts of justice and in the administration of justice. . . ."

[3] Matter of Rockmore, 127 App. Div. N.Y. 499, 502, 111 N. Y. S. 879 (1908).

[4] See 6 C.J. §§ 53, 54, p. 594; Matter of Rockmore, 127 App. Div. N.Y. 499, 502, 111 N. Y. S. 879 (1908).

[5] 7 C.J.S. § 18, p. 730; "While attorneys have the widest latitude in differing with, and criticising opinions of, the courts, yet when they resort to . . . unwarranted assaults on the courts whose officers they are, they violate their duty and obligation and are subject to suspension or disbarment." 7 C.J.S. § 23, p. 752; Chief Justice Gibson discusses the right of a court to remove an attorney in Case of Austin, 5 Rawle (Pa.) 191 (1835); Wernimont v. State ex rel. Little Rock Bar Assn., 101 Ark. 210, 142 S.W. 194 (1911).

[6] 6 C.J. § 54, p. 594.

than might have been used, at least so far as the attorney was concerned.[7] But what of the attorney's clients? In a way, the order of the court amounts to a visiting of the sins of the attorney on the heads of his clients, the defendants in the original trial. Had the attorney merely been fined for contempt the defendants would still have had a counsel ready to go on with the further trial proceedings. There would have been no delay in the determination of their case, and they would have been represented by the counsel of their choice. Certainly his dismissal from the case works a hardship on them. The effect is to deprive them of all the knowledge their attorney has of the case, and makes necessary the additional expense of hiring new counsel who must acquaint himself with the preparation of the case, and who may make a less cogent defense than the original attorney would have made. The usual answer to this, however, is that the attorney is the agent of the client,[8] and if the attorney is the agent of the client, then the client should not be heard to complain because he is indirectly punished for the misdeeds of his attorney. In favor of the client it must be said that, in a situation like that in the principal case, he has little or no control over his attorney. He does not know the procedure of the law nor its many rules, and lacking this knowledge he is not in a very good position to control intelligently the actions of his attorney in carrying on his side of the trial. It could be argued here also that the attorney's action was beyond the scope of his employment. But isn't the real solution to this problem a matter of balancing the interests of the client against the interests of having the dignity of the court protected? The court in a criminal case is in a rather difficult position in dealing with the attorneys for the defense, for it is confronted with the danger that in ruling on the various controversies that arise in the trial it may commit error and thus give the defense a ground for appeal. On the other hand the state has no chance to reverse an acquittal. Defense attorneys, being cognizant of this situation, naturally are inclined to take advantage of it to swing the balance in favor of their clients. And certainly when they go so far as to state in open court that the other side is being favored unfairly, or that the judge presiding is corrupt, it is necessary that the court have a means of protecting itself. That right cannot be denied even when it works a hardship on the client of the erring attorney. The importance of upholding the dignity of our judicial system in the eyes of the public cannot be overemphasized. The hardship on the client should be taken into consideration in meting out punishment to the attorney, and, if possible, the punishment should be such as does not

[7] Bradley v. Fisher, 13 Wall. (U.S.) 335 (1871); Brown v. Miller, (App. D.C., 1923) 286 F. 994 at 997 which upheld trial court's decision dismissing the attorney from a particular trial, stating that the appellant attorney's contention that the proceeding should have been in the nature of a disbarment, and should, if at all, have been prosecuted as such, was not a cogent argument. "It would indeed be singular, in a case like this, to hold that the proceedings below must come to naught because of a character more favorable to the appellant than might have been invoked against him"; where an attorney filed a brief in the appellate court attacking the intelligence and integrity of the judges of the lower court, it was held, that the name of the attorney would be stricken from the record as counsel, and he should not be further heard from in the case. Kelley v. Boettcher, (C.C.A. 8th, 1897) 82 F. 794.

[8] 7 C.J.S. § 67, p. 850.

deprive the client of the services of his attorney. But when, as in the principal case, the attorney is not deterred from his contemptuous actions by other forms of punishment, or where his retention in the case would be manifestly improper, removal of such attorney from the case, suspending him from practice, or even disbarment of him, would seem to be the only means left to the court to protect adequately its proceedings.

John Dobson