

649 S.W.2d 300
Supreme Court of Texas.

Ex parte [Craig SHAFFER](#).

No. C-2019.

|
April 20, 1983.

Synopsis

Relator, who was named defendant in a breach of fiduciary duty suit, brought habeas corpus proceeding seeking to be discharged from an order of Probate Court, No. 3, Dallas County, committing him to jail for contempt. The Supreme Court, Robertson, J., held that trial court's order which directed defendant to file a cost bond to indemnify plaintiff for costs of delaying trial and to retain an attorney to represent him in suit, and which provided that a failure to comply would result in an order of contempt was void, since one who involuntarily comes into court and does not seek affirmative relief cannot be required to post a cost bond, and ordering a party to be represented by attorney abridges that person's right to be heard by himself.

Relator discharged.

West Headnotes (3)

[1] [Costs](#) 🔑 [Nature and grounds of right in general](#)

One who involuntarily comes into court and does not seek any affirmative relief cannot be required to post a cost bond. [Vernon's Ann.Texas Rules Civ.Proc., Rules 143, 147](#).

[2 Cases that cite this headnote](#)

[2] [Attorneys and Legal Services](#) 🔑 [Pro Se Litigants; Self-Representation](#)

Ordering a party to be represented by an attorney abridges that person's right to be heard by himself. [Vernon's Ann.Texas Rules Civ.Proc., Rule 7](#).

[12 Cases that cite this headnote](#)

[3] [Attorneys and Legal Services](#) 🔑 [Pro Se Litigants; Self-Representation](#)

[Costs](#) 🔑 [Nature and grounds of right in general](#)

Trial court's order which directed defendant to file a cost bond to indemnify plaintiff for costs of delaying trial and to retain an attorney to represent him in suit, and which provided that a failure to comply would result in an order of contempt was void, since one who involuntarily comes into court and does not seek affirmative relief cannot be required to post a cost bond, and ordering a party to be represented by attorney abridges that person's right to be heard by himself. [Vernon's Ann.Texas Rules Civ.Proc., Rules 7, 143, 147](#).

[67 Cases that cite this headnote](#)

Attorneys and Law Firms

*301 Dwaine Boydston, Dallas, for relator.

John Exline, Dallas, for respondent.

Opinion

ROBERTSON, Justice.

In this original habeas corpus proceeding, the relator, Craig Shaffer, seeks to be discharged from an order of Probate Court No. 3, Dallas County, committing him to jail for contempt for failure to comply with an order of that court requiring him to post a cost bond and hire an attorney. We order relator released.

While serving as Independent Executor for the estate of Horace Yates, Shaffer was sued by the widow, Cleta Yates, for alleged breach of his fiduciary duty in that capacity. The case was set for trial and continued four times at Shaffer's request. On March 16, 1983, Shaffer appeared and once again moved for a continuance on the grounds that his attorney had been allowed to withdraw three days before trial and he had not yet been able to retain a new attorney. Two days later, Judge Ashmore ordered Shaffer (1) to file with the court a \$10,000 cost bond to indemnify Cleta Yates for the costs of delaying trial; (2) to report to the court his status in retaining an attorney; and (3) to retain an attorney to represent him in

the suit. If these orders were not complied with by March 23, Shaffer would be in contempt and subject to imprisonment.

On March 25, without a formal motion for contempt, notice to Shaffer or a show cause hearing, the court adjudged him in contempt and ordered Shaffer placed in the county jail “until he purges himself of this contempt....” The court later issued findings of fact and conclusions of law in support of the contempt order including statements that: (1) a hearing was held without Shaffer being present; (2) that Shaffer had wholly failed to comply with the court's order and that such violation was intentionally designed to delay the trial; and (3) that no motion for contempt, notice, show cause order or other citation or process was required because this was a case of direct contempt.

[1] [2] [3] The issue here is whether the trial court's March 18 order exceeds its statutory authority and is therefore void, inasmuch as one may not be held guilty of contempt for *302 refusing to obey a void order. *Ex parte Lillard*, 159 Tex. 18, 314 S.W.2d 800 (Tex.1958); *Ex parte Henry*,

147 Tex. 315, 215 S.W.2d 588 (Tex.1949). Counsel cites no authority, and indeed we can find none, which allows a court to require a bond of a defendant or to require any party to retain an attorney. Rather, in Texas the law is clear that one who involuntarily comes into court and does not seek any affirmative relief cannot be required to post a cost bond. *Tex.R.Civ.P. 143, 147*. Additionally, ordering a party to be represented by an attorney abridges that person's right to be heard by himself. *Tex.R.Civ.P. 7*. If Shaffer's lack of an attorney was being used to unnecessarily delay trial or was abusing the continuance privilege, the proper action would have been to order him to proceed to trial as set, with or without representation. Accordingly, we hold that the March 18 order is void.

The relator is discharged.

All Citations

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