State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Thursday, September 10, 2015

No. 131 The Ministers and Missionaries Benefit Board v Snow

Prior to his divorce, Reverend Clark Flesher joined two benefits plans -- a retirement plan and a death benefit plan -- administered by the Ministers and Missionaries Benefit Board (MMBB), a New York not-for profit corporation. He designated his wife, now Reverend LeAnn Snow, as the primary beneficiary of both plans and her father, Leon Snow, as the contingent beneficiary. When Flesher and LeAnn Snow divorced in California in 2008, they signed a settlement agreement in which each of them relinquished all rights to inherit from the other. The agreement also authorized them to change the beneficiaries of their MMBB plans, but Flesher never did so. He died without a will in Colorado in 2011, and competing claims of entitlement to the proceeds of his MMBB plans were made by his Estate and by LeAnn and Leon Snow. To determine how to distribute the disputed funds -- in excess of $400,000 -- MMBB brought this federal interpleader action against the claimants in the Southern District of New York.

U.S. District Court granted summary judgment to Flesher's Estate, holding that it was entitled to the disputed funds under New York law. Estates, Powers & Trusts Law § 3-5.1(b)(2) provides, "The intrinsic validity, effect, revocation or alteration of a testamentary disposition of personal property, and the manner in which such property devolves when not disposed by a will, are determined by the law of the jurisdiction in which the decedent was domiciled at death." The court found that the proceeds of the MMBB plans are "personal property" and that Flesher had changed his domicile to Colorado prior to his death. Under Colorado law, divorce revokes any beneficiary designations of an ex-spouse and relatives of the ex-spouse, the court said, so the designations of both Snows were automatically revoked. Under New York law, divorce revokes beneficiary designations of ex-spouses, but not of their relatives.

The U.S. Court of Appeals for the Second Circuit found a threshold issue raised by the governing law provisions of the MMBB plans, which state, "The provisions of this Plan shall be governed by and construed in accordance with the laws of the State of New York." The court said, "The provisions could be read to require a court to apply both New York substantive law and New York choice-of-laws principles. They could also be read to require only the application of New York substantive law.... There is also a third possible reading...; namely, that they preclude the application of New York common-law conflict-of-laws analysis, but not the application of a choice-of-law directive in a New York statute." It said it is also unclear whether entitlement to the proceeds of the MMBB plans is "personal property" under EPTL § 3-5.1(b)(2).

The Second Circuit is asking this Court to resolve the issues in a pair of certified questions: (1) Whether a governing law provision, which was "not consummated pursuant to New York General Obligations Law section 5-1401, requires the application of [EPTL] section 3-5.1(b)(2), a New York statute that may, in turn, require application of the law of another state? (2) If so, whether a person's entitlement to proceeds under a death benefit or retirement plan, paid upon the death of the person making the designation, constitutes 'personal property ... not disposed of by will' within the meaning of [EPTL] section 3-5.1(b)(2)?"

For appellants Snow et al: Jesse Wilkins, Levittown (212) 809-5808
For respondents Estate of Flesher at al: Brian Rosner, Manhattan (212) 785-2577

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To be argued Thursday, September 10, 2015

No. 90 El-Dehdan v El-Dehdan *(papers sealed)*

Jacqueline El-Dehdan (El-Dehdan) brought this divorce action against Salim El-Dehdan, also known as Sam Reed (Reed), in 2008. After Supreme Court informed Reed it would refer equitable distribution issues to a referee, he transferred ownership of two parcels of marital property -- selling a parcel in Brooklyn for $950,000 in March 2009 and transferring a parcel in Queens in April 2009, apparently without consideration. After a hearing, at which Reed did not appear, the referee determined that El-Dehdan should be awarded the Brooklyn and Queens properties. When El-Dehdan learned both properties had been transferred, she sought relief from Supreme Court, which issued an order in January 2010 directing Reed to "deposit immediately" with El-Dehdan's attorney the net proceeds of the March 2009 transfer ($776,000). Reed failed to deposit any money and El-Dehdan moved to hold him in civil and criminal contempt. Reed responded in an affidavit that he no longer possessed the proceeds of the Brooklyn transfer. At the contempt hearing before a referee, Reed conceded he received a copy of the January 2010 order and did not turn over any money pursuant to the order. He invoked his Fifth Amendment privilege against self-incrimination in response to all questions about the proceeds of the March 2009 transfer. The referee found Reed dissipated marital assets, but recommended denial of the contempt motion for lack of proof he could have complied with the January 2010 order.

Supreme Court rejected the referee's report and held Reed in civil contempt, finding that he "was fully awar[e] of the court's lawful and unequivocal order" to turn over the proceeds of the Brooklyn transfer and that El-Dehdan "was clearly prejudiced by [his] refusal to comply."

The Appellate Division, Second Department affirmed, holding that "willfulness" is not an element of civil contempt under Judiciary Law § 753. It said "subdivision (3) of the civil contempt statute ... does not include the words 'wilful' and 'wilfully,' which are included in the criminal contempt statute.... The absence of the term 'wilful' ... indicates that the legislature, by inference, intentionally omitted or excluded the requirement of willfulness...." Finding no Fifth Amendment violation, it said Reed "had the burden of establishing his defense of an inability to pay the sum required by the January 2010 order...; his invocation of his privilege against self-incrimination did not relieve him of the obligation of coming forward with evidence in support of that defense.... Moreover, the Supreme Court was entitled to draw an adverse inference against him" in a civil proceeding, although it "did not hold him in contempt solely for having asserted his Fifth Amendment privilege. Rather, [it] held him in civil contempt for failing to comply with the ... order."

Reed argues that "the difference between civil and criminal contempt is not the existence of willfulness, but the level of willfulness required." Omitting willfulness from the civil contempt statute "would raise constitutional problems given the quasi-criminal nature of civil contempt proceedings. Without a willfulness element, defendants like Mr. Reed could be thrown in jail for simply failing to pay court-ordered debts." He says the federal and state Constitutions "do not permit a negative inference from a defendant's invocation of his Fifth Amendment rights where both civil and criminal penalties are being sought in the same proceeding." He also argues he should have been permitted to collaterally attack the validity of the January 2010 order.

For appellant Salim El-Dehdan (aka, Sam Reed): Donna Aldea, Garden City (516) 745-1500
For respondent Jacqueline El-Dehdan: Karina E. Alomar, Ridgewood (718) 456-1845

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To be argued Thursday, September 10, 2015

No. 132 People v Terrance Mack

Terrance Mack was charged with gang assault in the first degree for his alleged participation in a September 2007 brawl, during which Latasha Shaw was beaten and stabbed to death by a large number of people in Rochester. Only one eyewitness identified Mack as a participant. During jury deliberations, County Court declared a recess and told the attorneys they would address any questions or concerns raised by the jury when they returned. The jury sent the court three notes during the recess. The first note said "we would like to have the instructions regarding the importance of a single witness in a case versus multiple witnesses and the instructions about the meaning of reasonable doubt read back to us." The second note asked "to hear [the eyewitness's] testimony regarding Terrance Mack's leaving of the crime scene" and requested "more jury request sheets." The third asked for a smoking break. Upon reconvening, the court read the notes into the record and indicated it would read the requested instructions, but before it did so, the jury sent another note saying it had reached a verdict. The court recessed for 16 minutes, then accepted the jury's guilty verdict without responding to the notes. Mack was sentenced to 25 years in prison.

The Appellate Division, Fourth Department reversed and ordered a new trial in a 3-1 decision, finding that "the core requirements" of CPL 310.30 were triggered by the jury's requests for readbacks of legal instructions and "a portion of the testimony of the sole witness who had identified defendant," and that Mack was "seriously prejudiced" by the trial court's failure to respond. "[A]lthough defense counsel failed to object to the court's procedure of accepting the verdict without responding to the jury's notes, the failure of the court to provide a meaningful response to the substantive requests of the jury is a mode of proceedings error for which preservation is not required...." It said the "request for a readback of the instruction on reasonable doubt, the determination of which is the crux of a jury's function, and for a readback of the instruction regarding 'the importance of a single witness in a case versus multiple witnesses,' 'demonstrates the confusion and doubt that existed in the minds of the jury with respect to ... crucial issue[s].... The jury is entitled to the guidance of the court and may not be relegated to its own unfettered course of procedure'...."

The dissenter said the jury, "by issuing a note stating that it had reached a verdict, impliedly rescinded its outstanding notes requesting a readback of certain instructions and certain testimony, and County Court therefore did not err in concluding that 'the jury had resolved its questions and was no longer in need of the requested information'...." He also argued that any error was unpreserved. "Although providing a meaningful response to notes from the jury is clearly among the court's 'core responsibilities' under CPL 310.30..., the statute does not expressly require the court to respond to a note that is followed by an announcement from the jury that it has reached a verdict.... In my view, the court's failure to respond to the outstanding jury notes, even if error, was not so significant or prejudicial as to constitute a fundamental flaw in the criminal process."

For appellant: Monroe County Assistant District Attorney Geoffrey Kaeuper (585) 753-4674
For respondent Mack: Nicolas Bourtin, Manhattan (212) 558-4000

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To be argued Thursday, September 10, 2015

No. 133 People v Kenneth Nealon

Kenneth Nealon and an accomplice were arrested for allegedly mugging a man in Queens in September 2007. Witnesses said that, while posing as undercover police officers, the two men stole cash and property from the victim, then beat him when he questioned their authority. Nealon was charged with first and second-degree robbery, second-degree assault, and possession of stolen property. During deliberations, the jury sent three notes to the judge. The first asked for the "difference between robbery in the 1st degree and 2nd degree." The second said, "Please reinstruct us on all 4 charges." The third note said, "Clarify if 1st count robbery in first degree includes assault and 2nd count robbery in second degree doesn't include assault;" and then asked, "Does the degree of injury count towards 1st or 2nd degree?" Supreme Court called the jury into the courtroom, read the notes aloud into the record, and then responded to the jury's requests. Nealon was convicted of all four counts and sentenced to 20 years in prison.

On appeal, Nealon argued the trial court erred under People v O'Rama (78 NY2d 270) by responding to the jury notes without first informing him of the contents of the notes and affording him an opportunity to consult on the response. The prosecution then moved at the trial court to resettle the record, contending the court showed the notes to defense counsel at unrecorded sidebar conferences before the jury was called into the courtroom. Supreme Court granted the motion "to the extent that the record reflects that the attorneys were shown the notes" before the court responded to the jury.

The Appellate Division, Second Department struck the portions of the prosecution's brief that referred to the resettled record and reversed Nealon's conviction, finding the trial court committed a mode of proceedings error based on the original record. "[T]he record demonstrates that the Supreme Court violated the procedure set forth in O'Rama by reading the contents of the jury note for the first time in front of the jury and immediately providing a response.... Significantly, the jury's repeated requests for clarification of the difference between the counts of robbery in the first degree and ... second degree within the context of this case required a 'substantive response' ... rather than a merely 'ministerial' one...." It said this was a mode of proceedings error requiring reversal despite defense counsel's failure to object.

The prosecution argues the trial court "read the jury notes *verbatim* and out loud in the presence of defendant, defense counsel, the prosecutor, and the jury. Afterwards, the court answered the jury's inquiries.... Since defendant was privy to the exact contents of the notes, he was in possession of all the information he needed to object if he so desired, and was required to do so in order to preserve his claim that the trial court violated O'Rama.... [W]hen the trial court fully reveals the contents of a jury note to defendant and counsel, the defense must object to preserve an O'Rama claim, even if this disclosure first occurs in front of the jury." It also argues, "The resettled record demonstrates that there was no O'Rama error" because "the notes were disclosed prior to the jury's return to the courtroom."

For appellant: Queens Assistant District Attorney Christopher Blira-Koessler (718) 286-5988
For respondent Nealon: Kendra L. Hutchinson, Manhattan (212) 693-0085

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To be argued Thursday, September 10, 2015

No. 134 People v Rhian Taylor

Rhian Taylor was accused of fatally shooting Darion Brown during an argument in Laurelton, Queens, in August 2007. Taylor allegedly fired several shots at Brown, who was sitting at the wheel of his car. Three bullets struck Brown and one struck a passenger sleeping in the front seat. Two other passengers, Anthony Hilton and Seprel Turner, identified Taylor as the gunman at his trial. They also received benefits for their cooperation with the prosecutor. Shortly before the trial, Hilton faced a hearing on alleged violation of his probation for possession of a weapon. The prosecutor appeared at the hearing, described his cooperation in the murder case and asked that he be released without bail, a request the court granted. The court also restored Hilton to probation at the same hearing. Turner was arrested on felony weapon possession charges in 2009 and 2010 and entered into a written cooperation agreement, which promised that the felony charges would be dismissed and he would receive probation for a misdemeanor plea in return for his truthful testimony in the murder case. Turner's cooperation agreement was entered into evidence as an exhibit at Taylor's trial, but the benefits offered to Hilton were reflected only in testimony.

Before the jury began deliberating, the parties agreed Supreme Court could provide any "exhibits" requested by the jury without consulting counsel. When the jury asked "to see the benefits offered to Mr. Hilton and Mr. Turner," the court sent in Turner's cooperation agreement, but not Hilton's testimony. When defense counsel later learned of the note, he complained that Hilton's testimony about his benefits should have been read to the jury. The court said, "They didn't ask for that." The next time the jury was brought to the courtroom, the court mentioned the note and said, "I believe we sent in to you the cooperation agreement with Mr. Turner. That's what is in evidence." It did not ask the jury for clarification of its request. Taylor was convicted of second-degree murder and lesser charges and was sentenced to 20 years to life in prison.

The Appellate Division, Second Department affirmed, rejecting Taylor's claim that he was deprived of his rights under People v O'Rama to notice of the note and to be heard on it. It said, "While it may have been preferable for the court to seek further clarification from the jury with respect to its request to 'see the benefits'..., the wording of the subject jury note, particularly when read in conjunction with several other notes, demonstrated that the jury was requesting only the physical exhibit. Under these circumstances, the Supreme Court's response did not fall outside the acceptable bounds of its discretion...."

Taylor argues, "A trial court has no 'discretion' to unilaterally construe an inherently ambiguous jury note as 'ministerial' without according the defendant his fundamental constitutional rights to notice, presence, and the opportunity to be heard." He says, "Reversal is also required because the trial judge responded to the jury's note in a prejudicially misleading way and failed to provide the jury with all evidence responsive to its request."

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