

STATE OF MICHIGAN
COURT OF APPEALS

DETROIT FREE PRESS,

UNPUBLISHED
May 14, 1996

Plaintiff-Appellee,

v

No. 170071
LC No. 92-222840-AS

THIRTY SIXTH DISTRICT JUDGE,

Defendant-Appellant.

Before: Mackenzie, P.J., and White and M.W. LaBeau,* JJ.

PER CURIAM.

Defendant appeals the circuit court's supplemental order of superintending control, entered following the circuit court's determination that defendant had violated an earlier order granting writ of superintending control, pertaining to defendant's handling of requests for media coverage of proceedings in his courtroom. We conclude that although the circuit court did not err in concluding it had authority to exercise superintending control and did not abuse its discretion in determining defendant had violated the initial writ, the supplemental order is overly broad. We thus affirm in part and vacate in part.

Plaintiff brought an action seeking a writ of superintending control in August 1992,¹ alleging that defendant denied Free Press photographers access to court proceedings on five occasions over a six-month period, and had a standing policy never to allow cameras in his courtroom, which he had stated on the record. Plaintiff alleged defendant's blanket exclusion of cameras and failure to make findings and articulate them on the record violated Supreme Court Administrative Order No. 1989-1 (AO 1989-1), which states:²

Film or Electronic Media Coverage of Court Proceedings

The following guidelines shall apply to film or electronic media coverage of proceedings in Michigan courts:

* Circuit judge, sitting on the Court of Appeals by assignment.

* * *

2. Limitations.

(a) Film or electronic media coverage shall be allowed upon request in all court proceedings. Requests by representatives of media agencies for such coverage must be made in writing to the clerk of the particular court not less than three business days before the proceeding is scheduled to begin. A judge has the discretion to honor a request that does not comply with the requirements of this subsection. The court shall provide that the parties be notified of a request for film or electronic media coverage.

(b) A judge may terminate, suspend, limit, or exclude film or electronic media coverage at any time upon a finding, made and articulated on the record in the exercise of discretion, that the fair administration of justice requires such action, or that rules established under this order or additional rules imposed by the judge have been violated. The judge has sole discretion to exclude coverage of certain witnesses, including but not limited to the victims of sex crimes and their families, police informants, undercover agents, and relocated witnesses.

(c) Film or electronic media coverage of the jurors or the jury selection process shall not be permitted.

(d) A trial judge's decision to terminate, suspend, limit, or exclude film or electronic media coverage is not appealable, by right or by leave.

3. Judicial Authority. Nothing in these guidelines shall be construed as altering the authority of the Chief Justice, the Chief Judge of the Court of Appeals, trial court chief judges, or trial judges to control proceedings in their courtrooms, and to ensure decorum and prevent distractions and to ensure the fair administration of justice in the pending cause.

4. Equipment and Personnel. Unless the judge orders otherwise, the following rules apply:

(a) Not more than two videotape or television cameras, operated by not more than one person each, shall be permitted in any courtroom.

(b) Not more than two still photographers, utilizing not more than two still cameras each with not more than two lenses for each camera, and related necessary equipment, shall be permitted in any courtroom.

(c) Not more than one audio system for radio and/or television recording purposes shall be permitted in any courtroom . . .

* * *

6. Location of Equipment and Personnel.

* * *

(b) Still camera photographers shall be positioned in such locations in the courtroom as shall be designated by the judge. Still camera photographers shall assume fixed positions within the designated areas and shall not move about in any way that would detract from the proceedings.

(b) Photographic or audio equipment may be placed in, moved about in, or removed from, the courtroom only during a recess. Camera film lenses may be changed in the courtroom only during a recess. [432 Mich cxii-cxv.]

Following a hearing, the circuit court entered an order granting writ of superintending control on October 13, 1992, which stated in pertinent part that defendant:

. . . shall allow, upon proper request submitted not less than three business days in advance, pursuant to Supreme Court Administrative Order 1989-1, film or electronic media coverage of Court proceedings in his courtroom;

. . . may deny a three-day advance request only for reasons specifically related to the court proceeding for which coverage is requested, and in which the fair administration of justice requires such action. These reasons must be articulated on the record at the time the request is denied. It is not sufficient reason to deny coverage on the basis that the parties or witnesses involved must receive notification under the Administrative Order or give their consent;

IT IS FURTHER ORDERED that in all other respects, the Administrative Order of the Supreme Court controls request [sic] for electronic media coverage of proceedings before the Honorable David Martin Bradfield.

IT IS FURTHER ORDERED that the Court retains jurisdiction to enforce the terms of this Order.

This Court dismissed defendant's claim of appeal from this original writ of superintending control as untimely and denied his application for delayed appeal.

Following entry of the writ granting superintending control, plaintiff made additional requests to photograph proceedings in defendant's courtroom and, after requests were allegedly denied or limited, moved to show cause why defendant should not be held in contempt for violation of the order granting writ of superintending control. At a show cause hearing in October 1993, there was testimony that defendant continued to deny plaintiff's requests for media coverage or imposed conditions more restrictive than AO 1989-1. One of plaintiff's requests was filed three days in advance but was denied as untimely. Another request was denied because it did not identify a particular proceeding, but rather indicated coverage was sought of proceedings on a particular day. There was also testimony that, although defendant approved several requests, the approvals were subject to conditions defendant imposed which were set forth in a document entitled "Special Court Rules for the Press," and attached to the approvals. The document stated:

STATE OF MICHIGAN
36TH DISTRICT COURT
HON. DAVID MARTIN BRADFIELD PRESIDING

SPECIAL COURT RULES FOR THE PRESS

Pursuant to Michigan Supreme Court Administrative Order 1989-1 (4) the following rules apply for authorized photo, video and audio coverage in this court and supersede the subsections (a) (b) & (c) of that order:

- a. Not more than one camera whether videotape, television, or still photographic, shall be permitted in the courtroom. That camera shall be located centered in the last rearmost seat in the courtroom. No movement of the camera or its operator is allowed.
- b. No camera is allowed more than one lense - wide angle with no zoom lense. Close ups of any person in the court is [sic] prohibited. The faces of all court personnel must be obstructed or made unrecognizable.
- c. Only one audio system shall be permitted in the courtroom and is to be component with the camera or a wireless pick up at the location of the operator. No audio equipment will be allowed to be installed beyond the last rearmost seat in the courtroom.

David Martin Bradfield
Judge, 36th District Court

The circuit court determined defendant violated the initial order and issued a Supplemental Order of Superintending Control on October 22, 1993, which stated:

. . . that Judge Bradfield committed three separate violations of this Court's October 13, 1992 Order Granting Writ of Superintending Control, the Court being of the opinion that a Supplemental Order should be issued further restricting Judge Bradfield's power to make decisions regarding media access to his courtroom in light of his violations of the Superintending Control Order . . .

[1] IT IS ORDERED that Judge Bradfield must grant all requests for film or electronic media coverage of court proceedings, whether or not the request is made three business days before the proceeding;

[2] IT IS FURTHER ORDERED that the request for film or electronic coverage of court proceedings need not specify a particular case;

[3] . . . that the only proceedings for which Judge Bradfield has discretion to exclude film or electronic media coverage are those specifically enumerated in the last sentence of [paragraphs] 2(b), and in 2(c), of Supreme Court Administrative Order 1989-1;

[4] . . . that Judge Bradfield can give reasonable directions to media regarding where any film or electronic cameras can be located in his courtroom when absolutely necessary to prevent disruption in the Court in a particular proceeding;

[5] . . . that Judge Bradfield's authority to limit film or electronic media coverage is restricted to those situations set forth in this Supplemental Order, and shall be construed narrowly;

[6] . . . that Judge Bradfield's "Special Court Rules for the Press," dated January 1, 1993 are VACATED, and Judge Bradfield shall not promulgate any such rules;

[7] . . . that, if Judge Bradfield believes that news organizations are abusing their rights under this Order, or if he feels there is an ambiguity in this Supplemental Order, it shall be incumbent upon Judge Bradfield to file a motion in this Court seeking clarification or amendment of this Supplemental Order or of the October 13, 1992 Order;

[8] . . . that Judge Bradfield's Motion for a Stay of this Supplemental Order is Denied.

I

Defendant's initial argument, that the circuit court lacked authority to issue a writ of superintending control in the first instance, is not properly before us. Defendant concedes he was unsuccessful in his appeal from the original order. In any case, we believe the circuit court had both jurisdiction, MCR 3.302(D), and authority to issue the original order. *Lockhart v Thirty-Sixth District Judge*, 204 Mich App 684, 688; 516 NW2d 76 (1994).

Generally, for superintending control to lie, a plaintiff must establish the absence of an adequate legal remedy and that the defendant failed to perform a clear legal duty. *Id.* As defendant concedes, the first prong is met. AO 1989-1(2)(d) expressly states that "a trial judge's decision to terminate, suspend,

limit, or exclude film or electronic media coverage is not appealable, by right or by leave." Defendant argued below the second prong was not met, that he did not fail to perform a clear legal duty, i.e., he did not violate AO 1989-1, but rather applied his interpretation of it, with which the circuit court differed.³

By its terms, all Michigan courts are subject to and bound by AO 1989-1. *See, e.g., Frederick v Presque Isle Judge*, 439 Mich 1, 9; 476 NW2d 142 (1991). Administrative orders are binding until changed or modified by the Supreme Court. *Detroit & Northern v Woodworth*, 54 Mich App 517, 520; 221 NW2d 190 (1974). The circuit court properly determined defendant's general and non-particularized policy of excluding photographic coverage violated his clear legal duty under AO 1989-1.⁴

The circuit court's initial order mandated compliance with AO 1989-1's requirement that denials of or limitations on timely requests for media coverage be articulated on the record, and precluded blanket exclusions of media coverage, in keeping with the AO's spirit that media coverage be allowed.

II

However, the supplemental order of superintending control, which defendant argues is overly broad, exceeded the dictates of AO 1989-1, and to the extent it did, we agree with defendant that the circuit court exceeded its superintending control power.

The superintending court does not substitute its judgment or discretion for that of the magistrate; neither does it act directly in the premises. Rather it examines the record made before the magistrate to determine whether there was such an abuse of discretion as would amount to a failure to perform a clear legal duty; and in such case, the superintending court orders the magistrate to perform his duty. [*Cahill v Fifteenth Dist Judge*, 393 Mich 137, 143; 224 NW2d 24 (1974), quoting *People v Flint Municipal Judge*, 383 Mich 429; 175 NW2d 750 (1970).]

Defendant was bound to obey AO 1989-1, and to obey the order of superintending control, as it was entered by a court with proper jurisdiction. *In the Matter of Hague*, 412 Mich 532, 544-545; 315 NW2d 524 (1982). We conclude that the circuit court did not abuse its discretion in determining defendant's special rules for the press, which by their own terms "superseded" AO-1989-1, violated the original writ of superintending control, as did his denials of certain press requests. Although the circuit court's issuance of a supplemental order under those circumstances was not an abuse of discretion, the supplemental order, in the paragraphs we have numbered [1], [3], and [5], goes beyond ordering defendant to perform his legal duties. We thus vacate those

provisions. We note that the initial order, which remains undisturbed, will fill any void created by our vacating the three paragraphs.

Affirmed in part, and vacated in part.

/s/ Barbara B. MacKenzie

/s/ Helene N. White

/s/ Michael W. LaBeau

¹ *In Re: Detroit Free Press, Inc., and Post-Newsweek Stations, Michigan, Inc.* Post-Newsweek Stations (WDIV) is not a party to this appeal. Plaintiff's August 1992 complaint stated that plaintiff and WDIV had previously unsuccessfully sought superintending control, civil action no. 92-210036-AS, and that the circuit court had ruled at a hearing in that matter that if defendant had a blanket rule against camera coverage such a rule would violate AO 1989-1, and that the circuit court would take action.

² AO 1989-1 and its predecessors were adopted as an exception to the Michigan Code of Judicial Conduct's Canon 3A(7), which prohibits broadcasting, televising, recording or taking of photographs in Michigan courtrooms "except as authorized by the Supreme Court." See 429 Mich xcix, at ciii-civ.

The predecessor to AO 1989-1, AO 1988-1, was adopted "to permit film or electronic media coverage in all Michigan courts except the juvenile division of the probate court . . . ", 429 Mich xcix, following a one-year experimental program. See AO 1987-4, 428 Mich cxl. AO 1989-1 pertains to all Michigan courts and took effect on March 1, 1989. 432 Mich cxii.

³ Defendant argued the circuit court's superintending control power was limited to ordering defendant to articulate on the record his reasons for denying or limiting media access.

⁴ Following argument at the September 1992 hearing, the circuit court noted:

. . . my mandamus would merely say, any request that meets the procedural requirement of the Administrative Order may not be denied, absent a specific finding on the record that it will be disruptive in a particular case.

And, unless you've got something else to say, I'm going to grant the writ.

[*Defense counsel*]: The only thing I would say, your Honor, is I think that goes further and that intrudes upon the discretion of the lower court tribunal.

THE COURT: Well, I know. But, that's the major issue here. Whether the discretion goes to a judge's blanket conclusion that cameras are always disruptive, or whether the Administrative Order already finds that cameras are not disruptive on a blanket basis, but can be on an individual basis.

And, my view of the law is the latter.

[*Defense counsel*]: It must be an individual finding?

THE COURT: Right. Okay. I will grant it. And based on that, please prepare a writ of mandamus and submit it.