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EXPERT OPINION

Absent a Stay, Appellants Must Obey Trial Court Orders on Appeal

The requirement of obeying even erroneous court orders on appeal (absent a stay) is based on the authority of the trial court, the presumption of correctness of orders on appeal, and the importance of maintaining order in the administration of justice.



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Some appellants may believe that a trial court judgment or other order that they appeal to a district court of appeal is automatically put on hold until the conclusion of the judicial review. In reality, that rule applies when “the state, any public officer in an official capacity, board, commission, or other public body seeks review” of administrative action under the Administrative Procedure Act or “as otherwise provided by chapter 120, Florida Statutes.” Fla. R. App. P. 9.310(b)(2). Other appellants, including individuals and businesses, must comply with the trial court’s order during the appeal unless they obtain a stay. This requirement applies no matter how strongly the appellant thinks the order is erroneous or unjust. Absent a stay, failure to obey the trial court’s order can have serious consequences, including dismissal of the appeal or being held in contempt.

Importance of Compliance

The requirement is simple and strict. As the U.S. Supreme Court stated in *Maness v. Meyers*, “If a person to whom a court directs an order believes that order is incorrect the remedy is to appeal, but, absent a stay, he must comply promptly with the order pending appeal.” Florida courts consistently enforce this principle, emphasizing that appellants must comply with the trial court orders they are appealing.

The Florida Supreme Court held in *Gazil v. Gazil* that if a party fails to follow the trial court's order during the appeal, the appellate court has the authority to dismiss the appeal. This precedent gives appellate courts—and appellees—leverage to address non-compliant appellants. The key is to promptly move for a stay in the trial court or post a bond to obtain an automatic stay of a money judgment while appealing.

Reasons for the Rule

The requirement of obeying even erroneous court orders on appeal (absent a stay) is based on the authority of the trial court, the presumption of correctness of orders on appeal, and the importance of maintaining order in the administration of justice. The Florida case of *Rubin v. State* noted that even where an order is allegedly invalid, “the need for obedience to a court order far outweighs any detriment to individuals who may be temporarily victimized by the order, even if erroneous.” The decision in *Robbie v. Robbie* explained that “the reason that a party may properly be held in contempt for failure to abide by an erroneous order is that the need for obedience to a court order outweighs the individual's temporary detriment.” These cases prioritize the integrity of the judicial system over the appellant's views of the order or the impact of compliance.

Consequences of Noncompliance

Florida appellate courts can dismiss an appeal if the appellant is disregarding the order under review. For example, in *McLemore v. McLemore*, the appellant chose to defy the order she was appealing without seeking a stay or posting a bond. The appeal was dismissed. The appellate court emphasized that an appellant “cannot invoke the authority of this court at the same time she is scorning the rulings of the trial court.” Similarly, in *Daniels v. JP Morgan Chase Bank*, the appellate court declared “a party in contempt of the trial court cannot seek to invoke the authority of this Court.”

In *Viacao Aerea Sao Paulo v. Pegasus Aviation*, the court dismissed an appeal, stating, “The appellant has continued to disregard the trial court's orders, therefore, we exercise our discretion and dismiss this appeal.” The Florida Supreme Court confirmed in *Davidson v. District Court of Appeal, Fourth District* that appellate courts may dismiss appeals when appellants “intentionally and willfully abuse the judicial process” by ignoring trial court orders without obtaining a stay.

The risk of dismissal of the appeal is separate from consequences the trial court itself could impose. The trial court generally retains authority to enforce its order during the appeal such as through its contempt powers, and the appellee generally can execute on a judgment during the appeal, absent a stay.

Promptly Seek a Stay

The Florida rules of appellate procedure allow appellants to obtain an automatic stay of money judgments and to move for a discretionary stay of other orders. It is important to do so promptly. The purpose is to “stay further judicial proceedings in the trial court, to

restore or preserve the status quo or to stay execution of an order or judgment.” *Hirsch v. Hirsch*, 309 So. 2d 47, 50 (Fla. 3d DCA 1975).

“If the order is a judgment solely for the payment of money, a party may obtain an automatic stay of execution pending review, without the necessity of a motion or order, by posting a good and sufficient bond....” Rule 9.310(b)(1).

If the order is not solely a money judgment, the first step is to file a motion in the trial court for a stay pending appeal. The appellant’s motion must assert the appellant will suffer harm absent a stay and must demonstrate that there is a likelihood of success on appeal. It is also advantageous to argue the appellee will not be prejudiced by a stay. The trial court will decide whether to grant, modify, or reject the relief requested, and the court has discretion to impose conditions such as a bond even where the order is not solely a money judgment.

If the trial court denies the motion for stay or imposes conditions that the appellant deems unreasonable, the appellant can file a motion for review in the appellate court under Rule 9.310(f). This review is like an “appeal within an appeal,” as it is sought in the same appellate case as the main order that is on appeal.

Practice Tips

Attorneys representing appellants should be sure to advise their clients that appealing an order does not excuse compliance, and they should promptly seek a stay of any judgment or other order with which the client does not want to comply while it is on appeal. If it is a money judgment, the attorney should advise the client to post a bond. If it is another kind of order, the attorney should advise the client to file a motion for stay pending appeal. If the trial court denies the motion, the attorney should file a motion for review within the pending appeal. If the appellate court affirms the trial court’s order denying the stay, the client clearly must comply with the order or risk the consequences discussed above.

Absent a stay, appellate courts take the duty of compliance seriously—even if the order is erroneous and will be reversed. Attorneys representing appellees should monitor the appellant’s compliance with the order on appeal. If the appellant is not complying and does not promptly obtain a stay, the appellee may want to consider moving the appellate court to dismiss the appeal under *Gazil*.

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