

NO.

IN THE
SUPREME COURT OF ILLINOIS

NAZARIY PETRAKH,

Plaintiff,

vs.

ALVARO MORANO,

Defendant,

and

ALLISON Y. SMITH,

Contemnor-Respondent.

Appeal from the Appellate
Court of Illinois, First District,
First Division, Case No. 1-07
1737

There heard on appeal from the
Circuit Court of Cook County,
Illinois, Municipal Division
No. 07 M1 11809

Honorable Pamela E. Hill
Veal, Presiding Judge

**PETITION FOR LEAVE TO APPEAL BY
INTERVENOR/PETITIONER THE HONORABLE PAMELA E. HILL VEAL**

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)	
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PETITION FOR LEAVE TO APPEAL

To: The Honorable Chief Justice and the Associate Justices of the Supreme Court of Illinois.

May It Please Your Honors:

I. PRAYER FOR LEAVE TO APPEAL

 Petitioner, the Honorable Judge Pamela E. Hill Veal (hereinafter referred to as "Judge Veal"), by and through her attorneys, Barclay, Dixon & Smith, P.C., Denise Brewer & Associates, and Law Office of Deborah L. King, respectfully petitions this Court, pursuant to Supreme Court Rule 315, to exercise its sound and judicial discretion to review a decision by the Appellate Court, First District, First Division, that conflicts with established Illinois Supreme Court Rules and presents a question of general importance.

Judge Veal contends that a review and reversal of the Appellate Court's Opinion is

warranted, because the Opinion conflicts with Illinois Supreme Court Rules 303 and 323 as it failed to dismiss an appeal or otherwise affirm an order of direct criminal contempt due to the appealing party's failure to file a properly certified Bystanders' Report and provide notice of the appeal to the appropriate party(ies); resulting in a failure to afford the party(ies) an opportunity to be heard on the merits of the matter. Additionally, the Opinion presents a question of general importance as the issues raised directly bear upon the fundamental principles of due process that require notice to a party to allow said party to respond to matters directly impacting the party.

II. HISTORY IN THE APPELLATE COURT

On May 24, 2007, Judge Veal entered an order of direct criminal contempt against Allison Smith ("Smith") (R. C20-C23). Smith subsequently filed a notice of appeal with the Illinois Appellate Court. (A. 24-A. 25). The Illinois Appellate Court, First District, First Division rendered an Opinion that reversed Judge Veal's direct criminal contempt order on September 16, 2008. (A. 4- A. 15). In addition to relying upon a Bystanders' Report that Smith presented and had certified by a judge other than Judge Veal, who issued the order of direct criminal contempt, the Appellate Court vacated the aforesaid Order and directed that the order be expunged from Smith's record.

After inadvertently learning of the Appellate Court's decision, Judge Veal filed a Motion for Leave to file her Appearance as an Intervenor/Appellee on October 6, 2008 with the Illinois Appellate Court, which was granted on October 16, 2008. On or about October 7, 2008, Judge Veal filed a Petition for Rehearing. On October 8, 2008, the Appellate Court entered an Order setting a briefing schedule for the Petition. (A. 2). The Appellate Court, First District, denied the Petition for Rehearing on November 19,

2008 without granting oral argument and without specifically addressing the issues raised in Judge Veal's Petition, namely Smith's failure to comply with the stated Supreme Court Rules. This Court has established that strict compliance with its rules is generally required. *Village of Lake Villa v. Stokovich*, 211 Ill. 2d 106, 116, 810 N.E.2d 13 (2004). Accordingly, Judge Veal requests that this Honorable Court grant this Petition for Leave to Appeal, and ultimately reverse the decision of the Appellate Court, First District, First Division denying the Petition for Rehearing, as well as either dismissing the underlying appeal or affirming the order of direct criminal contempt entered on May 24, 2007.

III. POINTS RELIED ON FOR REVERSAL

- A. Smith's failure to comply with Illinois Supreme Court Rule 303(c), which requires that a party seeking appellate review to serve notice of the appeal on every party and other appropriate persons, violated principles of fundamental due process and warrants a dismissal of Smith's appeal.**

Ebert v. Dr. Scholl's Foot Comfort Shops, Inc.,
137 Ill. App. 3d 550 (1st Dist. 1985).....5

Leyden Fire Protection Dist. v. Township Bd. of Leyden Tp.,
26 Ill. App. 3d 569, 325 N.E.2d 796 (1st Dist. 1975).....6

Tri-G v. Burke Bosselman & Weaver,
222 Ill. 2d 218, 856 N.E.2d 389 (2006).....7

55 ILCS §5/3-9005 (West 2004).....6

Village of Lake Villa v. Stokovich,
211 Ill. 2d 106, 810 N.E.2d 13 (2004).....4

Illinois Supreme Court Rule 303(c).....5,10

Illinois Supreme Court Rule 330(a)(3).....7,10

- B. Smith's failure to comply with Illinois Supreme Court Rule 323, which required that she (the appellant) file a bystander's report that is certified by the trial court judge, warrants a dismissal of Smith's appeal or an affirmance of**

the trial court's order of direct criminal contempt.

<i>Portock v. Freeman</i> , 53 Ill. App. 3d 1027, 369 N.E.2d 201 (1 st Dist. 1977).....	9
<i>Renfield Importers, Ltd. V. Modern Liquors, Inc.</i> , 55 Ill. 2d 546, 304 N.E.2d 626 (1973).....	9
<i>Shafer v. Northside Inn, Inc.</i> , 36 Ill. App. 2d 441, 184 N.E.2d 756 (1 st Dist. 1962).....	8
<i>Bauman v. C.I.T. Corp.</i> , 356 Ill. 336, 190 N.E. 696 (1934).....	8
<i>Taylorville Sanitary Dist. v. Nelson</i> , 334 Ill. 510, 166 N.E.2d (1925).....	8
<i>Midland Oil Co. v. Packers Motor Transport</i> , 277 Ill. App. 451 (1934).....	8
<i>Village of Lake Villa v. Stokovich</i> , 211 Ill. 2d 106, 810 N.E.2d 13 (2004).....	4
<i>Illinois Supreme Court Rule 323</i>	4,7,8,9,10

IV. STATEMENT OF FACTS

On May 24, 2007, Smith appeared before Judge Veal as attorney of record for her client, who was a defendant in a pending civil action. As a result of her conduct before Judge Veal, an order of direct criminal contempt was entered against Smith. (R. Vol. 1, C20-C23; A. 16 - A. 19). Smith filed a notice of appeal with the Clerk of the Circuit Court on June 22, 2007. (R. Vol. 1, C43; A. 24 -A. 25). The notice of appeal was not served on Judge Veal or on the Cook County State's Attorney. Smith prepared a proposed Bystander's report for the record on appeal and presented it to Judge Moira Johnson for certification. (R. Vol. 2, C5-C10; A.21-A. 23) Judge Moira Johnson cer-
tified the bystander's report. (R. Vol. 2, C2; A. 20). The Illinois Appellate Court, First District, reversed Judge Veal's May 24, 2007 order of direct criminal contempt and expunged the same in an Opinion filed on September 16, 2008.

On or about October 6, 2008, Judge Veal filed a Motion for Leave to file her

Appearance as an Intervenor/Appellee with the Appellate Court, which was granted on October 16, 2008. On October 7, 2008, Judge Veal filed a Petition for Rehearing. The Illinois Appellate Court denied the Petition for Rehearing on November 19, 2008 without oral argument. (A. 1).

V. ARGUMENT

- A. Smith's failure to comply with Illinois Supreme Court Rule 303(c), which requires that a party seeking appellate review to serve notice of the appeal on every party and other appropriate persons, violated principles of fundamental due process and warrants a dismissal of Smith's appeal.**

The law requires that a party seeking to review a trial court judgment must file the notice of appeal with the circuit court clerk, and then give appropriate notice of the appeal to all persons of interest. Specifically, Illinois Supreme Court Rule 303(c) requires that: "The party filing the notice of appeal or an amendment as of right, shall, within 7 days, file a notice of filing with the reviewing court and serve a copy **of the notice of appeal upon every other party, and upon any other** person or officer entitled by law to notice. Proof of service, as provided by Rule 12, shall be filed with the notice." Ill. S. Ct. Rule 303(c) (emphasis added). Thus, this duty to inform all interested persons, parties, and non-parties is mandatory.

The Illinois Appellate Court, when previously addressing the issue of the Illinois Supreme Court's requirement for service of the notice of appeal, held that: "The purpose of a notice to appeal is to inform the party in whose favor a judgment has been rendered that the unsuccessful party desires review..." *Ebert v. Dr. Scholl's Foot Comfort Shops, Inc.*, 137 Ill. App. 3d 550, 556, 484 N.E. 2d 1178 (1st Dist. 1985). Furthermore, the Appellate Court has held that: "Where reversal of the trial court's judgment would deprive a party of the benefit of the trial court's favorable interpretation of his authority the party could be adversely affected by the outcome of this case on appeal; thus, the party was

entitled to be served with notice of this appeal.” Leyden Fire Protection Dist. v. Township Bd. of Leyden Tp., 26 Ill. App. 3d 569, 573, 325 N. E. 2d 796 (1st Dist. 1975).

Smith failed to give proper notice to Judge Veal. No notice of appeal was ever served upon Judge Veal, or upon the Office of the Cook County State’s Attorney, which by law (55 ILCS §5/3-9005), is Judge Veal’s authorized legal representative in matters concerning issuance of contempt orders pursuant to her judicial duties. Yet, the judgment sought to be reviewed was Judge Veal’s ruling that Smith’s conduct before Judge Veal constituted direct criminal contempt. Any review that could result in reversing Judge Veal’s finding that Smith had engaged in contemptuous conduct against and in the presence of Judge Veal, would adversely affect Judge Veal, and the People of the State of Illinois, in whose name the direct contempt order was issued. (R. C20-C23; A. 16- A. 19). As such, Judge Veal and the Cook County State’s Attorney were parties to whom notice was required to be given. However, Judge Veal was first made aware of the appeal of her May 24, 2007 Order, more than one year after the Notice of Appeal was filed, when a reporter for the Daily Law Bulletin contacted her on September 17, 2008. Indeed, the reporter asked Judge Veal if she had any comment regarding the Court’s Opinion filed on September 16, 2008. Prior to that date, Judge Veal was never notified that her May 24, 2007 Order had been appealed.

It is important to note herein that Smith failed to name the appropriate Appellee in the caption of the case on appeal before the Illinois Appellate Court. The direct order of criminal contempt of May 24, 2007, correctly captioned the judgment as “The People of the State of Illinois v. Allison Smith.” (R. Vol. 1, C20-C23; A. 16 -A. 19). Smith chose not to use, or reference, this caption in the reviewing court in violation of Supreme Court Rule 330. Thus, the People of the State of Illinois were not identified as the

proper Appellee before the Appellate Court, and were never notified of Smith's appeal. Because of Smith's failure to provide notice of the appeal to the proper Appellee, a party was deprived of an opportunity to address the Appellate Court on the issues raised by

Smith. This deprivation constitutes a violation of the principle of due process of the law. *See generally Tri-G v. Burke Bosselman & Weaver*, 222 Ill. 2d 218, 244-45, 856 N.E.2d 389 (2006) (“[f]undamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated...to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”).

Judge Veal was denied her fundamental right to due process before the Appellate Court in its consideration of Smith's appeal of the May 24, 2007 Direct Order of Contempt. Based upon the foregoing, the September 16, 2008 Opinion of the Illinois Appellate Court, First District, First Division should be vacated, and Smith's appeal dismissed due to Smith's failure to comply with the aforementioned Illinois Supreme Court Rules.

B. Smith's failure to comply with Illinois Supreme Court Rule 323, which required that she (the appellant) file a bystander's report that is certified by the trial court judge, warrants a dismissal of Smith's appeal or an affirmance of the trial court's order of direct criminal contempt.

According to Supreme Court Rules 321 and 326, a record on appeal, consisting of the entire common law record of the case, including the judgment order that has been appealed and the notice of appeal, is required to be filed with the reviewing court by the appellant within 63 days after the notice of appeal is filed. Supreme Court Rule 321 also states that “the record on appeal shall also include any report of proceedings prepared in accordance with Rule 323.” Ill. S. Ct. R. 321.

Rule 323 provides the process by which an appellant is to certify and file a report of proceedings for the record on appeal. According to Supreme Court Rule 323, a Bystander's report of proceedings should be presented to the trial judge of record on the case for

certification, Indeed, in its interpretation of this Rule 323, the Illinois Supreme Court long ago established the case law that if there are several different issues raised on appeal, and different judges presided over the different issues in the trial court, the certification of the report of proceedings must be made by each judge as to the specific issue over which he or she presided. *Taylorville Sanitary Dist. v. Nelson*, 334 Ill. 510, 166 N. E. 60 (1925); *Midland Oil Co. v. Packers Motor Transport*, 277 Ill. App. 451 (1934).

Smith failed to serve her self-serving unopposed Motion to Certify Bystander's Report for Appeal, with her proposed bystander's report attached thereto, on Judge Veal for certification. (R. Vol. 2, C5-10; A. 21- A. 23). Indeed, the record on appeal shows that the Notice of Motion for said unopposed motion set the hearing in Courtroom 1501, and not in Judge Veal's Courtroom 1102. (R. Vol.2, C3-4). Due to Smith's actions, the Bystander's report was certified by a judge other than Judge Veal. (R. Vol. 2, C2). Once again, Smith's conduct violated fundamental due process and evidenced an intentional act of circumventing judicial procedures and the Supreme Court Rules.

The Illinois Supreme Court long ago established that it was the "exclusive province" of the trial judge that tried a case to determine the accuracy of, and certify, a report of proceedings. *Bauman v. C.I.T. Corp.*, 356 Ill. 336, 339, 190 N.E. 696 (1934). In *Shafer v. Northside Inn, Inc.*, 36 Ill. App. 2d 441, 184 N.E. 2d 756 (1st Dist. 1962), the Illinois Appellate Court followed this precedent when it ruled that it is improper for a judge that is not the trial judge of record to certify a bystander's report of proceedings, unless it is shown in the record why the report was not presented to the trial judge. The Shafer Court held that the record must "affirmatively" show that the trial judge was unable to certify the record due to death, sickness, disability or other absence. 36 Ill. App. 2d at

444. The record on appeal reflects that Smith made no such showing.

The Appellate Court actually acknowledged in a footnote in the September 16, 2008 Decision Order that the certification of the Bystander's report of proceedings was signed by Judge Moira Johnson, and not Judge Veal. (A. 5, fn.1). Yet, the Appellate Court proceeded to address the issues raised by Smith, even though there was no evidence of Smith ever presenting the Bystander's report to Judge Veal, as well as no evidence of Judge Veal's inability to have certified the Bystander's report.

The Appellate Court's action in this regard constituted judicial error. The case law concerning an appellant's failure to certify and file a bystander's report in accordance with Rule 323 is well established. This Court has held that the reviewing court has no authority to review and consider issues raised on appeal when the report of proceedings necessary to the consideration of those issues is not properly before the reviewing court. Lukas v. Lukas, 381 Ill. 429, 431-433, 45 N.E. 2d 869 (1942). This historic precedent from the state's highest court has consistently been followed by this Illinois Appellate Court. Hall v. Turney, 56 Ill. App. 3d 644, 650, 371 N.E. 2d 1177 (1st Dist. 1977).

Furthermore, the Illinois Appellate Court definitively ruled that: "Where compliance has not been had with this Rule [323] and Rule 326, the appropriate action is to dismiss the appeal or summarily affirm without considering the merits of the case." Portock v. Freeman, 53 Ill. App. 3d 1027, 1032, 369 N.E. 2d 201 (1st Dist. 1977). This decision follows the legal precedent set by the Illinois Supreme Court in Renfield Imports Ltd. v. Modern Liquors, Inc., 55 Ill. 2d 546, 549, 304 N.E. 2d 626 (1973) (upheld dismissal of appeal for appellant's failure to adhere to Supreme Court Rules 323 and 326).

✦ Thus, the Appellate Court, First District improperly rendered a decision based upon a report of proceedings that did not comport with the requirements of the well-

established Supreme Court Rules. As such, the Appellate Court's September 16, 2008 Opinion should be reversed, Smith's improper Bystander's report stricken, and the appeal should be either dismissed or Judge Veal's May 24, 2007 Order of direct criminal contempt should be affirmed.

VI. CONCLUSION

In sum, Smith failed to comply with the Illinois Supreme Court Rules in her appeal of the May 24, 2007 direct criminal contempt order, which warrants dismissal of her appeal or affirmance of said Order. First, Smith failed to state the proper caption before the Appellate Court to identify the People of the State of Illinois as the Appellee, which violated Supreme Court Rule 330. Second, Smith failed to serve the notice of appeal on all interested parties in violation of Supreme Court Rule 303(c) and the fundamental principles of due process. Third, Smith failed to present the proposed bystander's report to Judge Veal, the trial judge, for certification in violation of Supreme Court Rule 323. As stated by the Illinois Supreme Court and consistently interpreted in well-established case law, Smith's non-compliance with these rules requires the Appellate Court's Opinion of September 16, 2008 be reversed.

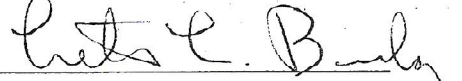
WHEREFORE, Intervenor-Petitioner, the Honorable Pamela E. Hill Veal, respectfully requests that this Honorable Court grant her the following relief:

- (1) grant this Petition For Leave To Appeal;
- (2) reverse the Illinois Appellate Court, First District, First Division's Opinion filed on September 16, 2008 Order in its entirety;
- (3) strike the bystander's report; and

(4) either dismiss Smith's appeal or affirm the May 24, 2007 Order of direct criminal contempt.

Respectfully Submitted,
The Honorable Pamela E. Hill Veal

By:


One of Her Attorneys

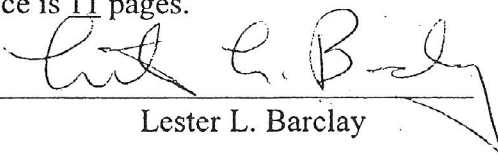
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RULE 341 CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies that this Petition for Leave to Appeal conforms to the requirements of Rule 341(a) and (b). The length of this petition, excluding the pages containing the Rule 341(d) cover, the Rule 341 (c) certificate of compliance, the attached Appendix, and the certificate of service is 11 pages.


Lester L. Barclay