

In defense of Judge Robert S. Murphy Jr.'s 11 June 2014 Order finding Iheanyi D. Okoroafor in contempt of court at the Belchertown District Court.

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There has been much ado over the jailing of a retired 71 year-old man by Massachusetts District Court Judge Robert S. Murphy, Jr. over the failure to pay \$508.27 as reported in the Boston Globe on July 2, 2014. As a cursory review of the on-line comments about the story illustrate, not much provokes more debate than how debt collection should work and what exemptions society should allow. Those comments also show a widespread ignorance of the basics of the debt collection process in Massachusetts. Before attempting to defend Judge Murphy's actions, a few basic pointers are in order.

First, yes there are no debtor's prisons. That means if you do not have the means to pay, you do not go to jail for failure to pay, or to force you to earn to pay through forced hard labor, for your debt. But if you do have the means, a court can order you to pay. And you do go to jail (as Mr. Okoroafor arguably did) for failure to obey an order. So, yes, people can and do go to jail for not paying a debt (that our society believes you have the means to pay, as determined by a judge applying the applicable exemption laws).

Second, the process Mr. Okoroafor was in was not small claims court, although that apparently was the court that rendered the initial judgment, it was really the supplemental process session at work here. This is the session where straight up *this-guy-now must-pay-me* type collections occur. Typically, a creditor gets a judgment and then files a separate action in the supplemental process session if it choose that path for collections, and many do. Sometimes, for whatever reason, the author has observed a small claims judgment obtained in the small claims session just automatically roll into supplementary process. What this means is that in the supplementary process session, the legal fact that you owe the money has been established, and that question is off the table so to speak.

A side note is in order. In general, pro se litigants often argue something off point at a hearing due to their lack of knowledge and understanding as to what the particular hearing they are appearing at is to decide. Doing this indicates a lack of knowledge of procedure and can hurt the pro se litigant's credibility to argue legal arguments. In the supplementary process session, this translates into a pro se trying to argue the merits of the case, when, as Judge Murphy correctly stated to Mr. Okoroafor when he did this very thing, "that ship has sailed." It is very common occurrence in the supplementary process session to the frustration of the clerk or judge presiding. To avoid this waste of time, for example, one of the clerks in the supplementary process session in Springfield

District Court regularly announces before the session starts to all in the courtroom that it is not the place or time to argue the merits of your case. This announcement is analogous to the no parking sign "Don't even think of parking here" that we all see in places that are tempting to illegally park in. The point is, day after day when pro se litigants raise this, it becomes difficult for the human beings involved, even if they are supposed to be professional lawyers, clerks, or judges, not to become frustrated.

Third, civil contempt is the act of knowingly violating a clear and direct court order that you had the ability to follow. This is the end of the road for debtors. And what all people need acknowledge is that society needs that force to keep it civilized. Somehow, we all instinctively know (and must rationally acknowledge) that there has to be an end of the line, and in debt collection, it is to be jailed by civil contempt for a debt someone has the ability to pay with non-exempt income.

Now with these basics in mind, the author will turn to defending Judge Murphy's order and then make a few equitable observations based only on a review of the on-line Boston Globe July 2, 2014, article and the audio recording of the hearing at issue. First, it appears that there was an order already in place before Judge Murphy found Mr. Okaroafor in contempt. The prior order required Mr. Okaroafor to make payment before the hearing and he did not comply. And Mr. Okaroafor had been to multiple hearings involving orders to pay that he did not comply with before. It is true that Massachusetts pension income is exempt from collection and that was the only income the debtor stated he had personally at the hearing. However, all of this about Judge Murphy not following exemption laws, and more specifically, being ignorant that Massachusetts pension income is exempt, appears not to be as deserved as reported because there is more to consider here. Judge Murphy did not act alone. If the contempt finding was wrong, the responsibility for it is shared with the judge that issued the prior order to pay that Judge Murphy was enforcing, as it should be safe to assume that the issue of whether Mr. Okaroafor was required and had the ability to pay was decided in the affirmative at a prior time. We are assuming here that at the prior hearings the other judge(s) did not have adequate basis to make the order, such as learning that Mr. Okaroafor had non-exempt assets or income to satisfy this \$508.27 debt. Yes, Judge Murphy made a mistake, but he did correctly believe he had an obligation to enforce the prior judge's order.

Second, debtors in supplementary process are required to complete a form listing their assets and income and expenses. Did Mr. Okaroafor complete this form? Or did he refuse? If there was a form, what appeared on it? Is there more information that was before Judge Murphy when he made his decision?

Third, at the hearing, Mr. Okaroafor stated as one of his expenses his wife's medical bills. Although it is laudable to pay your spouse's medical bills, it can be argued that

such an expense is not necessary since it is essentially a gift to an adult third party, which is not to take priority over paying a judgment creditor. Moreover, he stated his wife had insurance and social security income, which supports the idea that money from Mr. Okaroafor to pay the bills was not needed even if it could be considered to take priority over paying a judgment creditor. All of this could have been in Judge Murphy's mind that day. So, the error of his decision was more about not realizing Mr. Okaroafor's income was exempt, and less about his actual ability to pay.

Fourth, Mr. Okaroafor was not a help to himself. He did what many pro se debtors do at supplementary process hearings, try and argue the merits of the case that have already been decided. In addition, the author has a hard time believing that Mr. Okaroafor was not informed prior to the hearing, if not many times at the multiple collection hearings he was afforded over the 18 months since the judgment issued, that arguing the merits of the case was off-point at these types of hearings. There are two points here, one that by doing this he most likely lost his credibility to make a legal argument, and more importantly, if it was believed he was repeatedly told "that ship had sailed" then by raising it repeatedly he was exhibiting a refusal to follow and acknowledge rules and procedure. Not a wise choice when being subject to a contempt hearing and facing possible incarceration for not following orders.

In addition, it was Mr. Okaroafor who was supposed to advocate for himself and had the most responsibility to argue that his income was exempt, but he did not. After 18 months of collection proceedings, he had ample notice that he would have to defend himself. The article stated that judges should "know and apply the law correctly" when dealing with unrepresented parties. That may be true, but it is equally true that Judges are also not to be advocates for one side, but instead impartial judges. Keep in mind that there was another pro se litigant on the other side. Who should he favor? The answer is neither party. This is not to say that a judge should ignore the law when it is before him, but the point is that just how far a judge is supposed to advocate for one party and not the other is debatable and there is a point that a judge can go to far in advocating for one side. The judge's proper role should be considered in any debate on the subject.

Another interesting fact on this point that did not appear in the article is that Mr. Okaroafor can be heard stating that he wanted to make payment arrangements. But this was in stark contrast to his prior statements that he could not afford to pay and after the order was issued to put him in custody. This indicates he may have thought he could have avoided the contempt at the last minute by offering to pay, but wanted to push it until the very end.

Lastly, Judge Murphy was not mistaken in finding that Mr. Okaroafor did not comply with the prior order; he did not make the payment by the hearing date. According to the

article, there were many orders issued requiring him to pay and he repeatedly did not comply and raised the wrong argument when questioned. Thus, Mr. Okaroafar had many orders to pay issued against him that he did not follow. Yes, Judge Murphy apparently considered exempt income in finding Mr. Okaroafar could have complied with the payment order, and based only on the information presented at the hearing at issue, that was legally incorrect. But he was correct that the payment was not made.

Some final, non-legal common sense points are in order. The day Mr. Okaroafar was jailed he was entering a hearing where the question of whether he was in contempt of court was to be decided. It is clear from the audio recording that Mr. Okaroafar was unfamiliar with the legal process in general and was not adequately prepared. (For example, he thought at one point that the Massachusetts District Attorney's Office could represent him). Simply put, he should not have been there. He never should have been playing with the fire of a civil contempt hearing. The point is that you do not let your friend or loved one enter a civil contempt hearing after they have not paid and risk ending up getting jailed over a \$508.27 debt. Why wasn't this avoided? Where were the friends and family? Where were they at the hearing? Why was the debt not paid for him? Why, at the least, was he not armed with the correct legal argument by someone with that knowledge?

It is easy to rest the responsibility on Judge Murphy (and the rest of the government) and his legal mistake makes a good headline for the Boston Globe, but Mr. Okaroafar, those close to him, and the entire private sector have some responsibility here. All of us, especially those wanting to point blame on some government official, should take some of the responsibility for the unfortunate result of what happened to Mr. Okaroafar on 11 June 2014.

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