116 F.3d 466
Unpublished Disposition
NOTICE: THIS IS AN UNPUBLISHED OPINION.
(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. See Federal Rule of Appellate Procedure 32.1 and this court's local Rule 32.1.1. for rules regarding the citation of unpublished opinions.)
United States Court of Appeals, Second Circuit.

UNITED STATES OF AMERICA, Plaintiff-Appellee,
v.
STATE of Connecticut; William A. O'NEILL, Governor State of Connecticut; DEPT. OF MENTAL RETARDATION; BRIAN LENSINK, Commissioner, Dept. of Mental Retardation; ROBERT GRIFFITH, Director, Southbury Training School, Defendants-Appellants,
SOUTHBURY TRAINING SCHOOL, Home and School Association of Southbury Training School and Southbury Training School Foundation, Inc., Movant.

No. 96-6218. | June 13, 1997.

Attorneys and Law Firms

APPEARING FOR APPELLANT: LOUIS E. PERAERTZ, Washington, DC (Isabelle K. Pinzler, Acting Assistant Attorney General, Dennis J. Dimsey, Attorney, United States Department of Justice, of counsel)

JAMES P. WELSH, Assistant Attorney General, Hartford, CT (Richard Blumenthal, Attorney General for the State of Connecticut, Bernard F. McGovern, Jr. Assistant Attorney General, of counsel).

PRESENT HON. FRANK X. ALTIMARI HON. DENNIS JACOBS, HON. PIERRE N. LEVAL, Circuit Judges.

Opinion

SUMMARY ORDER

***1** THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 13th day of June, one thousand nine hundred and ninety-seven.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut (Burns, J.), and was argued.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the appeal be and it hereby is dismissed for lack of appellate jurisdiction.

Defendants, the State of Connecticut and various state officials, appeal from a ruling of the United States District Court for the District of Connecticut finding defendants in civil contempt and stating the intent to appoint a special master. We dismiss the appeal for lack of appellate jurisdiction.

The United States initiated this action against the defendants in 1985 under the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997, et seq.. The complaint sought to address and remedy the living conditions at the Southbury Training School, a Connecticut institution for persons with developmental disabilities.

The parties thereafter entered into a consent decree, which required the defendants to submit an implementation plan addressing the procedures by which the consent decree would be effectuated. The district court approved the plan in 1988, which was then modified by several stipulations filed by the parties in the late eighties. Two further stipulations and orders (primarily directed toward medical care at Southbury) were approved by the court in 1990 and 1991 respectively. The consent decree, the implementation plan, and the two later stipulations and orders were referred to collectively by the district court as the "Remedial Orders."

In 1996, following an investigation and examination of the conditions at Southbury, the United States brought an application for an order to show cause why defendants should not be held in contempt. The district court held a four day hearing and in a ruling dated June 18, 1996, found the defendants in contempt of the Remedial Orders and stated the court's intent to appoint a special master to determine why Southbury's efforts are not producing the Remedial Orders' intended results, and to make recommendations to the court. The district court imposed no sanctions and has not yet chosen a special master, apparently due to the pendency of this appeal.

We have jurisdiction to hear appeals of "final decisions" of the district courts. 28 U.S.C. § 1291. "[A] finding of contempt unaccompanied by sanctions is not final and thus cannot support an appeal." *Dove v. Atlantic Capital Corp.,* 963 F.2d 15,17 (2d Cir.1992) (citing *In re Irving,* 600 F.2d 1027, 1031 n. 1 (2d Cir.1979); *Comptone Co. v. Rayex Corp.,* 251 F.2d 487, 488 (2d Cir.1958) (per curiam)). And "[a]n order referring a matter to a special master is not a final order appealable under 28 U.S.C. § 1291." *Grilli v. Metropolitan Life Ins. Co.,* 78 F.3d 1533, 1538 (11th Cir.1996); *see also Deckert v. Independence Shares Corp.,* 311 U.S. 282, 290-91 & n. 4 (1940).

***2** It follows that the district court's ruling in this case-finding defendants in contempt, imposing no sanctions, and stating the intent to appoint a special master-is not an appealable final decision. Nor does the court's order qualify as an appealable order under the collateral order doctrine. Accordingly, this appeal is dismissed for lack of appellate jurisdiction.

Parallel Citations

1997 WL 321594 (C.A.2 (Conn.))