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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 22021-001527

Tina Patton,

Appellant,

v.

Linda Doty,

Respondent.

INITIAL BRIEF OF RESPONDENT

Respondent, Linda Doty, by and through her counsel, Charnell G. Peake, respectfully asks this court to affirm the decision of the court below affirming the Richland County Magistrate Court finding that Appellant was in contempt of Court for violating the Court's original restraining order.

STATEMENT OF THE CASE

Appellant Patton filed for a restraining order against Respondent Doty on April 29, 2019, (R, pg. 66), alleging harassment, specifically repeated calls by Ms. Doty to Ms. Patton's landlord and continual photographing of her residence. *Id.* Ms. Linda Doty, by and through retained counsel, filed and served an Answer and Counterclaim requesting a restraining order against Ms. Patton on May 6, 2019. (R. 79-83). A hearing on both matters was held on May 29, 2019. (R, 84). At that hearing, Judge Coble denied Ms. Patton's request for a restraining order against Ms. Doty, and granted Ms. Doty's request for a restraining order against Ms. Patton. Plaintiff Doty subsequently filed a Rule to Show Cause on October 24, 2019, alleging violations of the May 29 restraining order.

A rule to show cause hearing was scheduled on January 6, 2020 in front of Judge Coble. (R, 91). The matter was continued. The rescheduled show cause hearing was held on February 19, 2020. Ms. Patton was represented by Thornwell Simons of the Richland County Public Defender's Office, and Ms. Doty was represented by Charnell Peake of Peake & Fowler. (T, 2).

From the face of the Complaint filed by Ms. Doty, Ms. Doty was seeking to have Ms. Patton held in contempt of Court for her failure to comply with the prior order of the Court. (Complaint, P.3; Record, 9). At the beginning of the hearing, Ms. Patton moved to dismiss, both orally and in writing, on several grounds. Defendant's motions were denied. (T, 12). Appellant counsel also requested a jury trial on Ms. Patton's behalf. (T, 12; R, 17). This request was also denied, and the matter proceeded to a bench trial. (T, 12).

After hearing the testimony and reviewing the evidence presented, Judge Coble found Ms. Patton in contempt of court for violating the May 29, 2019 restraining order and sentenced her to 30 days, suspended upon payment of a \$500 fine. (T, 49, 54). A Notice of Appeal was filed and served on all parties on or before February 28, 2020. A Hearing on the appeal was first scheduled for December 11, 2020, but was continued due to the ongoing coronavirus crisis. The hearing was rescheduled for January 29, 2021, but that date was also rescheduled as Appellant's counsel had a mandatory training at that date and time. The matter was heard at oral argument before Circuit Court Judge Jocelyn Newman on August 27th, 2021. At that time the matter was taken under advisement. A ruling of "Affirmed" was issued by the Circuit Court on December 9, 2021. This appeal follows.

QUESTIONS PRESENTED AND ANALYSIS

- I. DID THE TRIAL COURT HAVE SUBJECT MATTER JURISDICTION, IN THE ABSENCE OF AN ARREST, OVER ALLEGED CONTEMPT OUTSIDE THE PRESENCE OF THE COURT?

The trial court certainly had subject matter jurisdiction to hear the allegations of Respondent Doty's Complaint in Support of Rule to Show Cause for contempt (Record, 10-12). The restraining order was issued by Judge Coble after hearing testimony and reviewing evidence in an action that was started by Appellant Patton (R, 14-16). The wording of Judge Coble's restraining order is very clear as to actions that are prohibited and the penalties for violation of the restraining order.

Ms. Patton was given proper notice of the charges against her in the Complaint itself. The penalty for violating Judge Coble's restraining order is set out on page 3 of the order:

“Violation of this Order is a criminal offense punishable by thirty days in jail, a fine of five hundred dollars, or both.....”

The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice. Curlee v. Howle, 287 S.E. 2d 915, 277 S.C. 377 (S.C. App. 1982).

It would be nearly absurd to have a judicial system in which a judge could not hold a person in contempt for violating his or her duly issued order. Respondent would respectfully remind this court of the question presented and direct attention to S.C. Code. Section 22-3-550 (A):

“(A) Magistrates have jurisdiction of all offenses which may be subject to the penalties of a fine or forfeiture not exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both.”

Respondent requests that the order finding contempt be upheld.

II. DID THE TRIAL COURT COMMIT A REVERSIBLE ERROR OF LAW BY REFUSING TO DISMISS MS. DOTY'S ALLEGATIONS OF CRIMINAL CONTEMPT WHEN THERE WAS NO PROPER PROSECUTOR AND MS. DOTY LACKED STANDING TO REQUEST A CRIMINAL REMEDY?

Respondent would respectfully assert that cases relied upon by appellant are misplaced as to this question. The cases involve non-attorneys participating in prosecutions. It is elementary that any individual has a right to have a licensed attorney represent him or her in a legal proceeding.

In the case at hand, Judge Coble proceeded under the Court's own contempt authority. Counsel for the Respondent simply presented the evidence and testimony based on what was in the Complaint, as stated by Judge Coble (T, at 13).

III. DID THE TRIAL COURT COMMIT A REVERSIBLE ERROR OF LAW AND/OR ABUSE ITS DISCRETION BY ALLOWING A TRIAL TO TAKE PLACE WHEN DEFENDANT HAD BEEN PROVIDED WITH NO ADEQUATE NOTICE OF THE CHARGE SHE FACED AND NO DISCOVERY IN ADVANCE OF THE TRIAL DATE, IN VIOLATION OF THE REQUIREMENTS OF *BRADY* AND SCRCP, Rule 5?

Respondent adamantly denies that appellant had not been provided with adequate notice of the charge she faced. We would direct the court's attention to the verified complaint and the restraining order itself. The language in both of these documents is very clear as to the charges being made and punishment for violation of the restraining order.

In response to the portion of the question at hand involving violation of the requirements of Brady and SCRCP, Rule 5, Respondent would first state that respondent is not aware of any materials which present Ms. Doty's claims as false or shed doubt on her credibility.

Additionally, the testimony presented by Respondent Doty at the hearing was essentially the same testimony as set out in the verified Complaint which was filed in support of the Rule to Show Cause. Hence, respondent is not aware of any evidence not provided to appellant's attorney which was material to the Ms. Patton's guilt or innocence or was impeaching. State v. Moses, 702 S.E. 2d 395 (2010).

Further, Appellant's discussion of incident reports done in 2014 and 2017, is puzzling.

The hearing consisted of testimony revolving around the allegations of the Complaint, per the instructions of Judge Coble. (T, at 13). The complaint set out allegations as to violations of the Restraining Order which occurred in 2019, not 2014. Based upon the testimony that was presented at the Hearing, it should be clear that Appellant had significant information to put her on notice as to what was going on in this case.

Hence, with regard to the two parts set out in Question III, there is no reversible error of law and Judge Coble certainly did not abuse his discretion.

IV DID THE TRIAL COURT COMMIT A REVERSIBLE ERROR OF LAW WHEN IT DENIED MS. PATTON'S REQUEST FOR JURY TRIAL?

The law in this State is stated in Dimarco vs. Dimarco, 713 S.E. 2nd 631, 393 S.C. 604 (2011):

A contemnor has a constitutional right to a jury trial before a criminal sentence of more than six months incarceration has been imposed.

As Appellant has pointed out, she was not arrested and brought before Judge Coble. She appeared in response to a Rule to Show Cause as to why she should

not be held in contempt for violation of a Restraining Order. Her sentence was 30 days suspended on \$500 fine. The sentence was substantially lower than six months. The denial of a jury trial was not reversible error.

CONCLUSION

The Trial Court did not lack subject matter jurisdiction to hear the case.

The Trial Court did not commit an error of law nor did it abuse its discretion in allowing the trial to take place.

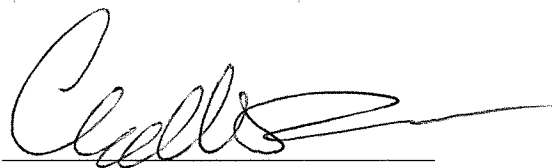
Appellant was provided adequate notice of the charge against her. Additionally, even if there was no discovery prior to the date of trial, there was no error of law nor abuse of discretion.

Refusing the Appellant's request for a jury trial was not an error of law nor was it an abuse of discretion.

Respondent Linda Doty therefore requests that the Order of the Court be Affirmed.

Respectfully submitted,

July 7, 2022



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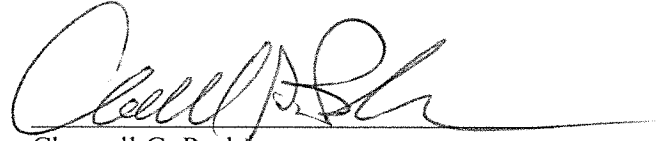
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CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing document to be served upon
opposing counsel via electronic mail in the above captioned case, on this date, July 7, 2022.



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