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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case Number 2020-000021

In the Matter of the Estate of Chris Combis,

Desa Ballard, as Personal Representative of the Estate of Chris Combis..……….Respondent,

v.

George Combis, Diane Combis, and Chris Combis..……………………………..Defendants,

Of Whom, George Combis and Chris Combis are………………………………...Appellants.

APPELLANT CHRIS COMBIS' PETITION FOR REHEARING

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PETITION FOR REHEARING

Appellant Chris Combis, pursuant to Rule 221, SCRAP, moves for a rehearing and reconsideration of Opinion Number 5984, filed May 3, 2023 (the "Opinion).

This appeal, as relevant to this Petition, involved a finding of contempt and sanction against Chris Combis for his alleged violation of an order compelling him to turn over a Rolex watch, which was confusingly described in a subpoena and the order to compel. The Opinion overlooks and misapprehends the law and evidence in the record to hold that "clear and convincing" evidence exists that Chris intended to violate the Order. In fact, the Opinion and the Record on Appeal reveal a complete lack of any evidence in this regard, and reveal that the order to compel failed to describe in clear terms what must be done to comply with it.

In light of the above, Appellant Chris Combis requests that this Court reconsider the Order and (1) find that no evidence exists – and certainly not clear and convincing evidence – that Chris intentionally violated the Order to compel the erroneously-described watch in the subpoena, and (2) that the order to compel fails to describe in definite, clear, and uncertain terms what must be done to comply. Accordingly, the Court should withdraw the Opinion and issue a new opinion holding that the finding of contempt against Chris be reversed.

I. THE OPINION OVERLOOKS AND MISAPPREHENDS THE GOVERNING LAW AND THE EVIDENCE IN THE RECORD TO CONCLUDE THAT CHRIS WILFULLY DISOBEYED THE MOTION TO COMPEL ORDER.

Section I of the Opinion addresses the finding of civil contempt against Chris relating to his production of a Rolex watch. The Opinion sets forth many of Chris' contentions, but then it fails to address them.

A. The Opinion Misapplies the Requirement that the Order Describe in Definite, Clear and Uncertain Terms What Must be Done to Comply with the Order.

The Opinion finds that at the time Respondent issued the subpoena, "[she] was only aware that Pop owned one gold Rolex . . ." However, this does not comport with the language used in the subpoena, which requested the "Original Rolex." The modifier "original" is superfluous and extremely unlikely to have been used if Respondent believed there was only one Rolex watch. In fact, if she believed that Pop owned only one gold Rolex the she would have used the modifier "Gold" and this controversy would not have existed. The use of the term "original" is confusing and unclear whether there was one or more than one Rolex watch. Significantly, the Order to Compel that Chris is accused of violating uses the exact same inherently confusing description of the watch sought by the subpoena.

Nowhere in the Opinion or the brief of Respondent is there a defense of the descriptor "original" used in the subpoena. The Opinion attempts to address the obvious flawed description in the subpoena and Order to Compel by holding that Chris "should have produced both watches regardless of whether he believed the description 'original' referred to the silver Rolex." However, perhaps the *only* thing clear about the description in the Order to Compel is that it sought only one watch. The Opinion overlooks and misapprehends the fair and logical burden requiring that the court order must set forth in definite terms using clear and certain language must the party must do to comply with the order.

In this regard, the Opinion overlooks the South Carolina Supreme Court case *Welchel v. Boyter*, 260 S.C. 418, 196 S.E. 2d 496 (1973). The *Welchel* case was discussed in Appellants' Final Brief (at p. 18), and in the Reply Brief (at pages 7-8). The Final Brief even asserts that "[t]he *Wechel* decision dictates a reversal in this case." (at p. 18.).

> In *Welchel v. Boyter*, 260 S.C. 418, 196 S.E.2d 496 (1973), the lower court held a man in contempt for violating an order that was unclear and indefinite as to what was required of him. The Supreme Court reversed, holding that "the findings do not establish that Welchel disobeyed the order," which was indefinite. *Id*. at 421, 196 S.E.2d at 498. Significantly, it held: "One may not be convicted for contempt for violating a court order which fails to tell him in definite terms what he must do. The language of the commands must be clear and certain rather than implied." *Id.* (citing 17 Am.Jur.(2d), Contempt, Sec. 52 (1964)).

Appellants' Br. at p. 18.

The Opinion merely cites to the *Wechel* decision for its holding that "[o]ne may not be convicted of contempt for violating a court order which fails to tell him in definite terms what he must do," but the Opinion proceeds to affirm the lower court's order that does precisely what *Wechtel* forbids.

It is also noteworthy an adequate description certainly was possible in the subpoena and Order to Compel. This is demonstrated by the description of the watch sought that Petitioner included in her subsequent Rule to Show Cause Petition. That Petition includes a much more detailed description of the Rolex watch: "an 18k Rolex watch, with a Presidential, solid gold bracelet-band . . . a brown walnut face . . . and initials engraved on back" (RSC Petition p. 9) (R. p. 0174-0175). There is no reason that this accurate description was not used in the subpoena or the Order to Compel. Indeed, if it had been so described, Chris would have had reason to know which watch was sought. In fact, that is precisely what happened. After the Rolex watch sought by was described with reasonable particularity in the subsequent RSC Petition, as required by the law, Chris produced the gold Rolex watch so described at the first day of the hearing. (R. p. 0299).

B. The Opinion Overlooks Important Testimony of the Expert Witness Regarding Whether Chris Should Have Known the Silver Rolex was Real or Fake, And the Distinction is Irrelevant in Any Event

The Opinion holds that "we find evidence supports the circuit court's finding Chris's testimony that he did not know the difference between a real Rolex watch and a fake Rolex watch was not credible." To justify the holding, the Opinion cites to the testimony of the jeweler expert witness who testified for the Respondent. However, the Opinion omits the critical testimony of the expert jeweler that he would not be surprised if a lay person thought that the silver stainless-steel Rolex was real. (R. p. 0442-0443). This significant testimony was included in Appellants' Final Brief (at pp. 12, 21) and Reply Brief (at p.8). But it is not included in the Opinion.

And there can be no question that the silver Rolex appeared to be a real Rolex watch. The Record clearly reveals this fact. The watch produced was a Rolex with the word "Rolex" and the familiar Rolex crown logo on the face of the watch. There are photographs of the Rolex watch that Chris timely produced in the record. (R. pp. 0930-0931, 0987). Thus, the *only* expert testimony is that a lay person, such as Chris, certainly could have thought the Rolex that he produced was real. This should have been addressed in the Opinion.

In any event, the issue is irrelevant. The Order to Compel did not identify "the Genuine Rolex" or the "Real Rolex." It commanded the "Original Rolex." And that is what was timely produced.

CONCLUSION

Appellant Chris Combis is entitled to a Rehearing of the appeal. Appellant requests a rehearing that applies the governing law as set forth herein, includes the relevant and significant evidence that was overlooked in the Opinion, and orders the finding of contempt against him reversed in an opinion that replaced the Opinion issued herein.

This the 16th day of May, 2023.

s/ Brian S. McCoy____________
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