

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP4601178

Rock Hill City Of	Chris Wellborn
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by: The Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

s/John C. Hayes, III 2049 9/25/2013
 Circuit Court Judge Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on **October 2, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **October 3, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

Paula Knox Brown 201 E. Main Street Third Floor Rock Hill, SC 29730

ATTORNEY(S) FOR THE PLAINTIFF(S)

James W. Boyd 1544 Ebenezer Rd. PO Box 36425 Rock Hill, SC 29732

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Christopher A. Wellborn,)
)
 Appellant,)
)
 vs.)
)
 City of Rock Hill,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-46-01178

FILED-RECEIVED
 2013 OCT 2 PM 3:58
 DAVID W. JOHNSON
 C.C.P. & CS
 YORK COUNTY, SC

ORDER

This matter is before the Court by way of an appeal from the Rock Hill Municipal Court.¹ Appellant, a licensed attorney, at a contempt hearing before Rock Hill Municipal Judge Peter J. Lenzi, was held in contempt on two of five allegations of contempt set forth in Judge Peter J. Lenzi's Verified Petition alleging Contempt of Court. Appellant alleges numerous grounds for reversal. This matter was heard August 27, 2013, and taken under advisement. James W. Boyd, Esq. appeared for Appellant; Paula Knox Brown, Esq. for Respondent.

Initially, appellant alleges on an appeal that the Trial Judge should have recused himself from the contempt proceeding. The Notice of Appeal sets forth nothing in support of this alleged error.

However, Appellant's motion for recusal is part of the record by way of the trial court's Return. Appellant's motion for recusal is based on Canon 3.E.(1)(d)(iv) of the Code of Judicial Conduct, Rule 501 SCACR. The above referenced canon provides that a judge shall disqualify themselves in a proceeding in which their impartiality might reasonably be questioned and that

¹ The original caption was "Rock Hill Municipal Court vs. Christopher A. Wellborn." Whether the captions affixed to this matter are correct is not before the Court. It seems the caption should actually be "In re: Christopher A. Wellborn." See Black's Law Dictionary, 7th Ed., p. 796.

Handwritten signature/initials

the Trial Judge's impartiality may be questioned because "to the judge's knowledge he [or she] is likely to be a material witness in the proceeding."

The Trial Judge denied the Appellant's motion for recusal without elaboration. Implicit in his ruling is the judge's determination that he was not likely to be a material witness.

As set forth below, a Trial Judge has the inherent power to hold one in contempt. This power resides with the Trial Judge, that is, the judge in whose presence a contemptuous act occurred or whose direct order has been disobeyed. Here, the Trial Judge, Judge Lenzi, was not obliged to recuse himself. This inherent power has been to some degree codified as set forth below.

In Floyd v. Floyd, 365 S.C. 56, 615, S.E.2d 465 (Ct. App. 2005) the Court stated that a decision on contempt rests with the Trial Judge and is not subject to reversal unless the decision lacks evidentiary support or the Trial Judge abused his or her discretion.

The Trial Judge's order does not set forth the burden of proof he applied in his consideration of the evidence. Absent anything reflecting the contrary, this Court must consider that the Trial Judge applied the correct burden of proof. Appellant did not ask the Court to reconsider the subject order to reflect the burden the Court applied. Also on appeal the Appellant has not raised the issue.

The Court's analysis of this appeal starts with the Court of Appeals' compendium of the law on contempt found at Ex Parte Cannon 385 S.C. 643, 685 S.E.2d 814 (Ct.App. 2009).

Cannon, supra, states that all courts have the inherent power² to punish for contempt, which is essential for the preservation of order in judicial proceedings and to enforcement of the orders of the Court. As to disobedience to a court order, the record must clearly and specifically

² Inherent power; a power that necessarily derives from an office position or status. Black's Law Dictionary, 7th Ed., p. 1189.

reflect the contemptuous conduct. Additionally, the courts have the inherent power to punish for offenses calculated to obstruct, degrade or undermine the administration of justice.

Cannon, supra, establishes that contemptuous conduct occurring in the presence of the Court is considered direct contempt. Civil contempt must be proven by clear and convincing evidence. Criminal contempt, which is the species here present, requires proof beyond a reasonable doubt.

In addition to the Court's inherent power to punish contemptuous conduct, our legislature has provided, by statute, two specific types of contemptuous conduct by Sections 22-3-950 and 40-5-510, South Carolina Code, 1976. The Court references these in its review of this appeal as they relate to the matter on appeal.

The two allegations upon which the Trial Judge found Appellant in contempt are:

3. Mr. Wellborn degraded the Court with his comment. There were several juries selected that morning including the Cullen jury. The Cullen jury was struck without Mr. Wellborn or his client in Attendance. Before the case got underway, Mr. Wellborn appeared. When the Court inquired of Mr. Wellborn as to why he was more than two hours late, Mr. Wellborn responded that "given the way the Rock Hill Municipal Court is run, I am never quite sure when I'm supposed to be here."
4. Mr. Wellborn disobeyed a Court ruling with his comment. Mr. Wellborn advised that his client who works in Charlotte had been contacted but he did not know when he would arrive. Mr. Wellborn asked for permission to advise the jury during his opening statement as to the reasons why neither he nor his client were present for jury selection. The Court denied that request and instructed Mr. Wellborn not to make any comment concerning his or his client's tardiness in appearing for court in any manner in the jury's presence. After opening remarks, Mr. Wellborn asked permission to check in the hallway in order to determine whether his client had arrived. That permission was granted; however, as he was leaving the Courtroom, Mr. Wellborn, in the jury's presence, once again, stated that he wanted to explain to the jury why he and his client were late in arriving to Court. This request violated the Court's previous Order concerning Mr. Wellborn making any reference to that issue in the jury's presence.

As to Number 3 above, in his Order, the Trial Judge found that [Appellant's] remark to the Court when asked why he was more than two hours late, to wit: "given the way the Rock Hill Municipal Court is run, I am never quite sure when I am supposed to be here" was, at best, impudent and, at worst, insolent and impertinent. The Trial Judge held that "such conduct has a chilling effect on the administration of justice and the judicial process. For this instance of contemptuous conduct, the Court fines the Respondent the sum of \$500.00."

Based on this finding and the contempt charge from the verified petition, the trial court, by inference, appears to have found the referenced remark of Appellant degrading. The Trial Judge did not make a finding that Appellant's conduct constituted disorderly conduct which caused an interruption of the Court's business. (See § 40-5-510, South Carolina Code of Laws, 1976).

Since the Trial Judge, by proceeding through the vehicle of a verified petition, the power of contempt set forth in § 22-3-950, South Carolina Code of Laws, 1976, does not seem to apply. This Code Section reads to the undersigned as a ground of contempt power during the course of a proceeding in order that a judge is able to preserve the decorum in his or her court. Section 22-3-950, South Carolina Code of Laws, 1976, clothes a summary court judge with the "power to enforce observance of decorum in his court while holding the same." (emphasis added)

While the undersigned agrees that the comments could be rightfully construed by the Trial Judge to be "impudent", "insolent" and "impertinent," such conduct was not found to have disrupted court, but rather to have "a chilling effect on the administration of justice and the judicial process." This latter finding is not significantly different from The Supreme Court's observance in The Matter of Goude, 296 S.C. 510, 374 SE2d 496 (S. Ct. 1988), wherein the

Court states "when a lawyer fails to conduct himself appropriately, he brings into question the integrity of the judicial system."

In Goude, the contemptuous conduct was committed in public. In the instant case it appears the comment was made to the Trial Judge "face to face." (See excerpt from contempt hearing set forth in Respondent's brief at page 6.)

The undersigned finds that the conduct of Appellant, while arguable a comment of disrespect for the operation of the City of Rock Hill's Municipal Court, does not constitute contemptuous conduct within the purview of § 22-3-950 or § 40-5-510, South Carolina Code of Laws. The comment does not, in context, rise to the level necessary for a contempt finding based on the Court's inherent power to punish contempt.

As to Number 4 above, the Trial Court found Appellant in contempt for violating the Court's order to Appellant "not to make any comment concerning his or his client's tardiness . . . in the presence of the jury." This finding is dramatically different from the comment at Number 3 above. Here, the Court has found that Appellant violated a direct order of the Court. This conduct clearly constitutes "an open and direct contempt to the court." (Section 40-5-510, South Carolina Code of Laws). As a direct violation of an order of the Court, it was within the Trial Court's inherent power to punish the comment as an act of contempt.

Neither a summary court judge nor any other members of the unified judicial system are to be prohibited from punishing conduct as contemptuous when it violates a direct order of the Court. A court without the authority to effectuate its orders by way of a finding of contempt is a neutered court. Requiring recusal in these instances would, as stated, neuter a court's ability to conduct the business of his/her courtroom.

JOHN H. S.

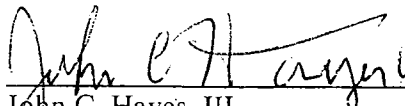
According to Judge Lenzi's Petition, Appellant was instructed (ordered) "not to make any comment concerning his or his client's tardiness in appearing for court in any manner in the jury's presence." In his Order, Judge Lenzi found that Appellant agreed with the allegation of the Petition and agreed that he was advised not to make any comment concerning his or his client's tardiness in any manner in the jury's presence.

Appellant's second request for permission to inform the jury of the reason for his and his client's tardiness was in direct violation of the order of the Trial Judge, an order Appellant acknowledged. If Appellant was confused as to the judge's order a request to take up the matter outside the jury's presence would have been warranted. Instead of such request, Appellant chose to violate the Court's order and accomplish by doing so that which he had been ordered not to do.

Based on the above, I grant Appellant's appeal as to the finding of contempt for "degrading the Court with his comment" (Number 3 above) and set same aside.

Based on the above, I deny Appellant's appeal as to the finding of contempt for disobeying a court ruling and affirm the Trial Judge's finding of contempt and imposition of a fine for same. (Number 4 above)

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge

September 15, 2013
York, South Carolina

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