

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Insurance,)
)
Petitioner,)
)
v.)
)
Wendell A. Norris, d/b/a Cole Bonding)
Company,)
)
Respondent.)

Docket No. 11-ALJ-09-0647-CC

ORDER
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MAR 17 2015

SC Court of Appeals

APPEARANCES: For the Petitioner: David E. Belton, Esq.
For the Respondent: Wendell A. Norris, *Pro Se*

This matter is before the South Carolina Administrative Law Court (Court or ALC) upon a Notice of Motion and Motion for Finding of Contempt filed by the South Carolina Department of Insurance (Department) against Wendell A. Norris, d/b/a Cole Bonding Company (Respondent) for failure to pay an administrative fine of three thousand dollars (\$3,000) pursuant to an Amended Final Decision and Order of the ALC issued on April 18, 2012.

BACKGROUND

On January 4, 2012, Respondent filed a Request for a Contested Case Hearing to challenge the Department's August 18, 2011 Order Imposing an Administrative Fine and Probation based on the Department's determination that Respondent failed to timely remit bond reports, to file his Professional Bondman license with the Horry County Clerk of Court, and to pay the bond registration fee to the Horry County Clerk of Court as required by S.C. Code Ann. §§ 38-53-310, - 100(D), and - 260. A hearing was held before the Honorable Shirley C. Robinson on March 15, 2012 at the ALC in Columbia, South Carolina.

The Court issued a Final Decision and Order on March 23, 2012. On April 2, 2012, Respondent filed a Notice of Motions and Motion to Reconsider, Motion to Vacate Order and Motion to Recuse. In response, the Court issued an Amended Final Decision and Order dated April 18, 2012, the Court amended its prior order to reflect that the Department presented no evidence of the Respondent's failure to file his professional bondsman license with the Horry

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February 9, 2015

SC ADMIN. LAW COURT

County Clerk of Court and to pay the bond registration fee as required. The Court denied the remainder of Respondent's Motion to Reconsider and denied his other two motions. The Court also found that Respondent had willfully violated South Carolina insurance laws by failing to file written bond reports in accordance with S.C. Code Ann. § 38-53-310 for a lengthy period of time and on more than one occasion. Consequently, the Court ordered Respondent to pay an administrative fine of three thousand dollars (\$3,000) to the Department within thirty days from the date of the order, in addition to suspending his Professional Bondsman License Number 185547 for a period of forty-five days. Respondent did not perfect an appeal of that decision.¹

On December 30, 2014, the Department filed a Notice of Motion and Motion for Finding of Contempt, asserting that Respondent had not paid the administrative fine as ordered by the Court and alleging that Respondent's failure to comply was willful, intentional, and deliberate. On January 5, 2015, Judge Robinson issued an Order Requiring a Response from Respondent and Notice of Hearing. Pursuant to that Order, a hearing in this matter was set for 10:00 a.m. on Monday, January 26, 2015. On January 20, 2015, Respondent filed a Response to Order Requiring Response, in which he "invoke[d] and claim[ed] the constitutionally granted Fifth Amendment of the United States [Constitution] as a defense." However, Respondent did not attach to this filing a certificate of service on the Department. On the same day, Respondent also filed a Motion for Recusal of Shirley C. Robinson, which also did not include a certificate of service on the Department.

On January 22, 2015, Respondent filed four motions, none of which were accompanied by a certificate of service: (1) Notice of Motion and Motion to Compel Discovery; (2) Notice of Motion and Motion for Continuance; (3) Notice of Motion and Motion to Compel a More Definitive Affidavit; and (4) Notice of Motion and Motion to Dissolve or Vacate Amended Order. Also, on January 22, 2015, Judge Robinson issued an Order Granting Motion for Recusal, and the case was reassigned to this Court. The hearing in this matter proceeded as originally scheduled, occurring at 10:00 a.m. on Monday, January 26, 2015 at the ALC.

¹ Respondent filed a Notice of Appeal on May 21, 2012 together with a certificate of service on the Department. However, Respondent never filed his appeal with the South Carolina Court of Appeals and thus did not perfect his appeal. Also, at the end of the hearing, Respondent handed the Court another Notice of Intent to Appeal. Nevertheless, this document has not been filed with the Court, would be too late to file with regards to the April 18, 2012 order, and would be premature to file in the instant matter. Finally, Respondent also handed the Court a Request for Transcripts. This document has also not been properly filed with the Court.

DISCUSSION

“Courts have no more important function to perform in the administration of justice than to ensure their orders are obeyed.” *State v. Bevilacqua*, 316 S.C. 122, 128, 447 S.E.2d 213, 216 (Ct. App. 1994). “Contempt results from the willful disobedience of a court order.” *S.C. Dep’t of Soc. Servs.*, 386 S.C. 426, 435, 688 S.E.2d 588, 592 (Ct. App. 2009) (citing *Moseley v. Mosier*, 279 S.C. 348, 351, 306 S.E.2d 624, 626 (1983)). Before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. *Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 918 (1982). Once a moving party makes out a prima facie case of contempt by pleading the order and showing its noncompliance, the burden shifts to the respondent to establish his defense and inability to comply. *Means v. Means*, 277 S.C. 428, 430, 288 S.E.2d 811, 812 (1982).

In its Amended Final Decision and Order dated April 18, 2012, the Court ordered Respondent to pay the Department an administrative fine of three thousand dollars (\$3,000) within thirty days from the date of the order. Respondent failed to perfect his appeal of this Order. Respondent has also failed to pay any of the fine ordered by the Court. When the Department sent Respondent a letter on October 22, 2012 concerning his failure to pay the fine, the Department received no response.² Finally, at the hearing, Respondent provided insufficient excuse for why he has failed to pay the three thousand dollar (\$3,000) fine as ordered by the Court in its April 18, 2012 order.³ Therefore, I find Respondent in contempt.

Although Respondent requested to relitigate matters relating to the April 18, 2012 amended order in an attempt to dissolve or vacate that order, that order was appealable but not appealed by Respondent. The Court could not therefore entertain Respondent’s arguments relating to the April 18, 2012 amended order imposing the three thousand dollar (\$3,000) fine. A

² To clarify, the Department received no response from Respondent reflecting an explanation of his failure to pay the fine and/or any plans to pay the fine. The Department did receive profanity-laced letters from Respondent, which explains the delay in the Department’s filing of its Notice of Motion and Motion for Finding of Contempt.

³ Respondent had filed four motions on January 22, 2015, as listed in the Statement of the Case above. However, the Court addressed and denied these motions at the January 26, 2015 hearing, on the record. Moreover, the fact that Respondent failed to attach a certificate of service for these motions is sufficient grounds alone to deny them. See ALC Rules 4(B), 5, and 23(B). Respondent also invoked the protection of the Fifth Amendment in his January 20, 2015 Response to Order Requiring Response. Nevertheless, Respondent failed to raise this matter at the hearing. Moreover, in addition to being vague as to how his rights under the Fifth Amendment were violated, Respondent, as with the aforementioned motions, failed to attach a certificate of service. This omission would thus be a sufficient ground upon which to resolve the issue in the favor of the Department even had Respondent addressed the matter at the hearing. See ALC Rules 4(B), 5, and 23(B).

party in a contempt proceeding for failure to comply with a prior order cannot relitigate issues from the prior action from which the order was issued. See *Simpson v. Simpson*, 404 S.C. 563, 573, 746 S.E.2d 54, 60 (Ct. App. 2013) (finding in part that party failing to comply with the final divorce decree issued by the family court was barred by res judicata from relitigating at the contempt hearing an issue that had been raised during the divorce proceeding); see also *Duckett v. Goforth*, 374 S.C. 446, 464, 649 S.E.2d 72, 81 (Ct.App.2007) (“Res judicata precludes parties from subsequently relitigating issues actually litigated and those that might have been litigated in a prior action”). Furthermore, a party cannot object to an appealable order from which no appeal was taken, as it becomes the law of the case. See *Doran v. Doran*, 288 S.C. 477, 478, 343, S.E.2d 618, 619 (1986) (cited in *Simpson*, 404 S.C. at 574, 746 S.E.2d at 60). Thus, a party is “not entitled to take a second bite at the apple by defending [himself] in [a] contempt proceeding[] on [a] ground that [was raised, or could have been raised in a prior action].” *Simpson*, 404 S.C. at 574, 746 S.E.2d at 60.

ORDER

IT IS HEREBY ORDERED that Petitioner’s Notice of Motion and Motion for Finding of Contempt is **GRANTED**.

IT IS FURTHER ORDERED that Respondent pay an administrative fine of three thousand dollars (\$3,000) to the Department within (thirty) days from the date of this order.

IT IS FURTHER ORDERED that Respondent’s Professional Bondsman License Number 185547 shall be suspended immediately if the aforementioned fine is not paid within thirty (30) days of the date of this order and shall remain suspended until the fine is paid.

AND IT IS SO ORDERED.

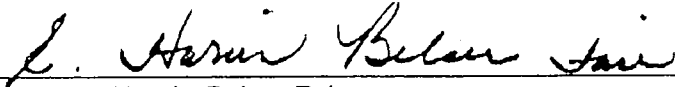


Ralph King Anderson, III
Chief Administrative Law Judge

February 9, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



E. Harvin Belser Fair
Judicial Law Clerk

February 9, 2015
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
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South Carolina Department of Insurance)
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 Respondent,)
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 Wendell Norris, d/b/a Cole Bonding Co.)
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 Petitioner.)

Docket No. 11-ALJ-09-0647-CC

**NOTICE OF MOTION AND
MOTION TO RECONSIDER**

DENIED
Ralph K. Anderson 2/23/15
 Ralph King Anderson, III Date
 Chief Administrative Law Judge

TO: PRESIDING JUDGE *Ralph K. Anderson III*
 ADMINISTRATIVE LAW JUDGE.

This Petitioner moves for reconsideration of the Order of Ralph King Anderson, III, dated February 9, 2015 pursuant to the applicable rules of the South Carolina of Civil Procedures.

BACKGROUND TO THIS MOTION

The aforementioned hearing was heard before Chief Administrative Law Judge Ralph K. Anderson, III. Present was Wendell Norris, Petitioner, Pro se and David Belton, attorney for the South Carolina Department of Insurance.

Petitioner filed four motions as follows:

1. Motion to Compel Discovery
2. Motion for Continuance
3. Motion to Compel a More Definitive Affidavit
4. Motion to Dissolve or Vacate Amended Order.

CERTIFICATE OF SERVICE
 This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
 This 23rd day of February, 2015
L. Harin Belton III
 Judicial Law Clerk

Those Motions were denied by the Presiding Judge Anderson and is the foundation of this present Motion for Reconsideration.

Petitioner has confronted the findings of the earlier Court's findings as being a product of criminal actions committed by the South Carolina Department of Insurance attorney, David Belton, the South Carolina Department of Insurance Investigator

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