

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

IN THE MATTER OF THE ESTATE OF
CHRIS COMBIS

DESA BALLARD, as Personal Representative
of the Estate of Chris Combis,

Plaintiff/Petitioner,

vs.

GEORGE COMBIS, DIANE COMBIS, and
CHRIS COMBIS,

Defendants/Respondents.

IN THE COURT OF COMMON PLEAS

Case No. 2014-CP-29-306

RECEIVED

JAN 06 2020

SC Court of Appeals

ORDER OF CIVIL CONTEMPT AS TO
GEORGE COMBIS AND CHRIS A.
COMBIS

This matter was commenced by the Petitioner Desa Ballard ("Ms. Ballard") with the filing of a Verified Petition and Request for Rule to Show Cause (the "Petition") on August 28, 2017. The Court issued an Order and Rule to Show Cause (the "Order") to George Combis ("George"), Diane Combis ("Diane"), and Chris A. Combis ("Chris or Chris A.") (collectively, George, Diane and Chris are the "Combises") on September 5, 2017. A hearing on the Petition and Order was scheduled for November 13, 2017, and the matter was eventually heard on November 14, 2017, November 17, 2017, and concluded on August 5, 2019¹.

This matter arises out of a dispute between the Petitioner and Respondents over the production of certain items subpoenaed by Petitioner as the personal representative of the Estate of Chris Combis ("Pop"). On March 16, 2017, Petitioner issued three subpoenas (collectively the "Subpoenas") to the Combises. The first subpoena (the "Chris Subpoena") was issued to Chris,

¹ The Court, stayed this matter on November 17, 2017 pending an investigation by S.L.E.D. into any wrongdoing by the Combises. S.L.E.D. determined no criminal charges were to be made and closed the case on or about July 20, 2018. See Court's Exhibit Number 1.

and it requested the production of the “ORIGINAL ROLEX WATCH ALLEGEDLY GIFTED TO YOU BY THE DECEASED FOR APPRAISAL.” *See* Respondent’s Exhibit Number 8. The second subpoena (the “Diane Subpoena”) was issued to Diane, and it requested the production of “COINS ALLEGEDLY RECEIVED FROM THE DECEASED.” *See* Respondent’s Exhibit Number 9. The third subpoena (the “George Subpoena”) was issued to George, and it requested the production of “ANY AND ALL FIRE ARMS ALLEGEDLY RECEIVED FROM OR GIFTED TO YOU BY THE DECEASED FOR APPRAISAL AS WELL AS CONTENTS OF THE SAFE IN WHICH THE DECEASED STORED CASH AND DOCUMENTS”. *See* Respondent’s Exhibit Number 10.

On March 30, 2017, the Combises served an objection to the Subpoenas. In response, on or about May 15, 2017, the Petitioner filed a motion to compel, and following a hearing on the matter, on August 8, 2017, the Court entered an order (the “MTC Order”) granting the motion to compel.

The MTC Order ordered the Combises to produce the items requested by the Subpoenas on or before August 15, 2017. As set out in greater detail below, the Combises timely produced a number of items to the Petitioner by August 15, 2017, however the Petitioner claims that the Combises failed to adhere to the MTC Order by producing the wrong items and/or only a portion of the items requested. Petitioner’s belief that the Combises violated the MTC Order prompted her to file the Petition and the Court to issue the Order.

During the multiple days of hearings on this matter in November of 2017, the Court heard testimony from Chris, Diane, Lauren Combis (“Lauren”), Linda Combis (“Linda”), Larry Garris (“Mr. Garris”) and Petitioner. When this matter resumed and concluded on August 5, 2019, the Court heard the remaining testimony from Petitioner.

North Carolina Attorney David Redding appeared at the August 5, 2019 hearing, seeking permission to transfer his *pro hac vice* status from the United States District Court to allow him to appear *pro hac vice* in this proceeding for parties George, Diane and Chris A. Ballard objected, pointing out that Redding had not complied with Rule 404, SCACR which governs admissions *pro hac vice* in the state courts. It is undisputed that Redding did not properly seek *pro hac vice* admission in the state court. However, the Court examined Redding as to qualifications for *pro hac vice* admission, and granted the motion. The Court also directed Redding to immediately file the appropriate documents and filing fee as required by Rule 404, SCACR for his participation in this case. Based upon his representation that he did so, Redding's *pro hac vice* application was granted for this case.

For the reasons set forth below, this Court finds Chris and George to be in civil contempt of Court, but declines to find same as Diane.

PROCEDURAL HISTORY

1. Pop passed away in February of 2009. (27:17-20, November 17, 2017).
2. In 2013, Petitioner was appointed personal representative of Pop's estate. (75:17-21, November 17, 2017).
3. This Court consolidated several earlier actions involving the Petitioner, the Combises, and others, and those cases were removed to the United States District Court for the District of South Carolina. *See* the MTC Order.
4. That matter was tried in US District Court before The Honorable Joseph F. Anderson, and in the judgment entered by that Court, Judge Anderson remanded issues related to personal property owned by Pop at the time of his death. *Id.*

5. On March 16, 2017, in her capacity as Personal Representative, Ballard served subpoenas on George, Chris A. and Diane to produce specific items of personal property she has identified as assets of the estate and that had been advised by prior counsel to be in the possession of George, Chris A. and Diane. Counsel for Respondents acknowledged receipt of the subpoenas but advised counsel for Ballard that his clients refused to respond to the subpoenas. Ballard filed a Motion to Compel.
6. The Chris Subpoena requested the production of the "ORIGINAL ROLEX WATCH ALLEGEDLY GIFTED TO YOU BY THE DECEASED FOR APPRAISAL." *See* Respondent's Exhibit Number 8.
7. The Diane Subpoena requested the production of "COINS ALLEGEDLY RECEIVED FROM THE DECEASED." *See* Respondent's Exhibit Number 9.
8. The George Subpoena requested the production of "ANY AND ALL FIRE ARMS ALLEGEDLY RECEIVED FROM OR GIFTED TO YOU BY THE DECEASED FOR APPRAISAL AS WELL AS CONTENTS OF THE SAFE IN WHICH THE DECEASED STORED CASH AND DOCUMENTS". *See* Respondent's Exhibit Number 10.
9. Following the Petitioner issuing the Subpoenas, and the Combises' objecting to the Subpoenas, the parties were before this Court on Petitioner's motion to compel. This Court issued an Order dated August 8, 2017 in which it required Respondents to deliver the subpoenaed items to Ballard for purposes of appraisal and valuation for the estate proceedings. In addition to a request for a finding of civil contempt, Ballard's Petition seeks, *inter alia*, a citation of criminal contempt against Respondents. For that reason, this Court's order dated August 30, 2017, which required George, Chris A. and Diane to

appear before this Court, specifically advised the Respondents that, while they were required to appear before the Court, they had a right to counsel at the hearing and of their right to remain silent.

10. During the hearing, the Court heard arguments regarding the disposition of the items sought by Petitioner while this action was pending. In its MTC Order, the Court ordered the Combises to produce the items sought by Petitioner on or before August 15, 2017, that Petitioner would inventory and appraise the items, and then return them to the Combises. *Id.*
11. On August 14, 2017, the Combises delivered a box of items to Petitioner. (106:8-107:23, August 5, 2019; Petitioner's Exhibit Number 3). As memorialized in the letter accompanying Petitioner's Exhibit Number 3, the items delivered by the Combises to the Petitioner were:
 - a. Four rolls of pennies;
 - b. Ten sealed packages of various coins;
 - c. Five blue encased coins;
 - d. One firearm;
 - e. One holster;
 - f. One empty detachable magazine; and
 - g. One Rolex watch.
12. The Petitioner claims that the items delivered by the Combises on August 14, 2017 were not the items compelled by the Subpoenas and the MTC Order. (110:13-17, August 5, 2019; the Petition). Ballard also introduced deposition excerpts from a companion action regarding the items of personal property.

13. The Court finds that Petitioner brought this Petition to address her contentions that the Combises violated the MTC Order.
14. In the Petition, the Petitioner sought both civil and criminal contempt. *See* the Petition, page 11; the Order.
15. At the conclusion of Petitioner's presentation of her evidence, the Combises moved pursuant to Rule 41 of the South Carolina Rules of Civil Procedure to dismiss the Petition. (171:6-185:5, August 5, 2019).
16. The Court granted the Combises' Rule 41 motion with respect to Petitioner's request that the Court hold the Combises in criminal contempt. The Court denied the Combises' Rule 41 motion with respect to civil contempt. *Id.*
17. Ballard presented her own testimony, as well as that of Linda Combis, and Lauren Combis. She also called as witnesses, Diane and Chris A. Lastly, she called Larry Gasser, a jeweler in Lancaster as an expert witness who verified that the watch produced by Chris A. pursuant to the Court's order was a fake Rolex. Respondents George, Chris A. and Diane presented no witnesses or evidence. The Court also considered George's deposition testimony, in which he told conflicting stories about Pop's Rolex, and suggested there may have been multiple Rolex watches owned by Pop at one time or another. George also said that he had loaned his Rolex to Pop when Pop wanted to impress his friends. George testified that Pop bought himself a cheap fake Rolex after he had borrowed George's real Rolex and wore it every day. As to the pistols, George testified that any pistols that Pop had were kept in safe that only Diane had access to, and when he was ordered to produce the pistols to Ballard, he asked Diane and Diane gave him the single pistol that was produced to Ballard.

18. The following findings of fact are based on the exhibits, my deliberate and careful review of the testimony as well as the credibility of the witnesses and the weight of the testimony. I have carefully observed each witness, and I noticed such things as their tone of voice, gesture, hesitation or readiness to answer questions, their sincerity and mannerisms, all of which assisted in my evaluation of their credibility. While this Court did not rely on it for determinations regarding credibility, the Court is aware of and had read the order of the United States District Court Judge Joseph F. Anderson Jr., which found that George and Diane had misappropriated approximately \$500,000.00 from Pop's trust. The court is also aware that the Fourth Circuit Court of Appeals vacated the joint and several judgment against George, leaving Diane as the sole obligor on the judgment for breach of fiduciary duty.
19. At the hearing, the Court personally examined the box and items of personal property that were produced to Ballard by Respondents, through counsel, which had been have been in Ballard's possession since they were delivered and until the box was entrusted to counsel for Respondents at the conclusion of the first part of the hearing on November 17, 2017.
20. The Court personally examined the watch that was delivered to Ballard, alleged to be the one demanded by the subpoena (which was primarily of a silver color, with a black face), and a real gold-colored Rolex with a brown face that Respondent's counsel brought to Court and showed to witnesses. The Court took judicial notice of the difference in the weight of the two watches, with the "real" Rolex being significantly heavier and more substantial than the one that was produced to Ballard.

FINDINGS OF FACT

1. On August 14, 2017, counsel for George, Diane and Chris delivered to Ballard's office a box containing certain item of personal property, along with a cover letter that stated "[i]n response to your Subpoena. . . our office is producing the following items . . . for appraisal." (Petition and Rule to Show Cause, Exhibit B, with attachments). The response did not indicate which of the Respondents was producing which items, or if all of them were producing the items, or if the law firm was producing them without assistance of its clients.
2. Respondents' counsel initially asked Ballard to accept photographs of the items that this Court ordered produced in its Order dated August 8, 2017, but Ballard insisted on production of the items as ordered. Respondents' counsel delivered certain items to Ballard's office on Monday, August 14, 2017.
3. Upon receipt of the box of items by Respondents' counsel, Ballard examined the documents and concluded that the items produced were not the items she had subpoenaed. She filed the instant Rule to Show Cause, asserting that the items delivered to her were not the items she had requested to be produced by subpoena, and she asserted that Respondents were attempting to perpetrate a fraud on the Court.
4. Ballard produced the box of delivered items to the courtroom on November 14, 2017. The box contained various coins, a silver-colored watch which was labeled a Rolex and a pistol in a leather-like case.
5. Ballard did a thorough investigation to determine the assets owned by Pop at the time of his death. Prior counsel confirmed to Ballard that Respondents had possession of the items she requested in the subpoenas, which included a gold Rolex, several pistols and a coin collection.

6. Curiously, Respondents provided a real gold Rolex watch the morning of trial on August 17, 2017, but declined to offer any authentication or identification of the Rolex or advise where it had come from; the real Rolex was presented to the Court “out of an abundance of caution.” This Court directed Ballard to have the Rolex appraised and she did, providing an appraisal that valued the Rolex watch at present at \$5,200.00, noting the removal of several links of the gold bracelet. The court also directed Ballard to have the pistol appraised and she did so. The pistol was appraised at a value of less than \$100.
7. Chris A. asserted he had complied with the subpoena by delivering to his father George, the silver-colored watch that was determined to be a fake Rolex. He testified the fake Rolex was the “original Rolex” gifted to him by Pop and he asserted that he had fully complied with the Court’s Order. Chris A. also testified that Pop has also gifted to him a real Rolex, but he had produced only the “original” Rolex. The real gold Rolex was not produced by Respondents’ counsel until after prior to Chris A.’s testimony and, as a result, Chris A. was not asked about the real Rolex.
8. At the hearing on August 5, 2019, a second pistol was located in the courtroom; Respondents’ counsel advised he had brought the second pistol to Court on that date and entrusted it to the deputies at the security desk in the courtroom. This pistol was similar in appearance to the gun Respondents had produced to Ballard in 2017, except it did not have a case. Ballard was asked to have the second pistol appraised after the conclusion of the August 5, 2019 hearing. Thereafter, the parties stipulated that the value of the second pistol was \$125.00.
9. No explanation was provided as to why these items had not been provided to Ballard in response to the subpoenas, or after the Court issued its Order compelling production of the

items subpoenaed by Ballard. The mysterious appearance of the real gold Rolex and a second pistol during these proceedings, as well as the testimony by the parties, establish by clear and convincing evidence to this Court's satisfaction that Respondents knew they had additional items that were the subject of this Court's August 9, 2017 order and deliberately withheld the items from Ballard in violation of the Court's Order.

WATCH

10. Chris A. testified that the watch he produced was the "original" Rolex he got from Pop. However, the watch produced to Ballard pursuant to this Court's Order was not a Rolex, so Chris A. did not respond to the subpoena at all. The Court find Chris A.'s explanation that he did not know the difference between a fake Rolex and a real Rolex lacks credibility and the Court find that it was the intent of Chris A. to mislead Ballard and the Court.
11. Lauren Combis (former wife of Chris A.) identified the gold Rolex produced during the hearing by counsel for Respondents was a gold Rolex that had previously been Pops' watch. Chris A. gave the watch to Lauren sometime after Pop's death after having it remodeled and cut down to fit her. Chris A. later asked for the watch back after this litigation started, but he did not produce the watch in response to the subpoena and did not produce it at all until the hearing in these proceedings.
12. George did not testify. However, the Court observed his demeanor in the courtroom during these proceedings and reviewed his deposition testimony, which clearly demonstrate his contempt for these proceedings and for Ballard.
13. The watch delivered to Ballard by Respondents is not a real Rolex.
14. It is undisputed that Pop owned at least one real gold Rolex. When Pop created his trust in 2003, he included a specific trust distribution that left his Rolex watch to Chris A., his

grandson. When Pop amended his trust in 2006, he continued to include the gift of the Rolex to Chris A. in the amended trust agreement. In 2008, the final time he amended his trust, Pop deleted this gift, as well as many others; the elimination of the specific gifts of personal property from the trust was the primary change effected by the 2008 amendment of the trust.

15. The real gold Rolex watch was in Pop's possession until shortly before his death. The Rolex watch disappeared in the last year of Pop's life when Pop was spending days at Sunrise, a day-care facility for senior citizens. Pop was very upset at the loss of his watch and Linda and Diane helped Pop look for the watch, finally locating it at Sunrise.
16. Diane took Pop's gold Rolex from Sunrise for "safekeeping." It seems likely that this is the watch that was given to Chris A. and remodeled for Lauren, but there is not sufficient evidence to make that determination by clear and convincing evidence.
17. Chris A. received a gold Rolex by Pop before Pop's death. Chris A. also testified that Pop had earlier given him the fake Rolex. He produced the fake Rolex rather than the real Rolex in response to this Court's Order because he considered the fake Rolex to be the "original" Rolex, and that is what the subpoena asked for. It is not known when Chris's counsel became aware of the existence of the real gold Rolex. Chris's position is not credible and is disingenuous at best.
18. Chris A. denied having any work done on the real Rolex, but I find, based on the testimony of Lauren Combis and my examination of the watch, that the real Rolex was modified by Chris A. after he received it, the face was changed to mother-of-pearl, links were removed and diamonds added on the face. Chris A. gave the modified Rolex to his then-wife Lauren,

and she wore it on family occasions for several years but then stopped wearing it. She gave it to Chris A. in 2015 when he insisted she give it back to him.

19. The gold Rolex has been in Chris A.'s possession since he took it back from Lauren in 2015 and was in his possession at the time Ballard's subpoena for Pop's "original" Rolex was served and this Court's Order of August 8, 2017 was issued. In response to the subpoena and order, Chris A. did not produce or reveal the existence of the real Rolex.
20. For more than four years, Ballard has been attempting to locate Pop's gold Rolex for appraisal to include on the estate inventory. She communicated with Respondent's prior counsel, who acknowledged that Pop's gold Rolex existed, but had been gifted by Pop to Chris A. At no point did Respondents reveal to Ballard the existence of two (2) Rolexes belonging to Pop.
21. The first mention of Pop having a second Rolex came during George's deposition, which began on September 13, 2017. That deposition occurred several weeks after Ballard had filed her petition alleging that the watch that was produced to her was a fake Rolex and was not Pop's Rolex that she has listed on the estate inventory.
22. Ballard subpoenaed from Chris A. the "original Rolex" allegedly gifted by Pop to him. Chris A. produced a fake Rolex and did not disclose his ownership or possession of the real Rolex.
23. I also find that Chris A.'s claim that he did not know the fake Rolex was a fake lacks credibility. The watches are vastly different in quality, and even without expert testimony, it is apparent that the fake Rolex produced to Ballard is not a watch of quality. Chris acted intentionally and deliberately in willful noncompliance of this Court's Order.

PISTOL

24. Pop owned at least two (2) nice pistols at the time of his death. One was a heavily engraved silver handgun with pearl colored grips. Multiple non-family witnesses interviewed by Ballard described the heavily engraved handgun and Pop's propensity to carry it frequently, at least before his health deteriorated and he stopped his social encounters.
25. Respondent's prior counsel, Charles Bridgmon, acknowledged to Ballard, in response to her inquiries, that George had possession of two (2) pistols that had been owned by Pop during his lifetime. No details or photographs were disclosed, despite repeated requests by Ballard and her counsel. When Ballard persisted in attempting to gain information about the pistols, communication ceased.
26. This Court examined the handgun produced by George in response to the subpoena and Order. It is not in a case, but is held in what appears to be a sleeve, not a holster. Ballard also had the handgun examined by a former SLED agent who has expertise in firearms, who valued the gun at less than \$100.
27. The pistol produced by George in response to the subpoena and Order is a cheap, inferior quality, and well-worn "Saturday night special." George did not provide any evidence as to the origin or ownership of this gun. Ballard presented deposition testimony from George that Diane gave the produced pistol to him, after removing it from a safe maintained by Diane to which George had no access. This request to Diane was made by George after this Court's Order of August 9, 2017. Diane provided no testimony regarding the gun that was produced to Ballard by George. George did not testify either.
28. George has two (2) pistols owned by Pop. The admissions of his prior counsel establish this fact. One of them may or may not be the silver, heavily engraved handgun that Pop

sometimes carried. Pop may have owned more guns, however, there is insufficient evidence to establish this.

29. While George did not testify, this Court reviewed his deposition taken in a different case brought by Ballard and observed his behavior in the courtroom during the two (2) days of hearings in this proceeding. It is clear from the long and convoluted record in this case that he has thwarted every reasonable effort taken by Ballard to complete a full accounting and inventory for Pop's estate. George's lack of respect for this Court is concerning and his conduct has made it clear that he intends to obstruct these proceedings in every way he can.

30. Respondents produced a single pistol; even if the pistol produced was owned by Pop (of which there is no evidence), George has provided no explanation for his failure to produce the second pistol that his prior counsel acknowledged he had in 2013 when Ballard was appointed Personal Representative and began gathering and identifying the assets owned by Pop at the time of his death. In the deposition testimony provided by Ballard, George testified that he produced only one gun because that's all Diane gave him in response to his request. Mysteriously however, another pistol appeared at Court on August 5, 2019, more than two years after the subpoenas and accompanying Order to Compel had been issued. George also did not testify, and the Court draws an adverse inference to this fact.

COINS

31. The Court heard extensive testimony with regard to the coins from Diane, Linda, and the Petitioner.

32. In her Petition, the Petitioner claimed that the coins produced by Diane in August of 2017 were not the coins that Linda asked Diane to safekeep prior to Pop's passing, and therefore Diane's production was not responsive to the Diane Subpoena and the MTC Order. *See* the Petition, page 10. Specifically, Petitioner claimed that Pop owned: between 75-100 silver dollars in a Ziplock bag, including a "Carson City" silver dollar worth \$1,800.00, a mint set of coins, and enough blue collector coin books to fill a shoe box. *Id.*

33. During the hearing, Diane testified, in pertinent part, to the following with respect to the coins:

- a. She received some coins that belonged to Pop around 2000 and they were not "messed with" since they were brought to her house. (81:4-9; 89:17-22, November 14, 2017);
- b. She did not take an inventory of the coins. (89:23-25, November 14, 2017);
- c. She could not recall a series of coins or a Ziplock bag with 75-100 silver dollars. She did not know what a Carson City silver dollar was. (99:10-15; 100:7-101:18, November 14, 2017);
- d. She could not recall a mint series of coins or blue collector coin books. (101:19-102:6, November 14, 2017);
- e. She denied that Linda gave her the coin collection for safekeeping. (102:6-103:6);
- f. She stated that there were no other coins, other than the coins she produced, that could be responsive to the Diane Subpoena and/or the MTC Order. (104:5-106:10).

34. With regard to the coins, Linda testified, in pertinent part, to the following:

- a. She stated that what Pop owned “wasn’t really a coin collection”. Her grandfather would give her silver dollars, but they were not necessarily Pop’s. Pop had some silver dollars, bluebooks with various coins including pennies and nickels, but “it wasn’t a huge coin collection.” (40:10-18, November 17, 2017);
 - b. Pop kept some of the coins in a baggy. Pop had 50-70 silver dollars in a bag, but she noted that Pop would hide his money. (40:23-41:5; 41:21-42:8, November 17, 2017);
 - c. She stated that some of the coins produced by Diane might have been Pop’s. (41:12-16; 63:5-6, November 17, 2017);
 - d. She did not take any photographs of the coins. (42:11-12, November 17, 2017);
 - e. The last time she saw the coins was in 2000, and she did not count them at the time. She stated that the number of silver dollars could be as low as 25. (57:23-58:2; 61:7-11; 62:8-16; 62:21-22, November 17, 2017);
 - f. The Carson City silver dollar was not Pop’s. It was her ex-husband’s and he gave it to her. (40:20-21; 56:14-16, November 17, 2017);
 - g. To the extent her information was relied upon for the Petition, it was from information she provided five or six years ago. (57:16-18, November 17, 2017).
35. With regard to the coins, the Petitioner, in pertinent part, testified to the following:
- a. She was looking for Diane to produce the Carson City silver dollar and three blue velvet containers. (73:3-6, August 5, 2019);
 - b. Linda and Mary Combis (“Mary”) were her sources for the coins. (86:2-9, August 5, 2019);

- c. She acknowledged that the Diane Subpoena sought “coins” received by Diane “from the deceased”. The Diane Subpoena does not specifically describe the coins, that it sought coins received by Diane from Linda, state the number of coins sought by Petitioner, or contain a description of the blue books. (95:23-98:14; 131:17-132:4, 135:3-12, August 5, 2019; Respondent’s Exhibit Number 9);
- d. She does not know what the coin collection specifically consists of. (97:13-17, August 5, 2019).

36. Based upon the extensive testimony by the above witnesses, and the documents submitted during the hearing, the Court finds that Diane did not willfully disobey the MTC Order for the following reasons:

- a. Diane timely produced the coins in her possession;
- b. In order for Diane to be found in contempt of Court, the Court must find that she willfully disobeyed the MTC Order. Therefore, the issue before the Court is whether Diane voluntarily and intentionally produced the incorrect coins with the specific intent of violating the Diane Subpoena and MTC Order;
- c. The only witnesses with direct knowledge of the coins called by the Petitioner were Linda and Diane, and neither took any pictures of the coins, counted them, itemized them, or created an inventory, and both witnesses agreed that Diane came into possession of the coins approximately 20 years ago. Linda has not seen the coins since approximately 2000;
- d. Linda was also unsure of the amount of silver dollars in Pop’s coin collection;

- e. There is no itemized description of the coins or coin collection in Pop's trust documents that would allow the Court to compare Pop's collection with what Diane produced;
- f. With respect to the Carson City silver dollar, Linda's testimony was that it was her coin given to her by her ex-husband. The Court is not making any findings as to what property was (or was not) part of Pop's estate in this hearing, but for the purposes of this contempt hearing, there is no evidence to suggest that the Carson City silver dollar was Pop's and/or part of Pop's estate, and therefore it could not be compelled by the Diane Subpoena and/or the MTC Order;
- g. Taking all of the testimony and exhibits together, the Court finds that it cannot identify the coin collection to any reasonable degree of certainty. Since the Court cannot identify the coin collection, the Court cannot find by clear and convincing evidence that Diane specifically intended to produce the wrong coin in response to the Diane Subpoena and MTC Order;

37. Based upon the Court's findings, the Court concludes that Diane did not willfully disobey the MTC Order by producing the coins contained in Petitioner's Exhibit Number 3.

Therefore, the Court holds that Diane is not in civil contempt of Court.

LEGAL DISCUSSION

The burden of proof in this matter remains on Ballard, who is the moving party. Rule 301, SCRE; Ford v. Atlantic C.L.Ry.Co., 169 S.C. 41, 168 S.E. 143 (1933) *affirmed* 287 U.S. 602. The moving party must show the existence of a court order and the facts establishing the Respondent's noncompliance with the order. Hawkins v. Mullins, 359 S.C. 497, 597, S.E.2d 897 (Ct. App. 2004); Lindsay v. Lindsay, 328 S.C. 329, 491 S.C.2d 583 (ct. App. 1997). Once the moving party establishes the existence of the order allegedly violated and sufficient facts to show an intentional violation of the Order, the burden then shifts to the Respondents to establish their defense or inability to comply with the Court's Order. Henderson v. Henderson, 298 S.C. 190.

The burden of proof of a violation of an order that results in an order of civil contempt is "clear and convincing" evidence. Miller v. Miller, 375 S.C. 443, 652 S.E.2d 754 (Ct.App. 2007); Poston v. Poston, 331 S.C. 106, 502 S.E.2d 86 (Ct.App. 1998).

In Poston v. Poston, 331 S.C. 106, 502 S.E.2d 86 (1998), the Supreme Court defined civil contempt of court and criminal contempt of court, and clarified that a definite non-purgeable jail sentence is a criminal contempt sanction and the burden of proof for a criminal contempt proceeding is beyond a reasonable doubt. *Id. Citing State v. Bowers*, 270 S.C. 124, 241, S.E.2d 409 (1978); *State v. Bevilacqua*, 316 S.C. 122, 447, S.E.2d 213 (Ct. App. 1994) ("If it is for civil contempt the punishment is remedial, and the benefit of the complainant, but it is for criminal contempt the sentence is punitive, to vindicate the authority of the court.")

"Contempt results from willful disobedience of a court order." Lindsay v. Lindsay, 328 S.C. 329, 491 S.E.2d 583, 592 (Ct. App. 1997). Willful disobedience requires an act to be done "voluntarily and intentionally with the specific intent to do something the law forbids or with the

specific intent to fail to do something the law requires to be done; with bad purpose either to disobey or disregard the law." Spartanburg County DSS v. Padgett, 296 S.C. 79, 82-83, 370 S.E.2d 872, 874 (1998).

"In order to sustain a finding of contempt, the record must be clear and specific as to the acts or conduct upon which such finding is based." Whestone v. Whestone, 309 S.C. 227, 420 S.E.2d 877, 881, (Ct. App. 1992).

The elements of contempt are:

- A. The existence of a valid duty, order or obligation
- B. Knowledge of the mandate or duty to comply, and
- C. A willful or voluntary violation of the order.

Burnell v. Burnell, 359 S.C. 361, 597 S.E.2d 24 (Ct. App. 2004); Long v. McMillan, 226 S.C. 598, 86 S.E. 477 (1955); State v. Passmore, 363 S.C. 568, 611 S.E.2d 273 Ct. App. 2005)

RULING AS TO CONTEMPT

I find and conclude that Ballard has established by clear and convincing evidence that Respondents George and Chris A. have intentionally and knowingly violated this Court's Order of August 8, 2017 by producing items that are not the items that were subpoenaed, and in withholding items that were ordered to be produced. I find and conclude that they did so knowingly and intentionally. Most egregiously, these Respondents have shown a complete disregard for the authority of this Court and its order.

These Respondents have willfully failed and refused to comply with this Court's order and are held in contempt of court, for their total disregard for authority of this Court and their intentional obstruction of Ballard's reasonable efforts as personal representative.

Because the court directed a verdict in Respondents's favor at the conclusion of Ballard's case, the only issue before the court is whether Respondents are in civil contempt. The court concludes by clear and convincing evidence that Respondents, George and Chris A. are in civil contempt of this Court's Order of August 8, 2017.

Civil contempt is purgeable; that is, once a violating party comes into compliance the sanctions are lifted. In civil contempt, the sanctions are conditioned on compliance with the court's order. The conditional nature of the punishment renders the relief civil in nature because the contemnor can end the sentence and discharge himself at any moment by doing what he had previously refused to do. If relief provided is a sentence of imprisonment, it is remedial if the contemnor stand committed unless and until he performs the affirmative act required by the contempt order. It is said one who is imprisoned until he obeys the order "carry the keys of their prison in their own pockets." Miller v. Miller, 375 S.C. 652 S.E.2d 754, 761 (Ct. App. 2007).

The administration of the Estate of Pop Combis has been hampered and damaged by the action and inactions of George and Chris Combis as referenced in detail above. Ballard and her attorney, Mr. Truslow have done everything in their power in attempting to recover and or fully account for property of Pop's Estate. Their reasonable efforts have been rebuffed at almost every turn as demonstrated in my findings above.

The Court has reviewed the itemized billings and attorney fee affidavits of both Ballard and Mr. Truslow and finds their fees and costs to be reasonable based upon their professional standing and the time spent devoted to this contempt matter, which was unnecessarily prolonged by the conduct of George and Chris described above. Ballard obtained overall beneficial results in this contempt action even though she failed to sustain her burden of proof as to criminal contempt or as to civil contempt of Diane. George and Chris have the financial ability to pay an

award of attorney fees and costs. The Estate needs to be made whole. Ballard's fees and costs total \$52,000, and Mr. Truslow's fees and costs total \$52,000.

To that end, as a result of George and Chris Combis being held in civil contempt of court, I find and conclude that George and Chris are hereby committed to the custody of the Lancaster County Detention Center, each to serve a sentence of ninety (90) days, suspended however upon them being jointly and severally liable for payment of Ballard and Truslow's fees and costs in the amount of \$70,000 (roughly two thirds of the amount requested due to the results obtained). The remainder of fees and costs are held in abeyance pending the trial in this matter scheduled for March 2020.

George and Chris have until December 31, 2019, to pay these fees and costs. If not paid by then, upon the affidavit of Ballard and Truslow, George and Chris are to report to the Lancaster County Detention Center on or before 01/05/2020 to serve their civil contempt sentence of ninety (90) days apiece. If either fail to purge their contempt as stated above or fail to report to the detention center by 01/05/2020, a bench warrant shall be issued for their arrest.

AND SO IT IS ORDERED

Date _____

Brian M. Gibbons
Presiding Circuit Judge



Lancaster Common Pleas

Case Caption: Desa per Rep; Ballard , plaintiff, et al VS George Combis ,
defendant, et al
Case Number: 2014CP2900306
Type: Order/Other

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge