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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.

FINAL REPLY BRIEF OF APPELLANTS

Brian S. McCoy
MCCOY LAW FIRM, LLC
378 E. Main St.
Rock Hill, SC 29730
Phone: (803) 366-2280
bmccoy@mccoylawfirm.com

Ty K. McTier
REDDING JONES, PLLC
2907 Providence Road, Suite 303
Charlotte, NC 28211
Phone: (704) 900-2215
tmctier@reddingjones.com

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INTRODUCTION

In Appellants' Initial Brief, they set forth multiple errors in the lower court's order of October 21, 2019 (the "Contempt Order") (R.p.0057), and its order of December 31, 2019 (the "Reconsider Order") (R.p.0080) (collectively herein "the Orders"). Chris demonstrated that the finding of contempt against him was error because he timely complied with the vague and confusing language used in the subpoena and in the the Order of August 8, 2017 granting the Motion to Compel ("MTC Order"), which used the term "the Original Rolex watch." Similarly, George complied with the MTC Order by producing all firearms that may have been sought by the subpoena to him.

At a minimum, each Appellant further demonstrated that he purged any contempt. Chris did so by producing a second Rolex watch on November 14, 2017, after receiving an adequate description of the watch sought. George purged any contempt by identifying a second gun on November 14, 2017 and producing the additional firearm on November 17, 2017, despite Respondent's contention at the time that the gun(s) were not a part of Pop's Estate. At that time, everything possibly required by the MTC Order had been produced, and any contempt was purged. Respondent's Initial brief does not set forth any facts or law to counter these facts and law.

Significantly, Respondent's Initial Brief does not even attempt to address Appellants' arguments demonstrating the errors in the lower court's Orders, including (i) failure to base the sanction on actual damages to be proven by the complainant; (ii) basing the sanction on time entries allegedly incurred by a party to the case; (iii) failure to analyze and limit the contempt sanction to any possible period of noncompliance; and (iv) making the random sanction joint and several as to the two Appellants.

ARGUMENT

I. AS TO CHRIS' ARGUMENTS, RESPONDENT FAILED TO ADDRESS THE VAGUE LANGUAGE USED IN THE SUBPOENA, OR THE FACT THAT ANY CONTEMPT WAS PURGED WHEN THE GOLD ROLEX WAS PRODUCED.

In Respondent's Initial brief, she fails even to address most of Chris' arguments as to errors of the lower court, or spews baseless theories with no factual support. In fact, most of Respondent's confusing alleged facts and arguments in response to Chris seem to focus on the history of the dispute between George and his sisters[1], in which Chris was not involved, or George's deposition testimony and various other allegations regarding George. (See, Resp. Br. p. 11-21).

Chris' argument is straight-forward and convincing. The subpoena requested the "original Rolex watch" given to Chris by Pop, and that is precisely what Chris timely produced. The fact that Respondent apparently wanted a *different* Rolex watch that she failed to describe in the subpoena is the fault of Respondent. In any event, when Respondent later provided an adequate description of the particular Rolex watch that she apparently was seeking, Chris produced it. Plainly, Chris did nothing to constitute a finding of contempt. "It is well settled that contempt results from willful disobedience of a court order; and before a person may be held in contempt, *the record must be clear and specific* as to acts or conduct upon which the contempt is based." *State v. Bevilacqua*, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct. App. 1994) (emphasis added).

[1] Respondent cites to the fact that Judge Gibbons recessed the hearing and ordered a SLED investigation. (Respondents Br. p. 10). However, Respondent failed to set forth the fact that SLED concluded that "there were no criminal charges to be made." (R. p. 0942).

A. Respondent Does Not Address the Vague Language Used in the Subpoena.

Absent from Respondent's brief is any attempt to explain or justify the poor language of Respondent's subpoena to Chris, which used the phrase "original Rolex watch" when she apparently intended a different gold Rolex watch. The poor language of the subpoena was emphasized in Chris' section of the Appellants' Initial brief as a reason that Chris could not be held in contempt (*See* Appellants' Br. pp. 16-21), but Respondent's brief fails to address this argument. Respondent does not even attempt to explain (i) why the silver Rolex that was timely produced is not the original Rolex, (ii) why the gold Rolex that was produced after a description was provided is the original Rolex, or (iii) how Chris was supposed to know what she meant by the term original Rolex. These omissions in Respondent's brief speak volumes.

Respondent's brief makes it clear that prior to drafting the language in the subpoena seeking the "original Rolex watch," she was aware that the Rolex watch she was seeking was gold, with a presidential band, and an engraving on back. (Respondent's Br. p. 12). However, despite her knowledge of this description of the Rolex watch, the subpoena did not include a description of color, material, band, engravings or authenticity. Instead, only the word "original" described the Rolex watch that was sought by the subpoena.[2] No explanation is provided by Respondent as to why she didn't describe the Rolex watch with reasonable particularity in the subpoena.

On August 14, 2017, Chris timely produced the silver "original" Rolex watch given to

[2] In fact, Respondent claims that at the time she issued the subpoena, she was not aware that Pop had multiple Rolex watches. (Respondent Br. p. 8). One can only ponder then why she included the confusing modifier "original" before Rolex watch, which lead to the confusion. If she had simply requested the Rolex watch, it would have resulted in a inquiry as to which Rolex watch was sought, and the entire issue would have been avoided. Respondent is responsible for the language she used in the subpoena.

him by Pop. (11/14/17 T. at pp. 28, 30, 40, 41 and 46-47) (R. pp. 0299, 0301, 0311, 0312, 0317-0318). Despite the timely production of the original Rolex watch by Chris, Respondent filed a Rule to Show Cause Petition ("RSC Petition") on August 28, 2017. In contrast to the description used in the subpoena, the RSC Petition includes a much more detailed description of the Rolex watch that she was seeking: "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). The RSC Petition includes an exhibit with pictures of the silver Rolex produced by Chris. (R. pp. 0930-0931, 0987).

A comparison of the detailed description the Rolex watch set forth in the RSC Petition with the vague description in the subpoena strikingly demonstrates the error of a contempt finding against Chris. After the Rolex watch sought by Respondent was described with reasonable particularity, as required by the Rules, Chris produced the gold Rolex watch so described. (11/14/17 p. 28) (R. p. 0299).

Instead of addressing this important and undisputed fact, Respondent sets forth a confusing and fanciful theory about the invention of a story about multiple Rolex watches. (Respondent's Br. pp.13-14). No evidence relating to Chris is cited for this theory, but instead it inexplicably focuses on deposition testimony of George. (Respondent's Br. pp. 13-18). There is no factual support for Respondent's unsubstantiated theory, and it is nonsense because there clearly were two Rolex watches, and both were produced by Chris to Respondent. (11/14/17 T. at pp. 22, 28).

In *Welchel v. Boyter*, 260 S.C. 418, 421, 196 S.E.2d 496, 498 (1973), the Supreme Court 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." Here, the Order allegedly violated by Chris was the MTC Order, which used the same impossibly vague language as the subpoena seeking "the original Rolex watch." That Order failed to tell Chris "in definite terms what he must do" and the commands certainly were not "clear and certain." Accordingly, the Orders of the lower court must be reversed.

B. Whether the Silver Rolex is Fake or Genuine is Irrelevant.

In Respondent's brief, she repeats the irrelevant argument that the original silver Rolex watch that was timely produced in response to the subpoena is not a genuine Rolex watch, according to the jeweler who testified as an expert witness at the hearing. However, as Chris set forth in Appellant's initial brief, whether or not the silver Rolex watch was genuine or fake is not relevant in any way. The record shows that 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). The Respondent's expert witness below conceded that a lay person such as Chris might not know whether it was real or fake. (11/17/17 T. pp. 20-21). (R. pp. 0442-0443).

However, the actual language used to describe the watch in the subpoena is controlling. The subpoena did not request the "authentic Rolex watch." If it had used such a description, that language would have generated further inquiry regarding which Rolex watch was authentic and which one was not. Instead, the modifier "original" was used, and Chris knew which Rolex was the original, and that is what he produced. (11/14/17 T. pp. 35, 52) (R. pp. 0306, 0323).

Thus, whether or not the silver Rolex that was timely produced in response to the subpoena was an authentic Rolex watch or not is a red herring. Respondent wants to hide from the language that she used in the subpoena, and hopes the Court won't notice the language used in the subpoena. The Orders holding Chris in contempt must be reversed.

C. After an Adequate Description was Provided by Respondent, Chris Produced the other Rolex watch, and Any Possible Contempt was Purged.

The MTC Order simply restated the vague language used in the subpoena, which required Chris to produce the "original Rolex watch" on or before August 15, 2017. Prior to the deadline, Chris produced the silver Rolex watch. Necessarily, the MTC Order was the order that allegedly was violated to support a contempt charge. Indeed, in Respondent's RTC Petition, the MTC Order is the basis for the contempt allegation. (RTC Petition p. 2) (R. p. 0168).

The RTC Petition included, with reasonable particularity, a description of the Rolex watch actually sought by Respondent, including that it was gold and a description of the face and band. (R. p. 0174). After that description was provided, Chris realized that Respondent did not want the "original Rolex watch," but instead she wanted the gold Rolex watch that Pop had given to Chris. On November 14, 2017, that gold Rolex watch was produced to Respondent, meaning Chris had certainly complied with the MTC Order, and any contempt thereof was purged.[3] "'[O]nce a civil contemnor complies with the underlying order, he is purged of the contempt . . .'" *Ex Parte Cannon v. Georgia Attorney General's Office*, 397 S.C. 541, 547-48, 725 S.E.2d 698 (2012) (quoting *Turner v. Rogers*, 564 U.S. 431 (2011)).

In response to the plain facts that the gold Rolex was produced, which purged any alleged contempt, Respondent makes the unsupported contention that "Judge Gibbons determined compliance was never going to happen," and that "[i]t was well within the trial court's authority to determine that compliance with the original order was never going to happen . . ."

[3] It is unclear why Respondent chose to continue, and the lower court allowed, the case to continue against Chris after the gold Rolex was produced. The matter should have completely ended at that time.

(Respondent's Br. p. 29). These assertions as to the alleged contempt by Chris are puzzling. First, Respondent cannot cite to any part of the record to indicate that Judge Gibbons made such a determination. Second, it makes no sense because compliance with the relevant order did happen. Even if Chris somehow should have produced the gold Rolex initially, which is denied, he absolutely did so on November 14, 2017, as reflected in the transcript. (11/14/17 T. p. 28) (R.p. 0299).

Accordingly, Respondent has provided no argument to dispute that Chris purged any contempt on November 14, 2017.

II. AS TO GEORGE'S ARGUMENTS, IN HER RESPONSE BRIEF RESPONDENT STILL COULD NOT POINT TO SPECIFIC INSTANCES OF CONTEMPT, CONTINUES TO TAKE INCONSISTENT FACTUAL POSITIONS RELATING TO THE GUNS AND ERRONEOUSLY INTERPRETS THE NATURE OF THE CONTEMPT ORDER .

A. Respondent Still Cannot Point to a Single Instance of Contempt in the Record.

Just like the Contempt Order and the Reconsider Order, Respondent in her response brief could not point to specific instances in the record (1) showing that George had possession of a specific gun/item and (2) that he failed to produce the specific gun/item.[4] This was not an oversight from the Court because at the motion to reconsider hearing, counsel for George Combis raised the issue that there were no citations to the record as to Chris and George and gave the Circuit Court one last chance to insert specific instances of "clear and convincing" evidence that George (1) had a specific item and (2) did not produce it. (R. p. 792). South Carolina Law is abundantly clear that the record has to clearly and specifically show the

[4] Respondent somehow alludes that the contempt was not based on failure to produce, but was aimed at the conduct during the proceedings which would be more in the province of criminal contempt as argued previously by Appellants. (Respondent's Br. p. 23).

contemptuous conduct. *See Spartanburg County Dep't of Soc. Serv. v. Padgett*, 296 S.C. 79, 82-83, 370 S.E.2d 872, 874 (1988) (*quoting* Black's Law Dictionary 1434 (5th ed. 1979)). *Also see, Welchel v. Boyter*, 260 S.C. 418, 421, 196 S.E.2d 496, 498 (1973).

In the instant case no such citations exist. If you look at the portion of the Contempt Order finding that Diane Combis was not in contempt, it is chocked full of citations to the record. (R. p. 0070-0074). This is important for two reasons: (1) Respondent also claimed that all of the items were the wrong items including the coins produced by Diane[5] and (2) the Circuit Court had a myriad of specific citations to find that Diane was not in contempt and zero citations to find that George (and Chris) was/were in contempt. (R. p. 0057-0069). As to George and Chris, there is not one citation to the record of a specific and clear instance of contempt. The Reconsider Order did not address any specific instances of contempt and was just as vague as the Contempt Order. Respondent's brief likewise fails to address specific instances of contempt; thus, on these grounds alone, contempt is wholly improper.

B. Respondent Claims that the Guns were Not a Part of Pop's Estate, However She has the Guns Listed in the Inventory for Pop's Estate.

Respondent completely side-steps the key issues in this appeal as to Chris and George as addressed more fully below. Specifically to George, no arguments were put forth as to why the Court, Respondent and her witnesses could not show that George had possession of the firearms Respondent contended should be turned over. In response to Appellants' arguments, Respondent fashions conflicting theories dealing with the firearms in derogation of well-established judicial estoppel principles.

The South Carolina Supreme Court in *Cothran v. Brown*, 357 S.C. 210 (2004) (*citing*

[5] This also summarily dispenses with the argument that counsel's production was somehow defective because it was done all at once.

Carrigg v. Cannon, 347 S.C. 75, 83, 552 S.E.2d 767, 772 (Ct. App.2001)), set forth five elements for judicial estoppel:

> (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

Id. Here Respondent easily meets the first prong as she has clearly taken differing stances with regard to the firearms. In her response brief, Respondent takes a bold stance and contends that George "never produced any pistols that were Pop's." (Respondent's Br. p 22). However, the inventory (the "Inventory") signed by Desa Ballard on January 31, 2020 (executed under oath and after the contempt proceeding and motion to reconsider hearing), shows the two pistols as 100% a part of Pop's estate. (R. p. 0880). The first prong is met because Respondent made the claim that the guns produced were not a part of Pop's estate in the contempt proceedings and then subsequently includes them in the Inventory. The second prong is triggered as the inventory is within the same/related proceeding Unfortunately, the third prong was met because Respondent was successful in maintaining her position and received the benefit of an absurdly high sanction award.

Respondent's inventory list pre-dates her response brief in this Court where she claims that George did not produce anything that was Pop's; yet she lists both firearms as part of Pop's estate. (R p. 0880, 0978). Respondent either forgot that the pistols are listed in Pop's inventory, in which case she can still save her position and dismiss this contempt proceeding, or her response brief was an attempt to mislead both this Court and the lower court satisfying the fourth element of judicial estoppel. Imagine if Respondent had listed the guns as part of the inventory before the motion to reconsider hearing. We would not be here. Finally, for the last element, both

positions are completely inconsistent. Although not a requirement for judicial estoppel, the Inventory was a sworn statement by Respondent. (R. p. 0880, 0978). Either the firearms are part of Pop's estate or they are not, both cannot be true.

Respondent's actions fit squarely within the five elements of judicial estoppel. Respondent continues to hold George Combis' feet to the fire by trying to throw an elderly man in jail, while on the other hand she now lists the guns he produced as part of the inventory of Pop's estate. This is not only absurd, but highlights the frustration of trying to comply with demands that can never be satiated.

If nothing else, George Combis has a right for remand of these proceedings under the post-hearing(s) factual admission by Respondent that the guns produced were "100%" owned by Pop.[6] Since the denial of criminal contempt was not appealed by Respondent, Mr. George Combis could finally testify regarding the two pistols produced in this matter. Without requiring Respondent to choose between civil and criminal contempt on a Rule 37 motion before the proceeding began greatly prejudiced George Combis' rights. Without the sword of Damocles hanging over his head, Mr. George Combis could finally defend himself properly upon remand.[7] This is especially true since Respondent now agrees that the pistols produced by George were, in fact, Pop's. (R. p. 0977-0978).

C. There Was No Finding in the Contempt Order or the Reconsider Order

[6] Respondent argues that George's prior counsel's failure to identify items gifted to George years before the subpoenas were issued entitles Respondent to a contempt order; however, as this record indicates any items identified as gifted to George or Chris' during Pop's lifetime magically appear in the inventory with no consequence to Respondent. The MTC Order said to return the items after appraisal which never happened because they found themselves listed on the inventory of Pop's Estate. (R. pp. 0040 & 0978).

[7] The Contempt Order shows that the lower court drew an adverse inference to George not testifying even though Respondent could have appealed the denial of criminal contempt. (R. p. 0057).

Where Judge Gibbons "Determined Compliance was Never Going to Happen."

Respondent states in her response that "Judge Gibbons determined compliance was never going to happen;" however, she does not cite to this "finding," mainly because it does not exist. Further, Respondent's reliance on *Turner* is misplaced in that the litigant in *Turner* was frequently in court under threat of contempt and had previously been in jail. *Turner v. Rogers*, 564 U.S. 431, 131 S. Ct. 2507, 2511, 180 L. Ed. 2d 452 (2011). Ultimately, in *Turner* the Supreme Court reversed the award of contempt for failing to determine ability to pay. *Id.*

Here, the lower court had two opportunities to cite to a specific section of the record and to show by clear and convincing evidence that George Combis had a specific item and did not produce that item for appraisal. Respondent and the lower court punted on both counts. Respondent contends that "Judge Gibbons fashioned the only remedy that could accurately recompense the circumstances, which resulted in an order finding that Appellants had violated the order of production." (Respondents' Br. p. 30). This "fashioned" remedy fabricated by the lower court violated established precedent relating to contempt and has caused enormous prejudice to George Combis. Thus, the award of contempt should be overturned.

III. RESPONDENT FAILED TO ADDRESS SIGNIFICANT ARGUMENTS IN APPELLANTS' INITIAL BRIEF SHOWING THE LOWER COURT'S ERRORS.

Significantly, Respondent did not even address the important substantive arguments in Section IV of the Appellants' Brief. (Appellants' Br. pp. 26-33). This failure is telling and the logical assumption is that Respondent had no valid arguments in response. *See Wierszewski v. Tokarick*, 308 S.C. 441, 444 n.23, 418 S.E.2d 557, 559 n.2 (Ct. App. 1992) (stating when the respondent did not file a brief, "it [was] proper to reverse on the points presented rather than to search the record for reasons to affirm"); *Campbell v. Carr*, 361 S.C. 258, 266-67, 603 S.E.2d

625 (Ct. App. 2004) (citing Rule 208(a)(4), SCACR, and holding "As in *Wyerszewski*, this court should not be inclined to do what [Respondent] neglected to do, i.e. 'search the record for reasons to affirm'").

The only argument in this section of Appellants' brief that was addressed in Respondent's brief is the fact that attorneys' fees were not awarded by the lower court, which Respondent conceded in her brief. (Respondent's Br. p. 31). The holding that attorneys' fees were not awarded is law of the case.

A. Respondent Does Not Address the Lower Court's Failure to Require a Sanction to be Based on Actual Damages Proven by Respondent.

Appellants demonstrated that the lower court erred by failing to require that its sanction for compensatory contempt must be based on actual damages that the complainant bears the burden of proving. (Appellants' Br. pp. 26-28). *See, Cheap O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 607, 567 S.E. 2d 514, 520 (2002). The lower court committed reversible error by failing to base its arbitrary sanction award of $70,000.00 on actual damages proven by Respondent. *See, Jarrell v. Petoseed Co., Inc.*, 331 S.C. 207, 212-13, 500 S.E.2d 793, 794 (Ct. App. 1998) (reversing "speculative" award of compensatory contempt damages); *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 543, 489 S.E. 2d 679, 682 (Ct. App. 1997) (trial court abused its discretion because contempt sanction was not narrowly tailored to the offense committed); *Cheapo's Truck Stop*, 380 S.C. at 609, 567 S.E. 2d at 521 ("Any component of a sanction must be directly related to the contemptuous conduct and the loss incurred by the offended party"). Respondent failed to address this argument in her brief. Respondent also did not address why a fine of $70,000.00 was appropriate given all the items comprising the hearing were valued at $5,468.72. (R. p. 0978).

B. Respondent Failed to Address the Lower Court's Error of Basing the Sanction

on Time Allegedly Incurred by Respondent, a Party to the Case.

Appellants demonstrated the error of the lower court of basing a sanction on time allegedly incurred by the Respondent, who is a party to the case and is not entitled to an award of her time. (Appellants' Br. pp. 29-30). *See, First Union Nat'l Bank of South Carolina v. Soden*, 333 S.C. 554, 571, 511 S.E.2d 372, 381 (1998) (a litigant is not entitled to an award of attorneys' fees even when the litigant is a practicing attorney). Respondent did not address this argument in her brief.

C. Respondent Concedes that Attorneys' Fees Were Not Awarded, and Fails to Address the Lower Court's Failure to Analyze the Time Records Submitted by Respondent and Limit the Sanction to the Appropriate Time Periods.

It is undisputed law of the case that the lower court did not award Respondent her attorneys' fees. (Appellants Br. p. 26). However, if not based on attorneys' fees, there is absolutely nothing upon which to base the lower court's random sanction amount of $70,000.00. Respondent concedes that attorneys' fees were not awarded. (Respondent Br. p. 31). If the sanction amount is not attorneys' fees, which it is not, then no explanation for the sanction amount is provided in the lower court's Orders or by the Respondent.

In any event, if the sanction could somehow be based on time spent by Respondent's counsel, but not constitute attorneys' fees,[8] Appellants demonstrated the lower court's error by failing to analyze the time records submitted by Respondent and her counsel, and to limit any award to the appropriate time periods. (Appellants' Br. pp. 31-32). The defects include the failure to limit any sanction to the relevant beginning time period of when any award possibly could have begun to accrue, and the failure to end any sanction to the date that any contempt was

[8] Respondent makes the illogical contention that although the lower court did not award attorneys' fees, the sanction was based on the time spent by Respondent and her attorney. (Respondent Br. p. 31).

purged. Further, the time entries of Respondent and her counsel fail to differentiate the time entries allegedly devoted to the Chris issue concerning the Rolex watch, and those time entries allegedly devoted to the George issue concerning firearms. *See, Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 399 S.E.2d 439, 440 (Ct. App. 1990) (contempt "sanction should be aimed at the specific misconduct of the party sanctioned . . . [and] should be a rifle-shot, not a shotgun blast"); *Harris-Jenkins v. Nissan Car Mart, Inc*., 348 S.C. 171, 557 S.E.2d 708 (Ct. App. 2001) ("compensatory contempt seeks to reimburse the party for the costs it incurs in forcing the non-complying party to obey the court's orders").

In *Ex Parte Cannon v. Georgia Attorney General's Office*, 397 S.C. 541, 725 S.E.2d 698 (2012), the circuit court convened a hearing after remand to determine an appropriate amount of attorneys' fees to be awarded in a civil contempt matter. The circuit court analyzed the affidavit submitted by the attorney and found the attorneys' fees to be reasonable after application of the *Taylor* factors. On appeal, the Supreme Court did not reverse the award of attorneys' fees below, but it reversed and modified in part because the affidavit and expense sheets in the record "still include some items that are not related solely to the two matters for which [Appellant] was found in contempt in this action, as there are line entries that predate the earliest of the two orders that [Appellant] was accused of violating." *Id*. at 550, 725 S.E.2d at 702.[9]

Respondent did not address this argument in her brief.

[9] The time entries submitted by both Respondent and her counsel reveal time entries began on April 4, 2017, which is well before the filing of MTC Order on August 8, 2017, and before the filing of Respondent's RSC Petition (which included a reasonable description of the watch sought) on August 28, 2017. Moreover, the time entries continued until October 11, 2019, which is far beyond November 14, 2017 when Chris purged any possible contempt, and November 17, 2017, when George purged any possible contempt. The vast majority of the time entries and resulting fees were outside the possible window of time that any fees relating to alleged contempt by Appellants could have accrued. (R. pp. 0952 & 0957).

D. Respondent Failed to Address the Error of the Lower Court by Making the Sanction Joint and Several.

Appellants demonstrated the error of the lower court in making the sanction joint and several liability as to George and Chris. (Appellants' Br. pp. 32-33). Instead, any compensatory contempt award must be based upon the actual conduct of each Appellant. *Karppi*, 327 S.C. at 543, 489 S.E.2d at 682 ("The need for the trial court to narrowly tailor its sanction to the offense committed by a party is never more evident than in cases involving multiple parties").

In this case, there is simply no basis for a joint and several sanction. The conduct of Chris and his response to the subpoena request for the "original Rolex" is completely separate and unrelated to George's response to his subpoena request for "firearms." Moreover, the alleged damages are severable. For a sanction of compensatory contempt against Chris, Respondent was required to prove damages relating to the conduct of Chris. *See, Id.* For a sanction of compensatory contempt against George, Respondent was required to prove damages relating to the conduct of George. *Id.* The Orders below failed to comply with this requirement.

As a practical matter, it is unclear how a joint and several sanction for contempt would work in this case. For example, it appears that if one of the Appellants was able to pay half of the sanction amount, and the other Appellant paid nothing, both of the Appellants would go to jail. Further, separate proceedings may be required to apportion fault, and to determine contribution among the parties because the lower court failed to apportion the contempt sanction.

Respondent did not address this argument in her brief.

CONCLUSION

The trial court committed numerous errors in its Contempt Order and Reconsider Order. The rulings should be reversed.

This the 2nd day of March, 2021.

s/ Brian S. McCoy
Brian S. McCoy
MCCOY LAW FIRM, LLC
378 E. Main St.
Rock Hill, SC 29730
bmccoy@mccoylawfirm.com

s/ Ty K. McTier
Ty K. McTier
Redding Jones, PLLC
2907 Providence Road, Suite 303
Charlotte, NC 28211
Phone: (704) 900-2215
tmctier@reddingjones.com

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CERTIFICATE OF COUNSEL – FINAL REPLY BRIEF OF APPELLANTS

The undersigned certifies that the Final Brief of Appellants complies with Rule 211(b), SCACR.

This 2nd day of March 2021.

s/ Brian S. McCoy
Brian S. McCoy
MCCOY LAW FIRM, LLC
378 E. Main St.
Rock Hill, SC 29730
(803) 366-2280
bmccoy@mccoylawfirm.com
ATTORNEYS FOR APPELLANTS