THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 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 the
Appellants,

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

The trial court found Appellants in civil contempt of court. Appellants were given their choice of a 90-day sentence at the Lancaster County Detention Center or payment to the Estate of $70,000.00 to purge the sentence. That amount was calculated based on the amount of time the personal representative and her counsel spent demonstrating to the Court the contemptuous conduct of Appellants, based on a theory of compensatory contempt. (R. pp. 77-78). On rehearing, the trial court edited its order slightly to make that the contempt order was for civil contempt and could be purged. (R. p. 81).

The trial court granted Appellants' motion to stay the enforcement of sanctions pending appeal. (R. p. 109).

STANDARD OF REVIEW

A finding of contempt rests within the sound discretion of the trial judge. *Duriach v. Duriach*, 359 S.C. 64, 596 S.E.2d 908 (2004). "Such a finding should not be disturbed on appeal unless it is so unsupported by the evidence or the judge has abused his discretion." *Dimarco v. Dimarco*, 393 S.C,. 604, 713 S.E.2d 631 (Ct.App. 2011).

FACTS

This is one of many disputes which arose following the death of Chris Combis, (referred to throughout most of the proceedings as 'Pop") in February 2009, but the first to be before this Court[1]. Most of the substantive issues were decided by United States District

[1] Prior litigation was filed (by Linda and Mary) in the General Court of Justice, Superior Court Division, Mecklenburg County, North Carolina, was removed to the United States District Court for the District of North Carolina and remanded back to state court.

Court Joseph F. Anderson Jr. in a non-jury trial, but matters related to specific items of personal property owned by Pop at his death were left to the probate court[2] in Lancaster to litigate. (R. pp. 8-9).

Pop was the patriarch of a family which "enjoyed considerable financial success in the decorative tile and stone business in Charlotte. . ." (R. p. 5[3]). Judge Anderson undertook to "untangle and resolve the issues presented, with the observation that the failure [of the Combis family] to follow even rudimentary formalities and reliance upon 'home drawn' financial documents often sow the seeds of controversies that tax the ability of the legal system to achieve justice years [4]later." *Id.*

South Carolina litigation includes a foreclosure action in Lancaster County Circuit Court, to which third-party claims were added by the successor trustee, and independent claims by the successor trustee against George and Diane Combis for theft of funds from the trust. Those matters were consolidated by Judge Gibbons, and removed to United States District Court for South Carolina and decided (except for probate issues addressed in this litigation) by District Judge Joseph F. Anderson Jr. Judge Anderson's order was appealed to the Fourth Circuit Court of Appeals, which affirmed in part, reversed in part and remanded. Judge Anderson issued subsequent orders on remaining issues in District Court. The instant matter relates to the litigation of personal property owned by the deceased, which Judge Anderson remanded to the Lancaster County probate court. That court, *sua sponte*, transferred the matter to the circuit court. All of the litigation arises from refusals by George and Diane Combis to repay money they stole from the trust prior to Pop's death.

[2] The probate court transferred the case to Circuit Court. (R. pp. 1-2).

[3] As Judge Anderson noted, Pop's company "provided stone and tile work . . . [at] the Charlotte Panthers Stadium and the Headquarters for Bank of America. . . George even bragged that it would be easier to produce a list of buildings in Charlotte that Superior Tile had *not* worked on than to provide a list of those for which the company *had* performed work." (R. p. 6).

[4] Diane's "surprise" at the amount in controversy exceeded $75,000.00 was directed to the United States District Court for the District of South Carolina almost a year <u>after</u> she had sworn to the United States District Court for the District of North Carolina that "the amount in controversy . . . exceeds the sum or value of $75,000.00. . ." <u>Linda Combis and Mary Combis v. George C. Combis and Diane Combis</u>, Case No. 12-CVS-17140, General

George's wife Diane was named as the trustee of Pop's trust before Pop's death. Prior to Pop's death, Diane took all the cash from the trust (approximately $412,000) and she and George used it for their personal purposes[5]. In 2012, George told Linda and Mary that all of the money Pop left them was gone (he didn't tell them he was the one who had taken it). At that time, Linda and Mary hired counsel and open an estate in Lancaster County. South Carolina attorney Desa Ballard was nominated and appointed by all parties to serve as personal representative of the estate and, later, successor trustee of Pop's trust.

Ballard brought actions to recover the funds George and Diane had stolen from the trust and to recover a promissory note that was owed to Pop's estate.

All litigation was consolidated by Order of Judge Gibbons on March 27, 2014. After consolidation, George and Diane[6] claimed surprise that the amount in controversy was in excess of $75,000.00, and removed the action to United States District Court, which led to the non-jury adjudication by Judge Anderson. The decision adjudicated all then-pending issues (other than the personal property issues) by entry of judgment against

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Court of Justice, Superior Court Division, County of Mecklenburg, which was removed to United States District Court for the Western District of North Carolina on June 3, 2013 and assigned Case No. 3:13-cv-335. Diane's "surprise" is one of many occasions on which she and Appellants fabricate facts as needed to support their position at any given time.

[5] The funds were paid on a line of credit George and Diane had that was secured by their home. (R. p. 995 lines 6-11)

[6] Throughout these eight (8) years of litigation, George and Diane, and later their son Chris, have been represented by the same groups of lawyers (which changed from time to time), which prompted the Fourth Circuit Court of Appeals to note that the joint representation "appears, at best, ethically fraught." (R. p. 53). Various filings have been done sometimes by George, sometimes by Diane, and sometimes by both.

George and Diane for breach of fiduciary duty. (R. p. 34). He denied relief to the estate on a promissory note owed to Pop's estate.

Both parties appealed to the Fourth Circuit, which affirmed in part, reversed in part, and remanded[7]. (R. p. 49). On remand, Judge Anderson granted a judgment to Pop's estate against Superior Tile Marble and Terrazzo, a company begun by Pop in the 1960s which George now owns. (R. p. 108).

Since Judge Anderson specifically elected not to deal with items of personal property listed by Ballard as PR on the estate inventory, Ballard began discovery to obtain assets owned by Pop that were in the possession of Chris, Diane, and George to have them appraised. (R. pp. 905-914).

During her initial investigation, counsel for the Combises confirmed that Pop had a gold Rolex of which he was quite proud. His initial trust documents gifted the Rolex to his grandson Chris (George and Diane's son) upon Pop's death, but a later amendment to the trust removed that gift. (R. p. 871).

As Ballard began looking for the personal property, counsel for the Combises told her that Chris had Pop's Rolex watch. (R. p. 513, lines 10 – 17). They would not release the watch for appraisal. (R. p. 573, line 3 - 18).

[7] George and Diane were represented by the same counsel on appeal. Counsel threw Diane under the bus at the Fourth Circuit by arguing that only Diane, and not George, should be liable for the theft of funds. The Fourth Circuit agreed, reversing the joint and several judgment as to George, but leaving it in place as to Diane. (R. p. 56).

At no point prior to the filing of the Rule to Show Cause did anyone ever say Pop had multiple Rolex watches.

Counsel for the Combises also stated that George had multiple pistols that belonged to Pop. (R. p. 508, lines 2 – 22; R. p. 565, line 11 – p. 567, line 25). Counsel would not identify the pistols by model, serial number, or any identifying information. *Id.* Despite multiple requests for more specific information about the items, the Combises' counsel refused[8]. (R. p. 508, line 17 – p. 510, line 1).

By that time Ballard was receiving no cooperation from the George/Diane side of the family[9]. She issued a subpoena to Chris Combis for the "original Rolex watch allegedly gifted to you by the deceased for appraisal." (R. pp. 905 - 914). She also issued a subpoena to George for "any and all firearms 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." (R. pp. 905 - 914). The probate court transferred the matter to Judge Gibbons,

[8] The Combises have gone through multiple attorneys. With the issuance of the subpoenas by Ballard, the Combises hired the counsel who represented them before the District Court and on appeal to the Fourth Circuit. (R. p. 509, lines 21-23). Those counsel are still representing George on appeal, but Chris has now gotten separate counsel. (R. p. 960).

[9] George filed two (2) lawsuits against Ballard in North Carolina after she filed the initial inventory of the estate, one attempting to remove her as personal representative and another to litigate ownership of company stock Ballard had listed as an asset of Pop's at the time of his death. Once the lawsuits began, counsel representing George and Diane refused to communicate with Ballard and she had to hire counsel both in NC and SC. George also unsuccessfully asked the SC court to remove Ballard as personal representative. While SC had exclusive jurisdiction over Pop's estate, the NC court permitted George to litigate ownership of an estate asset in NC and ruled with George.

who issued an order compelling production of the items Ballard had subpoenaed.[10] (R. p. 40).

After offering to send photos of the items, counsel for the Combises delivered a box to Ballard's office which contained the items supposedly covered by the order to compel. The items produced included an obviously fake Rolex watch and a single cheap gun.[11] (R. p. 514, lines 3 – p. 515, line 25). Ballard had two jewelers in Columbia look at the watch to confirm her suspicions and also had a SLED agent examine it. (R. p. 516, lines 1 – p. 517, line 16[12]). She obtained photos of the watch and additional descriptions and filed a Petition and Rule to Show Cause seeking contempt against George, Diane, and Chris for producing fake items in response to the court order.

The Rule to Show Cause hearing convened nonjury in Lancaster County before Judge Brian Gibbons on November 14, 2017. Ballard called as witnesses the Respondent Chris Combis, Respondent Diane Combis, and Lauren Combis, who is/was the ex-wife of respondent Chris Combis. On the second day of trial, Ballard introduced a jeweler who confirmed the watch was not a real Rolex. She introduced testimony of Linda Combis (one

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[10] There was a third subpoena, to Diane for Pop's coin collection. Diane was not found to be in contempt. Chris was not a party to the action at the time; he became a party only after he refused to comply with a subpoena and was a Respondent in this Rule to Show cause.

[11] There were several rolls of pennies, and a few coins encased in vinyl, but not the coins Ballard had been looking for as belonging to Pop.

[12] Counsel for the Combises would not agree that the fake Rolex was a fake. (R. p. 434, line 23 – p. 435, line 1). Ballard knew the watch was not a real Rolex, brought to sustain proof, she presented testimony from a jewelry expert from Lancaster who examined the watch and confirmed it was "very obvious" that the watch was a fake Rolex. (R. p. 436, lines 14 – p. 439 line 6).

of Pop's three adult children) and began her own testimony. On the second day of the hearing, Judge Gibbons halted Ballard's testimony and met with counsel in chambers. (R. p. 531, line 23 – p. 538, line 21). Following the in-chambers meeting, Judge Gibbons recessed the hearing, ordering a SLED investigation:

> . . . The most important thing that the Judge has to do is to make sure that people's constitutional rights are protected. . . Having said that – having sat through almost a full day's worth of testimony in this case, it's this Court's opinion . . . , that his has gone beyond a civil or criminal contempt complaint into possible criminal malfeasance. . . I have a duty to report what I've heard as possible criminal violation of both South Carolina law and North Carolina law. What I've heard can possibly arise to breach of trust in South Carolina, which is punishable by up to ten years in prison, a felony. What I've heard could possibly arise to criminal conspiracy, which in South Carolina is up to ten years in prison. Also. . . what I've heard could possibly arise to perjury. . .

(R. p. 532, line 12 - p. 534, line 25).

Judge Gibbons referred the matter to SLED. Almost two years later, Judge Gibbons lifted the stay (Order dated April 16, 2019) and reconvened the Rule to Show Cause. (R. pp. 540 - 761). Ballard concluded her testimony, and Appellants offered no testimony in opposition to the Rule to Show Cause. (R. p. 724, lines 20-23[13]).

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[13] Judge Gibbons explored with the parties the mysterious appearance of a second pistol that had appeared in the courtroom just as the court recessed for lunch. (R. p. 725, lines 1-8). Ms. Ballard identified the pistol she had brought to court that morning (that had been produced to her by opposing counsel) in a ziplock bag. (R. p. 725, lines 6-14). Judge Gibbons identified a second pistol that was found in the courtroom just as the lunch recess occurred. (R. p. 725, lines 19 – 22). The clerk of court had taken possession of the new and unidentified pistol when it was found in the courtroom and the pistol was produced after court reconvened. (R. p. 726 line 15 – 20). The Combises' counsel claimed the second gun had been "in the courthouse when the previous hearings were held in November of 2017." (R. p. 728, lines 3-10). Judge Gibbons concluded "now we have two (2) pistols in . . . in the courtroom." *Id.* lines 16-22. No determination was made as to h ow or when

He issued an order finding George and Chris to be in contempt of court, and the order was amended on rehearing to clarify it was civil contempt. This appeal followed.

ARGUMENTS

ISSUE ONE - CHRIS

Chris argues on appeal that he genuinely believed the fake Rolex he produced was the "original" Rolex sought in the subpoena and the order of contempt should be reversed because Ballard did not establish he was sophisticated enough to know a fake Rolex from a real Rolex.

Chris was not a party to this action until he was served with a subpoena to deliver Pop's "original Rolex" to Ballard for appraisal. He was, however, reported by his counsel to have possession of Pop's Rolex watch. (R. p. 507, lines 10 - 17). It was that watch for which a subpoena was served on Chris[14]. (Subpoena).

On appeal, Chris argues that he "timely produced a Rolex watch in response to the MTC Order that he believed was the original Rolex of Pop." (App. Br. p. 10). He testified that Pop had an older stainless and gold Rolex, and he claimed that was the "original" Rolex gifted to him by Pop. (R. p. 293, line 17 – p. 294, line 3; p. 299, line 10 – p. 30, line 5; p. 305, line 19 -23).

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the second pistol appeared in the courtroom. Appellants introduced the second pistol into evidence. (R. p. 731, lines 10-18).

[14] We now know from Chris's testimony that he never saw the subpoena or the court order requiring him to produce the subpoenaed item. He got an email from his attorney, Joe Pellington (R. p. 299, lines 11- p. 300, line 1) which set in motion the events which led to Chris (and George) being held in contempt.

Pop, did, in fact, have a stainless and gold Rolex that he sold to Linda's ex-husband in the early 1990s. (R. p. 451, lines 7-18). The Rolex that Pop owned at the time of his death was an 18k gold Rolex watch with a presidential band with professional engraving on the back. (R. p. 450, line 17 – p. 451, line 2; p. 451, line 19 – p. 452, line 8). Linda described the watch in detail, which she personally knew. Pop's Rolex was identical to the Rolex Pop's wife Jesse had, the only difference being the color of the face. (R. p. 451, lines 1-6)[15]. At Jesse's death, Linda inherited her mother's gold Rolex watch. *Id.*

Ballard's investigation determined that Pop had one gold Rolex at the time of his death. (R. p. 506, line 21 – p. 507, line 17). Ballard had examined photos of Pop wearing his gold Rolex for many years prior to his death. (R. p. 515, line 20 – 25; p. 516, lines 22-23). In the period immediately preceding his death, Pop was at an assisted living facility and he got "panicky" thought he had lost the gold Rolex. (R. p. 455, line 1 – 12). Diane took the Rolex for safekeeping and confirmed to Linda that she had it. *Id.* line 13 – 19).

Ballard filed the Rule to Show Cause in August 2017, after a fake Rolex had been produced in response to Judge Gibbons' order compelling production of the Rolex and other items.

In a deposition shortly after that, in September 2017, George said that <u>he</u> had the real gold Rolex that had been Pop's, and Pop had other Rolexes as well. (R. p. 518, lines 1 - .p. 520, line 17). George went out of his way at the Sept/Oct. 2017 depositions to

[15] Pop lived with Linda from 2000 until his death in 2009. (R. p. 449, line 17 – 20). Linda had to wash Pop's gold Rolex with a toothbrush because he wore it all the time and it would get dirty and need to be cleaned. (R. p. 451, line 1 – 6; p. 453, lines 14- p. 454, line 4).

suggest Pop had multiple Rolexes, which occurred immediately after the fake Rolex had been produced in response to Judge Gibbons order, and after Ballard had filed the Rule to Show Cause (R. pp. 167-178). Linda Combis confirmed that the fake Rolex produced in response to the order compelling production was not Pop's watch. (R. p. 453, lines 6-13).

Clearly, the story about there being multiple Rolexes was manufactured to provide a defense for Chris in the Rule to Show Cause hearing. George was deliberately evasive about which Rolex was which in his deposition. (R. p. 1010 line 1 - p. 1019 line 3; R. p. 519, line 19 – p. 523, line 20). In fact, he wore one gold Rolex when the deposition convened in September 2017 but did not wear it when the deposition reconvened in October 2017, claiming he had gifted the Rolex to one of his grandsons. (R p. 1083; R p. 521, line 6 – p. 524, line 20). The gold Rolex that George was wearing on the first date of his Sept./Oct. 2017 deposition, and that he was not wearing when it reconvened a few weeks later, was worth more than $5,000.00. (R. p. 522, lines 10 – 19[16]).

The only reasonable conclusion is that, after having been caught producing a fake Rolex, it was the joint intent of George and Chris to create a cover story for why a fake Rolex was produced in response to Judge Gibbons order compelling production. This occurred after four (4) years of litigation which focused, *inter alia*, on Pop's single gold

[16] George testified in his deposition in Oct. 2017 that he had gifted the gold Rolex he had been wearing when the deposition recessed in September, 2017 to his grandson. (R. p. 1083; R. p. 521, line 6 – p. 524, line 20). Had that been true, George would have been violated a stay issued in North Carolina to secure the trust's judgment against George and Diane during their appeal. (R. p. 522, 20 - p. 524, line 5).

Rolex (and confirmation from their attorney that Chris had Pop's [only] Rolex). (R. p. 506, line 24-25; P. 507, lines 9 – 17;).

George was arrogant and disruptive during his deposition[17]. He refused to bring any of the documents which had been subpoenaed, saying "I felt like I didn't need to bring anything" and confirmed he made no effort to "look for any documents" to respond to the subpoena. (R. p. 1009, lines 3-20). He testified he had purchased "40 or 50" Rolexes from different sources, and "enjoy them for a little while and then sell them, give them away." (R. p. 1010, lines 20 – 23; p. 1014, lines 18 – 25). He refused, even after his counsel told him he could answer, to divulge the contents of his safe, stating it to the court reporter "And you can capitalize that if you want to." (R. p. 1011, lines 11-24).

Q. I could hear part of it. You turned to the court reporter and said, you can capitalize that?

A. Yeah.

Q. Does that mean you are emphatic that you're not going to –

A. Right.

Q. You're winking and putting the thumbs up, meaning you refuse to tell us what assets you may have in your safe?

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[17] George's arrogance permeated these proceedings almost from the beginning. Judge Gibbons viewed an email from George to Ballard's counsel Truslow which said, *inter alia*, "I TOLD YOU BEFORE – STOP WASTING MY MONEY ON YOUR STUPID NEED TO KNOW STUFF. All you and our so called 'ASSISTANT' Desa is doing is running up your fees." (R. p. 1122) (emphasis in original).

A. Correct.

(R. p. 1012, lines 1-10).

With reference to the actual Rolex that belonged to Pop, George testified that he gave his father a Jubilee Rolex in 2008[18]. (R. p. 1015, lines 22- p. 1016, line 1; p. 1016, line 22 - 23). George then backtracked and said Pop had borrowed George's own Rolex to "impress a friend and then he bought his own and gave me that one back." (R. p. 1016, lines 3-5).

A. I gave it to my son, Chris, with the stipulation that it was my watch and if you – I didn't want him to go out and sell it or trade it because there was a little bit of sentimental value in giving it to my dad. So my dad got – got his self another one and then I gave this[19] watch to Chris and, again, with the stipulation that don't sell it, or, you know – for another one or whatever."

(R. p. 1016, line 20 – p. 27 line 1). The gift from George to Chris was "maybe '10 or '11". (R. p. 1017, lines 2-10).

Q. The other watch, what happened to it? The other Rolex watch that your father had?

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[18] Pop's original Rolex was a gold Rolex that he identified in his 2003 trust agreement, designating it to be a gift to his grandson Chris after his death. (R. p. 808). Pop amended his trust in 2008 to delete that provision and others. (R. p. 871).

[19] This testimony was also false. Lauren Combis, Chris's estranged wife, tried on the real gold Rolex which was mysteriously produced by counsel for the Combises on the first day of trial and confirmed this was the watch Chris had that was re-styled for her. (R. p. 402, lines 10 - p. 403, line 24).

A. He kept –

George's counsel: Objection.

A. My father kept it.

Q. Do you know where it went, what happened to it?

A. Yeah. He told Diane to take and sell it or do whatever and – but we kept it and that's what we turned in a month to (pauses) – . . .

Q. So from the time your father gave it to you, it's been in yours and Diane's possession?"

George's counsel: Objection.

A. Yes.

(R. p. 1017, lines 11-25).

Q. And what did your son do with the watch that you said your father gave to you and you gave to Chris in 2010/2011? Where is that watch?

George's counsel: Objection.

A. I have it.

Q. You still have it?

A. Yes.

Q. . . . where is it?

A. (Indicates).

Q. That's what you're wearing today?

A. Yes.

(R. p. 1018, lines 1-13).

Chris argues on appeal that Ballard had the obligation to introduce evidence that he was sufficiently sophisticated to know a fake Rolex from a real gold Rolex. Since no one filed a response to the Rule to Show Cause, it was not until Chris testified that it became apparent that George's deposition testimony was the seed planted to introduce the story about multipole Rolexes. With everyone represented by the same attorney, Ballard really has no idea who produced the box that contained the fake Rolex. It came from the law firm that represented George, Diane, and Chris. Clearly, George knows a lot about Rolex watches, having purchased more than 50 during his lifetime.

The cover letter from the Combises' lawyer accompanied a single box, which contained items ordered produced from three separate subpoenas. The cover letter itself made no distinction as to who was delivering what. (R. p. 928).

George testified that he was the one who placed the watch in the box before it was sealed (for delivery to Ballard). (R. p. 1069, line 13 – p. 1072, line 21). Chris testified that he had turned the watch over to his counsel. (R. p. 301, line 2 – 20).

Chris testified at the hearing, gratuitously, that Pop had two Rolex watches. (R. p. 293, line 24 – p. 294, line 4; lines 20-25). Chris also testified that George's testimony that Pop's Rolex was given to Chris in 2011, two years after Pop died, was false. (R. p. 297, lines 2 – 8).

Chris emphasized in his testimony that Pop had "two" Rolex watches and that Pop had given him both. (R. p. 297, line 9 – p. 299, line 17.) It was during Chris's direct testimony that the only real Rolex was pulled from the pocket of the Combises' counsel. *Id.* Chris was cagey about when he turned over each of the watches to his counsel. (R. p. 300, line 2 – p. 301, line 15).

However, his familiarity with the watches became apparent when he demonstrated to Ballard's counsel how to open the band on the watches and pointed out what Chris said was engraving on the watch. (R. p. 301, line 21 – p. 302, line 15). While holding both watches at the hearing, Chris admitted that the real Rolex was heavier because "gold weighs." (R. p. 306, lines 3 – 15). While he denied knowing the watch that was produced was not a real Rolex, he freely admitted the difference in the weight of the watches. *Id.*

In retrospect, the record demonstrates Chris's counsel carefully objecting to individual questions to assist his client in narrowing his testimony to blur the lines of which watch was the real Rolex, and which was not and when Chris turned over the fake one versus the real one. (R. p. 307, lines 11-14; p. 307, line 22 – p. 308, line 4). Chris kept on script carefully. (R. p. 311, lines 21-25).

Lauren Combis, Chris's estranged wife, cleared up the confusion. She said the gold Rolex (the one held back and suddenly pulled from counsel's pocket during the hearing)

was a Rolex given to Chris by George, and that Chris had redesigned for her to wear. (R. p. 402, line 7 – p. 403, line 11). Lauren testified that Chris had a link removed from the real Rolex so it would fit her, and it did fit her. (R. p. 403, line 15 – p. 404, line 14). Lauren recalled that the family wanted to keep Pop's Rolex in the family. *Id*. Lauren returned the real Rolex to Chris when he had to attend some legal proceeding. (R. p. 404, lines 1-3; lines 23-25; p. 407, line 4 – 16). Lauren gave the real Rolex to Chris "because he needed it for this whole mess." (R. p. 407, lines 13-16).

Chris's counsel attempted to try to convince Lauren she was mistaken. She was firm. "That's the watch that after Pop died, Chris gave it to me. He had it fixed up, links taken out, presented it to me. It was beautiful, I wore it." (R. p. 408, line 6– p. 409, line 9). She said the face had been changed since she surrendered it to Chris, but it was the same watch he had given her because it had the same crude scratching that she remembered. (R. p. 402 line 7 – p. 403, line 24; p. 404, lines 7-14)

Judge Gibbons specifically said that he judged the credibility of the witnesses. (R. p. 63, ¶ 18).

> The . . . findings . . . 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. (R. p. 63, ¶ 18).

While George did not testify[20], he was animated in the courtroom and Judge Gibbons could not escape George's performance. During Linda Combis's testimony, she answered a question about the number of safes George had in his house. Linda said "I believe he has a couple." (R. p. 466, lines 9-12). A few minutes later, Judge Gibbons stopped the proceedings and called George down for his behavior in the courtroom.

> Going back to the question about five minutes ago about the number of safes. I don't know Mr. Combis. I assume the person sitting behind you. . . is Mr. George Combis. He's sitting beside the witness that's been identified as Diane Combis. I'm going to take judicial notice of the fact that when his sister's up here and testifying and she said I don't know the number, he said – he mouthed the word six and held up six fingers, and he's nodding his agreement that there is – there must be six safes in his house. . . so you may want to talk to your clients about trying to communicate with the witnesses while they are on the witness stand.

(R. p. 468, line 13 – p. 469, line 2).

While George did not affirmatively testify in his defense to the Rule to Show Cause, his behavior in the courtroom did not go unnoticed. Judge Gibbons observed George and Chris's behavior in the courtroom and factored that into his conclusions about credibility. Judge Gibbons didn't believe George and Chris. Judge Gibbons correctly concluded that Chris and George willfully kept the real Rolex and produced a fake Rolex to Ballard to thwart the authority of the court.

The timing of the second Rolex story becomes apparent when juxtaposed against the production of the items by the Combises to Ballard in August 2017, the filing of the

[20] George's testimony was offered by Ballard via depositions taken in September and October, 2017.

Rule to Show Cause, also in August 2017, and George's depositions in September and October 2017, where the story of multiple Rolexes was born. The story materialized when Ballard called foul on the production of the fake Rolex and the Combises had to come up with an explanation for why they produced a fake Rolex[21] rather than Pop's gold Rolex.

ISSUE TWO - GEORGE

George argues that he should not be held in contempt for producing a cheap pistol that was not Pop's because he finally produced a second cheap pistol at the hearing in this matter. However, he never produced any pistols that were Pop's.

Before George decided to stop cooperating, George's attorney told Ballard that Pop had several guns and that George had them. (R. p. 508, lines 6- p. 510, line 1). George and Diane confirmed to Ballard that they had property of Pop's, including guns. (R. p. 500, line 21 – p. 501, line 4). Even after the items were subpoenaed, they refused to turn anything over. (R. p. 509, line 24 – p. 510, line 1).

George also argues that he cannot be held in contempt because the subpoena didn't sufficiently describe "the pistol" that was Pop's. Ballard testified that she repeatedly asked for details of Pop's guns and George's counsel refused repeatedly to send pictures, tell her the make and model, or disclose anything at all about Pop's guns. (R. p. 508, lines 2 – 18). Ballard said after judgment was entered against George and Diane in the District Court, she issued subpoenas for the items she needed to complete the estate proceeding. (R. p.

[21] When Judge Gibbons halted the proceedings to order a criminal investigation, he had already observed George's behavior for two days, heard Chris's and Lauren's testimony, and may have already read George's deposition transcripts.

509, line 13 – p. 513, line 2). George is the architect of Ballard's inability to describe Pop's pistols in more detail.

Once Judge Gibbons ordered George to comply with the subpoena, a cheap gun of unknown origin was produced to Ballard. Ballard and her counsel attempted to get the "real story" before seeking relief from the Court, but they were stonewalled. (R. p. 516, line 15 – p. 518, line 19).

Judge Gibbons' order clearly charged George with the responsibility for producing Pop's pistols. "George testified that any pistols that Pop had were kept in [a[safe . . . and when he was ordered to produce the pistols to Ballard. . . Diane gave him the single pistol that was produced to Ballard." (R. p. 62, ¶ 17).

George, however, misconstrues the reasons Judge Gibbons found that he was in contempt of court. The order to compel dated August 8, 2017, did not order George to deliver the gun(s) or Chris to deliver the Rolex(s). It ordered all three Respondents, including George and Chris, to produce the subpoenaed items to Ballard by a certain date[22]. (Order dated August 17, 2017). Judge Gibbons' order of contempt specifically dealt with the production by all the Combises as a group. (R. p. 61, ¶11). The items produced were produced *en masse*.

The order of contempt specifically states that counsel for "George, Diane and Chris delivered . . . a box containing certain items of personal property." (R. p. 64, ¶ 1). There

[22] As noted above, it was not George who delivered the gun, or Chris who delivered the fake Rolex. The cover letter was from counsel for all three by the counsel who represented all of them and it did not delineate who was producing what item(s). (R. p. 928).

is no appeal from the finding that the items produced were produced by George, Diane and Chris as a single package. Indeed, their counsel's letter specifically said it was a joint production from all of his clients. (Petition and Rule to Show Cause, Exhibit B, with attachments; also, letter dated 8.14.2017).

Therefore, in determining George was in contempt of court, Judge Gibbons properly considered George's active participation in manufacturing the story about multiple Rolexes to try to cover for Chris, as discussed above. The order to produce Pop's property was addressed to the Combises as a group. Therefore, the order required George's cooperation in delivering Pop's original Rolex to Ballard. *Id.* It doesn't matter whether George, Chris, or even perhaps their counsel, came up with the ruse of creating a story of multiple Rolexes, they all actively perpetrated it.

In his order of contempt, Judge Gibbons stated as follows:

> 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.

(R. p. 62, ¶ 17).

Judge Gibbons' order of contempt also found it significant that the real gold Rolex and 'second pistol" were produced during the hearing on the Rule to Show Cause. He referenced

> [t]he 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.

(R. p. 66).

George was not held in contempt solely because of his failure to produce any of Pop's pistols. He was held in contempt because "it is clear from the long and convoluted record in this case that [George] 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." (R. p. 70, ¶ 29).

The record overwhelmingly supports the trial court's finding that George was in contempt of court and should be sanctioned accordingly.

ISSUE THREE - APPLICABLE LAW

Appellants argue in their Issue III that Judge Gibbons "misconstrued the law of contempt by inflicting a punishment which could not be purged by compliance with the court's prior order." In their brief, they assert that they must have been offered an opportunity to "purge the alleged contempt" by complying with the order with which they refused to comply. Under Appellant's theory, they cannot be punished for their contempt of court without first being given an opportunity to comply with the order which they are found to have violated.

That explains Appellants' argument on appeal that, since they <u>finally</u> produced a gold Rolex that could have been Pops' and a second gun (which on one testified ever

belonged to Pop) so they could not be held in contempt. The law of contempt in South Carolina is not so limited.

Civil contempt must be shown by clear and convincing evidence. *Poston v. Poston*, 331 S.C. 106, 113, 502 S.E.2d 86, 89 (1998). Criminal contempt must be shown beyond a reasonable doubt. Id. In determining whether a contempt sanction is criminal or civil, one must identify the purpose for which the sanction is imposed. Whereas civil contempt is either coercive or remedial in nature, criminal contempt is purely punitive. Id. at 111, 502 S.E.2d at 88. Incarceration may be either civil or criminal. Id. at 112, 502 S.E.2d at 89. The distinguishing factor is whether the incarceration is for a definite period of time, which is the hallmark of criminal contempt, or whether the contemnor may avoid or cut short the incarceration by complying with the court's directive, which indicates civil contempt. *Dimarco v. Dimarco*, 393 S.C. 604, 713 S.E.2d 631 (2011).

The difference between the two is substantial because the constitutional safeguards provided in the Sixth Amendment 1 may be triggered in [393 S.C. 608] criminal contempt proceedings. A contemnor has a constitutional right to a jury trial before a criminal sentence of more than six months incarceration may be imposed. Curlee v. Howle, 277 S.C. 377, 385, 287 S.E.2d 915, 919 (1982).

Contempt is civil in nature when the "contemnor . . . hold[s] the keys to his cell because he may end the imprisonment and purge himself of the sentence at any time. . ." *Miller v. Miller*, 375 S.C. 443, 457, 852 S.E.2d 754 (Ct.App. 2007). *See also Dimarco v. Dimarco, supra.*

While *Miller* suggests that the only means by which a contemnor can unlock the doors to the jail cell is by complying with the *original* order, the Court of Appeals made that statement in a case in which the trial court's order of contempt provided that particular option. In *Miller*, a father was held in contempt of court for failing to pay child support, ordered to be incarcerated, but his purge could be cured by paying the child support he previously refused to pay, *i.e.*, the original order.

One of the hallmark cases in South Carolina regarding contempt is *Poston v. Poston*, 331 S.C. 106, 502 S.E.2d 86 (1998). The first appeal resulted in a Court of Appeals order finding the trial court had applied the wrong standard of proof. The Supreme Court's later opinion said that the reason civil versus criminal contempt had to be determined was because criminal contempt required additional procedural safeguards[23]. *Id.*

> In *Poston*, the Supreme Court discussed the many variable situations in which contempt can be imposed, based primarily on what conditions are provided for a purge of the order to be made. While remanding to the trial court to clarify whether the award was civil or criminal in nature, the Supreme Court affirmed a monetary award to the offended party, not as a sanction but for reimbursement for "the expenses he incurred." *Id.* 331 S.C. at 117. It is true that the examples of civil contempt set forth in the opinion related to mandating compliance with the *original*

[23] That analysis would be academic here. The Rule to Show Cause itself warned Appellants that, because the petition sought, *inter alia*, imposition of criminal contempt, each was "advised of their right to counsel at the hearing, and of their right not to testify at the hearing." (R. p 46).

court order. However, that is not the sole method by which to vindicate the court's authority.

Dimarco v. Dimarco, 398 S.C. 604, 713 S.E.2d 631 (2011) makes clear that civil contempt can be either "coercive or remedial. . . incarceration may be either civil or criminal." *Id.* at 633.

"Compensatory contempt is a money award when the defendant has injured by plaintiff by violating a previous court order." *Ex Parte: Cannon*, 725 S.E.2d 698, 702 (2012) citing *Curlee v. Howle*, 277 S.C. 377, 386, 287 S.E.2d 915, 919 (1982). "Included in the actual loss are the costs in defending and enforcing the court's order, including litigation costs and attorney's fees." *Id.*

"The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice." *Curlee v. Howle*, 277 S.C. 377, 287 S.E.2d 915 (1982).

The Supreme Court analyzed the nature of the contempt imposed in *Curlee* to determine whether the contempt order was for civil or criminal contempt. The facts in *Curlee* were such that it would have been impossible for the contemnor to comply with the original order (which required return of minor children to the United States), because the children had already been returned. However, the imposition of contempt was to make the offended party whole financially and included a prison term to enforce the award. The Court required the contemnor to "spend a year in prison or pay the respondent's expenses that she incurred in enforcing the court order." *Id.* 277 S.C. 385. As is well-settled in

South Carolina jurisprudence, Appellants hold the keys to the jail cell: they pay the amount awarded to the Estate, or they go to jail.

> The purpose of the sentence was obviously to compel appellant to pay the expenses, not for punishment. . . The conditional nature of the imprisonment, based entirely upon appellant's refusal to pay [compensatory contempt] justified holding the civil contempt proceeding without a jury trial.
>
> *Curlee v. Howle*, 277 S.C. 377, 287 S.E.2d 915 (1982)

Appellants' argument demonstrates clearly why it is necessary to examine the nature of the order of contempt in each particular case to determine whether it is civil or criminal. If Appellants are correct, and they can obstruct the proceeding by fabricating a fake Rolex and refusing to produce Pop's pistols at all (or even if the second fake pistol was Pop's pistol) without fear of consequence until the actual hearing on the Rule to Show Cause, the court's power of contempt is meaningless. Judge Gibbons could well have held Appellants in contempt of court for violating the original order of production, but it was clear to Judge Gibbons that Appellants would never comply and it would be useless for a sentence to be imposed until compliance occurred.

Instead, Judge Gibbons determined compliance was never going to happen, so after finding Appellants had obstructed the process of the estate proceedings and demonstrated their contempt for the court in doing so, he imposed an order which assessed the consequences as an order to pay the expenses incurred by Ballard. He added the alternate for service of a term of imprisonment to compel performance of payment of the money award to the estate. Therefore, Appellants do, in fact, hold the keys to the jail.

It was well within the trial court's authority to determine that compliance with the original order was never going to happen and fashion an appropriate remedy. In *Cannon v. George Attorney General's Office*, 397 S.C. 541, 725 S.E.2d 698 (2012), the South Carolina Supreme Court cited to *Turner v. Rogers*, 131 S.C. 2507, 180 L.Ed.2d 451 (2011), which upheld an order of civil contempt in which the contemnor had already served a sentence, finding the issue was not moot because the conduct "was capable of repetition." The same is true here. The parties have been embroiled in litigation for more than eight (8) years and the behavior of Appellants has been evolving and escalating in its outrageousness.

As noted above, the Rule to Show Cause advised Appellants of their constitutional rights in the event an award of criminal contempt was made. While Chris and Diane testified, they were not compelled to do so, because they voluntarily took the stand when called. They could have refused to testify, but they did not. At the time they voluntarily took the stand, criminal contempt was still an option because Judge Gibbons had not yet ruled it out.

The precise nature of the contempt order here demonstrates Judge Gibbons' careful analysis of the facts and circumstances, which resulted in an order finding that Appellants had violated the order of production. Judge Gibbons fashioned the only remedy that could accurately recompense the circumstances, and to ensure the civil nature of the contempt, he provided a provision that allowed Appellants <u>not</u> to pay the sanctions ordered.

The choice between payment of funds to the estate or service of a 90-day sentence in jail is entirely Appellants' choice. They have nothing to complain of on appeal.

ISSUE FOUR -THE IMPOSITION OF SANCTIONS

Appellants argue on appeal that the trial court made no award of attorney's fees and the doctrine of "compensatory contempt" appeared only in the order following motion for rehearing. They are correct.

As discussed above, Judge Gibbons did not award attorney's fees. He examined the amount of time and effort that had to be undertaken by Ballard, as personal representative, and of her counsel Mr. Truslow, and assessed an amount of money to be paid which was based upon the time spent by them in bringing the contempt proceeding and concluding it.

The fact that that the term "compensatory contempt" appears only in the order after a motion for rehearing proves that the procedural process for SCRCP Rule 59(e) motion works. While the description of the nature of sanctions ordered was not accurately labeled in the original order, it was addressed on rehearing.

CONCLUSION

The overwhelming evidence of the contemptuous conduct of Appellants is clear. Appellants do not dispute Judge Gibbons finding that they disobeyed the order of production or that their refusal to comply was intentional. Appellants put up no defense. They didn't even file a response to the Petition or Rule to Show Cause. Their contempt for the power of the court is insulting.

While Appellants quibble with isolated facts which have little to do with the substance of Judge Gibbons' decision and order, and they clearly want to continue to obstruct these proceedings, "whatever doesn't make a difference doesn't matter in the law." *McClurg v. Deaton*, 395 S.C. 85, 716 S.E.2d 887 (2011) (CJ Toal, dissenting), citing *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987).

Respectfully submitted,

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