

RECEIVED

May 21 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE PROBATE COURT
Case Number: 2018-ES-40-2112

IN THE MATTER OF)
JESSICA SHEILA COLEMAN)
_____)

ORDER HOLDING CARRIE COLEMAN
IN CONTEMPT OF COURT
AND ORDERING DETENTION

FILED
MAY 13 2021
3:23
RICHLAND COUNTY
PROBATE COURT
ANY RECORDS
RECORDED

THIS MATTER COMES BEFORE THE COURT upon a hearing held on January 28, 2021. The hearing was scheduled due to Carrie M Coleman’s (“Ms. Coleman”) failure to account to the heirs and the Court. Ms. Coleman was appointed by the agreements of her family members as Personal Representative on January 30, 2019. This Court has made numerous requests of Ms. Coleman to account and provide bank records of her transactions. Ms. Coleman provided some but not all of her bank records and did not file an accounting before or during the hearing.

Following the hearing, the Court issued an Order to Provide Bank Statements and Accounting on February 1, 2021. The Order required Ms. Coleman to provide a complete accounting, along with bank statements by February 15, 2021. She was also warned in that Order that if she failed to provide the accounting with bank statements she would be held in contempt of court. That Order was emailed to Ms. Coleman and was delivered to her by certified and regular mail. Ms. Coleman signed for the certified mail and received the Order on February 8, 2021. On February 11, 2021, Ms. Coleman advised this Court that she had tested positive for COVID on February 4, 2021. The Court advised Ms. Coleman of the new deadline of February 22, 2021, in an email dated February 12, 2021.

Ms. Coleman failed to provide the accounting and therefore, this Court issued an Order Requiring Carrie Coleman to Distribute to Heirs on March 18, 2021, which required Ms. Coleman to pay \$12,900.00 to Carrie Makiya Smith and \$12,900.00 to the Estate of Malcolm Coleman. The deadline to provide these funds was April 30, 2021, and the Court stated that if she failed to deliver the funds by April 30, 2021, a bench warrant would be issued for her arrest and she would be held in the Richland County Detention Center until the money was paid. This Order was delivered to Ms. Coleman by certified and regular mail. She was also personally served on March 19, 2021, for which the Affidavit of Service is on file with the Court.

In the interim, Ms. Coleman retained attorney Kimberly Raber. Attorney Raber filed a Proposal for Distribution and Final Accounting on April 26, 2021. Ms. Coleman also delivered to the Court a check for the amount of \$5,033.76 as partial payment for the Estate of Malcolm Coleman. After reviewing the accounting the Court issued, on April 29, 2021, an Order Amending

Previous Order Dated March 18, 2021, which amended the amounts owed to Carrie Makiya Smith and the Estate of Malcolm Coleman. In that Order the Court determined that Ms. Coleman must pay to Carrie Makiya Smith \$11,811.10 and pay the Estate of Malcolm Coleman \$5,714.84, both due by April 30, 2021. This Order was delivered via email to attorney Raber, Carrie Makiya Smith, and Ms. Coleman on April 29, 2021. In response to that email Ms. Coleman emailed the following: "Please make the Judge aware. I will turn myself in to the detention center tomorrow." That same day the Court responded as follows:

"Ms. Coleman that is not how it works. If you fail to pay the money tomorrow, Judge McCulloch will issue a bench warrant for your arrest. At that point if you and Ms. Raber want to arrange for you to turn yourself in, we will coordinate that. You are encouraged to pay the money as ordered. If you choose to go to the detention center to "turn yourself in" they will not be in any position to receive and process you."

The Court has not received any response, heard from Ms. Coleman or her attorney since April 29, 2021, or receive the required payments.

Pursuant to S.C. Code Ann. § 14-23-310, 1976 as amended, the Probate Court may "keep order in court and punish any contempt of [her] authority in like manner as such contempt might be punished in the circuit or Supreme Court." The decision to hold a party in contempt rests within the sound discretion of the Court and is punishable by fine or imprisonment. Miller v. Miller, 375 S.C. 454, 652 S.E.2d 760 (Ct. App. 2007). A party may be found to be in contempt due to the willful disobedience of a court order. Id. at 454, 652 S.E.2d at 760. A willful act is one which is "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; that is to say, with bad purpose either to disobey or disregard the law." Id. Once it is shown that a party has not complied with a court order, the burden shifts to that party to establish his defense and inability to comply. Id.

In making a finding of contempt, a court must distinguish whether a party's conduct constitutes direct or constructive contempt. "Direct contempt is defined as contemptuous conduct occurring in the presence of the court." Id. at 455, 652 S.E.2d at 760. "Constructive contempt is contemptuous conduct occurring outside the presence of the court." Id. Black's Law Dictionary references indirect contempt to define constructive contempt, and defines indirect contempt as "[c]ontempt that is committed outside of court, as when a party disobeys a court order." Black's Law Dictionary, 337 (8th ed. 1999).

Courts have the power to punish for both civil and criminal contempt, if a party willfully disobeys a prior order. The purpose of a civil contempt order is to "coerce the defendant to do the


thing required by the order” and if imprisonment is determined to be appropriate by the trial judge, a party’s discharge is conditional upon performance of the act required by the order. See Miller, 375 S.C. at 456-57, 652 S.E.2d at 761. A finding of civil contempt “must be proven by clear and convincing evidence.” Poston v. Poston 331 S.C. 106, 113, 502 S.E.2d 86, 89 (1998).

In addition to the inherent authority of the Probate Court to punish for contempt, as detailed in the case-law cited above, pursuant to S.C. Code Ann. § 14-23-290, 1976 as amended, the Probate Court may “issue all warrants and processes, in conformity to the rules of law, which may be necessary to...carry into effect any order, sentence or decree of such courts or the powers granted them by law.” All remaining principles of law and equity pertaining to contempt are applicable to the Probate Court through S.C. Code Ann. § 62-1-103, 1976 as amended.

After considering all pleadings and documents contained in the file, including the Final Accounting filed on April 26, 2021, and Ms. Coleman’s behavior at the hearing on January 28, 2021, the Court finds that there is clear and convincing evidence that Carrie Coleman is in willful constructive civil contempt for her failure to comply with this Court’s Order Amending Previous Order Dated March 18, 2021, and all previous Orders as outlined above, and that this charge of willful constructive contempt is in compliance with statutory and case law. Carrie Coleman has had since March 18, 2021 to pay this debt and has been aware that her failure to pay would result in her being held in contempt of court and this bench warrant being issued.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT based on clear and convincing evidence, Carrie Coleman is in willful constructive civil contempt of this Court’s Order Amending Previous Order Dated March 18, 2021 and is ordered incarcerated at the Alvin S. Glenn Detention Center where she will be held until the money is paid. Therefore, a Bench Warrant shall be issued for Carrie Coleman’s arrest. Carrie Coleman will be released upon the payment to Carrie Makiya Smith in the amount of \$11,811.10 and payment to the Estate of Malcolm Coleman in the amount of \$5,714.84, delivered to the Richland County Probate Court.

AND IT IS SO ORDERED.



Amy W. McCulloch, Probate Judge
Richland County Probate Court

May 13, 2021
Columbia, South Carolina