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NO. COA01-826

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

STATE OF NORTH CAROLINA

v.

Cabarrus County
No. 01 CRS 2803

JAY E. GELL

Appeal by defendant from judgment entered 8 February 2001 by Judge Michael E. Beale in Cabarrus County Superior Court. Heard in the Court of Appeals 17 April 2002.

Attorney General Roy Cooper, by Assistant Attorney General Staci Tolliver Meyer, for the State.

Carolin Bakewell, for The North Carolina State Bar.

Fred A. Biggers, P.C., by Fred A. Biggers, for defendant-appellant.

CAMPBELL, Judge.

Defendant appeals from a judgment finding him guilty of criminal contempt for violating an order preventing him from engaging in the unauthorized practice of law. We find no error.

Defendant, Jay E. Gell, has never been licensed to practice law in any jurisdiction. Nevertheless, defendant attempted to represent Harrisburg Auto Salvage, a corporation owned by his friend, Horace Hart ("Hart"), in the case of *Bellsouth Advertising and Publishing Co. v. Harrisburg Auto Salvage of Cabarrus County, Inc.*, 98 CVS 1592 ("the Bellsouth case"). Prior to the calling of

the *Bellsouth* case for hearing, defendant filed an answer and several motions on behalf of Harrisburg Auto Salvage. On 6 November 1998, defendant appeared in Cabarrus County Superior Court on behalf of Harrisburg Auto Salvage. At that time, Judge Larry Ford ("Judge Ford") struck the corporation's answer and denied its motions. Judge Ford also gave Harrisburg Auto Salvage time to hire an attorney after informing defendant that he could not represent the corporation.

Despite Judge Ford's admonition, defendant filed additional motions on Harrisburg Auto Salvage's behalf on 4 March 1999. These motions came on for hearing on 8 March 1999 before Judge W. Erwin Spainhour ("Judge Spainhour"). When defendant appeared in court purporting to represent the corporation, Judge Spainhour told defendant that:

You are not an attorney and you have no business at all filing [motions] on behalf of a corporation. You're practicing law without a license. That is a misdemeanor; it's a crime. . . . [T]his is a court of record in which only licensed attorneys may speak on behalf of clients or parties to cases, and you are not one of those

Judge Spainhour did not take any further action against defendant at that time. Judgment was entered against Harrisburg Auto Salvage. Defendant then filed notice of appeal on behalf of Harrisburg Auto Salvage from the judgment. *Bellsouth*, in turn, filed motions to dismiss Harrisburg Auto Salvage's appeal and for sanctions.

Prior to Bellsouth's motions being heard, defendant filed a motion in the cause with this Court on 26 April 1999. On 27 April 1999, the Clerk of the Court of Appeals, John H. Connell, issued an order dismissing defendant's motion because defendant was "not a licensed attorney, [was] not a party to [the *Bellsouth* case] and may not purport to represent [Harrisburg Auto Salvage] in this action."

On 10 May 1999, Bellsouth's motions were heard before Judge Spainhour. Judge Spainhour dismissed Harrisburg Auto Salvage's appeal and issued sanctions against defendant. Also, after noting defendant's continued attempts to engage in the unauthorized practice of law, Judge Spainhour entered an order on 19 May 1999 stating that defendant:

[S]hall not file any documents in this court purporting to represent [Harrisburg Auto Salvage] as its agent and he may not appear in open court acting as agent for [Harrisburg Auto Salvage] or purporting to represent [Harrisburg Auto Salvage] in any capacity whatsoever.

A violation of this order shall subject [defendant] to contempt powers of this court which may include a fine up to Five Hundred Dollars (\$500.00), or imprisonment for thirty (30) days, or both fine and imprisonment.

After the order was entered, defendant filed two additional notices of appeal on Harrisburg Auto Salvage's behalf.

Thereafter, in the case of *Town of Harrisburg v. Horace G. Hart and wife, Miriam C. Hart*, 00 CVS 1751 ("the *Harrisburg* case"), defendant again filed several court documents, this time, on behalf of Hart and his wife ("the Harts"). On 20 December 2000, defendant

appeared before Judge Spainhour in open court representing the Harts against motions filed by the Town of Harrisburg. By order entered 5 January 2001, Judge Spainhour entered default judgment and sanctions against the Harts. He also ordered defendant to appear in court on 22 January 2001 to show cause why he should not be held in contempt "for filing pleadings and acting as an attorney in this matter when he is not licensed to practice law and after having been specifically ordered . . . not to file pleadings and/or act as an attorney."

Judge Michael E. Beale ("Judge Beale") presided over defendant's show cause hearing on 5 February 2001. After considering the evidence and the previous orders and sanctions entered against defendant, Judge Beale stated that although defendant may not have directly violated Judge Spainhour's 19 May 1999 order by purporting to represent Harrisburg Auto Salvage, he had violated the "spirit" of that order by purporting to represent the Harts. Therefore, Judge Beale entered an order on 8 February 2001 finding that defendant's actions in the *Harrisburg* case constituted "willful behavior committed during the sitting of a court and directly tending to impair the respect due its authority." Defendant was placed in the sheriff's custody for thirty days for criminal contempt, but was allowed to purge himself of the contempt by paying a \$500.00 fine. Defendant appeals.¹

¹ Judge Beale also issued a new show cause order to determine whether defendant's actions in the *Harrisburg* case violated Judge Spainhour's order. This show cause order was later withdrawn by a consent order dated 12 February 2001.

Defendant brings forth three assignments of error, all of which present this Court with the issue of whether the trial court erred in imposing a criminal contempt sanction on defendant for violating an order preventing him from engaging in the unauthorized practice of law in the *Harrisburg* case. In addressing this issue, defendant argues the trial court (1) failed to give him adequate notice and opportunity to respond to the criminal contempt charges and (2) found no evidence sufficient to support the imposition of a criminal contempt sanction. For the following reasons, we conclude the trial court did not err.

Proceedings for criminal contempt "are those brought to preserve the power and to vindicate the dignity of the court and to punish for disobedience of its processes and orders." *Galyon v. Stutts*, 241 N.C. 120, 123, 84 S.E.2d 822, 825 (1954). These proceedings are punitive in nature and are generally applied where the judgment is in punishment of an act already accomplished that tends to interfere with the administration of justice. *O'Briant v. O'Briant*, 313 N.C. 432, 434, 329 S.E.2d 370, 372 (1985). Those acts of contempt done in the court's presence which tend to "subvert or prevent justice" constitute direct contempt, whereas acts done outside the presence of the court which tend to "degrade the court or interrupt, prevent, or impede the administration of justice" constitute indirect contempt. *Galyon*, 241 N.C. at 123, 84 S.E.2d at 825.

Furthermore, our courts:

[R]ecognize that criminal contempts are crimes, and accordingly, the accused is

entitled to the benefits of all constitutional safeguards. The United States Supreme Court has held that in contempt actions where the defendant is not punished summarily or where the contemptuous act does not occur in the presence of the judge or legislative body, principles of due process require reasonable notice of a charge and opportunity to be heard in defense before punishment is imposed.

O'Briant, 313 N.C. at 435, 329 S.E.2d at 373 (citation omitted). "Notice and a formal hearing are not required when the trial court promptly punishes acts of contempt in its presence." *In re Owens*, 128 N.C. App. 577, 581, 496 S.E.2d 592, 595 (1998), *aff'd*, 350 N.C. 656, 517 S.E.2d 605 (1999).

In the present case, Judge Beale stated during the show cause hearing that defendant did not "technically violate" Judge Spainhour's order that prevented him from acting as the legal representative of Harrisburg Auto Salvage. However, Judge Beale did find that defendant had violated the "spirit" of that order by representing Hart, Harrisburg Auto Salvage's owner, and Hart's wife in a separate action in which defendant engaged in the very acts the order prevented him from doing, i.e., filing court documents and appearing in a representative capacity for a party before the court. Defendant argues that since he was not technically found in violation of Judge Spainhour's order, Judge Beale erred in finding him guilty of indirect criminal contempt without affording him proper notice and an opportunity to be heard. Although we note the distinction made by Judge Beale between the two orders, we find that distinction does not require reversal of the trial court's order.

Here, defendant was given ample notice and opportunity to be heard regarding the contempt charges. Prior to Judge Spainhour ordering a show cause hearing, defendant had been given several warnings and had even been sanctioned for filing court documents and appearing in open court in a representative capacity. By issuing a show cause order, Judge Spainhour gave defendant notice that he would have to show cause as to why he should not be found in contempt for filing pleadings and acting as an attorney after having been specifically ordered not to do so by the trial court. Additionally, Judge Spainhour appointed an attorney to assist defendant at the show cause hearing. However, despite notice of the charges and the assistance of appointed counsel, defendant did not take advantage of his opportunity to be heard at the hearing because he elected not to present evidence on his own behalf. Therefore, we conclude defendant was afforded proper notice and an opportunity to respond to the criminal charges against him.

Defendant also argues there was insufficient evidence to support the imposition of a criminal contempt sanction. Our statutes hold that at the conclusion of a hearing for criminal contempt, "the judge must enter a finding of guilty or not guilty. If the person is found to be in contempt, the judge must make findings of fact and enter judgment. The facts must be established beyond a reasonable doubt." N.C. Gen. Stat. § 5A-15(f) (2001). See also *Cox v. Cox*, 92 N.C. App. 702, 706, 376 S.E.2d 13, 16 (1989). Defendant contends the trial court's findings of fact do not meet this burden. We disagree.

In the case *sub judice*, there was overwhelming evidence to support Judge Beale's conclusion that defendant's actions constituted willful behavior committed during the sitting of a court that was directly intended to impair the respect due the court's authority. See § 5A-11(a)(2). As stated earlier, defendant filed several court documents while acting in a representative capacity in the *Bellsouth* and *Harrisburg* cases. At no time during either of these cases was defendant a licensed attorney. Also, defendant was warned on several occasions about filing court documents and appearing in court as a party representative. This is evidenced by the order filed by Clerk John Connell, as well as the three separate orders filed by Judge Spainhour, that clearly stated defendant could not engage in activities performed by licensed attorneys. Despite the orders, defendant continued to file court documents and appear in court as an attorney on behalf of Harrisburg Auto Salvage and the Harts. Thus, the trial court had sufficient evidence and made sufficient findings of fact from this evidence to find defendant in criminal contempt.

Accordingly, for the aforementioned reasons, the trial court did not err in ordering that defendant should be sanctioned for criminal contempt.

Affirmed.

Judges WALKER and McGEE concur.

Report per Rule 30(e).