

COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION

Estate of Henry N. Anhalt, Sr., Deceased  
O.C. No. 413 DE of 2015  
Control No. 160446

Henry N Anhalt Sr., Deceased



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OPINION

Following notice and a hearing, this Court issued an Order dated May 2, 2016 holding Raymond G. Quaglia, Esquire in contempt of court and fining him \$1,000.00 for willfully failing to comply with this Court's March 16, 2016 Order that required his client, Barbara Bacci, to comply with discovery requests for certain documents and information within twenty (20) days of that Order. He filed an appeal and, in his Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal, alleged two errors that this Court will address in this opinion, which is being filed pursuant to Pa.R.A.P. 1925(a)(1). For the reasons set forth at length below, this Court did not err by finding Raymond J. Quaglia, Esquire in contempt of court and fining him \$1,000.00.

**I. PROCEDURAL HISTORY**

On February 8, 2016, Michael Anhalt ("Petitioner"), represented by Brem M. Moldovsky, Esquire ("Mr. Moldovsky"), filed a "Petition for Leave to Obtain and Compel Discovery" ("First Discovery Petition"). On February 27, 2016, Barbara Bacci ("Respondent" or "Ms. Bacci"), represented by Raymond J. Quaglia, Esquire ("Mr. Quaglia"), filed an Answer with New Matter. On February 29, 2016, Petitioner filed an Answer to the New Matter. In an Order dated March 16, 2016 ("March 16 Order"), the Court granted the First Discovery Petition in part and denied it in part. Paragraph three (3) of the March 16 Order granted the discovery demands set forth in paragraphs 11a, b, c, d, e, f, g, h, i, k, l, m, n, o of the First Discovery Petition, limited to the time period from 2006 to the date of Decedent's death (August 26, 2013).

Paragraph five (5) of the March 16 Order said that “Respondent shall respond to the aforementioned discovery [demands] within twenty (20) days and/or provide an affidavit that such discovery is not within Respondent’s possession.”

On April 20, 2016, Petitioner filed a Petition for Citation to Compel Discovery (“Second Discovery Petition”) wherein he alleged that Respondent did not provide the documents that the aforementioned March 16 Order required her to provide. In a Decree dated April 25, 2016 (“April 25 Decree”), this Court issued a Rule, directed to Respondent and Mr. Quaglia, to show cause “why the Court should not hold [them] in contempt of court ... for failure to comply with the provision of [the March 16 Order] requiring Respondent to respond to certain discovery requests or provide an affidavit that discovery is not within her possession within twenty days.” The April 25 Decree scheduled a hearing on the Rule for May 2, 2016, but stated that if “Respondent appropriately responds to the said discovery requests or provides such an affidavit on or before April 29, 2016, the Court will hold the issue of contempt under advisement pending any further failure to follow an Order of this Court.” However, the Respondent failed to provide the Petitioner with the documents or the affidavit that the Court’s March 16 Order required her to provide, thereby willfully declining to avoid contempt proceedings by taking advantage of the Court’s de facto extension of the 20 day deadline from the March 16 Order that had since passed.

Consequently, per the April 25 Decree, a hearing on the Rule was held on May 2, 2016, during which the Court found Mr. Quaglia in contempt of court and ordered him to pay a \$1,000.00 fine. In an Order dated May 2, 2016 (“May 2 Order”), the Court reiterated that Mr. Quaglia was in contempt of court for failing to comply with the March 16 Order and ordered him

to pay a \$1,000.00 fine within thirty (30) days.<sup>1</sup> On May 25, 2016, Mr. Quaglia filed a Notice of Appeal of the provisions in the May 2 Order finding him in contempt and fining him \$1,000.00. In an Order dated June 8, 2016, the court ordered Mr. Quaglia to file a concise statement of the errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Mr. Quaglia timely filed and served a Pa.R.A.P. 1925(b) concise statement of the errors complained of on appeal (“Rule 1925(b) Statement”). This opinion in support of the May 2 Order followed per Pa.R.A.P. 1925(a)(1).

## II. FACTS

At the May 2, 2016 hearing, Mr. Moldovsky told the Court that he had received virtually none of the documents that the Court ordered the Respondent to turn over in the March 16 Order. *See Transcript* p. 5. In fact, the only documents that he received up to that point from Mr. Quaglia consisted of “a letter ... indicating that they would turn things over and ... a few sheets of the paper from one policy” that Mr. Quaglia sent the previous week—well after the 20 day deadline in the Court’s March 16 Order. *See Transcript* pp. 5-6.

Mr. Quaglia told the Court that he gave Mr. Moldovsky “everything that we have,” but admitted that he did not do so within 20 days of the March 16 Order nor, as of the date of the hearing, provide an affidavit from Ms. Bacci stating that she did not possess the other documents that the March 16 Order required Ms. Bacci to turn over to Petitioner. *See Transcript* pp. 6, 8.

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<sup>1</sup>In this case the contempt is indirect criminal contempt. *See Knaus v. Knaus*, 127 A.2d 669, 671 (Pa. 1956) (citations omitted) (holding that an “[a]n indirect criminal contempt consists of the violation of an order or decree of a court which occurs outside the presence of the court”); *Commonwealth v. Ashton*, 824 A.2d 1198, 1203 (Pa. Super. Ct. 2003) (citations omitted) (holding that “[a] charge of indirect criminal contempt consists of a claim that a violation of an order or decree of court occurred outside the presence of the court”); *Diamond v. Diamond*, 715 A.2d 1190, 1194 (Pa. Super. Ct. 1998) (holding that, if “the dominant purpose” of the contempt order “is to punish the contemnor for disobedience of the court’s order, ... the adjudication of contempt is criminal”)

Mr. Quaglia claimed that “we really thought we complied” with the March 16 Order by sending a letter to Mr. Moldovsky after the 20 day deadline wherein he “told [Mr. Moldovsky] we would give him” an affidavit, despite the fact that paragraph five (5) of the March 16 Order clearly and unambiguously required Respondent to provide the ordered discovery or “an affidavit that such discovery is not within Respondent’s possession” within 20 days. *See Transcript* pp. 6, 8.

Because the March 16 Order was so clear, the Court does not find to be credible Mr. Quaglia’s claim that he thought he complied with the March 16 Order by telling Mr. Moldovsky in a letter sent well past the 20 day deadline that he would give him the required affidavit. If Mr. Quaglia—a practicing attorney—read the Court’s one page (excluding the signature) March 16 Order, he would have known that it was impossible to obey the Order by failing to send anything at all to Mr. Moldovsky within 20 days and failing altogether (until after the May 2 hearing) to send an affidavit for items that Ms. Bacci did not have in her possession.

Due to Mr. Quaglia’s willful violation of the March 16 Order, as evidenced above, and in order to “vindicate the dignity and authority of the court[,] to protect the interest of the general public,” and to deter the future blatant and willful disregard of court orders, the Court, pursuant to 42 Pa.C.S. § 4132(2), found Mr. Quaglia in indirect criminal contempt of court and imposed summary punishment in the form of a \$1,000.00 fine after notice and a hearing. *See Lachat v. Hinchliffe*, 769 A.2d 481, 487 (Pa. Super. Ct. 2001).

### **III. DISCUSSION**

“[T]rial courts in Pennsylvania have an inherent power to [punish] contempt of court” in response to “[d]isobedience or neglect by officers, parties, jurors or witnesses of or to the lawful process of the court.” *Commonwealth v. Pruitt*, 764 A.2d 569, 573 (Pa. Super. Ct. 2000); 42

Pa.C.S. § 4132(2). Attorneys are considered officers of the court for purposes of § 4132(2). *Commonwealth v. Marcone*, 410 A.2d 759, 765 (Pa. 1980) (stating that “there can be no doubt of counsel's obligation to comply with the lawful process of the court as required under [42 Pa.C.S. § 4132(2)]”); *Commonwealth v. Stevenson*, 393 A.2d 386, 389 (Pa. 1978) (citations omitted) (citing to multiple Pennsylvania Supreme Court cases that “recognize an attorney’s position as an officer of the court”).

“Each court is the exclusive judge of contempts against its process.” *Neshaminy Water Res. Auth. v. Del-Aware Unlimited, Inc.*, 481 A.2d 879, 883 (Pa. Super. Ct. 1984) (citation omitted). Accordingly, when “considering an appeal from a contempt order, [the Superior Court] place[s] great reliance on the discretion of the trial judge” and will only reverse a finding of contempt “when a plain abuse of discretion occurs.” *Commonwealth v. Worthy*, 512 A.2d 39, 40 (Pa. Super. Ct. 1986) (citation omitted); *Commonwealth v. Jackson*, 532 A.2d 28, 31 (Pa. Super. Ct. 1987).

In order to find a person in criminal contempt of court under 42 Pa.C.S. § 4132(2) for failure to comply with a court order, the non-compliance must have been “willful or at least reckless” and the evidence must prove beyond a reasonable doubt the presence of four elements:

- (1) the court’s order must be definite, clear, specific and leave no doubt or uncertainty in the mind of the person to whom it was addressed of the conduct prohibited;
- (2) the contemnor must have had notice of the specific order or decree;
- (3) the act constituting the violation must have been volitional; and
- (4) the contemnor must have acted with wrongful intent.

*Commonwealth v. Kolansky*, 800 A.2d 937, 939-40 (Pa. Super. Ct. 2002) (quoting *Fenstamaker v. Fenstamaker*, 487 A.2d 11, 14 (Pa. Super. Ct. 1985)).

In his Rule 1925(b) Statement, Mr. Quaglia raises two issues in his appeal to the Superior Court: (1) whether this Court erred by holding him in contempt despite his “letter to opposing counsel showing his client’s timely compliance with the Orphans’ Court discovery order in lieu of an affidavit to this effect”; and (2) whether this Court denied him due process of law by finding him in contempt and fining him for failing to follow the Court’s Discovery Order that was “not directed to him but to his client.” Because “[i]ssues not included in the [Rule 1925(b)] Statement and/or not raised in accordance with [Pa.R.A.P. 1925(b)(4)]” are waived, this court will address only the issues that Mr. Quaglia raised in his Rule 1925(b) Statement. *See* Pa.R.A.P. 1925(b)(4)(vii).

**A. The Court did not Err by Holding Mr. Quaglia in Contempt of Court Despite the Letter that he Submitted to Opposing Counsel**

The Letter that Mr. Quaglia sent to Mr. Moldovsky in lieu of the actual documents and/or affidavit that the Court’s March 16 Order ordered Respondent to turn over to Petitioner did not come close to substantially complying with the March 16 Order for multiple reasons. First, the letter was sent in the week of April 25, 2016, which was after the 20 day deadline in the March 16 Order. Mr. Quaglia admitted that he turned over nothing in response to the March 16 Order within 20 days from its issuance and offered the Court no cognizable reason for his complete failure to do anything at all in response to a Court Order that, by its clear terms, required some action. *See Transcript* p. 37.

Even so, as the Court indicated in the April 25 Decree, if Mr. Quaglia had sent the ordered documents and/or affidavit to Mr. Moldovsky during the week of April 25, 2016, the Court would not have even held the contempt hearing. But the letter that Mr. Quaglia sent to Mr. Moldovsky after the April 25 Decree did not substantially comply with any of the requirements

of the March 16 Order. The March 16 Order required Respondent to turn over numerous documents and, for documents that his client did not have in her possession, an affidavit certifying that she did not possess such documents. Most of the lettered paragraphs in Mr. Quaglia's letter corresponding to each subparagraph in paragraph 11 of the First Discovery Petition that the March 16 Order ordered the Respondent to comply with either provided a one sentence answer or stated "[y]ou already have" the requested information, "will comply," or "none." There were a few pages of documents attached to the letter, but, at the time of the May 2 hearing, virtually all of the documents that the March 16 Order ordered the Respondent to turn over had not been turned over and no affidavit for documents that the Respondent did not have in her possession had been provided.

Furthermore, several of the responses in the letter were incomplete or nonsensical. For instance, in response to paragraph 11-I in the First Discovery Petition, which requested certain "information[,] records[s], and documents of all insurance, annuity, or investment type policies..." Mr. Quaglia's letter only addressed annuities. *See Transcript* pp. 30-38. In response to paragraph 11-L of the First Discovery Petition, which requests "[p]ersonal and family financial records of investments, real estate, and bank accounts owned or jointly owned by Barbara Bacci..." Mr. Quaglia's letter said "Barbara tells me she has no more than \$10,000.00 of her own assets invested in annuities purchased with her own money from Carl Schaeffer." *See Transcript* pp. 22, 40. Paragraph 11-M and 11-N in Mr. Quaglia's letter say "see above," indicating that the response to paragraph 11-L also applies to those two paragraphs. *See Transcript* p. 45. That response does not make sense when applied to Paragraph 11-N in the First Discovery Petition, which requests "an accounting of all monetary gifts from Henry Anhalt, Sr. to Barbara Bacci..." *Transcript* p. 45. These are just a few examples of how nonresponsive the

letter was, even if it was possible for a simple letter to comply with the requirements of that Order. Mr. Quaglia's claim that he "really thought we complied" with the March 16 Order is belied by the plain language in the March 16 Order, the woeful temporal and substantive deficiencies of his letter, and the fact that Mr. Quaglia is an attorney who has been practicing law for more than half of a century. *See Transcript* pp. 6, 52. Mr. Quaglia's letter did not satisfy the requirements of the March 16 Order and no literate person—much less an attorney—who read the one page Order could have believed otherwise.

**B. The Court did not Violate the Due Process Rights of Mr. Quaglia by Holding Him in Contempt of Court Despite the Fact that He was Merely the Attorney for the Party that the March 16 Order was Directed to and not the Actual Party**

Although the March 16 Order mandating compliance with certain discovery requests from Petitioner's First Discovery Petitioner was directed to Ms. Bacci, Mr. Quaglia, as the attorney *representing her* in the litigation, had an obligation to comply with the March 16 Order on her behalf. In fact, Mr. Quaglia and Mr. Moldovsky, as attorneys for the parties, were the only persons that the Court directly notified of the March 16 Order. It was Mr. Quaglia's basic responsibility as an attorney to notify the party he was representing, Ms. Bacci, of the Order and ensure that it was complied with. If Ms. Bacci failed to cooperate with him such that he would be unable to comply with the Order, he could have sought to withdraw as her counsel per Pa.R.C.P. 1012.

One of the key responsibilities of an attorney representing a client is to manage the litigation on behalf of the client, who retains the attorney for his legal expertise and ability to navigate the substantive and procedural complexities of litigation, including the process of discovery. It should go without saying that an attorney who *represents* a party in litigation has an obligation to act on that party's behalf in response to court orders, including discovery orders



that are issued while the litigation is ongoing. Therefore, in many instances, such as here, a court order directed at the party obligates the party's attorney too. *See e.g., In re C.W.*, 960 A.2d 458, 467 n.9 (Pa. Super. Ct. 2008) (citations omitted) (citing cases and noting that the Superior Court has held "that a counsel's failure to appear for a scheduled court appearance, a counsel's failure to communicate with the opposing party regarding transcripts, a counsel's failure to file timely points for charge, and a counsel's failure to file an accounting ... fall within the purview of [42 Pa.C.S. §] 4132(2)"); *Markey v. Marino*, 521 A.2d 942, 944 (Pa. Super. Ct. 1987) (affirming order assessing costs and fees against plaintiff's attorney where plaintiff failed to comply with a discovery order because "the refusal to comply had been the fault of" the attorney); *Ketterer v. Cochran*, 2015 WL 6087557, at \*2-4 (Pa. Super. Ct. Aug. 28, 2015) (reversing and remanding trial court's entry of default judgment and imposition of sanctions and attorney's fees against parties after they failed to comply with a discovery order because their "lawyer virtually removed himself from the case" and it would be inequitable to for the parties to "shoulder the burden for their attorney's failure to discharge his professional duties with reasonable care"); *Commonwealth v. Zacher*, 689 A.2d 267, 271 (Pa. Super. Ct. 1997) (holding that "when the trial court directs that counsel's client's case is to commence on a certain date, an essential part of this directive is that counsel will not only appear but that he will appear prepared to proceed with the case"). For instance, if the Court orders a represented party to submit a brief to the Court pursuant to Phila.O.C. Rule 3.2.A(3)(a) or other applicable court rule and the party's attorney willfully fails to submit a brief or willfully submits a deficient brief, the attorney can be found in criminal contempt of court, even though the order was directed to the party. *See In re C.W.*, 960 A.2d 458, 467 n.9 (Pa. Super. Ct. 2008) (concluding that "a finding of contempt based on the quality of the briefs submitted by [an attorney] falls within the purview of [42 Pa.C.S. §]

4132(2)"). Here, Mr. Quaglia clearly had an obligation, in his role as counsel to Ms. Bacci, to submit *something* to Mr. Moldovsky, in his role as counsel to the Petitioner, in response to the March 16 Order within 20 days of that Order. However, he did not submit anything to Mr. Moldovsky within 20 days or otherwise demonstrate any attempt to comply with the March 16 Order, nor did he seek an extension of time from the Court.

Mr. Quaglia's claim that "[i]t is a fundamental principle of due process that the rights of a person may not be adjudged in a proceeding to which he or she is not a party" and thus he cannot properly be held in contempt in this case is without merit. *See Rule 1925(b) Statement* (citing *Miller v. City of Philadelphia*, 954 F. Supp. 1056 (E.D. Pa. 1997), *aff'd*, 174 F.3d 368 (3d Cir. 1999)).<sup>2</sup> It is beyond dispute that an attorney can be held in contempt of court as an officer of the court even when, as is usually the case, the attorney is merely appearing on behalf of a party to the litigation and is not himself a party. *See* 42 Pa.C.S. § 4132(2) (authorizing courts "to issue attachments and to impose summary punishments for contempts of court" in cases of "[d]isobedience or neglect by officers ... of or to the lawful process of the court"); *Marcone*, 410 A.2d at 765 (noting that "there can be no doubt of counsel's obligation to comply with the lawful process of the court as required under [42 Pa.C.S. § 4132(2)]"). Indeed, on numerous occasions the Superior Court has upheld criminal contempt convictions of attorneys for conduct that occurred while they were (or should have been) representing parties. *See e.g., Himes v. Himes*, 833 A.2d 1124, 1127 (Pa. Super. Ct. 2003) (upholding criminal contempt conviction of attorney who willfully failed to appear at his client's scheduled custody mediation hearing); *Zacher*, 689 A.2d at 272 (upholding criminal contempt conviction of attorney who willfully appeared

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<sup>2</sup>It is unclear why Mr. Quaglia cited to *Miller v. City of Philadelphia*. The citation was not a pinpoint citation and this Court is unable to find any portion of that opinion that supports Mr. Quaglia's contention or is applicable to this case.

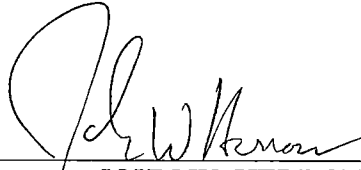
unprepared to first day of his client's trial); *Marcone*, 410 A.2d at 761 (upholding criminal contempt conviction against attorney who willfully appeared three hours late for "the weekly call of the Criminal Trial list" despite being "listed as counsel of record in two cases on the list for that date" and having "entered an appearance and accepted the responsibility for the representation of the client").

Furthermore, Mr. Quaglia was a party to the contempt proceeding that occurred on May 2, 2016 because the April 25 Decree issued a Rule, directed to Ms. Bacci and Mr. Quaglia personally, to show cause why she and he should not be held in contempt for failing to comply with the March 16 Decree. Mr. Quaglia had notice, a hearing, and even an opportunity to avoid contempt proceedings altogether.

#### **IV. CONCLUSION**

Mr. Quaglia's letter to Mr. Moldovsky, which was sent well after the 20 day deadline in the March 16 Order, was woefully deficient and in no way a reasonable substitute for actual compliance with the Court's March 16 Order. Furthermore, an attorney can be held in criminal contempt of court as an officer of the court for willfully failing to perform the obligations that he has to the court as counsel to a party. Mr. Quaglia willfully failed to perform the obligations that he had pursuant to this Court's March 16 Order as counsel to Respondent and the Court appropriately found him in criminal contempt of court after notice and a hearing. For the reasons previously explained at length, Mr. Quaglia's Pa.R.A.P. 1925(b) Statement does not identify any reversible errors and, therefore, this Court's May 2 Order should be affirmed.

BY THE COURT:

  
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JOHN W. HERRON, J.  
July 12, 2016

Raymond J. Quaglia, Esquire

Brem M. Moldvosky, Esquire