

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001364-MR

CARMEN REBECA MARTIN

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JOSEPH W. O'REILLY, JUDGE
ACTION NO. 09-D-501032

LUCIA POP-SCHENK POPA

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, MAZE AND STUMBO, JUDGES.

STUMBO, JUDGE: Carmen Martin appeals from an order holding her in contempt for failing to appear at a deposition. We find no error and affirm.

Daniel Popa is currently married to Appellant. He was previously married to Lucia Popa. Ms. Popa has a domestic violence order (DVO) against Mr. Popa that restricts most contact between the two. On January 22, 2014, Ms.

Popa filed a motion to hold Mr. Popa in contempt for violating the DVO. A hearing on the contempt motion was scheduled for February 12, 2014. Prior to the hearing, the trial court ordered that the parties exchange witness lists. Mr. Popa's witness list contained the name Rebecca Popa.¹ Ms. Popa's witness list contained the name Rebecca Martin/Popa. After exchanging witness lists, the hearing was continued.

Appellant does not live in Kentucky. The record in this case has three different addresses listed for Appellant. Those addresses are: 5860 Town Bay Dr., Apt. 114, Boca Raton, FL 33486; 21585 Cartagena Dr., Boca Raton, FL 33428; and 1009 E. 13 Mile Rd., Royal Oak, MI 48073. On February 13, 2014, Appellant was traveling through Kentucky. While staying in a hotel, she was personally served with a subpoena directing that she appear on February 27, 2014, in Louisville, Kentucky for the taking of her deposition. The subpoena was served by a process server hired by Ms. Popa. The subpoena listed Appellant's name as "Rebecca Popa". Appellant did not appear for the deposition.

On March 19, 2014, Ms. Popa filed a motion seeking to hold Appellant in contempt for failing to attend her deposition. On March 26, 2014, the Honorable Vincent Mallon entered a special appearance on behalf of Appellant. Mr. Mallon objected and argued that Appellant had not been properly served with the contempt motion. He also argued that the trial court did not have personal jurisdiction over Appellant. On March 26, 2014, the trial court denied Ms. Popa's

¹ Appellant only has one "c" in the spelling of Rebeca; however, Mr. Popa's witness list inadvertently included an extra "c". Ms. Popa also spelled Rebeca with an extra "c".

contempt motion. It found that Appellant did not receive proper notice of the motion and that it would not force her to travel to Kentucky for a deposition.

On April 9, 2014, the trial court entered an order which directed Appellant to appear at an address in Boca Raton, Florida on April 18, 2014, for the taking of her deposition. The order also noted that Appellant had been previously served with a valid subpoena in the state of Kentucky and had failed to attend a previous deposition. On April 11, 2014, counsel for Ms. Popa sent Appellant a notice to take her deposition. This notice was sent to all three addresses listed for Appellant. Appellant failed to appear for this deposition.

On April 23, 2014, Ms. Popa filed another motion seeking to hold Appellant in contempt for failing to appear for the deposition. This motion was mailed to Appellant at the Town Bay Dr., Boca Raton address previously mentioned. A hearing was held on the motion on April 30, 2014. Mr. Mallon again made a special appearance on behalf of Appellant. On July 21, 2014, the trial court entered an order finding Appellant in contempt. The trial court ordered Appellant to serve 60 days in the Jefferson County Jail and to pay \$500 toward Ms. Popa's attorney fees. This appeal followed.

Appellant's first argument on appeal is that the trial court lacked *in personam* jurisdiction over her; therefore, the Kentucky court could not order her to appear for a deposition and could not hold her in contempt. Appellant claims that because she lives in Florida, she does not have sufficient ties, or the necessary minimum contacts, to Kentucky to confer a Kentucky court with jurisdiction over

her. She cites to the seminal United States Supreme Court case of *International Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945), and Kentucky's long arm statute located at KRS² 454.210.

A lengthy discussion of *International Shoe* and KRS 454.210 is unnecessary for our purposes because Appellant was personally served with a subpoena while present in the state of Kentucky. Being personally served with a subpoena while in Kentucky is sufficient to bring a person under the jurisdiction of a Kentucky Court. *International Shoe*, 326 U.S. at 316; *Halcomb v. Halcomb*, 337 S.W.2d 32, 33 (Ky. 1960). In addition, Kentucky Rule of Civil Procedure (CR) 45.03(1) states in relevant part:

A subpoena may be served in any manner that a summons might be served. It may also be served by any person over eighteen years of age, and the affidavit endorsed thereon by such person shall be proof of service or the witnesses may acknowledge service in writing on the subpoena. Service of the subpoena shall be made by delivering or offering to deliver a copy thereof to the person to whom it is directed. A subpoena may be served at any place within this state.

CR 4.04(2), which concerns summonses, states in relevant part that “[s]ervice shall be made upon an individual within this Commonwealth . . . by delivering a copy of the summons and of the complaint (or other initiating document) to him personally[.]” Finally, a subpoena creates a “continuing obligation” to be available

² Kentucky Revised Statute.

to the trial court until the underlying case is concluded. *Otis v. Meade*, 483 S.W.2d 161, 162 (Ky. 1972).

In the case at hand, Appellant was properly served with a subpoena while in Kentucky. This obliged her to follow the court's direction and attend the deposition in Boca Raton. A person who disobeys a subpoena or fails to attend a deposition when ordered by the trial court is subject to punishment for contempt of court. KRS 421.110.

Appellant's second argument on appeal is that she could not be held in contempt due to res judicata and the law of the case doctrine. She claims that because the court declined to hold her in contempt on March 26, 2014, she could not later be held in contempt. We disagree. The court, in ruling from the bench, stated that it believed Appellant had been properly served with the subpoena; however, the court declined to hold Appellant in contempt because it found that Appellant had not received notice of the motion for contempt. In addition, Appellant was later found in contempt because she did not attend the deposition in Boca Raton, not because she failed to attend the earlier deposition in Louisville. Appellant's arguments based on res judicata and the law of the case doctrine are without merit.

Appellant's final argument on appeal is that even if the trial court had jurisdiction over her, she did not receive notice of the second contempt motion and did not receive a contempt hearing. We disagree.

Counsel for Ms. Popa mailed the notice to take Appellant's deposition in Boca Raton and the trial court's order indicating the same to all three of Appellant's addresses. Furthermore, the motion to hold Appellant in contempt for not attending the Boca Raton deposition was mailed to her Town Bay, Boca Raton address. This motion also indicated that a hearing would be held on April 30, 2014. Lastly, a hearing on the contempt motion was held on April 30, 2014. At this hearing, Mr. Mallon appeared on behalf of Appellant, indicated that the Town Bay address was Appellant's correct address, stated that Appellant received a copy of the motion for contempt, and made arguments on Appellant's behalf. Appellant received notice of the contempt motion and was afforded a hearing.

Based on the foregoing, we affirm the judgment of the trial court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Vincent F. Mallon
Louisville, Kentucky

BRIEF FOR APPELLEE:

Louis P. Winner
Sarah M. Tate
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