



Court of Appeals

Memorandum

To: Judge John J. Ellington
From: William L. Martin, III *W. Martin*
Subject: A06A2105. David Huffman v. Joseph P. Armenia, et al.
Contempt of Attorney
Date: April 18, 2007

Attached please find a copy of the letter Mr. Wilkinson sent in response to the Court's order of April 13, 2007, finding Mr. Wilkinson in contempt. As you can see, he has purged himself of contempt by sending a check for \$1,000 by return mail.

Pursuant to the Court's order, a copy of the order of contempt was sent to the State Bar. Do you wish me to send a letter to the State Bar of Georgia informing the State Bar that Mr. Wilkinson has purged himself of contempt by paying the \$1,000 via his letter of April 16, 2007, and to further send Mr. Wilkinson a courtesy copy of that letter?

Please let me know your feelings in this regard.

Thank you.

/ld

Attachments

Court of Appeals of the State of Georgia

ATLANTA, April 13, 2007

The Court of Appeals hereby passes the following order:

A06A2105. HUFFMAN v. ARMENIA et al.

Attorney Paul Wright filed a motion for reconsideration on behalf of his client, David Huffman, asking this Court to reconsider its March 20, 2007 order in the above-styled case. In that order, this Court directed Wright and his law partner, Neil Wilkinson, to show cause within ten days why they should not be held in contempt of this Court for making false statements in their appellate briefs in the above-styled case. By separate order, this Court has denied the motion for reconsideration, finding that Huffman failed to demonstrate a basis for granting the motion, pursuant to Court of Appeals Rule 37 (e).¹

Wright has thus far failed to respond to this Court's March 20, 2007 show cause order.² While this Court could decide whether to hold Wright in contempt based upon the appellate record alone, we have decided to exercise our discretion and consider the affidavit Wright filed in support of the motion for reconsideration. Turning to the merits of the contempt issue, we make the following findings of fact and conclusions of law.

In our opinion in the above-styled case,³ dated March 20, 2007, this Court concluded that Wright and Wilkinson made several false statements of fact in their appellate briefs which asserted that (1) the Board of Directors of HELP had

¹ We also note that the motion for reconsideration, as filed, fails to comply with Court of Appeals Rule 1 (c).

² The instant order applies only to Wright. This Court will address the alleged contempt of Neil Wilkinson in a separate order.

³ See *Huffman v. Armenia*, __ Ga. App. __ (Case Nos. A06A2105, A06A2106, and A07A0616, decided March 20, 2007).

unanimously authorized Huffman to file the bankruptcy petition on behalf of HELP before Huffman filed the petition, and (2) HELP successfully opposed motions to dismiss the bankruptcy petition and, in fact, cured the non-fatal defects in the petition. As explained in our opinion, the appellate record clearly shows that these statements are false. Moreover, in July 2006, Wilkinson acknowledged that the appellate briefs contained statements that were not true, yet neither Wright nor Wilkinson filed corrected briefs in this Court. As a result, we ordered both attorneys to file affidavits with this Court to show cause while they should not be held in contempt.

In his affidavit, Wright continues to perpetuate the myth that the HELP Board of Directors authorized the bankruptcy petition *before* it was filed. He attempts to support this contention by repeatedly citing to a purported board resolution. The resolution, however, clearly shows on its face that it was only signed by *one* board member, Huffman, before Huffman filed the bankruptcy petition.⁴ Apparently recognizing this fatal defect, Wright's affidavit now alleges *for the first time* that Huffman and another board member, Ronald Baker, "approved a Board Resolution during a telephonic meeting on January 12, 2006. . . . Mr. Baker had not affixed a signature to written evidence of the Board Resolution at the time because he was out of town. . . . Due to Mr. Baker's absence, Messrs. Huffman and Baker had agreed that Mr. Baker would sign written evidence of the Board Resolution when he returned." There is no evidence in the appellate record, or even in the unauthenticated documents Wright attached to his affidavit, to support these statements. More importantly, both Huffman and Baker testified in the trial court below, and their testimony does not

⁴ Frankly, given the complete lack of candor exhibited by both Wright and Wilkinson in this Court, the formality of the board resolution itself, the absence of evidence regarding who prepared the resolution and when, the fact that Huffman did not hire an attorney until February 2006, and the fact that the resolution was not produced until February 21, 2006, as well as Huffman's testimony that he alone filed the pro se bankruptcy petition on behalf of HELP and that he expected to pay all court costs out of his own pocket, this Court is not convinced that Huffman actually signed the board of directors resolution on January 12, 2006. Even so, we must accept the appellate record at face value, and we will not allow our concerns to impact our decision in this case.

support Wright's statements.⁵

Wright's affidavit also continues to argue the untenable positions that he and Wilkinson had, in fact, successfully opposed the motion to dismiss the bankruptcy petition, that they cured the defects in the bankruptcy petition, and that the bankruptcy court had not dismissed the petition, but had simply decided to "abstain" from making a decision in the matter.⁶ As shown in our opinion, however, the bankruptcy court's order states that it dismissed the bankruptcy petition after finding that "the undisputed evidence shows that the Chapter 7 Petition was filed without the appropriate Board authorization" and that Huffman and his attorneys had failed to cure the defects in the petition. Wright's contentions to the contrary, therefore, are false.

In support of his affidavit, Wright relies on hearsay and unauthenticated documents that were never filed in the court below and were not part of the appellate record, and his affidavit presents arguments that were never raised in the trial court. More importantly, Wright's affidavit contains statements of "fact" for which he clearly lacks any personal knowledge,⁷ as well as at least one false statement.⁸ Wright continues to insist that he made no "misstatements" in his briefs to this Court. «**Id. at 23 (33)**»

In our opinion in the above-styled case, this Court concluded that the appellate record clearly showed that certain statements by Wright and Wilkinson in the appellate briefs they filed on behalf of Huffman were false. The statements not only were unsupported by any evidence, but were actually *contrary* to the evidence in the record. In issuing the show cause order, this Court gave Wright and Wilkinson the

⁵ Moreover, as Wright's affidavit shows, Wright "had not even met Mr. Huffman or any other affiliate of HELP" before the week of February 6, 2006, and there is nothing to even suggest that Wright has any personal knowledge of a January 2006 agreement between Huffman and Baker regarding the board resolution or the circumstances surrounding such alleged agreement.

⁶ For example, on page 6, Wright's affidavit states that "Debtor filed the written evidence of the Board Resolution with the Bankruptcy Court on February 21, 2006, and thereby cured the defect [the receiver] had raised in that regard."

⁷ See footnote 5, *supra*.

⁸ See footnote 6, *supra*.

opportunity to show why they should not be held in contempt for including these false statements in their appellate briefs. Instead of acknowledging that the statements were false and offering an explanation, Wright has chosen to stand behind his statements. In so doing, Wright has not only abandoned his opportunity to argue why he should not be held in contempt, he has actually filed an affidavit which contains statements outside of his personal knowledge, as well as statements that are contradicted by the appellate record. Unfortunately, Wright has demonstrated to this Court that he is unwilling to acknowledge and accept responsibility for his contumacious conduct and, in fact, that he intends to continue acting in this manner indefinitely.⁹

We conclude that the preponderance of the evidence supports a finding that Paul Wright is in civil contempt of this Court, pursuant to Court of Appeals Rule 7. In order to purge himself of this contempt, Wright is ordered to pay \$1,000, payable to the Court of Appeals of Georgia. This fine is intended to be remedial in nature and is intended to dissuade Wright from further contumacious conduct in this Court. We further suspend Wright's license to practice in this Court until the fine is paid in full.

In addition, we direct the Clerk of the Court of Appeals to send a copy of this order to the State Bar of Georgia.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta

APR 13 2007

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Willi Z. Mart, Clerk.

⁹ Indeed, Wright filed a motion for reconsideration of this Court's March 20, 2007 opinion in the above-styled case on behalf of Huffman. In the motion, Wright *continues to insist* that the HELP Board of Directors authorized the bankruptcy petition *before* it was filed.

*The Court of Appeals
Office of the Clerk
47 Trinity Avenue
Suite 501
Atlanta, Georgia 30334*

WILLIAM L. MARTIN, III
CLERK AND COURT ADMINISTRATOR

(404) 656-3450
martinw@gaappeals.us

April 18, 2007

Mr. Neil L. Wilkinson
Wilkinson & Wright, LLC
1720 Mount Vernon Road • Suite B
Atlanta, Georgia 30338

RE: A06A2105. David Huffman v. Joseph P. Armenia, et al.

Dear Mr. Wilkinson:

Thank you for your letter of April 16, 2007 and the enclosed check made payable to the order of the Court of Appeals of Georgia in the amount of \$1,000 drawn on SunTrust Bank, check number 1065. I appreciate your prompt response to the Court's order of April 13, 2007.

If you have any questions or if I can be of any assistance to you, please do not hesitate to contact me.

Sincerely,



William L. Martin, III
Administrator/Clerk
Court of Appeals of Georgia

WLM, III/ld

cc: Jan Kelley, Fiscal Officer

bcc: Judge John J. Ellington



Court of Appeals

Memorandum

To: Jan Kelley
From:  William L. Martin, III
Subject: A06A2105. David Huffman v. Joseph P. Armenia, et al.
Date: April 18, 2007

Attached please find a check in the amount of \$1,000 made payable to the Court of Appeals of Georgia. This is in response to the Court's order of April 13, 2007, finding Mr. Wilkinson in contempt of Court and ordering him to pay \$1,000 to purge himself of this contempt. I have also included a copy of the Court's order.

If you have any questions or if I can be of assistance to you in this matter, please do not hesitate to contact me.

/ld

Attachments

cc: Judge John J. Ellington

NEIL LOVETT WILKINSON PC 06/2005
1720 MOUNT VERNON RD STE B
DUNWOODY, GA 30338-4208

1065

4/16/07

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DATE

PAY TO THE
ORDER OF

Court of Appeals of Georgia \$1,000⁰⁰
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FOR

A06A2105

Neil Lovett Wilkinson

MP

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