

IN THE IOWA DISTRICT COURT FOR MITCHELL COUNTY

STATE OF IOWA, <i>ex rel.</i> ,)	
IOWA DEPARTMENT OF NATURAL)	Case No. EQCV015506
RESOURCES,)	
)	
Plaintiff,)	
)	
vs)	
)	ORDER FINDING CONTEMPT
GARY D. EGGERS,)	
)	
Defendant.)	

The Court held a hearing in this case December 18, 2018, on the application of the State of Iowa to have Gary D. Eggers found in contempt. The State was represented by Assistant Attorney General David Steward. Defendant appeared in person for the hearing and was represented by his attorney, William Morrison. The Court heard testimony from Defendant and two other witnesses, and admitted seven exhibits offered by the State. After reviewing the file, reflecting on the record made at the hearing, and considering the applicable law, the Court is prepared to rule.

STATEMENT OF THE CASE

Defendant owns and resides on an acreage in Mitchell County Iowa, which is locally known as 2559 490th Street, Stacyville, Iowa (the “Acreage”). In September 2013 and again in July 2015, the Iowa Department of Natural Resources (the “DNR”) issued notices of violation to Defendant regarding his disposal and storage of waste tires on the Acreage. Both notices informed Defendant of the environmental laws that the DNR asserted he was violating and described what he needed to do to bring his use of the Acreage in compliance with the law. Defendant took no action in response to either notice of violation from the DNR. Subsequently, the DNR issued Administrative Order No. 2015-SW-04 and Administrative Order No. 2015-WW-19 to Defendant on August 17, 2015. For purposes of clarity and brevity, the Court will refer to these orders collectively as the “Administrative Order”). Among other things, the Administrative Order directed Defendant to stop bringing waste tires onto the Acreage, to pay a \$10,000 administrative penalty, to remove and properly dispose of certain waste tires located on the Acreage, and to provide the DNR with documentation showing that he had properly disposed

of the tires he removed. The Mitchell County Sheriff served Defendant with the Administrative Order on August 31, 2015.

Defendant did not appeal the Administrative Order, nor did he pay any part of the \$10,000 administrative penalty he was assessed or perform any of the remedial actions he was directed to take. After receiving another complaint about Defendant illegally disposing of waste tires on the Acreage, the State commenced this action on September 26, 2016, seeking enforcement of the Administrative Order and the assessment of a civil penalty against Defendant for his ongoing violation of the environmental laws of Iowa. Defendant was served with original notice and a copy of the State's petition on October 3, 2016, but did not answer or file any other response to the petition. On November 16, 2016, the Court found Defendant to be in default and entered its Order Granting Judgment on Default (the "Judicial Order"). In the Judicial Order, the Court directed Defendant to: (A) Pay a civil penalty of \$100,000 and an administrative penalty of \$10,000; (B) Remove and properly dispose of all waste tires on the Acreage in excess of 500 passenger tire equivalents; and (C) Provide the DNR with written certification that he had completed the removal of the excess waste tires and had properly disposed of them. Defendant did not appeal from or take any legal action to challenge the entry of the Judicial Order.

The State filed its pending application on May 15, 2018, alleging that Defendant should be found in contempt for his failure to comply with certain terms of the Judicial Order.

LEGAL PRINCIPLES

A contempt action is a quasi-criminal proceeding. *Ervin v. Iowa District Court for Webster County*, 495 N.W.2d 742, 745 (Iowa 1993). To establish contempt, the party seeking sanctions must show willful disobedience of a court order or injunction by proof beyond a reasonable doubt. *McKinley v. Iowa District Court for Polk County*, 542 N.W.2d 822, 824 (Iowa 1996). A finding of willful disobedience requires evidence of conduct that is "intentional and deliberate with a bad or evil purpose, or wanton and in disregard of the rights of others, or contrary to a known duty, or unauthorized, coupled with an unconcern whether the contemnor had the right or not." *Lutz v. Darbyshire*, 297 N.W.2d 349, 353 (Iowa 1980), overruled on other grounds by *Phillips v. Iowa District Court for Johnson County*, 380 N.W.2d 706, 707-709 (Iowa 1986).

Generally speaking, the underlying court order must be clear, definite, and unambiguous for a violation of its provisions to serve as the basis for a finding of contempt. *Zimmerman v.*

Iowa District Court for Benton County, 480 N.W.2d 70, 74 (Iowa 1992). Put another way, the acts allegedly constituting the contempt must be clearly and specifically prohibited by the court order, so that the person charged can ascertain from its terms what she may or may not do.

Lynch v. Uhlenhopp, 78 N.W.2d 491, 494-495 (Iowa 1956).

CONCLUSIONS OF LAW

Applying the above principles, the Court finds beyond a reasonable doubt that Defendant willfully and intentionally violated multiple provisions of the Judicial Order. Defendant has not paid any part of the \$100,000 civil penalty or the \$10,000 administrative penalty that the Court directed him to pay. According to his own testimony, Defendant has only removed a few waste tires from the Acreage. The photographic evidence presented by the State clearly showed that Defendant continues to have many times more than 500 waste tires on his property. Defendant has not provided the DNR with any documents to certify that the tires he has removed from the Acreage were disposed of properly.

Although Defendant claimed he did not have the financial means to pay anything on either of the monetary penalties imposed in the Judicial Order, he presented no proof to support this claim other than his own self-serving testimony, which the Court found not credible. Defendant offered no tax returns, bank statements, or other records to establish what his current income or present financial condition actually is. Similarly, while Defendant testified that he suffers from various medical conditions and physical ailments which rendered him unable to maintain gainful employment and prevented him from performing the physical labor necessary to remove waste tires from the Acreage, he presented no medical records or anything from a physician to confirm his claimed disability.

The Court acknowledges that the duties and obligations imposed on Defendant under the Judicial Order are substantial and may be beyond his ability to perform in full. However, the fact that Defendant has made no voluntary payment in any amount on either the civil penalty or the administrative penalty, and has made no discernible progress in removing and properly disposing of the massive number of waste tires on the Acreage shows the Court his failure to comply with the Judicial Order is deliberate and intentional. The attitude displayed by Defendant toward the DNR, its representatives, and the laws of Iowa that seek to protect our environment and our waterways makes clear to the Court he should be found in contempt. His disdain for the DNR and its representatives was apparent in his demeanor on the witness stand at

the hearing. Whether it is reasonable to require that Defendant fully perform all aspects of the Judicial Order is a question for another day. Because Defendant has made no effort to comply with any part of the Judicial Order and did not present any credible evidence to show that he was financially or physically incapable of complying, the Court finds him to be in contempt and will impose a harsh sanction.

THEREFORE, IT IS ORDERED THAT Defendant, Gary D. Eggers, is found to be in contempt for failing to make any progress on his duties and obligations under the Judicial Order. As a sanction for his contempt, the Court sentences Defendant to serve 120 days in the Mitchell County Jail. Defendant must surrender to the Mitchell County Sheriff to serve 20 days of this sentence by noon on April 15, 2019, or mittimus shall issue for his arrest. The Court shall stay mittimus on the remaining 100 days of his contempt sanction, and Defendant will be given a chance to purge his contempt and avoid any further incarceration, provided that Defendant satisfies all of the following four conditions:

- A. On or before May 3, 2019, makes a cash payment to the State in the amount of \$500 in partial satisfaction of the \$100,000 civil penalty imposed on him under the Judicial Order;
- B. Makes monthly cash payments to the State in the amount of \$100 each, beginning June 1, 2019, and continuing on the first day of every month until the \$100,000 civil penalty imposed on him under the Judicial Order is paid in full;
- C. Removes and lawfully disposes of at least 100 waste tires from the Acreage each month, beginning in May 2019 and continuing every month until no more than 500 passenger tire equivalents remain on the Acreage; and
- D. On or before the first day of every month, beginning June 1, 2019, Defendant must provide written certification to the State that he has removed and lawfully disposed of at least 100 waste tires from the Acreage during the calendar month just ended.

All payments and written certifications are to be sent to the attorney for the State, David Steward, Hoover State Office Building, 1305 East Walnut Street, Second Floor, Des Moines, Iowa 50319. Upon the filing of an affidavit by an authorized representative of the DNR that Defendant has failed to satisfy any of the four conditions set out above, the Court will issue mittimus against Defendant on the remaining 100 days of his contempt sanction without further notice or hearing.

Nothing in this Order is to be construed or interpreted as prohibiting either the State or the DNR from enforcing the duties and obligations imposed on Defendant under the Judicial Order by any means otherwise allowed by law.

The cost of these contempt proceedings are taxed against Defendant.

Clerk shall furnish copies to:

Assistant Attorney General David Steward
William Morrison
Mitchell County Sheriff



State of Iowa Courts

Type: OTHER ORDER

Case Number EQCV015506
Case Title STATE EX REL. IDNR V. GARY D. EGGERS

So Ordered

A handwritten signature in cursive script that reads "Chris Foy".

Chris Foy, District Court Judge,
Second Judicial District of Iowa