

LeRussi v. Calcutta Volunteer Fire Dep't

Court of Claims of Ohio

January 3, 2024, Filed

Case No. 2023-00434PQ

Reporter

2024-Ohio-564 *; 2024 Ohio Misc. LEXIS 9 **

CHRISTINE LEA LERUSSI, Requester v. CALCUTTA
VOLUNTEER FIRE DEPARTMENT, Respondent

Judges: [**1] SCOTT SHEETS, Magistrate.

Opinion by: SCOTT SHEETS

Opinion

DECISION OF THE MAGISTRATE

[*P1] Requester filed a motion for contempt on October 24, 2023. On December 4, 2023, the magistrate conducted an evidentiary hearing to determine whether "Respondent has engaged in contemptuous conduct by failing to provide all responsive documents in accordance with the Court's [September 5, 2023 Nunc Pro Tunc Order]." (November 8, 2023 Order of Reference.) At the hearing, requester testified and offered Exhibits 1 and 4 into evidence. Respondent's counsel cross-examined requester but respondent offered no evidence. For the following reasons, the magistrate recommends that the Court GRANT Requester's Motion for Contempt.

• Procedural Background

[*P2] Requester seeks an order of contempt based on respondent's alleged failure to obey the court's order to produce public records. In its September 5, 2023 order, the Court adopted the report and recommendation of the special master and ordered Respondent "to provide Requester with access to Respondent's Exhibits C, D, E, F, G, H, I, J, O, P, and Q, which Respondent filed with the Court." (September 5, 2023 Order p. 10.) The special master recommended that Respondent be ordered to produce [**2] these same records, which he first reviewed *in camera*, in his August 8, 2023 report and recommendation.

[*P3] Before conducting his *in camera* review, the special master ordered Respondent to "[f]ile, under seal

for in camera review, unredacted copies of all cancelled checks written on all of Respondent's bank accounts [f]rom January 1, 2019, through June 30, 2022." The special master also ordered requester to, "[f]ile, under seal for in camera review, unredacted copies of all records responsive to Requester's April 14, 2023, public records requests regardless of whether Respondent contends they are exempted from production by R.C. 149.43(A)(1)(v) or some other law." (June 22, 2023 Order of Special Master.) Of note, requester's April 14, 2023 request sought "[b]ank statements to include cancelled checks for all bank accounts" from July of 2022 through March of 2023 as well as the "monthly statement of Cardmember Services (believed to be a credit card)" from "January 2019 through March 2023." (Complaint p. 3-4.)

[*P4] In short, the Court has already determined that Requester is entitled to specific records, including cancelled checks and monthly credit card statements, and has ordered their production.

• Conclusions [**3] of Law

[*P5] Requester seeks relief pursuant to R.C. 2705.02, which provides, "[a] person guilty of any of the following acts may be punished as for a contempt... (A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or officer." Contempt can be civil or criminal in nature and "[s]anctions that are 'designed to benefit the complainant by remedying the contempt or coercing compliance with a court order are civil in nature.'" Moreover, the failure of a party to do that which the court has ordered for the benefit of the opposing party is civil contempt. *City of Columbus v. ACM Vision, V, LLC*, 10th Dist. No. 20AP-79, 2021-Ohio-925, ¶ 34 (internal cites omitted). Finally, contempt is indirect when it occurs outside the court's presence. *Howell v. Howell*, 10th Dist. No. 04AP-436, 2005-Ohio-2798, ¶ 20.

[*P6] Requester must prove respondent is in contempt by clear and convincing evidence. *Reprod. Gynecology, Inc. v. Alby Wu*, 10th Dist. No. 22AP-141, 2023-Ohio-

2557, ¶ 36; *State ex rel. AG of Ohio v. Shieldalloy Metallurgical Corp.*, 156 Ohio App. 3d 409, 2004-Ohio-982 ¶ 8-9. Clear and convincing evidence "is defined as 'that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.'" *City of Columbus v. State*, 10th Dist. No. 22AP-676, 2023-Ohio-2858, ¶ 21, 223 N.E.3d 540; *Ohio Water Dev. Auth. v. W. Reserve Water Dist.*, 10th Dist. No. 05AP-954, 2006-Ohio-2681, ¶ 9.

As to punishment for contempt:

[b]ecause the purpose [**4] of civil contempt sanctions is to "coerce compliance with the underlying order or to compensate the complainant for loss sustained by the contemnor's disobedience," punishment for civil contempt may "be either: (1) remedial or compensatory in the form of a fine to compensate the complainant for the contemnor's past disobedience; or (2) coercive and prospective, i.e., designed to aid the complainant by bringing the defendant into compliance with the order." (internal cites omitted).

[*P7] *City of Columbus v. ACM Vision, V, LLC*, 10th Dist. No. 20AP-79, 2021-Ohio-925, ¶ 35. See also, *Howell v. Howell*, 10th Dist. No. 04AP-436, 2005-Ohio-2798, ¶ 21 ("A sanction for civil contempt must allow a contemnor to purge himself or herself of the contempt."). Finally, if in violation of the court's order, whether respondent acted innocently or intentionally, has no bearing on a finding of contempt. See *Windham Bank v. Tomaszczyk*, 27 Ohio St. 2d 55, ¶ 2-3 of syllabus, (Ohio 1971) (The purpose of sanctions in a case of civil contempt is to compel the contemnor to comply with lawful orders of a court, and the fact that the contemnor acted innocently and not in intentional disregard of a court order is not a defense to a charge of civil contempt.)

• Findings of Fact

- Credit Card Statements

[*P8] Requester testified that she filed the present motion because respondent has not produced documents that it was ordered to produce. She [**5] first testified regarding credit card statements, copies of which are contained in exhibit 1. Requester created the spreadsheet list of credit card statements that begins exhibit 1. She also "paper clipped" statements and/or

pages of statements contained in exhibit 1 that she indicated were still "at issue."

[*P9] Using the February 2019 credit card statement from Home Savings as an example during her testimony, requester pointed out that the top right corner of the first page bears the notation "Page 3 of 4." However, about a third of the way down, a different notation reads "Page 1 of 4." In other words, the first page of the February 2019 credit card statement contained in Exhibit 1 appears to be two different pages or parts of two different pages of the February 2019 statement.

[*P10] In addition, requester pointed out a discrepancy between the total amount shown as "purchases" on the first page of the February 2019 statement and the total amount of individual transactions listed on the second page, which bears the notation page 2 of 4. The total purchases are indicated as \$2,482.11 while the individual transactions total \$2,086.38, a difference of \$395.73. Thus, the February 2019 statement [**6] does not contain a complete listing of individual transactions.

[*P11] Requester testified that the red highlighted entries on the spreadsheet that begins exhibit 1 represent credit card statements that she believes were altered.¹ A dollar amount next to these entries indicates statements where the total for purchases differs from the listed individual transactions. There are 14 red highlighted entries on this spreadsheet; only 6 are listed as "altered." Others say "statement submitted 11/14 or submitted 11/14/23" or "missing." Nevertheless, the magistrate reviewed all 14 entries as well as the corresponding copy of each credit card statement.² As

¹Requester opined that the credit card statements were altered. However, neither party presented evidence establishing the reasons behind their appearance, their varied formatting, why some pages are missing, or why pages appear in non-consecutive order. Thus, the magistrate could only speculate and makes no findings as to the reasons why respondent produced the records in such form. Ultimately however, it is immaterial because, as noted, intent is not a prerequisite to a finding of contempt.

²Requester also indicated that the paper clipped statements contained in Exhibit 1 were the altered statements but these clipped items comprise only eight statements. Moreover, because they could fall off, become misplaced, and easily be changed (even if inadvertently), the magistrate did not rely on the clips and instead reviewed all red highlighted entries in the spreadsheet as well as the corresponding credit card statements.

to these 14 entries and based on his review, the magistrate finds:

- 1) The February 2019 statement is incomplete; individual transactions are clearly not listed that would be included in the total for purchases though all pages are listed;
- 2) The April of 2019 statement does not contain any listing of transactions though all pages are listed;
- 3) The May of 2019 statement does not contain any listing of transactions though all pages are listed;
- 4) The June of 2019 statement is incomplete; page 4 is missing and there is no listing of transactions.
- 5) The [**7] December of 2020 is missing pages 2 and 4;
- 6) There is no January of 2021 statement;
- 7) The April of 2021 statement is incomplete; pages 2 and 3 are missing and there is no listing of transactions;
- 8) The June of 2021 statement appears complete;
- 9) The July of 2021 statement appears complete;
- 10) The August of 2021 statement appears complete;
- 11) The September of 2021 statement appears complete;
- 12) The October of 2021 statement appears complete;
- 13) The November of 2021 statement appears complete;
- 14) The December of 2021 statement is missing pages 2 and 3 and there is no listing of transactions.

• Canceled Checks

[*P12] Requester also testified regarding cancelled checks. Respondent has two checking accounts. Requester testified that, pursuant to the court's September 5, 2023 order, respondent produced cancelled checks and a summary page of the checking accounts. By comparing the summary pages and images of the cancelled checks, requester determined that respondent failed to produce all cancelled checks. Using the April of 2021 statement as an example, requester testified that checks are listed as being drawn on one of respondent's two checking accounts on certain statements that were not produced [**8] with copies of other checks listed on the statements. The spreadsheet that begins exhibit 4 lists the checks that were not produced in red as "check not submitted" including a date and check number. The statements themselves, with images of the produced cancelled checks, are also contained in exhibit 4. Based on requester's testimony and the contents of Exhibit 4, the

magistrate finds that checks from April, June, and August of 2021 and checks from June of 2022 were not produced. Based on the spreadsheet in Exhibit 4, a total of 61 checks have not been produced. These checks are listed, in some instances non-sequentially, in Exhibit 4.

• Conclusion

[*P13] The magistrate finds that requester has met her burden and proved, by clear and convincing evidence, that respondent is in contempt of the court's September 5, 2023 order. As noted, requester alone presented evidence. Though limited, the magistrate found it credible and compelling. Moreover, respondent did not present any evidence explaining the deficiencies in its production.

[*P14] Based on requester's testimony and the contents of Exhibit 1, the magistrate finds that respondent has failed to produce complete copies of all credit card statements, [**9] which requester sought through her April 14, 2023 request and which the court ordered respondent to produce in its September 5, 2023 order. Thus, requester has established that respondent disobeyed a court order and engaged in contemptuous conduct because the credit card statements discussed above exist (having been partially produced), were subject to the Court's September 5, 2023 order, and have not been fully and completely produced.

[*P15] In addition, the magistrate finds that requester's testimony and the contents of Exhibit 4 establish that respondent has failed to produce complete copies of "all cancelled checks written on all of Respondent's bank accounts [f]rom January 1, 2019, through June 30, 2022" which the court ordered respondent to produce in its September 5, 2023 order. In short, requester has established that respondent disobeyed a court order and engaged in contemptuous conduct because the cancelled checks exist, as they are reflected on monthly statements and other cancelled checks reflected on these same statements were produced, were subject to the Court's September 5, 2023 order, and have not been fully and completely produced. *See, Arthur Young & Co. v. Kelly*, 68 Ohio App. 3d 287, 295, 588 N.E.2d 233 (10th Dist. 1990) ("In order to show a contempt, it [**10] is necessary to establish a valid court order, knowledge of the order, and violation of it. In civil contempt, intent to violate the order need not be proved.")

[*P16] The magistrate RECOMMENDS that the Court GRANT Requester's motion for contempt and find that

respondent is in contempt of the court's September 5, 2023 order. To allow respondent to purge this contempt, the magistrate further RECOMMENDS that respondent be ordered to produce the credit card statements reflected in items 1-7 and 14, listed on page 4 and 5 above, as well as all cancelled checks from April, June, and August of 2021 and June of 2022. Respondent should ensure that production is complete. To the extent that any records do not exist or that there is some explanation for the appearance or format of the records, the magistrate also RECOMMENDS that respondent be ordered to produce an explanatory affidavit or other evidence to requester. Finally, the magistrate RECOMMENDS that requester's application for attorney's fees be held in abeyance until final decision on the motion to contempt by the court and/or respondent's production of the credit card statements and cancelled checks.

*[*P17] A party may file written objections to [**11] the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

SCOTT SHEETS

Magistrate

Filed January 3, 2024