

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Jay Nygard and Kendall Nygard,

Plaintiffs,

v.

CONTEMPT ORDER

Penny Rogers and Peter Lanpher,

Judge Susan M. Robiner

Court File No. 27-CV-13-3138

Defendants.

The above-entitled matter came before the Honorable Susan M. Robiner on January 20, 2015 for a contempt proceeding holding Plaintiffs in constructive civil contempt of court. Erick G. Kaardal, Esq. appeared for and with Plaintiffs Jay Nygard and Kendall Nygard. Robert H. Tennant, III, Esq. appeared on behalf of Defendants. Plaintiffs Jay and Kendall Nygard presented testimony.

Based upon all the files, records, and proceedings herein, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court issued a final court order in this matter on June 2, 2014. Defendants Jay T. Nygard and Kendall M. Nygard were required to comply with the Order dated June 2, 2014, which stated, in pertinent part:
 3. With respect to Defendants' nuisance claim, Plaintiffs are immediately enjoined from maintaining and operating the subject large wind turbine on their property. The turbine shall immediately be removed from the property as it constitutes a nuisance.
 4. With respect to Defendants' trespass claim, Defendants are awarded a judgment against Plaintiffs in the amount of \$7,950.00 pursuant to Minn. Stat. § 561.04.

2. At the January 20, 2015 hearing, both Plaintiffs testified and neither refuted the fact that the wind turbine has not been removed from the property as ordered and the outstanding judgment has not been paid. In addition to the testimony of the Plaintiffs, the Court also relied on argument from counsel in both oral and written form.
3. Pursuant to the Court's inherent powers and pursuant to Minn. Stat. § 588.01, subd. 3 (2014), Plaintiffs Jay T. Nygard and Kendall T. Nygard are in constructive civil contempt of court for disobedience of a lawful judgment, order or process of court for failure to comply with the Order dated June 2, 2014.
4. To exercise its civil-contempt remedies, the Court must find the following:
 - a. The Court has jurisdiction over the subject matter and the person;
 - b. The order to be enforced clearly defined the acts to be performed by a party to the proceedings;
 - c. The party directed to perform had notice of the order and a reasonable time to comply;
 - d. A request for relief has been filed with the Court by the affected party;
 - e. A hearing has been conducted and the party directed to perform has been given an opportunity to show compliance or reasons for failure to comply;
 - f. There has been failure to comply with the order to be enforced and confinement is likely to induce future compliance;
 - g. Future compliance can be achieved by the party directed to perform; and
 - h. If confinement is appropriate, the party in contempt will be able to effect release by full or partial compliance.

Hopp v. Hopp, 156, N.W.2d 212, 216–17 (Minn. 1968).

5. The Court offers the following contempt analysis:
 - a. The Court has jurisdiction over the subject matter and persons.
 - b. The Order clearly defined the acts to be performed by Plaintiffs as well as Plaintiffs had the additional opportunity to have the Court's Order clarified via the Order Denying Plaintiffs' Motions for a New Trial and Stay issued on November 14, 2014. The Court finds Plaintiff Jay T. Nygard's testimony that he did not understand the Order incredible.
 - c. Plaintiffs had notice of the order and over six months to comply with it.
 - d. Defendants have filed a request for relief with the Court.
 - e. The Court conducted an evidentiary hearing at which Plaintiffs testified and were given an opportunity to show compliance or reasons for failure to comply. Plaintiffs provided no credible reason for not complying with the Court's order.
 - f. There has been failure to comply with the order to be enforced and confinement is likely to induce future compliance.
 - g. Future compliance can be achieved by the party directed to perform.
 - h. If confinement is appropriate, the party in contempt will be able to effect release by full or partial compliance.
6. Additionally, Plaintiffs have failed to complete financial disclosures related to this matter as required by Minn. Stat. § 550.011 (2014) and have not provided good cause for failing to do so. Plaintiffs represent to the Court that they are willing and able to pay off the full amount of the judgment against them immediately, net of levied amounts yet to be released by Plaintiff Kendall Nygard's employer. Indeed, Plaintiffs' counsel reported he had cash to pay the judgment on his person at the hearing.

7. The Court sets the following purge conditions in this matter:
 - a. Plaintiffs shall immediately remove the wind turbine completely from their property and **in no event later than February 11, 2015.**
 - b. Plaintiffs shall immediately pay the outstanding money judgment owed by them to Defendants and **in no event later than January 27, 2015.** Payment can be limited to the portion of the judgment not already levied by Defendants if the levied funds are released to Defendants by January 27, 2015.
 - c. Plaintiffs shall return for a review hearing on **February 18, 2015 at 8:45 AM.** The hearing shall be held in Courtroom 1756 of the Hennepin County Government Center, 300 South Sixth Street, Minneapolis, MN 55487.
8. Through their testimony and the representations made in their written submissions and statements to the Court, the Court finds and concludes that Plaintiffs have the ability to comply with purge conditions outlined above.

ORDER

1. Plaintiff Jay T. Nygard is guilty of civil contempt of court for willful disobedience of lawful orders of court and shall be imprisoned in at the Hennepin County Adult Correctional Facility for a period of six (6) months and pay a fine of \$250.00.
2. Plaintiff Kendall M. Nygard is guilty of civil contempt of court for willful disobedience of lawful orders of court and shall be imprisoned in at the Hennepin County Adult Correctional Facility for a period of six (6) months and pay a fine of \$250.00.
3. Execution of sentence is stayed on the following conditions:
 - a. Plaintiffs shall immediately remove the wind turbine completely from their property and **in no event later than February 11, 2015.**

- b. Plaintiffs shall immediately pay the outstanding money judgment owed by them to Defendants and **in no event later than January 27, 2015**. Payment can be limited to the portion of the judgment not already levied by Defendants if the levied funds are released to Defendants by January 27, 2015.
 - c. Plaintiffs shall return for a review hearing on **February 18, 2015 at 8:45 AM**. The hearing shall be held in Courtroom 1756 of the Hennepin County Government Center, 300 South Sixth Street, Minneapolis, MN 55487.
4. The Court has made findings that Plaintiffs are able to comply with the purge conditions.
5. This matter is set for a review hearing on **February 18, 2015 at 8:45 AM** to review Plaintiffs' compliance with the purge conditions. Failure of Plaintiffs to appear may result in the issuance of a bench warrant and/or other equitable relief.
6. If Plaintiffs default in carrying out any of the provisions of this order, the stay of execution of sentence may be vacated and Plaintiffs may be incarcerated, but only after a review hearing in which Plaintiffs shall be given an opportunity to testify and to present evidence as to Defendants' inability to meet the stay conditions. **THE BURDEN SHALL BE UPON PLAINTIFFS TO PROVE THAT PLAINTIFFS HAD SUFFICIENT LEGAL JUSTIFICATION FOR NON-COMPLIANCE WITH THE STAY CONDITIONS.** If Plaintiffs fail to meet this burden of proof, the Court may vacate the stay of execution of sentence and may issue a Warrant of Commitment for Plaintiffs' immediate incarceration.
7. Except as provided herein, all prior orders remain in full force an effect.
8. Plaintiffs have been personally served with the review hearing date of **February 18, 2015 at 8:45am**.

9. Plaintiffs shall immediately order the transcripts of the court trial, motion for a new trial hearing and motion for stay hearing in this matter pursuant to Minn. R. Civ. App.. P. 110.02 and agreement of the parties.
10. The issues of costs and attorneys' fees incurred by Defendants in bringing this contempt proceeding will be addressed at the review hearing.
9. Copies of this order shall be sent to all of the parties.

Dated: January 21, 2015

BY THE COURT:

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01/21/2015 09:52:00 am

Susan M. Robiner
Judge of District Court