

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Feeding Our Future,

Case Type: Civil Other
File No.: 62-CV-20-5492
Judge: John H. Guthmann

Plaintiff,

v.

**ORDER GRANTING AND DENYING
MOTIONS FOR CONTEMPT,
INJUNCTIVE RELIEF, AND
AMENDMENT OF THE COMPLAINT**

Minnesota Department of Education,

Defendant.

The above-entitled matter came before the Honorable John H. Guthmann, Judge of District Court, via Zoom, on April 23, April 30, June 18, and June 23, 2021. The following motions were at issue at one or more of these hearings: Feeding Our Future’s April 13, 2021, Motion for an Emergency Temporary Restraining Order and Order for Contempt of Court; Feeding Our Future’s April 21, 2021, Motion for Leave to File its First Amended Complaint; Feeding Our Future’s April 23, 2021, Renewed Motion for an Emergency Temporary Restraining Order and Order for Contempt of Court; Feeding Our Future’s April 29, 2021, Motion for Leave to File its Second Amended Complaint; the Court’s Order to MDE to Show Cause made on the record during a hearing in this matter on April 30, 2021; and, Feeding Our Future’s May 28, 2021, Motion to Compel Production of Discovery Responses and Documents. Llonyddwch Rhyddid Watkins, Esq., appeared on behalf of plaintiff. Kristine K. Nogosek, Esq., appeared on behalf of defendant Minnesota Department of Education (“MDE”).

Based upon all of the files, records, submissions and arguments of counsel herein, the court issues the following:

ORDER

1. Feeding Our Future's Motion and Renewed Motion for an Emergency Temporary Restraining Order and Order for Contempt of Court is **GRANTED IN PART AND DENIED IN PART** as follows:

- a. Feeding Our Future's Motion and Renewed Motion for a Temporary Restraining Order seeking an Order requiring MDE to end its "stop pay" policy as to Feeding Our Future and to timely pay Feeding Our Future's claims is denied as moot because MDE lifted its "stop pay" as to Feeding Our Future's claims and paid the reimbursement claims that were the subject of the motion.
- b. Feeding Our Future's motions to find MDE in contempt of the stipulated December 22, 2020 Order ("Order") is granted. The Court finds MDE's violation of the Order sanctionable and hereby orders MDE to pay Feeding Our Future \$35,750. MDE shall pay the sanction to Feeding Our Future within thirty days of the date of this Order.
- c. As part of the ruling on the motions for contempt, MDE is also ordered to pay Feeding Our Future's reasonable attorneys' fees for pursuing its motions for contempt of court in the amount of \$11,750, which was stipulated by the parties, without prejudice to any other of Feeding Our Future's claims or any of MDE's defenses. MDE shall pay the sanction to Feeding Our Future within thirty days of the date of this Order.
- d. The rationale and legal basis for the court's ruling in connection with all contempt issues was stated in the record of the June 23, 2021 hearing, which record is incorporated herein by reference.

2. Feeding Our Future's Motion for Leave to File a First Amended Complaint was withdrawn by Feeding Our Future as moot and replaced by its Motion for Leave to file a Second Amended Complaint, which is **GRANTED IN PART AND DENIED IN PART** as follows:

- a. Feeding Our Future is granted leave to amend its complaint to add general allegations, amend its existing claims, and add a claim for defamation to incorporate MDE's conduct since Feeding Our Future filed its initial Complaint, all as set forth in the proposed Second and Third Amended Complaint.
- b. Feeding Our Future's motion for leave to add claims for civil theft, conversion, abuse of process, and fraud are denied.

- c. Feeding Our Future is hereby granted leave to file its proposed Third Amended Complaint, which incorporates the Court's rulings on the Motion to Amend. Upon execution of this Order, Feeding Our Future may serve and file the Third Amended Complaint.
- d. The rationale and legal basis for the court's ruling on the Motion to Amend was stated in the record of the June 18, 2021 hearing, which record is incorporated herein by reference.

3. By agreement of the parties, Feeding Our Future's May 28, 2021, Motion to Compel Production of Discovery Responses and Documents is withdrawn so the parties can continue their meet-and-confer efforts to resolve their outstanding discovery issues based on the guidance and recommendations from the Court at the June 18 hearing. If the parties are unable to resolve their discovery disputes, they may request an informal discovery conference.

4. In addition to the hearing record, the following supplemental memorandum is made part of this Order.

Dated: June 24, 2021

BY THE COURT:

John H. Guthmann
Judge of District Court

MEMORANDUM

This case involves a dispute over MDE's administration of the Child and Adult Care Food Program ("CACFP"). The CACFP is a program of the United States Department of Agriculture ("USDA") that is administered by the government of each state. (Def's Opp'n to Pl's Renewed Mot. for a Temp. Rest. Order and Contempt of Court at 2.) The USDA reimburses approved sponsoring entities for providing nutritious, prepared meals and snacks to children and adults in certain settings. *Id.*; see 7 C.F.R. § 226.1. For purposes of the instant motions, the parties do not dispute that MDE created a two-step application process for an applicant to gain

approval as a CACFP site. The first step entails an application for a site ID. Without a site ID, the applying party cannot gain access to the on-line CLiCS System to complete the rest of the application. MDE agrees that it may reject an application and trigger an applicant's right to an administrative appeal of its final decision at either stage of the process. (Second Honer Decl. & Ex. A.)

Between November 30, 2020 and April 13, 2021, plaintiff applied for 144 site ID's proposing to sponsor the delivery of food through the CACFP program during the remainder of the school year. (May 21, 2021 Bock Decl., Ex. 6.) Counsel noted at the June 23, 2021 hearing that only the April 13, 2021 application was acted upon (it was approved) before the remaining 143 were denied in a letter dated April 29, 2021, which also advised plaintiff that the denial could be appealed administratively. (Second Honer Decl., Ex. A.) The letter states that the denial was based on plaintiff's alleged serious deficiencies as a sponsoring agency.¹ (*Id.*) MDE took more than thirty days to act upon all 143 of the applications. (May 21, 2021 Bock Decl., Ex. 6.) In fact, MDE took more than 45 days to act on 129 of the applications and more than 80 days to act on 72 of the applications. (*Id.*) As stated during the June 23, 2021 hearing, MDE's conduct violated the Court's December 22, 2020 Order (filed on December 23, 2020), which required the MDE to be "reasonably prompt" in its response to plaintiff's CACFP program applications. By choosing to bifurcate the application process, and by asserting the right to make a final appealable decision at either stage of the process, the MDE was obligated to comply with the Court's Order and the applicable federal regulation at each stage of the application process

¹ According to counsel, plaintiff filed an administrative appeal of the denials, which was heard and the outcome is pending. Plaintiff, working with MDE cured the serious deficiencies by June 4 and, according to MDE counsel, plaintiff is now a CACFP program sponsor in good standing.

and when considering MDE's total evaluation time for the stages combined.² See 7 C.F.R. § 226.6(b)(3) ("Any new or renewing institution applying for participation in the Program must be notified in writing of approval or disapproval by the State agency, within 30 calendar days of the State agency's receipt of a complete application."). MDE cannot divide the application process into pieces and take as long as it wishes at every stage of the process except the last. In the context of a finite school year and an even shorter summer school season, such a practice can only be viewed as a clear violation of both this Court's order and applicable federal regulations.³

Based upon MDE's clear violation of the Court's December 23, 2020 order for injunctive relief, the court ruled that it defendant was guilty of contempt, its conduct should be sanctioned, and that sanctions are necessary to insure future compliance with court orders. The court finds it appropriate to expand on the ruling that it made during the June 23, 2021 hearing.

The court's order imposes statutory and common-law contempt penalties and sanctions. Minnesota courts may award attorney's fees as a sanction by statute, rule, or through the exercise of inherent power. See, e.g., *Frazier v. Burlington Northern Santa Fe Corp.*, 788 N.W.2d 770, 783 (Minn. Ct. App. 2010), *rev'd on other grounds*, 811 N.W.2d 618 (Minn. 2012) (inherent authority); Minn. Stat. § 549.21 (2020); Minn. R. Civ. P. 11. Here, the court awards sanctions and attorney's fees in part pursuant to its inherent authority.

The court may also use contempt power as a "means to enforce its orders." *Erickson v. Erickson*, 385 N.W.2d 301, 304 (Minn. 1986). Contempt of court is of two kinds, direct and constructive. Minn. Stat. § 588.01 subd. 1 (2016). Constructive contempt consists of an act or acts not committed in the immediate presence of the court and of which the court has no personal

² The parties dispute the legality of MDE's multi-part application process. Resolution of the dispute is beyond the scope of the contempt motions.

³ At no time did the MDE request good cause modification of the December 22, 2020 injunction due to subsequent circumstances, such as COVID-19 or its later finding that plaintiff committed a serious deficiency.

knowledge. *Id.*, § 588.01, subd. 3. Constructive contempt may occur when a party acts in disobedience of any lawful judgment, order, or process of the court. *Id.*, § 588.01, subd. 3(3). In the case of a constructive civil contempt, it must appear that the right or remedy of a party to an action or special proceeding was defeated or prejudiced by the contempt before the contempt can be punished by imprisonment or by a fine exceeding \$50. *Id.* § 588.02.

“Civil contempt . . . is failing to obey a court order in favor of the opposing party in a civil proceeding.” *Newstrand v. Arend*, 869 N.W.2d 681, 692 (Minn. Ct. App.) (quoting *Minn. State Bar Ass'n v. Divorce Assistance Ass'n, Inc.*, 311 Minn. 276, 285, 248 N.W.2d 733, 741 (Minn. 1976)), *rev. denied* (Minn. Dec. 15, 2015). Civil contempt sanctions operate in a prospective manner and are designed to induce future compliance with a court order. *Mower Cty, Human Servs. on Behalf of Swancutt v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996) (quotations omitted); *Mahady v. Mahady*, 448 N.W.2d 888, 890 (Minn. Ct. App. 1989) (“civil contempt is said to give the contemnor the keys to the jail cell, because compliance with the order allows him to purge himself and end the sanction.”).⁴ Comparatively, criminal contempt is intended to punish past misconduct. *Minn. State Bar Ass'n v. Divorce Assistance Ass'n, Inc.*, 285 N.W.2d 733, 741 (Minn. 1976).

Courts addressing civil contempt have expansive discretion because “the function of the court is to make the rights of one individual as against another meaningful.” *Hopp v. Hopp*, 279 Minn. 170, 174, 156 N.W.2d 212, 216 (1968). Thus, a district court has “inherently broad discretion” to hold a person or entity in contempt if they acted “contumaciously, in bad faith, and out of disrespect for the judicial process.” *Erickson*, 385 N.W.2d at 304 (citation omitted). The Minnesota Supreme Court recognizes that:

⁴ The court’s order does not include a jail sanction so there is no need to address purge conditions. *See Mower County Human Services v. Swancutt*, 551 N.W.2d 219, 222-24 (Minn. 1996) (outlining the proper procedure for imposing financial and penal consequences for constructive civil contempt of court).

If the duty [to be performed] is one specifically defined by a proper decree of the court, it must be free to compel performance by methods which are speedy, efficient, and sufficiently flexible to meet the problem at hand.

Hopp v. Hopp, 279 Minn. at 174, 156 N.W. 2d at 216.

Based upon the evidence received and following a hearing on the issue of contempt:

the court or officer shall determine the guilt or innocence of the person proceeded against and, if the person is adjudged guilty of the contempt charged, the person shall be punished by a fine of not more than \$250, or by imprisonment in the county jail, workhouse, or work farm for not more than six months, or by both.

Minn. Stat. § 588.10 (2020); *see also* Minn. Stat. § 588.04(a) (2020) (the court “may commit the [contemnor] to jail, impose a fine, or both, and make such order thereupon as the case may require”); Minn. Stat. § 588.02 (2020) (in the case of constructive contempt, “it must appear that the right or remedy of a party to an action . . . was defeated or prejudiced by [the contemnor] before the contempt can be punished by imprisonment or by a fine exceeding \$50.”).

Minnesota courts also possess inherent contempt power that exists independent of the statutory authority provided in Minnesota Statutes Chapter 588. *State v. Sports & Health Club, Inc.*, 392 N.W.2d 329, 336 (Minn. Ct. App.) (“The power to punish for contempt is an inherent power of constitutionally created courts in Minnesota” and “exists independent of the contempt statutes”), *rev. denied* (Minn. 1986); *accord In re Cary*, 165 Minn. 203, 204, 206 N.W. 402, 402 (1925) (addressing direct contempt). As such, the trial court has broad discretion to impose fines larger than the limits set by Chapter 588 “to induce compliance with its lawful order.” *Sports & Health Club, Inc.*, 392 N.W.2d at 336. The discretion even includes authority to hold nonparties in contempt when they flagrantly disregard court orders. *Bowman v. Bowman*, 493 N.W.2d 141, 144 (Minn. Ct. App. 1992) (upholding a finding of contempt and an award of attorney’s fees against a corporate officer of nonparty corporation who ignored a lawful subpoena).

Here, the court finds the MDE in constructive civil contempt for violating a court order, the entry of which it negotiated and stipulated to. Due to the short timeframes involved in the duration of plaintiff's CACFP program services, repeated visits to court cannot remedy the irreparable harm and accompanying collateral consequences to plaintiff and the children it serves if MDE violates the December 22, 2020 order again. Repeated MDE violations of the Court's December 22, 2020 order are indeed capable of repetition while evading effective review. *See, e.g., Elsie v. Comm'r of Public Safety*, 298 N.W.2d 29, 32-33 (Minn. 1980). The Court therefore finds that the contempt motions were not mooted when MDE finally acted upon the 143 applications with its April 29, 2021 letter. Only through a strong statement by the Court, accompanied by a meaningful financial consequence, can the Court ensure that the MDE will follow its orders.

J H G

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