

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

KISLING, NESTICO & REDICK,
LLC, et al.,

Defendants.

Case No. CV-2016-09-3928

Judge James Brogan

DEFENDANT SAM GHoubrial, M.D.'S
MOTION FOR CIVIL CONTEMPT,
AND TO SHOW CAUSE WHY
PLAINTIFFS' COUNSEL SHOULD NOT
BE HELD IN CRIMINAL CONTEMPT.

Defendant Sam Ghoubril, M.D. ("Dr. Ghoubril") respectfully moves this Court to hold Plaintiffs' counsel in civil contempt, and to issue a show cause Order for Plaintiffs and/or their Counsel to explain why they should not be held in criminal contempt of this Court's February 12, 2024 Order for the original deposition of Julie A. Ghoubril, given on October 12, 2018 in another matter, to be sealed, for the purpose of withholding it (the "Sealed Deposition") from private access and the public docket until its relevance to this litigation is determined. To wit, Plaintiffs' Counsel filed upon the public docket, on February 19, 2024, a "Response in Opposition to Defendants' Joint Motion to Redact Transcript of Feb. 15 Hearing, and Plaintiffs' Objection to Defendants' Proposed 'Nunc Pro Tunc' Order that is Really a Gag Order" (the "Opposition"). In the Opposition, Plaintiffs' Counsel knowingly and deliberately disclosed inflammatory content of the Sealed Deposition upon the public docket, frustrating the clear intentions of this Court's Order of February 12, 2024, which were furthermore stated upon the record and clarified in the telephone hearing of February 15, 2024.

As of the filing of this Motion, Plaintiffs' counsel's subjective interpretation of the content of the Sealed Deposition, along with some purported quotes from the Sealed Deposition, remains

publicly accessible on the public docket, due to the knowing and intentional filing by Plaintiffs' Counsel of the Opposition. This is a flagrant violation of this Court's directives. In accordance with its lawful prerogative, this Court ordered the Sealed Deposition to remain **sealed**. Plaintiffs' Counsel gained access to the Sealed Deposition via an inadvertent disclosure of the Clerk and/or the Court, as described in this Court's Nunc Pro Tunc Order of February 20, 2024. As such, Plaintiffs' Counsel should be held in civil contempt, and ordered to show cause and explain to this Court why publishing the content of the Sealed Deposition does not place him in criminal contempt of this Court's Order of February 12, 2024. Plaintiffs' counsel should also be ordered to appear and explain why he should not be sanctioned accordingly.

A Brief in Support follows.

Respectfully submitted,

/s/ Bradley J. Barmen

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Sam N. Ghoubrial, M.D.

BRIEF IN SUPPORT

I. FACTS AND CASE

On February 12, 2024, this Court ordered the filing, under seal, of the Sealed Deposition. This Court intended that the Sealed Deposition “remain private and not available to the public, the Parties, and/or their counsel,” as reiterated in the Nunc Pro Tunc Order of February 20, 2024. By inadvertence or mistake, counsel for the parties were provided access to download the content of the Sealed Deposition for approximately thirty (30) minutes on February 12, 2024. Plaintiffs’ Counsel took advantage of this inadvertent disclosure, confirming during a telephone hearing on February 15, 2024 that he had downloaded and reviewed the Sealed Deposition. Despite this Court therein reiterating its desire to withhold the Sealed Deposition from both private and public access, Plaintiffs’ Counsel filed the Opposition on February 19, 2024, in which incendiary content from the Sealed Deposition is discussed at length. As a result, the content of the Sealed Deposition, which this Court Ordered withheld from public access, was posted on the online docket for Summit County and was readily accessible to readers of the Opposition. By filing the Opposition on February 20, 2024, Plaintiffs’ counsel knowingly and blatantly violated the Courts’ February 12, 2024, Order.

II. LAW AND ARGUMENT

A. Standard of Review

This Court’s decision upon this Motion cannot be reversed unless the reviewing court finds that an abuse of discretion has occurred. *State ex rel. Ventrone v. Birkel*, 65 Ohio St. 2d 10, 11, 417 N.E.2d 1249 (1981). Contempt is a disregard of, or disobedience to, an order or command of judicial authority. *State v. Finn*, 7 Ohio App.3d 294, 295, 455 N.E.2d 691 (9th Dist. 1982); *see also* R.C. 2705.02(A) (“Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment,

or command of a court or an officer”). To establish contempt, it must be shown that the defendant willfully, and for an improper purpose, disobeyed a lawful court order. *State v. Finn*, 7 Ohio App.3d 294, 295, 455 N.E.2d 691 (9th Dist. 1982) (citing 17 Ohio Jurisprudence 3d 317, Contempt, § 3). There is no question this is precisely what occurred here.

B. Types of Contempt

Contempt may be classified as criminal or civil. *Carroll v. Detty*, 113 Ohio App.3d 708, 711, 681 N.E.2d 1383 (4th Dist. 1996). Civil contempt is “remedial” in character, and is designed to rectify an unfairness that was done to another party by the contemnor’s disobedience. *Pugh v. Pugh*, 15 Ohio St.3d 136, 139, 472 N.E.2d 1085 (1984). A sanction for civil contempt must allow the contemnor an opportunity to cure his contempt. *In re Purola*, 73 Ohio App.3d 306, 312, 596 N.E.2d 1140 (3d Dist. 1991). For this reason, the movant’s burden of proof to establish civil contempt is by clear and convincing evidence. *Carroll v. Detty*, 113 Ohio App.3d 708, 711, 681 N.E.2d 1383 (4th Dist. 1996). Evidence of the contemnor’s purposeful, willing, or intentional violation of a trial court’s prior order is *not* required to hold a party in civil contempt. *Id.*

Criminal contempt is punitive in character, serving as a punishment for past refusal to obey a court order. *Schrader v. Huff*, 8 Ohio App.3d 111, 113, 456 N.E.2d 587 (9th Dist. 1983). In cases of criminal contempt, *intent* to defy the court order is an essential element, and must be proven beyond a reasonable doubt. *In re Carroll*, 28 Ohio App.3d 6, 10, 501 N.E.2d 1204 (8th Dist. 1985).

C. Analysis

In this case, Plaintiffs’ Counsel has disobeyed and resisted this Court’s lawful Order of February 12, 2024, by publicizing some of the content of the Sealed Deposition. Clear and convincing evidence of this violation is present on this case’s public docket, which discloses: (1) the February 12, 2024, Order for the Sealed Deposition to be filed under seal; (2) the violative

Opposition filed by Plaintiffs on February 20, 2024,; and, (3) the Nunc Pro Tunc Order of February 20, 2024.

Plaintiff's Counsel, in a hearing on February 15, 2024, admitted that he accessed the Sealed Deposition. Although this Court expressed, in that same hearing, its intent to withhold the Sealed Deposition from both private and public access, Plaintiffs' Counsel reproduced the inflammatory, prejudicial content of the Sealed Deposition in the Opposition filed on February 20, 2024. This conduct plainly represents clear and convincing evidence of blatant disobedience of this Court's Order, which therefore subjects Plaintiffs to civil contempt sanctions – regardless of “intent” to disobey.

Furthermore, it is beyond any reasonable doubt that Plaintiffs' Counsel (an experienced attorney who is known for leveraging media coverage of provocative litigation discourse for his benefit) *did* knowingly and intentionally flout this Court's Order of February 12, 2024, as well as the directives of this Court given at the telephonic hearing of February 15, 2024. Therefore, punitive criminal contempt sanctions are appropriate against Plaintiffs as well. This Court is urged to find Plaintiffs' counsel in civil contempt and to require him to show cause why they should not be held in criminal contempt as well.

D. Retained Jurisdiction

This Court has jurisdiction to consider this contempt-related motion immediately, whether or not the appeal of an issue in this litigation has been noticed. Although a notice of appeal divests the trial court of jurisdiction over the issues on appeal, this Court “retains all jurisdiction not inconsistent with the reviewing court's jurisdiction[.]” *Howard v. Catholic Social Servs. of Cuyahoga Cty., Inc.*, 70 Ohio St. 3d 141, 146, 637 N.E.2d 890 (1994). The trial court's retained jurisdiction “includes the authority to rule on collateral issues such as contempt, appointment of a

receiver, and injunction.” *Young v. Young*, 10th Dist. Franklin No. 13AP-95, 2013-Ohio-4933, ¶ 9 (citing *State ex rel. Special Prosecutors v. Judges Court of Common Pleas*, 55 Ohio St.2d 94, 97, 378 N.E.2d 162 (1978)); *see also Cardone v. Cardone*, 9th Dist. Summit Nos. 18349, 18673, 1998 Ohio App. LEXIS 2028, *21 (May 6th, 1998) (“The general rule is that a trial court is divested of jurisdiction once an appeal is taken....However....the trial court retains the jurisdiction and the power to find a party in contempt”). Accordingly, contempt proceedings are within this Court’s retained jurisdiction, regardless of any pending appeal.

III. CONCLUSION

For the foregoing reasons, an Order should be issued finding Plaintiffs’ Counsel in civil contempt and further ordering him to appear and show cause why they should not be held in criminal contempt of this Court’s February 12, 2024 Order to file the Sealed Deposition under seal. All sanctions available under Ohio law should be considered, and the most severe are warranted, to include an award to Dr. Ghoumbrial of attorneys’ fees for the preparation of this Motion. A draft Order is attached to this Motion for the Court’s consideration.

Respectfully submitted,

/s/ Bradley J. Barmen

Bradley J. Barmen, Esq. (0076515)

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Counsel for Defendant

Sam N. Ghoumbrial, M.D.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was filed electronically with the Court on this 21st day of February, 2024. The parties may access this document through the Court's electronic filing system.

/s/ Bradley J. Barmen

Bradley J. Barmen (0076515)

Counsel for Defendant

Sam N. Ghoubril, M.D.

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ORDER

This matter is before the Court upon the Motion to Show Cause filed by Defendant Dr. Sam Ghoubrial. Pursuant to this Court's broad discretion to regulate discovery, it finds Defendant's Motion for Sanctions well taken and is GRANTED.

IT IS ORDERED THAT:

On or before _____, Plaintiffs and their counsel file a memorandum in this Court, showing cause why they should not be held in contempt for knowing and intentionally violating the February 12, 2024 Order to file the original deposition of Julie A. Ghoubrial under seal.

Date

Judge James Brogan