

CHILDREN'S COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

SMSC RESERVATION

STATE OF MINNESOTA

In Re the Matter of

Court File No.: CC- 079-13

Neglected Children.

Memorandum Opinion on Attorney Contempt

Introduction

All courts have the inherent authority to regulate the behavior and conduct of the attorneys who practice before them. In accords with this power, this Court ordered counsel for the Community, Jessica Ryan, to show cause why she should not be found in contempt of court for failing to comply with the Court's July 17, 2017 order in this case. For the following reasons, this Court is not holding Ms. Ryan in contempt of court, but is issuing this Opinion to convey to Ms. Ryan the seriousness of her conduct and the future expectations for practice before the SMSC Tribal Court.

Factual Background

Ms. Ryan serves as counsel for the Community in this child-welfare proceeding. Following out-of-home placement and transfer of physical and legal custody of the children, on May 24, 2017, this Court ordered stipulated child-support payments to be made on a regular basis in a set amount to the children's legal guardian. Because the

children's father is under a conservatorship, and the mother received support from the father for the care of the children, these payments needed to be made by the father's Conservator of Estate for both the father and mother, until a separate conservatorship was established for the mother's funds.

At the request of the children's custodian, the Court held a hearing on July 13, 2017, at which it became clear that the child-support payments were not being timely made. As a result, the Court issued an order on July 17, 2017 directing the payment of child support from the Conservator of Estate for the father's estate until further order of this Court changed that responsibility. To ensure compliance by the Conservator of Estate, the order contained the requirement that Ms. Ryan "immediately" provide both a copy of the Court's May 24, 2017 stipulated order and the July 17, 2017 order to the Conservator of Estate, with certain portions of the latter order pertaining to detailed information about the children redacted.¹ The Court further ordered that Ms. Ryan file a certificate with the Court stating that she had provided the Conservator of Estate with the required documents.

The purpose of the Order was two-fold. First, to ensure that the Conservator was aware of the Court's precise order, i.e. amounts to be paid, the deadlines by which they were to be paid, her responsibilities for ensuring timely payments, and the fact that payments could only be decreased if authorized by court order. And second—also

¹ July 17, 2017 Order at 7.

important—to provide the Court and all parties with notice that the Conservator of Estate had received (and could therefore comply with) the orders.

Two weeks after issuance of the order, on July 31, this Court had not received the required certificate, and the Clerk of Court sent two emails to Ms. Ryan, reminding her of this Court's order, and inquiring when the certificate would be filed. Ms. Ryan did not reply to either message. On August 8, three weeks after this Court's order, the Clerk of Court sent two additional emails to Ms. Ryan, inquiring when the required certificate would be filed. Ms. Ryan did not reply to these emails either. On August 17, *one month* after this Court's initial order, the Clerk of Court again emailed Ms. Ryan, explaining that the Court expected to receive the required certificate by the close of business that day. Ms. Ryan did not reply until *the following day*, when she responded:

I am just back in the office today and working my way through my emails. I now see this email. I will get the documents filed, but clearly it was not filed by the deadline of yesterday, as I am just seeing it now. I have not prepared the certificate and have a number of other filings that I am trying to accomplish today. I will add this to the list and try to get them all done by close of business, but I am realistic that such is going to be difficult. I will do my best – as that is all I can do.

Notably, in this, her first communication on the subject, Ms. Ryan did not inform the Clerk that she had already provided the orders to the Conservator of Estate, or give any hint that she had complied with the Court's order in any way.

A week later, on August 24, 2017, having not received the required certificate or anything further from Ms. Ryan, the Court issued an order for Ms. Ryan to appear on

August 31, 2017 at 9:30 a.m. “to explain why she should not be found in Contempt of Court for violating the Court’s July 17, 2017 Order in this matter.”²

Ms. Ryan finally filed the ordered certificate on August 30, 2017, the afternoon before the show-cause hearing (although it contained no certification that the July 17 order had been redacted as ordered). Ms. Ryan also filed an affidavit with the Court, offering more explanation surrounding her failure to comply with this Court’s order. Ms. Ryan attended and testified at the show-cause hearing, and the court-appointed guardian *ad litem* for the children, was also present.

Ms. Ryan began the hearing by apologizing to the Court, and explaining that because she had discussed the substance of this Court’s May 24, 2017, and July 17, 2017 orders with the Conservator of Estate, and ensured the child-support payments had been made, she “believe[d] . . . [she] had substantially complied with what the intent was, and the thrust of the order was to ensure that we took care of the obligations that we needed to take care of for getting payments out.”³ Ms. Ryan apologized for not following the procedural requirements of this Court.⁴

Ms. Ryan then explained that during this time period, she was moving to a new office location and working through a disruption in her practice,⁵ and thus “[i]n that

² August 24, 2017 Order at 2.

³ Aug. 30, 2017 Tr. at 6:3–7.

⁴ *Id.* at 6:15–16.

⁵ *Id.* at 6:18–8:4.

process I did not prioritize getting the Certificate of Service back to the Court and following through on what I needed to do that way. I was prioritizing other things that I was feeling were more urgent with other responsibilities that I had, and I realize I should not have done that.”⁶

Ms. Ryan detailed to the Court her communications with the Conservator of Estate after the July 13 hearing regarding the new details for the child-support payments and confirmation that the payments had been made. She also referenced an email sent by the Conservator of Estate to the Clerk of Court (but not to the other parties, and not as a filing in the Children’s Court or any other case) stating that child-support payments had been made.⁷ Ms. Ryan acknowledged that until August 30th, the Conservator of Estate did not receive the Court’s May 24, 2017 stipulated order (although she apparently saw some earlier unsigned version of the proposed stipulation among the parties) or its July 17, 2017 order, as ordered by this Court.⁸

Ms. Ryan closed her testimony by reporting that she had begun to put new procedures in place to ensure deadlines and court orders are followed in the future, and she is going to hire another person to work with her in the office to ensure the timely filing of documents.⁹ The Court then allowed _____ to speak on the matter. In

⁶ *Id.* at 8:5–11.

⁷ *Id.* at 8:12–13:6.

⁸ *Id.* at 11:7–12:7, 13:7–14.

⁹ *Id.* at 15:25–16:12.

her guardian role, _____ stated that because the payments had been made shortly after the Court's July 17, 2017 order, from the children's perspective the substance of the order was satisfied.¹⁰ _____ then stepped outside her role as a guardian *ad litem* and spoke positively about Ms. Ryan and her dedicated efforts on behalf of the children in the Community, and requested that this Court not find Ms. Ryan in contempt.¹¹

Analysis

To avoid "disobedience to the orders of the Judiciary,"¹² it is an inherent power of all courts, including this one, to hold in contempt those that appear before it.¹³ This contempt power "lies at the core of a sovereign's authority to make its own laws and to be governed by them."¹⁴ Part of this authority is the ability to regulate the behavior and conduct of the attorneys that practice before it.¹⁵ "While this power 'ought to be

¹⁰ *Id.* at 17:3–15.

¹¹ *Id.* at 17:16–19:15.

¹² *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 798 (1987).

¹³ See *In re Marriage of Enyart*, 5 Shak. T.C. 1, 2 (June 10, 2004) ("Under the remedial powers inherent to the Court, the Court may enforce its orders by holding parties subject to its personal jurisdiction in contempt for failure to abide orders of the Court. To deny this Court's power to enforce its own orders against noncompliant parties is to cripple the Court and, ultimately, to emasculate the Community's sovereignty.").

¹⁴ *Id.* at 3.

¹⁵ See, e.g., *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *Sisk v. Transylvania Cmty. Hosp., Inc.*, 695 S.E.2d 429, 436 (N.C. 2010); *Am. Express Co. v. Hickey*, 869 So. 2d 694, 695 (Fla. App. 2004); *Guss v. State*, 936 S.W.2d 76 (Ark. 1997) (per curiam); *In re Tubbs*, 302 B.R. 290 (Bankr. W.D. Ark. Nov. 25, 2003); *In re Kramer*, No. WR-70,510-01 (Tex. Ct. Crim. App. April 22, 2009) (per curiam).

exercised with great caution,' it is nevertheless 'incidental to all Courts.'"¹⁶ Following repeated missed deadlines and failure to comply with court orders and local rules, courts have held attorneys in contempt and sanctioned them in various ways, including fines ranging from \$100 to \$12,500,¹⁷ requirements that the attorney study local rules and practice books,¹⁸ removal from court-appointed cases and forfeiture of payment for work done,¹⁹ barring future practice before the court for a set amount of time,²⁰ and referral to state bar disciplinary boards.²¹

While the Community's court has not yet held an attorney in contempt, we have held individuals in contempt of court for failing to follow court orders.²² Furthermore,

¹⁶ *Chambers*, 501 U.S. at 43 (quoting *Ex parte Burr*, 22 U.S. (9 Wheat.) 529, 531 (1824)).

¹⁷ See *Miller v. Appellate Court*, 136 A.3d 1198 (Conn. 2016) (contempt finding and fine of \$100 and suspension from practice for six months following failure to meet deadlines in three separate cases and the filing of a frivolous appeal in a fourth); *Archibald v. People*, No. 2016-0050 (V.I. Aug. 10, 2017) (contempt finding and fine of \$1,000 following delays and improper filings causing the court to expend resources to obtain compliance); *In re Hermesmeier*, No. 16-11189 (5th Cir. May 2, 2017) (per curiam) (upholding decision of contempt finding and fine of \$500 for violating local rule requiring respect and candor towards the court); *Szoke v. Geotech Env't'l, Inc.*, Nos. 09-60077-CIV, 09-60211-CIV, 2009 WL 2589149 (S.D. Fla. Aug. 19, 2009) (fine of \$12,500 for failing to follow numerous local rules, failure to comply with court-orders, and failure to appear at show-cause hearing).

¹⁸ See *Thalheim v. Greenwich*, 775 A.2d 947 (Conn. 2001).

¹⁹ See *In re Kramer*, No. WR-70,510-01 (Tex. Ct. Crim. App. April 22, 2009) (per curiam).

²⁰ See *In re Tubbs*, 302 B.R. at 291.

²¹ See *Guss*, 936 S.W.2d at 77.

²² See *Gatzke v. Campbell*, 3 Shak. T.C. 131, 131 (Mar. 10, 1999) (finding that the SMSC courts had the "authority to find litigants in civil contempt" and holding judgment debtor in contempt, assessing a fine of \$500 for each day he did not comply with the court's previous order); *In re Marriage of Enyart*, 5 Shak. T.C. 1, 4 (June 10, 2004) (holding member in contempt for failing to pay court-ordered temporary spousal maintenance and garnishing per capita payments in remedy); *Shakopee Mdewakanton Sioux Community*

on at least one occasion, the Court has imposed a monetary sanction for failing to comply with court-ordered deadlines.²³ The Court's Rules of Civil Procedure establish standards of professional conduct for attorneys practicing before the Community's courts, and an attorney's license to practice in the Tribal Court can be suspended or revoked following a finding that the attorney "has been held in contempt of Tribal Court by the Tribal Court."²⁴

Ms. Ryan admittedly failed to comply with the Court's July 17, 2017 order. The Court does not view this as a minor "procedural" matter, as Ms. Ryan characterized it. As the Court explained at the show-case hearing, judges feel responsible for the children in the child-welfare cases before them, and without proper documentation and filings in the record, do not have any way to ensure that their orders are being followed.²⁵ Indeed, Ms. Ryan's behind-the-scenes verbal communications with the Conservator of Estate did not serve the second purpose identified above for the Court's order: to provide the Court and all parties with notice that the Conservator of Estate had received (and could therefore comply with) the orders. The Court was particularly

Gaming Enterprise v. Prescott, 5 Shak. T.C. 120, 123 (June 9, 2008) (considering, and denying, a contempt motion due to underlying jurisdictional issues).

²³ In *Little Six, Inc. v. Prescott*, 5 Shak. T.C. 5 (July 13, 2004), the Tribal Court sanctioned an attorney for failing to file a motion to take an attorney's deposition by the deadline outlined in the Court's scheduling order. *Id.* at 5–6. The sanction imposed was payment to the deposed attorney of his standard hourly fee for the time spent in the deposition. *Id.* at 7.

²⁴ SMSC R. Civ. P. 3(d).

²⁵ August 31, 2017 Tr. at 20:1–20:17.

concerned about this because of the lack of compliance with its May 24 child-support order demonstrated at the July 13 hearing.

Further, the Court order that actual copies of its prior orders be provided to the Conservator of Estate was intended to ensure that nothing got lost in translation between what Ms. Ryan heard at the hearing and what the Court ordered. Fortunately, it appears that in this instance, the Conservator of Estate received correct verbal information and complied with the Court's orders.

Had this this been the first instance of Ms. Ryan's failure to comply, the Court would likely not have gone so far as to issue a show-cause order. But as the Court pointed out at the show-cause hearing, Ms. Ryan's failure to comply with the July 17 order was not the first time in this case that Ms. Ryan has failed to comply with the Court's orders. In a March 31, 2015 Order, after a prior order directed the Community to file certain drug-testing results by March 10 with supplemental information, the Court found:

Despite these clear directives, the Community did not file [the] hair-follicle test results until March 20, and when it did file them, filed them without any supporting documentation regarding their authenticity or meaning and without proof of service.²⁶

And in an October 7, 2015 Order, this Court noted Ms. Ryan's representation at a September 3, 2015 hearing that she would seek to modify certain child-support

²⁶ March 31, 2015 Order at 3-4.

obligations by filing a motion in the related conservatorship matter, and the fact that over one month later, she had not done so.²⁷ In that instance, moreover, in addition to failing to timely seek to modify child-support obligations, Ms. Ryan and her client had unilaterally cut payments to the children's mother without court authorization and in direct contravention of the Court's prior order setting the amount the mother was to receive.²⁸

This Court has no doubt as to Ms. Ryan's dedication to the children and families of the Community, but the Court has a responsibility to ensure that the Community's Court, and those practicing before it, keep to the highest standards of professional diligence. The Court also has a responsibility to ensure that all parties receive due process, and many of the deadlines imposed (especially those imposed by court order in child-welfare and conservatorship proceedings where the statutory procedures are sparse) are intended to ensure that the non-Community parties to the proceeding have advance notice of what position the Community will take at a particular hearing. The Court has a further responsibility to act when its orders are not followed. If parties or their lawyers fail to comply with the Court's orders, the Court's authority—and its important place in the Community's government—is undermined.

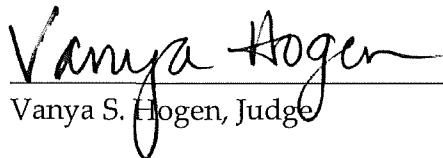
²⁷ October 7, 2015 Order at 4.

²⁸ *Id.*; see also Transcript of October 6, 2015 Hearing at 37:9-24.

As detailed in the Court's Rules of Civil Procedure and the caselaw cited above, a finding of contempt can have far-reaching effects. In light of the fact that Ms. Ryan did take steps to ensure the Conservator of Estate's compliance with the Court's child-support order, and in light of her promises to get assistance so that she can timely comply with Court orders (even those she deems "procedural") in the future, the Court does not wish to subject Ms. Ryan to a contempt order or its ramifications on her ability to practice law at this time. But because Ms. Ryan's conduct in this case constitutes a rather egregious flouting of court orders, deadlines, and communications directly from the Court, and is of a nature that she could be held in contempt, copies of this Opinion will be distributed to each of the SMSC Tribal Judges. In future, should there be a need to be excused from a court-imposed deadline, the proper course is to assume that all orders, including those viewed as "procedural," must be complied with and to seek *advance* permission to be excused from or modify the deadline or other order.

So ordered.

Dated: September 8, 2017


Vanya S. Hogen, Judge