

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
FOURTH DIVISION**

**2600 HOLDINGS,, LCC d/b/a
SOUTHERN ROOTS CULTIVATION**

PLAINTIFF

CASE NO. 60CV-21-582

**ARKANSAS DEPARTMENT OF FINANCE
AND ADMINISTRATION; ARKANSAS
ALCOHOLIC BEVERAGE CONTROL
DIVISION; and ARKANSAS MEDICAL
MARIJUANA COMMISSION**

DEFENDANT

**RESPONSE OF DORALEE CHANDLER TO MOTION
FOR ORDER TO SHOW CAUSE, WITH BRIEF INCORPORATED**

COMES NOW the Respondent, Director Doralee Chandler, in her individual capacity, by and through her attorneys, Jeff Rosenzweig and Erin W. Lewis, and for her *Response to Motion for Order to Show Cause, with Brief Incorporated* states as follows:

INTRODUCTION

1. On November 15, 2022, Plaintiff filed an Emergency Motion to Enforce Order, to Enjoin Defendants, and for Show-Cause Order. Plaintiff alleges that Director Chandler should be held in contempt for not moving with the appropriate expediency in revoking the license. Director Chandler hereby denies all allegations in the Plaintiff's motion other than those specifically admitted in this Response.

2. The motion does not identify whether the Plaintiff is seeking a finding of civil or criminal contempt. The Plaintiff's Motion, as it relates to the Respondent's alleged contemptuous conduct, should be denied because (1) Director Chandler has taken all steps necessary to remedy

the constitutional violation since the Court's Order was entered on November 3, 2022, while still complying with statutory and regulatory requirements; (2) Director Chandler has not disobeyed, much less willfully, the Court's Order; and (3) the Plaintiff's characterization of the Court's goes beyond what the Court actually said--- claiming a definition in its terms, clarity in the duties imposed and a timeline wholly absent from the text of the Order. What the Plaintiff is seeking is to penalize Director Chandler for complying with state law, regulations and constitutional due process protections accorded the current license holder.

3. Not once in the Plaintiff's Motion and Brief in Support does it cite to a specific provision of the Court's Order that Director Chandler supposedly violated or provide an alleged factual basis as to how a contemptuous act has occurred. Rather, Plaintiff's continued complaint throughout his Motion and Brief involves an alleged lack "expediency in revoking" in the license due to Director Chandler following the law in honoring the Court's Order to revoke the license.

4. This Court did not direct or order the Defendants to immediately revoke the license. This Court did not itself revoke the license. The Court ruled that it did not have the authority to divest the license holder of the license. This Court ordered the Defendants to "take all steps necessary to remedy these violations," which is exactly what Director Chandler has done. Since this Order was entered, the Defendants have initiated the revocation process by scheduling a hearing for November 28, 2022 and providing the notice to the license holder. Director Chandler intends to follow this Court's Order at the hearing; however, without any other authority directing her as to how and when to revoke the license, she is required to follow the laws regarding revocation of a license.

LEGAL STANDARD

5. The standard of review in contempt cases depends on the kind of contempt that is at issue. Contempt is divided into criminal contempt and civil contempt. *Ivy v. Keith*, 351 Ark. 269, 279, 92 S.W.3d 671, 677 (2002). Criminal contempt preserves the power of the court, vindicates its dignity, and punishes those who disobey its orders. *Johnson v. Johnson*, 343 Ark. 186, 197, 33 S.W.3d 492, 499 (2000). Criminal contempt is a crime in the ordinary sense. *Bloom v. Illinois*, 391 U.S. 194, 88 S.Ct. 1477 (1968); *Wood v. Goodson*, 253 Ark. 196, 485 S.W.2d 213 (1972). Civil contempt, on the other hand, protects the rights of private parties by compelling compliance with orders of the court made for the benefit of private parties. *Id.* Because civil contempt is designed to coerce compliance with the court's order, the civil contemnor may free himself or herself by complying with the order. *See Fitzhugh v. State*, 296 Ark. 137, 139, 752 S.W.2d 275, 276 (1988).

6. In order to establish civil contempt, there must be willful disobedience of a valid order of a court. *Ingle v. Ingle*, 2013 Ark. App. 660, However, before a person can be held in contempt for violating a court order, the order must be definite in its terms, clear as to what duties it imposes, and express in its commands. *James v. Pulaski County Circuit Court*, 2014 Ark. 305, 439 S.W.3d 19 (citing *Lilly v. Earl*, 299 Ark. 103, 771 S.W.2d 277 (1989)).

ARGUMENT

7. Plaintiff's Motion requesting that that Director Chandler be held in contempt should be denied. First, she has initiated the process required by law to revoke the license, which is exactly what the Court ordered be done. Second, the Plaintiff cannot establish that her actions taken following the entry of this Court's November 3, 2022 Order are that of willful disobedience. Last, the Order requires the Defendants in this case to "take all steps necessary to remedy these violations." *See* Page 15 of the November 3, 2022 Order. This provision of the Order is not any

more definite in its terms, or any clearer as to what duties it imposes, or any more express in its commands. *See Ingle*, at 2.

I. Director Chandler immediately took all steps necessary to revoke the license and is presently following both the Order entered by this Court and the pertinent laws.

8. On November 7, 2022, Defendants sent Mr. Nolan a Notice of Hearing notifying him of this Court's Order and that a hearing would take place on November 28, 2022. Arkansas Code Annotated section 25-15-211 provides:

No revocation, suspension, annulment, or withdrawal of any license is lawful unless the agency gives notice by mail to the licensee of facts or conduct warranting the intended action and unless the licensee is given an opportunity to show compliance with all lawful requirements for the retention of the license.

Ark. Code Ann. § 25-15-211(c). The Notice of Hearing was sent in accordance with 006 02 CARR 24.2, which requires:

All hearings for the suspension, revocation, or money fine of licenses or registry identification cards of dispensary agents, processor agents, and cultivation facility agents shall initially be before the Alcoholic Beverage Control Director or a Hearing Officer designated as provided in these rules pursuant to the notice required by these Rules, with an opportunity for interested parties to respond and present evidence and argument on all issues involved.

006 02 CARR 24.2. Plaintiff states the following in its Brief in regards to the Notice of Hearing sent to Mr. Nolan:

Director Chandler's Notice of Hearing demonstrates the State has no intention of complying with the Court's Order anytime soon, or even at all. Instead, Defendants are taking the only unnecessary step they could concoct in furthering their effort to provide more special accommodations to Mr. Nolan—whether to buy him tie for an appeal or to thumb their noses at the Court.

See Plaintiff's Brief, Page 7-8. The law requires every notice provide specific details: (1) a statement of the time, place and nature of the hearing; (2) a statement of the legal authority and

jurisdiction under which the hearing is to be held; (3) a short and plain statement of the matters of fact and law asserted; and (4) a statement advising the recipient of the notice that the license or registry identification card may be suspended or revoked. 006 02 CARR 24.3. Despite the Plaintiff's allegations, the Notice of Hearing served on Mr. Nolan is a form Notice.

9. Barebones allegations accusing Director Chandler of delaying the revocation run rampant throughout the Plaintiff's Motion and Brief without any actual proof or evidence of delay. She was required to "take all steps necessary to remedy" the violations. She has followed this Order by initiating the procedure required in order to revoke a license. The hearing on the revocation will take place on November 28, 2022, a little over three weeks following the entry of the Court's Order.

10. Plaintiff's contentions that (1) no hearing is warranted because the MMC erred in accepting the RVRC application in the first place and that (2) the revocation here must operate as a denial of an application is not supported by any pertinent legal authority. First, *Wyatt v. Carr*, 2020 Ark. 21, 592 S.W. 3d 656, involves a matter of eligibility for election to public office, a wholly different area of law. Likewise, the trial court in *Pruitt v. Smith*, 2020 Ark. 382, 610 S.W.3d 660 ruled that Mr. Pruitt ineligible to hold office, but ruled he should stay on the ballot in case an appeal overturned the lower court decision. In each of these cases, the trial courts issued a direct order to take immediate action, not—as here—to initiate a process ordained by law.

11. Additionally, Plaintiff's reliance on *EnviroClean, Inc. v. Arkansas Pollution Control & Ecology Commission*, 314 Ark. 98, 858 S.W.2d 116 (1993) is misplaced. The APC&EC issued a notice of permit expiration to EnviroClean because it found that the permit had expired due to it having been transferred to another party. *EnviroClean Inc.*, 314 Ark. at 101. This action was taken by the Commission in accordance with a permit condition that provided "[t]his permit

is issued to the applicant alone. It may not be transferred to another party. In the event of the sale of the permitted facility, this permit shall expire and the purchaser must apply for a new permit.”

Id. at 100. No such regulation or rule exists in this case.

12. There is no need to belabor the failed attempts on behalf of the Plaintiff to try to concoct a legal way for Director Chandler to be able to immediately revoke the license without subjecting herself to a lawsuit for noncompliance with the license holder’s due process rights. The simple truth is that absent a court order telling Director Chandler to revoke the license, she is required to initiate the administrative process to take such action. There currently exists no law permitting immediate revocation of a license in the way that the Plaintiff is seeking.

13. A status conference was held on November 9, 2022 between the Court, counsel for the Plaintiff, and counsel for Defendants so that the Court could be advised as to what steps were to be taken to comply with its Order. The Plaintiff admits in its Motion that the Court found that nothing in the record seemed to suggest that the Defendants were taking action inconsistent with the Court’s Order. *See* Plaintiff’s Motion, Page 5, Paragraph 19. To date, nothing has changed since the status conference took place. The hearing is still set to take place on November 28, 2022 at which time the permit likely will be revoked unless some contrary evidence unexpectedly appears. Thus, the Plaintiff’s Motion and Brief in Support incorrectly implies that Director Chandler has misrepresented her course of action to comply with the Court’s Order.

14. Director Chandler is following the law in her capacity as Director in order to ensure compliance with the Court’s Order. Her actions in following this Court’s Order and the statutory and regulatory procedure required to revoke a license are not “a violation of separation of

powers,”¹ “special accommodations to Mr. Nolan,”² “a gross miscarriage of justice,”³ or a “dog and pony show.”⁴

II. Director Chandler did not willfully disobey or in any way fail to comply with this Court’s November 3, 2022 Order.

15. The analysis of whether a litigant willfully violated a court order "properly encompasses the [litigant's] behavior in related incidents such as disobedience or resistance to other orders of the court. *Potter v. Holmes*, 2020 Ark. App. 391, 603 S.W.3d 422 (citing *Wright v. Nichols*, 80 F.3d 1248 (8th Cir. 1996)). The Plaintiff cites to no instances where Director Chandler has ever disobeyed or resisted orders of a court.

16. Additionally, the fact that all actions taken following the entry of this Court’s Order have been done in accordance with the rules governing the administrative process to revoke a license is evidence of obedience to law, not disobedience. The counsel for the Plaintiff and the Court were made aware of the administrative steps being taken by her in order to comply with the Court’s Order in the conference on November 9, 2022. To the best of the her knowledge, no objections to this administrative process were made during the conference call. Counsel for the Defendants notified her after the conference took place letting her know the Court was made aware of the November 28, 2022 hearing. At no time since that conference took place, has Director Chandler been advised or ordered to take other actions to effectuate the revocation of the license.

17. Based on the foregoing, Director Chandler is not in willful disobedience of this Court’s Order. This Court did not order her to immediately revoke the license. Rather it required her to take the steps necessary to ensure it is revoked, which she has done and will continue to do.

¹ See Plaintiff’s Brief in Support, Page 6.

² See Plaintiff’s Brief in Support, Page 8.

³ See Plaintiff’s Brief in Support, Page 10.

⁴ *Id.*

After being notified of the initiation of the administrative process being used as the mechanism to revoke the license, this Court did not make any orders for her to change course. This Court cannot make a finding of contempt absent a showing of willful disobedience, which cannot be done in this case. The Plaintiff's request to find the Director Chandler in some unidentified form of contempt should be denied.

III. The Plaintiff has inaccurately tried to engraft terms, duties and commands onto the Court's Order not present in the Order itself.

18. In order to find that a person is in contempt, a court must make a determination that its Order was definite in its terms, clear as to what duties it imposes, and express in its commands. *James v. Pulaski County Circuit Court*, 2014 Ark. 305, 439 S.W.3d 19 (citing *Lilly v. Earl*, 299 Ark. 103, 771 S.W.2d 277 (1989)). The Order requiring the Respondent to "take all steps necessary to remedy these violations" is a direction at most to execute the steps required by law. At most, it order Director Chandler to do exactly as she has done, which is to initiate the process to revoke the license pursuant to the law.

19. The Order does not require immediate revocation of the license, nor it does set a timeline of when the revocation must be completed. The Order lacks any directive as to when or how the license should be revoked and instead requires the Defendants to decipher on their own what steps should be taken to revoke the license. As such, the only authority expressly directing the Defendants as to what steps are necessary to revoke the license are Ark. Code Ann. § 25-15-211(c) and 006 02 CARR 24.1-24.14. Due to the Order lacking further specificity, this Court cannot find that Director Chandler is in contempt for violating it.

CONCLUSION

20. The Plaintiff's Motion and Brief in Support amount to a baseless and personal attack on Director Chandler, who was simply following the law to ensure compliance with the

Court's Order. Plaintiff has offered no evidence or factual basis of contemptuous conduct by Respondent. Rather, the Plaintiff has filed a frivolous contempt motion in a veiled attempt to modify the November 3, 2022 Order, while slandering Director Chandler in the process. The Plaintiff accused Director Chandler of contempt for not immediately revoking the license, yet in the same breath states this "Court should now order Director Chandler, or any other state actor for that matter, to revoke the license." *See* Plaintiff's Brief in Support, Page 12. It is clear that the Plaintiff's ultimate goal is to modify the Court's final order entered on November 3, 2022. Based on the foregoing, this Court should dismiss any and all claims that Director Chandler be held in contempt and any and all statements alleging contempt should be stricken.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Erin W. Lewis, certify that a copy of the foregoing pleading was served via electronic filing notification to the following on this 22nd day of November, 2022:

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