

STATE OF NORTH CAROLINA
ORANGE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
17 CVS 1724

JULIE SMITH MASON and JULIE
SMITH MASON, LLC,

Plaintiffs,

v.

RICHARD S. MASON,

Defendant.

**SENTENCING ORDER
ON MOTION FOR
CRIMINAL CONTEMPT**

1. THIS MATTER is before the Court on Plaintiff Julie Smith Mason’s (“Ms. Mason” or “Julie Mason”) Motion for Criminal Contempt (the “Contempt Motion”) filed against Defendant Richard S. Mason (“Mr. Mason” or “Richard Mason”) on April 16, 2019. (Mot. Criminal Contempt, ECF No. 129 [“Contempt Mot.”].)

I. BACKGROUND

2. On August 10, 2018, the Court entered an Order on Ms. Mason’s Motion for Receiver or Preliminary Injunction and Motion for Referee (the “Injunction”), granting Ms. Mason’s request for a preliminary injunction against Mr. Mason. (Order Pl.’s Mot. Receiver or Prelim. Inj. Mot. Referee, ECF No. 82 [“Injunction”].)

3. Plaintiff later filed the Contempt Motion on April 16, 2019 requesting the Court enter an order directing Mr. Mason to show cause why he should not be held in criminal contempt for violating the Injunction. The Court entered a Show Cause Order and Notice of Hearing on July 2, 2019 directing Mr. Mason to appear and show cause why he should not be held in criminal contempt. (ECF No. 156.) The Court

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held a hearing on the Contempt Motion on August 22, August 23, and September 20, 2019 (the “Hearing”). (See ECF Nos. 156, 174.)

4. On November 26, 2019, the Court entered its Order on Motion for Criminal Contempt Regarding Guilt (the “Contempt Order”). (Order Mot. Criminal Contempt Regarding Guilt, ECF No. 229 [the “Order”].) As more specifically detailed in the Contempt Order, the Court found Mr. Mason guilty of indirect criminal contempt pursuant to N.C.G.S. §§ 5A-11(a)(3), 5A-12(a), (b), 5A-13(b). (Order ¶ 75.) The Court concluded that Mr. Mason willfully and in bad faith engaged in separate acts of misconduct that violated the Injunction in at least the following four specific ways:

- a) Paying expenses representing personal expenditures for the benefit of Mr. Mason with MGI funds, (See Injunction ¶ 21.a);
- b) Obtaining additional loans for MGI without notice to and consent of Ms. Mason, (See Injunction ¶ 21.d);
- c) Failing to keep all accounts payable current and failing to promptly notify Ms. Mason when MGI had insufficient funds to meet outstanding obligations, (See Injunction ¶ 21.e); and
- d) Causing MGI to pay legal fees or expenses incurred in connection with Mr. Mason’s defense of this litigation, (See Injunction ¶ 21.i).

5. At the Hearing, counsel for Mr. Mason requested that, in the event that the Court found Mr. Mason guilty of criminal contempt, a separate sentencing hearing be held on a later date. After concluding that Mr. Mason is guilty of indirect criminal contempt and consultation with counsel for the parties regarding the parties and

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counsel's availability, the Court filed the Notice of Hearing and Scheduling Order on December 3, 2019 (the "Notice"), scheduling a sentencing hearing (the "Sentencing Hearing") for December 20, 2019 at 9:30 a.m. and directing Mr. Mason to attend. (ECF No. 230.)

6. On December 3, 2019, counsel for Mr. Mason certified that Mr. Mason received a copy of the Notice. (ECF No. 231.)

7. The Court held the Sentencing Hearing on December 20, 2019.

II. ANALYSIS

8. "It has long been the accepted rule in North Carolina that within the limits of the sentence authorized by law, the character and the extent of the punishment imposed is within the discretion of the trial court and is subject to review only in cases of gross abuse." *State v. Goode*, 16 N.C. App. 188, 189, 191 S.E.2d 241, 241–42 (1972).

9. "[A]s is the case with all offenses of a criminal nature, the punishment that courts can impose therefor, either by fine or imprisonment, is circumscribed by law." *Brower v. Brower*, 70 N.C. App. 131, 133, 318 S.E.2d 542, 544 (1984). "A person who commits criminal contempt, whether direct or indirect, is subject to censure, imprisonment up to 30 days, fine not to exceed five hundred dollars (\$500.00), or any combination of the three," except in circumstances not implicated by the Contempt Motion. N.C.G.S. § 5A-12(a).

10. Although criminal contempt hearings are criminal proceedings, "[a] criminal contempt adjudication is not a misdemeanor in North Carolina." *State v. Burrow*, 248 N.C. App. 663, 670, 789 S.E.2d 923, 929 (2016) (alteration in original)

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(citation and internal quotation marks omitted). Therefore, “[n]othing in [section 5A-12] or in Chapter 5A prohibits consecutive sentences for multiple findings of contempt.” *Id.* (upholding the trial court’s sentencing of defendant to “six consecutive thirty-day terms of imprisonment” for criminal contempt “[b]ecause a finding of contempt is not a Class 3 misdemeanor”).

11. “The judicial official who finds a person in contempt may at any time withdraw a censure, terminate or reduce a sentence of imprisonment, or remit or reduce a fine imposed as punishment for contempt if warranted by the conduct of the contemnor and the ends of justice.” N.C.G.S. § 5A-12(c).

12. At the Sentencing Hearing, the State and Defendant both presented arguments regarding the merits and justification respectively for: imprisonment, a fine, or censure. Following the receipt of evidence and arguments at the Sentencing Hearing, the Court took the matter under advisement, and then returned to the Courtroom after a recess and announced its decision.

III. CONCLUSION

13. Having carefully considered the evidence properly before this Court and the arguments presented at the Sentencing Hearing by the parties and the arguments of counsel, the Court believes that Defendant Richard Mason should be both fined and imprisoned for his misconduct.

14. **THEREFORE**, the Court, in its discretion and as authorized by law, **ORDERS** that Defendant pay to the Clerk of Superior Court of Orange County on or before January 22, 2020, a fine of Five Hundred Dollars (\$500.00) for each of the four

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counts of contemptuous conduct committed by Defendant as found in paragraph 69 of the Contempt Order entered on November 26, 2019 for a total payment to be made by Defendant of Two Thousand Dollars (\$2,000.00).

15. It is further ORDERED that Defendant be imprisoned in the custody of the Orange County Sheriff for a period of seven (7) days for each of the four counts of contemptuous conduct found in paragraph 69 of the Contempt Order entered on November 26, 2019. The four seven (7) day periods of imprisonment shall be served by Defendant consecutively for a total period of imprisonment of twenty-eight (28) days.

- a) Defendant shall serve an active sentence of seven (7) days in the Orange County Jail.
- b) The Court SUSPENDS twenty-one (21) days of Defendant's sentence until June 17, 2020 upon the following conditions:
 - i. Defendant shall report to the Orange County Probation Office on Monday, December 23, 2019 with a copy of this Sentencing Order on Motion for Criminal Contempt;
 - ii. Defendant shall complete forty (40) hours of community service at the direction of the Orange County Probation Office;
 - iii. Defendant shall pay the costs associated with completing the ordered hours of community service; and
 - iv. Defendant's counsel of record shall file proof of completion of the ordered community service in form of a certification by the

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Orange County Probation Office on the Business Court's e-filing
system on or before June 18, 2020.

16. Defendants' active sentence is to begin on Wednesday, January 22, 2020.
Defendant is to report to the Orange County Jail to begin his period of imprisonment
between the hours of 10:00 a.m. and 12:00 noon on Wednesday, January 22, 2020.

SO ORDERED, this the 20th day of December, 2019.

/s/ Michael L. Robinson

Michael L. Robinson
Special Superior Court Judge
for Complex Business Cases