

STATE OF NORTH CAROLINA

GUILFORD COUNTY

STEVEN MCRAE,

Plaintiff,

v.

KYLE RUSSELL CURTIS,

Defendant.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 8163

**ORDER ON AMENDED MOTION TO SHOW
CAUSE AND NOTICE OF HEARING**

1. THIS MATTER is before the Court on Plaintiff Steven McRae's ("Mr. McRae") Amended Motion for Order to Show Cause ("Amended Motion to Show Cause") requesting the Court order Defendant Kyle Russell Curtis ("Mr. Curtis") to appear before the Court and show cause as to whether he should be held in civil contempt for non-compliance with the Court's previous orders, including the Court's entry of partial judgment by default. (ECF No. 55.)

2. This action arose out of a dispute over an alleged partnership between Mr. McRae and Mr. Curtis established to co-host a podcast and YouTube channel called the NonSequitur Show from which both Mr. McRae and Mr. Curtis would divide potential proceeds equally. (Renewed Mot. Default J. Ex. A, 11/13/2019 Aff. Steven McRae ¶¶ 5–8 ("11/13/19 McRae Aff."), ECF No. 14.) Mr. McRae filed his Complaint, (ECF No. 3), which he then served on Mr. Curtis by certified mail, return receipt requested, at an address Mr. Curtis had used for the business. (Aff. Service Process ¶ 2, ECF No. 7; 1/12/2020 Aff. Steven McRae ¶¶ 3–5, ("1/12/2020 McRae Aff."), ECF No. 22.) Mr. McRae then filed the return receipt showing that the Complaint

had been accepted at the address shown and that a person present signed on Mr. Curtis' behalf. (Aff. Service Process, at Attach.)

3. On October 2, 2019, Mr. McRae filed his Motion for Entry of Default. (ECF No. 5.)

4. On October 3, 2019, the Court entered default in favor of Mr. McRae against Mr. Curtis due to Mr. Curtis' failure to plead or otherwise respond to Mr. McRae's Complaint. (Order Entry Default, ECF No. 9.)

5. On October 9, 2019, Mr. McRae filed his Motion for Default Judgment. (ECF No. 10.) Mr. Curtis did not file a response.

6. On November 12, 2019, the Court filed an Order noting that the Complaint was not verified—as had been claimed in the Motion for Default Judgment—and no affidavit had been filed providing adequate competent evidence for the findings of fact recited by Mr. McRae. (Order Pl.'s Mot. Default J. ¶¶ 2–3, ECF No. 13.)

7. Mr. McRae filed a Renewed Motion for Default Judgment on November 14, 2019 with an accompanying affidavit of Mr. McRae. (ECF No. 14.)

8. The Rules of this Court require a defendant to respond within 23 days of the filing of a motion for default judgment. BCR 7.6 (2019).

9. The Court mailed a copy of its Order on Mr. McRae's Renewed Motion for Default Judgment to Mr. Curtis giving him notice that his response was due December 9, 2019, and that absent his response the Court intended to enter default judgment. (Order Pl.'s Renewed Mot. Default J. ¶ 10, ECF No. 16.)

10. Mr. Curtis did not file a response. In his several filings since, Mr. Curtis has not claimed he was not aware of the Court's Order. He has never filed a pleading responsive to the Complaint nor asked for leave to do so.

11. After Mr. Curtis failed to timely respond, the Court entered Partial Judgment by Default (the "Judgment") on January 23, 2020, finding as fact those allegations supported by Mr. McRae's Affidavit. (Judgment ¶ 11, ECF No. 17.) The Complaint alleged additional matters or claims which cannot be resolved on those facts, such that no final judgment could be entered. In part, those matters require that Mr. Curtis provide certain information as the Court ordered him to produce.

12. Mr. Curtis registered as a party and created an account for filing materials with the Court electronically. When doing so, he listed his address as: 1532 Providence Church Road, Pleasant Garden, NC 27313, which is the address to which the certified mail with the Complaint and Summons were delivered. (Aff. Service Process ¶¶ 2-3.) Mr. Curtis has now filed materials electronically.

13. Mr. McRae's Amended Motion to Show Cause requests that a hearing be held for the purpose of having Mr. Curtis appear and show cause as to why he should not be held in civil contempt pursuant to section 5A-21(a) of the North Carolina General Statutes for failure to comply with the Court's January 23, 2020 Judgment.

14. The Judgment required Defendant to "return administrative control and primary ownership rights of the NonSequitur podcast, YouTube Channel, and other accounts associated with the parties' business endeavor to Plaintiff." (¶ 21.)

15. The Judgment further required Defendant to “provide Plaintiff with all financial documents associated with NonSequitur’s financial affairs and financial condition within fourteen (14) days” of the Order. (¶ 21.)

16. On February 4, 2020, Mr. Curtis submitted a document titled “Compliance to the Order.” (ECF No. 18.) The document included a summary of the finances, but no verified financial documents. (*See Compliance Order.*)

17. Mr. McRae contends that Mr. Curtis’ submission does not comply with the Court’s Judgment, (Mot. Show Cause ¶ 5, ECF No. 23), and that Mr. Curtis has still not complied with the Judgment, (Am. Mot. Show Cause ¶¶ 1–3); specifically, Mr. McRae contends that Mr. Curtis did not turn over the NonSequitur show Twitter account but instead deleted it, (2/12/2020 Aff. Steven McRae ¶ 15, (“2/12/2020 McRae Aff.”), ECF No. 22; Compliance Order 7); did not turn over access to the NonSequitur Discord server, which Mr. Curtis contends he does not administer—a contention which Mr. McRae challenges in his Affidavit, (2/12/2020 McRae Aff. ¶ 14; Compliance Order 7); did not turn over ownership of the YouTube Channel but has instead stated that he intends to retain 50-50 ownership of the Channel, (2/12/2020 McRae Aff. ¶ 13; Compliance Order 7); provided a list of inaccurate usernames and passwords for accounts associated with NonSequitur, (2/12/2020 McRae Aff. ¶ 12); and failed to provide any financial documents, (2/12/2020 McRae Aff. ¶ 16).

18. The Court will, at the parties’ election, allow the filing of additional materials prior to a hearing in the matter. Any documents must be authenticated by appropriate sworn testimony. The Court will not review or consider any documentary

material not so authenticated. Should the parties intend to offer testimony in support of their positions, such testimony must be by affidavit. The Court will not accept live testimony, either by direct or cross-examination.

19. Each of the parties must submit any additional document or affidavit within fourteen (14) days of the date of this Order.

20. At the hearing, Mr. Curtis shall be prepared to show cause why he should not be held in civil contempt for his willful failure to comply with the Court's Judgment, as the Court finds there is probable cause to demonstrate such failure.

21. The purpose of civil contempt is "to preserve the rights of private parties and to compel obedience to orders and decrees made for the benefit of such parties." *Tyll v. Berry*, 234 N.C. App. 96, 102, 758 S.E.2d 411, 415 (2014) (citation omitted). The Court may initiate civil contempt proceedings upon a finding of probable cause. *See* N.C.G.S. § 5A-23(a); *see also Plasman v. Decca Furniture (USA), Inc.*, 2016 NCBC LEXIS 20, at *6 (N.C. Super Ct. Feb. 26, 2016). "Probable cause refers to those facts and circumstances within [the judicial official's] knowledge and of which he has reasonably trustworthy information which are sufficient to warrant a prudent man in believing that' the alleged contemnor is in civil contempt." *Young v. Mastrom, Inc.*, 149 N.C. App. 483, 484–85, 560 S.E.2d 596, 597 (2002) (quoting *State v. Williams*, 314 N.C. 337, 343, 333 S.E.2d 708, 713 (1985)).

22. Proceedings for civil contempt may be commenced "by the order of a judicial official directing the alleged contemnor to appear at a specified reasonable time and show cause why he should not be held in civil contempt." N.C.G.S. § 5A-

23(a). Such an order may be issued on the affidavit of one with an interest in enforcing the order and a finding by the presiding judicial official that there is probable cause to believe the alleged contemnor should be held in contempt. *Id.*; see also *Shumaker v. Shumaker*, 137 N.C. App. 72, 76, 527 S.E.2d 55, 57 (2000). Once it is determined that probable cause exists, the burden shifts to the alleged contemnor to show that he should not be held in contempt, that he lacks the means to comply, or that his noncompliance was not willful. *Shumaker*, 137 N.C. App. at 76, 527 S.E.2d at 57.

A court's only means of compelling compliance of a person found in civil contempt is imprisonment as long as the civil contempt continues, subject to certain time limitations. See N.C.G.S. § 5A-21(b). An order holding a party in civil contempt must specify how the party may "purge himself or herself of the contempt," N.C.G.S. § 5A-23(e), and imprisonment must end once the person has purged himself or herself of contempt, N.C.G.S. § 5A-22(a). "Because civil contempt seeks to coerce compliance rather than to punish, the purge provision is essential to a civil contempt order."

Red Valve, Inc. v. Titan Valve, Inc., 2019 NCBC LEXIS 57, *79–80 (N.C. Super. Ct. Sept. 3, 2019) (quoting *Ray Lackey Enters., Inc. v. Vill. Inn Lakeside, Inc.*, 2016 NCBC LEXIS 9, at *23 (N.C. Super. Ct. Jan. 29, 2016)).

23. Based on materials and affidavit testimony filed to date, the Court finds that probable cause exists to find that Mr. Curtis willfully violated Court's January 23, 2020 Judgment, and specifically that he has failed to provide Mr. McRae with accounts associated with the NonSequitur Show, has failed to relinquish control of the associated YouTube Channel, and has not timely provided the financial documents ordered to be produced. (2/12/2020 McRae Aff. ¶¶ 12–13, 16; Br. Supp. Pl.'s Am. Mot. Order Show Cause 1, ECF No. 56.)

24. Accordingly, the Court GRANTS the Amended Motion to Show Cause.

25. WHEREFORE, the Court ORDERS that Defendant Kyle Russell Curtis SHALL APPEAR before the Court to SHOW CAUSE why he should not be found in civil contempt for violation of the Court's Judgment at 10:00 AM on Tuesday, May 11, 2021 at the North Carolina Business Court, 201 North Greene Street, Greensboro, North Carolina 27401.

26. The Court notes that "its only means of compelling compliance of a person found in civil contempt is imprisonment as long as the civil contempt continues." *Red Valve*, 2019 NCBC LEXIS 57, at *79 (citing N.C.G.S. § 5A-21(b)). As such, Mr. Curtis should be prepared to be placed in the custody of the Sheriff of Guilford County should the Court make an appropriate finding of civil contempt.

27. Should Mr. Curtis elect to retain counsel, he should do so promptly and shall have such counsel file a Notice of Appearance at least five (5) days in advance of the hearing. The Court will not continue the hearing for the purpose of retaining counsel.

SO ORDERED, this the 19th day of April, 2021.

/s/ James L. Gale

James L. Gale
Senior Business Court Judge