

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 594-11-19 Wncv

SOUTHFACE OWNERS' ASSOCIATION,
INC.,

Plaintiff,

v.

SUGARBUSH PROPERTY GROUP, INC. and
ZEKE CHURCH,
Defendants.

RULING ON SOUTHFACE'S MOTION FOR ORDER OF MITTIMUS

Final judgment in favor of Plaintiff Southface Owners' Association, Inc., and against Defendants Sugarbush Property Group, Inc. and Mr. Zeke Church, was entered on May 21, 2021. Part of the order required Defendants, *jointly and severally*, to turn over to Plaintiff certain records belonging to it that remained in Defendants' possession. Later representing that Mr. Church had willfully failed to comply, Southface sought an order of contempt. A show cause hearing was scheduled, but Mr. Church failed to appear. In response, counsel for Southface submitted to the court a draft "order of contempt," which the court signed on August 19, 2022. The order gave Defendants a *prospective* opportunity to purge the contempt by producing the records. It also provided, "If the defendants fail to [purge the contempt], the Sheriff of Washington County is hereby directed to imprison defendant Church until the defendants comply with the Judgment Order and purge themselves of contempt."

In a September 28, 2022 "motion for order of mittimus," Southface represents that it served the contempt order on Mr. Church, and Mr. Church did not produce any records before the prospective opportunity to do so expired. It further represents that the Washington County Sheriff has refused to take any action in response to the contempt order and these circumstances. Southface now asks the court to issue a mittimus or to clarify what steps should be taken at this point to enforce the final judgment. For the reasons that follow, the court vacates its August 19, 2022 order of contempt and will schedule a new show cause hearing.

The basic standards incorporated into family Rule 16 reflect more generally applicable contempt law as well as best practices. See V.R.F.P. 16 (civil contempt proceedings); see also generally *Russell v. Armitage*, 166 Vt. 392 (1997); *Choiniere v. Brooks*, 163 Vt. 625 (1995). Applying those standards here, it is apparent that neither the process leading to the previous show cause hearing nor the resulting order complied with Vermont law. Among others, Mr. Church was not warned that imprisonment might result, of his right to counsel, or the consequences of failing to answer or appear. The resulting

order provided a prospective opportunity to purge the contempt prior to imprisonment but gave the court no way to make such a determination before ostensibly imposing imprisonment. Accordingly, a new show cause hearing will be scheduled at which Southface has the burden of proving by clear and convincing evidence that Mr. Church has willfully refused to comply with the judgment order, and Mr. Church will have the opportunity to present any defenses. See *Vermont Women's Health Ctr. v. Operation Rescue*, 159 Vt. 141, 146 (1992).

The court's hearing notice shall contain the following in boldface type:

The purpose of this hearing is to determine, on the evidence presented, whether Mr. Church is in contempt of the May 21, 2021 judgment order by having the ability to produce the records referred to therein but willfully refusing to do so.

Mr. Church shall file an answer to Southface's October 25, 2021 motion for contempt within 14 days of service of this notice. The answer shall be made under oath and shall specifically address the factual allegations in the motion and supporting affidavit. If Mr. Church asserts an inability to comply with the judgment order, he shall explain why in detail.

Mr. Church shall appear at the hearing. A failure to do so may result in the issuance of an arrest warrant directing a law enforcement officer to transport Mr. Church to court.

If Mr. Church is found to be in contempt, sanctions may be imposed regardless whether Mr. Church has filed any answer or failed to appear at the hearing. Sanctions may include imprisonment.

Mr. Church has the right to counsel and, if indigent, to court-appointed counsel. The failure to obtain or request counsel will waive this right.

If Mr. Church fails to answer or appear as required, the court may consider the factual allegations of the motion for contempt admitted and find him in contempt.

Order

Southface's motion for order of mittimus is denied as moot. The court will schedule a 2-hour show cause hearing no sooner than 30 days from today. The clerk is directed to include the relevant language set forth above in the hearing notice.

Southface shall have the following personally served on Mr. Church:

- (a) the final judgment order;
- (b) the motion for contempt, which shall include a supporting affidavit; and
- (c) the show cause hearing notice.

SO ORDERED this 3rd day of October, 2022.

A handwritten signature in black ink, appearing to read "Robert A. Mello", written over a horizontal line.

Robert A. Mello
Superior Judge