

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BASSIL ALLY)	CASE NO. 4:09 CV 1144
)	
Plaintiff,)	JUDGE: CHRISTOPHER A. BOYKO
)	
vs.)	
)	
CITY OF YOUNGSTOWN, et al.)	MOTION TO SHOW CAUSE
)	
Defendants.)	
)	
)	
)	

Defendant City of Youngstown hereby moves this Court for an Order to show cause against the Islamic Society of Greater Youngstown Inc. and its counsel Scott Cochran as to why they should not be held in contempt for violating this Court's Orders.

FACTS

This Court filed an Opinion and Order at 3:54 p.m. on February 13, 2012 (ECF# 173). In that Order, the Court held that, "[T]herefore, before the Court permits the dissemination of materials subject to the protective order or unseals the remaining sealed documents, the parties are ordered to review the materials submitted under seal and shall redact all information that is prohibited by federal or state law or the Court's local rules from disclosure.....The parties shall produce copies of all documents filed under seal with the above described redactions....The Court will then make available on its docket the redacted records." (ECF# 173 at pages 3-4).

On February 13, 2012, at 4:39 p.m., forty-five (45) minutes after this Court granted, in part, the Motion of the Islamic Society of Greater Youngstown, Inc., to Intervene, counsel for the Society, Scott Cochran, disseminated sealed documents (ECF#92, attachments #18 and #20) in

an un-redacted form as well as additional text messages. These materials unquestionably contained privileged work product conversations about pending criminal cases, discussions of victims of criminal activity, as well as private medical information. As well, they engender precisely the type of “strong privacy interests, concerning certain personal information of parties and non-parties” that this Court referenced in its Order (ECF #173, page 2). The released texts also include information regarding medical procedures, family member names, discussions of minor children, and other non-relevant and personal materials that are clearly subject to this Court’s Protective Order. They were sent by attorney Cochran to two (2) reporters at the Youngstown Vindicator, a local newspaper. Attached as Exhibit A to this motion is Mr. Cochran’s e-mail to the Vindicator disseminating these sealed documents.

It is unknown where Mr. Cochran obtained these sealed text messages; whether he disseminated the materials to others in addition to the reporters listed in his e-mail; and, whether he intends to continue disseminating them. It is for these reasons that the City brings this motion.

LAW AND ARGUMENT

Violations of protective orders and court orders, in general, subject parties (or non-parties with knowledge of protective orders) to the possibility of being held in either civil or criminal contempt. *See Quinter v. Volkswagen of America*, 676 F.3d 969, 972 (3rd Cir. 1980) (imposing civil contempt fines, attorney fees, and costs, for violation of protective order); *see also Doe v. Maywood Hous. Auth.*, 71 F.3d 1294 (7th Cir. 1995) (attorney’s violation of protective order amounted to criminal contempt). In both these cases, the procedural process used by the harmed party was to file motions for orders to show cause. *See id.*; *Quinter, supra*.

The power of the federal courts to impose civil and criminal contempt stems from 18 U.S.C. § 401(c). To determine what sanction is appropriate in a given situation, courts consider the intended purpose of the sanction. *Falstaff Brewing Corp. v. Miller Brewing Company*, 702 F.2d 770, 778 (9th Cir. 1983). If the court intends to “punish past defiance of a court’s judicial authority, thereby vindicating the court”, the court will find the party in criminal contempt. *Id.* If, however, “the court intends to compel an obedience to a court order” or compensation for the violator’s adversary for the “injuries which result from the noncompliance” the court will find the party in civil contempt. *Id.* Finally, if the court intends to achieve both purposes, the court may find a party in both criminal and civil contempt. *United States v. Bayshore Associates, Inc.*, 934 F.2d 1391 (6th Cir. 1991); *United States v. Laurins*, 857 F.2d 529, 534 (9th Cir. 1988) (“the same conduct may result in both civil and criminal contempt charges”).

A. Civil Contempt

Islamic Society and attorney Cochran’s blatant violation of this court’s February 13, 2012 “Opinion and Order” constitutes civil contempt. A party may be held in civil contempt for violating a protective order if the court finds by clear and convincing evidence that (1) the party violated an order of the court, (2) the violation cannot be considered a “substantial compliance” with the court’s order, and (2) the violation was not based on a good faith reasonable interpretation of the order. *In re Dual-Deck Video Cassette Recorder Antitrust Litigation*, 10 F.3d 693, 695 (9th Cir. 1993). In the 6th Circuit, courts have found civil contempt violations for violating injunctions where a party, "violated a definite and specific order of the court requiring [them] to perform or refrain from performing a particular act or acts with knowledge of the court's order." *Rolex Watch U.S.A. v. Crowley*, 74 F.3d 716, 720 (6th Cir. Tenn. 1996).

“Willfulness is not an element of civil contempt, so the intent of a party to disobey a court order is irrelevant to the validity of a contempt finding.” *Id.*

Islamic Society and attorney Cochran violated this court’s definite and specific February 13, 2012 order. Therefore, Islamic Society and attorney Cochran’s behavior satisfies each of the elements of civil contempt. This Court’s February 13, 2012 “Opinion and Order” clearly orders the parties “review the material submitted under seal and shall redact all information that is prohibited by federal and state law or the Court’s local rules from disclosure” “*before* the Court permits the dissemination of materials subject to the protective order or unseals the remaining sealed documents.” The parties are then required to “file all redacted records and certifications no later than February 22, 2012.” Islamic Society, “may object to the redactions within seven days of the records being made available on the Court’s docket.” Therefore, Islamic Society is not entitled to view, nor may it disseminate any of the materials subject to the Court’s original Protective Order before the necessary redactions are made, and the ordered certifications are filed with the court. Additionally, nowhere in the Court’s Order is Islamic Society or attorney Cochran permitted to make any necessary redactions on their own before the parties i.e., Plaintiff and Defendants, make the necessary redactions. Islamic Society and attorney Cochran sent sealed text messages to the Youngstown Vindicator before the records with the necessary redactions along with the certifications had been filed with the court. Therefore, Islamic Society and attorney Cochran violated the Court Order.

Second, because Islamic Society and attorney Cochran directly violated the express provisions of the order, their conduct cannot be considered to be in “substantial compliance with the order.” The order expressly mandated that the parties are to review materials “before the Court permits the dissemination of materials subject to the protective order.” Therefore, Islamic

Society cannot be considered to be in substantial compliance with the original protective order and this Court's February 13, 2012 order. Finally, Islamic Society cannot argue that the violation was based on a good faith or reasonable interpretation of the order. The Court's February 13, 2012 order was clear, no materials were to be disseminated until after the parties reviewed the documents and redacted all information in accordance with "federal and state law or the Court's local rules."

As a remedy for civil contempt, federal courts may impose monetary sanctions which may be compensatory, coercive, or both. *See National Labor Relat. Bd. v. Aquabrom, Division of Great Lakes Chem. Corp.*, 855 F.2d 1174, 1187 (6th Cir.1988). The factors considered by courts when imposing civil contempt sanctions include: (1) the harm from noncompliance (2) the probably effectiveness of the sanction; (3) the contemnor's financial resources and the burden the sanctions may impose; and (4) the contemnor's willfulness in disregarding the court's order. *United States v. United Mine Workers of America*, 330 U.S. 258, 303-304 (1947). Monetary sanctions will be effective in deterring Islamic Society and attorney Cochran from continuing to violate the order. Furthermore, it is clear from their behavior that both Islamic Society and attorney Cochran willfully violated the order.

B. Criminal Contempt

Islamic Society and attorney Cochran violated this court's Protective Order with full knowledge of its terms, therefore Islamic Society and/or attorney Cochran should also be held in criminal contempt. A criminal contempt conviction requires a finding that the defendant: (1) had notice of the court order, (2) disobeyed it, (3) and did so with intent or willfulness. *United States v. Bibbins*, 3 F. App'x 251, 253 (6th Cir. 2001). To establish intent or willfulness a party must act "with a willfulness that implies a deliberate or intended violation, as distinguished from an

accidental, inadvertent, or negligent violation” *Id.* at 254. These elements must be proved beyond a reasonable doubt. *See id.*

In this case at bar, attorney Cochran was fully aware of the guidelines and requirements imposed on the parties by this Court’s February 13, 2012 “Opinion and Order.” Attorney Cochran had notice of the “Opinion and Order” because as Islamic Society’s counsel he was served with a copy of the Order. He knew that the Order required the parties to redact certain confidential information before any of the materials that were subject to the original protective order could be disseminated. Attorney Cochran, however, disobeyed the order by disseminating materials to the Youngstown Vindicator before the parties had an opportunity to redact information as required by the order. It is apparent that he acted willfully in violation of this order because, as a lawyer, he would clearly understand the terms of the Order and the requirements that must be fulfilled before anyone may disseminate sealed materials. Knowing full well of the requirements imposed on the parties before the materials could be disseminated, he chose to ignore these requirements and disseminated text messages that were subject to the protective order before the required redactions were made, filed with the court, and the necessary certifications were filed.

C. The Court’s Inherent Powers to Sanction

Federal courts also possess the power to impose sanctions against both parties and attorneys for willful disobedience of its orders pursuant to the Court’s inherent powers- powers that are not governed by rule or statute, but “by the control necessarily vested in courts to manage their own affairs” *Chamber v. NASCO, Inc.*, 501 U.S. 32, 43 (1991). Even where other sanctions can be imposed under other rules or laws, courts still have the power to sanction a party or attorney under their inherent authority. *See Metz v. Unizan Bank*, 655 F.3d 485, 490 (2011)

(upholding the District Court's decision imposing sanctions on a lawyer where his conduct would also subject him to sanctions under F.R.C.P. 11). The Court may sanction a party or attorney under its inherent power where that party acts in "bad faith". *Id.*

Attorney Cochran acted in bad faith by willfully violating the agreed Protective Order as well as this Court's Opinion and Order (ECF#173) as stated above. Attorney Cochran and Islamic Society knew full well of the requirements imposed on the parties to redact information and certify the redactions to the Court before any materials subject to the protective order could be disseminated. They simply chose to willfully disregard this Court's Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been filed electronically this 21st day of February, 2012. All parties will receive notice of this filing by operation of the Court's electronic filing system.

/s/ Robert S. Yallech
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