

# Court of Claims of Ohio

The Ohio Judicial Center  
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RICKY KURT WASSENAAR

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2006-02293

Judge J. Craig Wright  
Magistrate Matthew C. Rambo

## MAGISTRATE DECISION

{¶ 1} On August 27, 2007, the court enjoined defendant from withdrawing funds from plaintiff's inmate account (pursuant to a restitution order) in excess of 30 percent of his earnings. On January 9, 2008, plaintiff filed a motion for contempt on the ground that defendant violated the injunction. On January 23, 2008, defendant filed a memorandum contra. On February 4, 2008, plaintiff filed a reply with leave of court. On May 6, 2008, the court conducted an evidentiary hearing on plaintiff's motion at the Ohio State Penitentiary (OSP).

{¶ 2} As a preliminary matter, on May 22, 2008, plaintiff filed what the court construes as a motion for leave to file a post-hearing brief. On June 3, 2008, defendant filed a motion to strike plaintiff's motion for leave. Upon review, plaintiff's motion for leave is DENIED and defendant's motion to strike is DENIED as moot.

{¶ 3} "Contempt is defined in general terms as disobedience of a court order." *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 554, 2001-Ohio-15. Civil contempt is

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the failure in a civil action to do something ordered by the court for the benefit of the opposing party therein. *Pedone v. Pedone* (1983), 11 Ohio App.3d 164. A civil contempt finding may be made upon clear and convincing evidence. *ConTex, Inc. v. Consolidated Technologies, Inc.* (1988), 40 Ohio App.3d 94.

{¶ 4} R.C. 2705.02 states, in part:

{¶ 5} “A person guilty of any of the following acts may be punished as for a contempt:

{¶ 6} “(A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or officer \* \* \*.”

{¶ 7} In his motion plaintiff alleges that defendant improperly withdrew funds from his inmate account on November 20, 2007. At the hearing, plaintiff further alleged that defendant also improperly withdrew funds on December 28, 2007, January 30, 2008, and February 13, 2008. Defendant contends that it is making every effort to comply with the injunction and that any improper withdrawals were unintentional. The court notes, however, that lack of intent is not a defense to a charge of civil contempt. See *Windham Bank v. Tomaszczyk* (1971), 27 Ohio St.2d 55.

{¶ 8} On November 20, 2007, on December 28, 2007, and again on January 30, 2008, defendant withdrew \$2.70 from plaintiff’s account. Plaintiff alleges that on November 20, 2007, and December 28, 2007, defendant withdrew funds he received as gifts, rather than funds derived from his earnings, and that on January 30, 2008, defendant withdrew funds in excess of an amount equal to 30 percent of his earnings. Defendant asserts that each withdrawal complied with the injunction.

{¶ 9} At the hearing, plaintiff produced a statement detailing all transactions in his account. (Plaintiff’s Exhibit 1.) The statement shows that from the date of the injunction through January 30, 2008, plaintiff earned \$45 and defendant withdrew \$13.50 in restitution payments. Inasmuch as defendant withdrew 30 percent of plaintiff’s earnings during this time, the court finds that the withdrawals of November 20, 2007, December 28, 2007, and January 30, 2008, complied with the injunction.

{¶ 10} However, on February 13, 2008, plaintiff received a \$10 money order as a gift, at which time defendant immediately withdrew \$10 from plaintiff’s account. The parties agree that defendant had withdrawn an amount equal to 30 percent of plaintiff’s February earnings on February 8, 2008. OSP Account Clerk Supervisor Lori

Beggs testified that the withdrawal resulted from a computer error caused by the unique nature of plaintiff's restitution order. According to Beggs, defendant did not recognize the error in the withdrawal until after it had remitted the withdrawn funds as a restitution payment, but Beggs stated that defendant resolved the incident by applying a \$10 credit to future restitution payments owed by plaintiff. The court is unable to determine from the evidence adduced at the hearing whether any credit balance remains.

{¶ 11} Upon review, the court finds that defendant's February 13, 2008 withdrawal of \$10 violated the injunction, that defendant continues to violate the injunction by failing to return said funds, and that, as a result, plaintiff has incurred damages in the amount of \$10.

{¶ 12} For the foregoing reasons, it is recommended that plaintiff's motion for contempt be GRANTED, in part, such that defendant be found in contempt for violation of the August 27, 2007 injunction. In addition, it is recommended that defendant be ordered to pay plaintiff damages in the amount of \$10.

{¶ 13} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

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MATTHEW C. RAMBO  
Magistrate

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cc:

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