NORTH CAROLINA

CARTERET COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
02 CVS 1270

ADAMS CREEK ASSOCIATES,
A North Carolina Limited Partnership with
Billy Dean Brown, General Partner,

Plaintiff,
v.

MELVIN DAVIS and LICURTIS REELS,

Defendants.

SECOND MOTION IN THE CAUSE AFTER REMAND FROM SUPREME COURT

NOW COMES Defendants Melvin Davis and LiCurtis Reels, and hereby moves this honorable court pursuant to N.C.G.S. §5A-21 *et seq.*, and/or pursuant to U.S.C.A. Const.Amend. 1, to enter an Order immediately releasing the Defendants from custody in the Carteret County Detention Center for civil contempt. In support of this Motion, the Defendants show unto the court the following:

RECENT PROCEDURAL HISTORY

Defendant's filed a Motion in the Cause in this matter on May 9, 2016 to address the issue of their incarceration for more than five (5) years for civil contempt. The matter was heard before the Hon. Benjamin Alford in Carteret County Superior Court on May 16, 2016. The Defendant's proffered evidence of their inability to financially comply with the 2011 Order and proffered uncontroverted expert testimony regarding the costs of compliance and the sufficiency of their own equipment to effectuate the structure removal portion of the Order. The Court denied Defendants' motion for release in its Order dated June 13, 2016. The Court refused to

make factual findings on the evidence presented by Defendants of their ability to comply with the Court's order. (Exhibit "A") Defendants timely appealed to the North Carolina Court of Appeals ("COA") on July 11, 2016. The COA issued its opinion on January 16, 2018. In a two (2) to one (1) opinion, the COA denied Defendants' release from incarceration for civil contempt. Judge Donna Stroud wrote a dissenting opinion. (Exhibit "B") As a result of Judge Stroud's dissent, on February 19, 2018, Defendants appealed to the North Carolina Supreme Court as a matter of right. The Supreme Court ordered oral arguments for August 29, 2018. The Supreme Court issued its Opinion on September 21, 2018, *per curiam*. The Supreme Court's opinion vacated the decision of the COA, remanded the matter to the COA for further remand to the Carteret County Superior Court "for findings of fact concerning defendants' ability to comply with the removal of the structures as a condition of the 2011 Contempt Order". The opinion further stated that "[i]n the trial court, defendants also are without prejudice to advance claims not briefed or previously raised but discussed at oral arguments before the Court". (Exhibit "C").

MOTION IN THE CAUSE

(*The "Law of the Case" Relative to Structure Removal*)

1. This matter is on remand pursuant to the Supreme Court's *per curiam* order.
2. That the appellate rulings in this case are the "law of the case".
3. Defendants proffer the transcripts of the initial "Motion in the Cause" in this matter, heard before the Hon. Benjamin Alford on May 16, 2016. (Exhibit "D").
4. Defendants proffer the record on appeal and addendum thereto, the same filed with the COA on October 27, 2016 and February 2, 2017, respectively. (Exhibit "E").
5. Defendants respectfully request the Court take judicial notice of all evidence

proffered and admitted during the May 16, 2016 hearing, including all photographs and exhibits, and all evidence submitted to the COA and Supreme Court set out in the appellate record.

6. Since the May 16, 2016 hearing, Defendants have continued to be incarcerated, and as a result, their financial ability to comply with the structure removal portion of the order remains unchanged.

7. Upon information and belief, Adams Creek has not exercised its right to remove the structures and equipment from their property and seek reimbursement of its expenses as it is entitled to under the 2011 Order, as of this date.

8. The Defendants property (structures) have substantially deteriorated since they have last had access to the same more than seven (7) years ago.

9. The Defendants equipment, more specifically: backhoe, bulldozer, and trailer are all in a deteriorated condition as the same has been damaged by flood waters. The equipment has not been used since the flood.

10. That upon information and belief, to move and/or remove the structures, consisting of two homes, a shop, and a club (four (4) buildings) would costs tens of thousands of dollars to accomplish.

11. That Stephen Bray, a home moving expert proffered by the Defendants during the May 16, 2016 hearing testified that the approximate costs would be $47,000.00. Bray further testified that the Defendants' equipment was insufficient to remove the structures.

12. That the Defendants' current financial condition, after seven and a half (7.5) years of

imprisonment, effectively prevents them from having the ability to comply with the Court's order as they have not been able to earn any income.

13. Notwithstanding the Defendants' current financial inability to comply with the Court's order, Defendants also respectfully proffer in addition and/or in the alternative that their continued imprisonment, without committing a criminal act, is unequivocally punitive in nature and the same amounts to a violation of the Defendants' Due Process rights as afforded them by the Fourteenth Amendment to the United States Constitution.

14. To date, Defendants have been housed for approximately seven and a half (7.5) years and ten (10) months or approximately Two Thousand Eight Hundred Eighty-Five days (2,885) days.

15. Upon information and belief, the cost to house an inmate in the Carteret County jail is approximately Sixty Dollars ($60.00) per day.

16. Upon information and belief, the citizen taxpayers in Carteret County ultimately bear the burden of the costs of civil incarceration, amounting to approximately One Hundred Seventy-Three Thousand Dollars ($173,000.00) to house Defendants.

17. That Defendant LiCurtis Reels suffers from Diabetes. He has required hospitalization in the past due to his condition and is required to have medical attention on a daily basis as a result of the same.

(*First Amendment Violation*)

18. The North Carolina Supreme Court stated in its Order vacating and remanding this matter to the trial court, "[i]n the trial court, defendants also are without prejudice to advance claims not briefed or previously raised but discussed at oral arguments before this Court."

19. The 2011 Order also required Defendants to "confirm in writing [their] agreement to never again go onto the property."

20. During oral arguments before the Supreme Court, both Plaintiff and Defendants proffered their positions on the written attestation portion of the order.

21. Ostensibly, it was Plaintiff's position that Defendants could have complied with the written attestation portion of the Order directing them to confirm their agreement to never again go onto the property.

22. Defendants' response to queries from the Court on that issue was that the portion of the order directing them to write a statement that they were otherwise inclined not to write, nor agreed with, amounted to compelled speech, prohibited by the First Amendment to the Constitution.

23. The First Amendment states:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
> *U.S.C.A. Const.Amend. 1*

24. In the matter *sub judice*, all parties to this action are private litigants.

25. In order for the government to restrict or force speech, there must be a "compelling governmental interest" in doing the same so as to pass a "strict scrutiny" analysis.

26. In this matter, there cannot exist a "compelling governmental interest" as the government is not a party hereto nor should it have any interest whatsoever in this private litigation.

27. In the event there is not a compelling governmental interest at stake, the order cannot pass a "strict scrutiny" analysis under any set of facts.

28. The Defendants have remained adamant, for the past seven and a half (7.5) years, that they will not sign a piece of paper regarding the subject property forcing an agreement as directed by the Court.

29. Justice Robert Jackson wrote in *West Virginia Board of Education v. Barnette* (1943):

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion *or force citizens to confess by word or act their faith therein." (Emphasis Added)*

WHEREFORE, for the reasons stated above, Defendants respectfully request the Court grant Defendants' Second Motion In The Cause, immediately release Defendants from the custody of the Carteret County Detention Center, and grant any other relief the court deems proper.

Respectfully submitted this the 31st day of January, 2019.

HAIRSTON LANE, P.A.

James E. Hairston, Jr.
N.C. Bar No: 19687
434 Fayetteville Street, Suite 2350
Raleigh, North Carolina 27601
(919) 838-5295 Telephone
(888) 510-1160 Facsimile
Email: jhairston@hlbnclaw.com
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that today I caused Defendants' **Second Motion in the Cause After Remand From Supreme Court** to be served on Plaintiff via First Class Mail, postage prepaid and addressed to:

L. Lamar Armstrong Jr.
The Armstrong Law Firm, P.A.
P.O. Box 27
Smithfield, North Carolina 27577
(919) 934-1575

This the 31st day of January, 2019.

HAIRSTON LANE, P.A.

James E. Hairston, Jr.
N.C. Bar No: 19687
Two Hanover Square
434 Fayetteville Street, Suite 2350
Raleigh, North Carolina 27601
919-838-5295 (Telephone)
888-510-1160 (Facsimile)
Email: jhairston@hlbnclaw.com
Attorney for Defendants

NORTH CAROLINA

CARTERET COUNTY

FILED
2016 JUN 13 A 11:45
CARTERET CO., C.S.C.
BY

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 02 CVS 1270

Adams Creek Associates
Plaintiff

v.

Melvin Davis & Licurtis Reels
Defendants

Order Denying Motions in the Cause

Defendants' 12 November 2015 and 4 May 2016 Motions in the Cause (collectively referenced as "Motions") came on for hearing and were heard before the Honorable Benjamin G. Alford, Senior Resident Superior Court Judge Presiding (the Court), on 16 May 2016. James E. Hairston, Jr. was present in representation of defendants. L. Lamar Armstrong, Jr. was present in representation of plaintiff.

After hearing testimony and argument of counsel, the Court took the Motions under advisement. After considering the Motions, all testimony and argument, and all materials submitted by counsel, the Court makes the following:

Findings of Fact

1. Defendants through counsel filed a "Motion in the Cause" on or soon after 12 November 2015 (the November Motion) and noticed it for hearing on 7 December 2015.

2. At the request of defendants' counsel, the November Motion was removed from the 7 December 2015 calendar and was left open for counsel to calendar at a later date.

3. Defendants did not file any withdrawal of the November Motion itself. The November Motion remained pending, and was pending at the time of the hearing of this matter before the Court.

4. The November Motion contended that N.C. Gen. Stat. §5A-21(b)(2) applied and required that defendants have hearings after no more than 90 days of incarceration.

EXHIBIT
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5. The November Motion made no allegation that defendants had purged their contempt by complying with the March 2011 Contempt Order.

6. The November Motion did not allege that defendants wanted to comply.

7. The November Motion did not allege that defendants could not comply based on their financial condition or other factors.

8. The November Motion did allege that defendants had been wrongfully incarcerated for four years and seven months, that they had some health issues, and that continued incarceration was expensive for Carteret County, which the Court finds was equivalent to stating that hearing the November Motion involved a matter of urgency to defendants.

9. Despite the suggested urgency evident in the November Motion, defendants and their counsel did not calendar the November Motion for hearing after the 7 December 2015 calendar from which it was continued at their request.

10. Six months after filing the November Motion, on or soon after 4 May 2016, defendants through their counsel filed another Motion in the Cause (May Motion).

11. The May Motion was filed pursuant to N.C. Gen. Stat. §5A-21 and Rule 11.

12. Like the November Motion, the May Motion does not contend that defendants had purged their contempt or that they wanted to purge their contempt.

13. However, unlike the November Motion, the May Motion does set forth allegations about defendants' financial condition and alleged inability to pay to move structures from plaintiff's land.

14. The May Motion does not allege that either defendant had complied with the provision in the Contempt Order that "he confirms in writing to never again go upon the property" or that he would comply with such requirement.

15. At the hearing of the Motions, defendants' counsel stated twice in open court that he had not met with the defendants the night before although he had tried to do so.

16. Defendants' counsel called both defendants to the stand to testify about their lack of income since they have been in jail, the heavy equipment and its condition, and their health but asked no questions about the defendants' willingness to "never again go upon the property".

17. On cross examination, both defendants confirmed they had testified under oath at least five times in the past decades of litigation (in court and in deposition).

18. Both defendants confirmed that in their prior testimony they said on every occasion that it was not they couldn't comply with the Contempt Order, it was they wouldn't comply.

19. Both defendants again confirmed that they would not stay off the property and interjected their continued commitment to their ownership of the property despite the decades of legal rulings to the contrary.

20. Both defendants testified that they did not care how many judges told them to stay off the property, they would not do so.

21. Both defendants testified that if they had the money to remove structures as required by the Contempt Order, they would not do so.

22. Other evidence was presented on other factual issues concerning the defendants' financial condition, the heavy equipment still owned by Melvin Davis and its condition, the expense of moving the structures off of the property, the defendants' health, and other issues.

23. The Court makes no findings as to these matters because defendants' failure to sign the necessary written document pledging to not again go upon the property, and their avowed insistence to the contrary that they would indeed go back on the property, is dispositive on the controlling issue as to whether defendants have purged or are even willing to purge their contempt.

Based upon these findings of fact, the Court reaches the following

Conclusions of Law

1. N.C. Gen. Stat. §5A-21(b)(2) does not apply to this case because N.C. Gen. Stat. §5A-21(b) provides: *Notwithstanding subsection (b2) of this section, if a person is found in civil contempt for (. . . . child support) or failure to comply with a court order to perform an act that does not require the payment of*

a monetary judgment, the person may be imprisoned as long as the civil contempt continues without further hearing."

2. The Contempt Order in this case does not require the payment of a monetary judgment.

3. The November 2015 Motion in the Cause lacks justiciable issues of law because it relies on a statute that on its face does not apply.

4. The May Motion reasserts N.C. Gen. Stat. §5A-21 and Rule 11 of the North Carolina Rules of Civil Procedure as the authority upon which the Motion is based.

5. Both of these bases for the May Motion lack justiciable issues of law because neither apply to this case.

6. The May Motion is essentially a motion for the Court to find that contempt should be purged based on defendants' alleged financial inability to comply and that continued incarceration is punitive rather than coercive.

7. Because the May Motion cites to and relies upon inapplicable law as the basis for the motion, and does not allege that defendants either wanted to comply or that they were willing to comply with all the terms of the Contempt Order to attest in writing they will never again go upon the property, the May Motion lacks justiciable issues of law and fact.

8. Defendants' testimony confirmed defendants' continued refusal to recognize plaintiff as owner of the property and the defendants' obligation to never again go upon the property, which negated the whole premise of which a motion to purge must be based.

9. Despite over five years of incarceration, defendants' refusal to abide by the Contempt Order and accept the many other orders by which the legal system has repeatedly confirmed the plaintiff's ownership of the property was manifest and unchanged.

10. Continuation of defendants' incarceration under the Contempt Order is not punitive, because it has been for five years and remains a matter that is within the power of defendants to resolve and thereby purge their contempt – if they were willing to do so.

11. Both defendants' willful refusal to comply with the Contempt Order now in excess of five years cannot, based on the length of time they have

willingly endured their incarceration in order to not comply, be allowed to prevail over the rule of law they refuse to acknowledge.

12. Defendants' Motions in the Cause (November Motion and May Motion) are based on the frivolous position that it does not matter whether defendants want to comply with the equally important obligation to remain off the land; rather, it matters only that defendants have insufficient funds to complete the job of removing structures -- the very tasks they testified they would not do even if they had the financial resources.

13. Under these circumstances, based on the defendants' testimony before this Court, the Court does not reach the issue of financial resources or ability to comply with obligations under the Contempt Order that both defendants have once again said they will never do.

14. Defendants have failed to prove they have purged their contempt.

15. Defendants have failed to prove that their incarceration is punitive or otherwise is improper.

Wherefore, based on these findings of fact and conclusions of law, the Court orders that the Motion in the Cause (including both the November Motion and the May Motion) are **DENIED.**

The Honorable Benjamin G. Alford
Senior Resident Superior Court Judge Presiding
3B Judicial District

This the 3rd day of June 2016, *nunc pro tunc* May 16, 2016.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1080

Filed: 16 January 2018

Carteret County, No. 02 CVS 1270

ADAMS CREEK ASSOCIATES, Plaintiff,

v.

MELVIN DAVIS & LICURTIS REELS, Defendants.

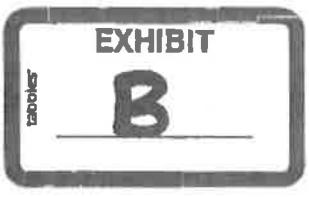
Appeal by defendants from order entered 13 June 2016 by Judge Benjamin G. Alford in Carteret County Superior Court. Heard in the Court of Appeals 6 September 2017.

The Armstrong Law Firm, P.A., by L. Lamar Armstrong, Jr. and L. Lamar Armstrong, III, for plaintiff-appellee.

Hairston Lane, P.A., by James E. Hairston, Jr., for defendant-appellants.

ELMORE, Judge.

Brothers, Melvis Davis and Licurtis Reels (defendants), appeal from an order denying their motions for release from conditional incarceration for civil contempt. Defendants have been previously before this Court twice, unsuccessfully disputing an adjudication that Adams Creek Associates (plaintiff), not defendants, are the rightful owners of 13.25 acres of property along Adams Creek in Carteret County, and have unsuccessfully challenged two orders entered in 2006 and 2011 finding them in contempt of court. *See Adams Creek Assocs. v. Davis*, 186 N.C. App. 512, 652



S.E.2d 677 (2007), *writ denied, disc. rev. denied, temp. stay dissolved, appeal dismissed,* 362 N.C. 354, 662 S.E.2d 900 (2008) ("*Adams Creek I*"); *Adams Creek Assocs. v. Davis*, 227 N.C. App. 457, 459, 746 S.E.2d 1, 3, *disc. rev. denied*, 367 N.C. 234, 748 S.E.2d 322 (2013) ("*Adams Creek II*"). Defendants have been imprisoned for civil contempt since March 2011, after entry of the second contempt order, for failing to comply with court orders requiring them to remove their structures and equipment from Adams Creek Associates' property, and to cease trespassing upon it. In its 2011 contempt order, the superior court afforded defendants the opportunity to purge their contempt by (1) removing their structures and equipment from the property, and (2) attesting in writing to never again trespass. In this appeal, defendants challenge a 2016 order denying their motions for custodial release.

In 2016, defendants moved for custodial release on the grounds that they were financially unable to comply with the contempt order and that their continued incarceration has become punitive and violates due process. But at the hearing on their motions, defendants testified that even if they were financially able to comply with the property-removal purge condition, they would not do so, and defendants again refused to comply with the attestation purge condition. Defendants' counsel also argued that because defendants were unable to comply with the order, their continued imprisonment has become a punitive contempt sanction. The trial court denied the motions. In its order, the trial court acknowledged that defendants

presented evidence regarding their financial situation and the costs associated with removing the structures and equipment from the property, but refused to make findings on the matter in light of defendants' refusals to comply with either purge condition. The trial court also concluded that continued incarceration has not become punitive because defendants wield the power to purge their contempt but have recalcitrantly refused.

On appeal, defendants contend the trial court erred by (1) failing to consider their alleged inability to comply with the contempt order, (2) failing to consider whether the purpose of the underlying order could still be served by defendants' continued incarceration, and (3) improperly concluding that their continued incarceration has not become a punitive criminal contempt. Because defendants were already ordered to be indefinitely committed until they purged their civil contempt when they filed their motions for release, the only issue properly before the trial court was whether defendants were subject to custodial release. Because defendants willfully refused to perform the attestation and admitted they would not perform the property-removal purge condition, even if they could, defendants failed to prove they purged their contempt or satisfy their burden of producing evidence to support their alleged inability-to-comply defense. We hold the trial court did not err in refusing to make futile findings on their alleged inability to comply with the prior order due to defendants' outright refusals to purge their contempt. Additionally, because the

character of relief ordered by the contempt order was incarceration until compliance, and defendants were afforded the opportunity to avoid imprisonment by performing affirmative acts, we hold that the trial court properly concluded their continued incarceration has not become punitive. Accordingly, we affirm.

I. Background

The litigation relevant to this appeal started in 1982, when Shedrick Reels filed a trespass action against defendant Melvin Davis and Gertrude Reels, the mother of defendant Licurtis Reels. *See Adams Creek I*, 186 N.C. App. at 516, 652 S.E.2d at 680. In 1984, the trial court entered a summary judgment order adjudicating Shedrick to be the owner of the property and ordering Davis and Reels' mother not to trespass. *See Adams Creek II*, 227 N.C. App. at 459, 746 S.E.2d at 3. In 1985, Davis was held in contempt and incarcerated for his refusal to comply with that order, but he was released upon satisfying the purge condition of executing a document acknowledging the property belonged to Shedrick and agreeing not to trespass. *Id.* In 1985, Shedrick sold the property to Adams Creek Development, which then conveyed the property to plaintiff, Adams Creek Associates, in 1986. *Id.* at 459–60, 746 S.E.2d at 3.

In 2002, plaintiff filed an action against defendants Davis and Reels, alleging they continued to claim an interest in the property and to trespass upon it. *Id.* at 460, 746 S.E.2d at 3–4. In 2004, the trial court entered a partial summary judgment

order in plaintiff's favor, enjoining defendants from further trespassing and ordering them to remove their structures and equipment from the property ("2004 Summary Judgment Order"). *Id.* After defendants refused to comply, plaintiff moved to hold them in contempt. *Id.* After a show cause hearing, the trial court entered an order on 10 August 2006 finding defendants in civil contempt for failing to comply with the 2004 Summary Judgment Order, and in criminal contempt for testifying under oath that they did not intend to obey future orders to stay off the property ("2006 Contempt Order"). *Adams Creek I*, 512 N.C. App. at 520, 652 S.E.2d at 683.

In 2006, defendants appealed the 2006 Contempt Order. *Id.* Defendants argued they were improperly found to be in both civil and criminal contempt for the same behavior. *Id.* at 526–27, 652 S.E.2d at 686–87. We disagreed and held that the trial court properly found defendants to be in both civil and criminal contempt for different acts. *Id.* at 527, 652 S.E.2d at 687 ("[D]efendants were found in civil contempt for failing to comply with the court's 2004 order, and were found in criminal contempt for their testimony threatening to disobey future orders of the court."). Defendants also attempted to challenge the 2004 Summary Judgment Order, but because their appeal from that order was not properly before us, we refused to address their challenges. *Id.* at 523, 652 S.E.2d at 684.

In January 2011, plaintiff filed another motion to hold defendants in contempt for continuing to occupy the property and refusing to comply with court orders

directing them not to trespass. *Adams Creek II*, 227 N.C. App. at 461, 746 S.E.2d at 4. After a hearing, the trial court entered an order on 31 March 2011 finding defendants in civil contempt for failing to comply with prior court orders, and ordering that defendants be incarcerated until they purged their contempt, *see id.*, by (1) presenting evidence they removed their structures and equipment from the property, and (2) attesting in writing to never again trespass ("2011 Contempt Order"). Defendants have remained incarcerated since March 2011.

In 2012, defendants appealed, among other orders, the 2011 Contempt Order and the 2004 Summary Judgment Order. *See Adams Creek II*, 227 N.C. App. at 462, 746 S.E.2d at 5. On appeal, defendants raised several challenges to the 2004 Summary Judgment Order that awarded plaintiff title to the property, and we affirmed that order. *Id.* at 462–67, 746 S.E.2d at 5–8. Defendants also challenged the 2011 Contempt Order on the basis that "it relied on the erroneous conclusion that Adams Creek is the rightful owner of the Waterfront Property." *Id.* at 470, 746 S.E.2d at 10 (footnote omitted). We ascertained that the actual issue presented was whether defendants were improperly found in civil contempt in 2011 for failing to comply with the 2004 Summary Judgment Order, *id.* at 470, 746 S.E.2d at 10, and concluded that "[b]ased on the evidence presented, the trial court properly found that defendants were able to comply with the 2004 Summary Judgment Order" and "[h]ence, defendants' noncompliance was willful." *Id.* at 471, 746 S.E.2d at 11. Accordingly,

having affirmed the 2004 Summary Judgment Order and having determined that defendants remained in noncompliance with that order, we affirmed the 2011 Contempt Order. *Id.*

On 1 June 2015, after having been incarcerated for four and a half years, defendants petitioned our Supreme Court for a writ of *habeas corpus* for their custodial release, which was denied three days later on 4 June 2015. *See Davis v. Buck*, ___ N.C. ___, 772 S.E.2d 707 (2015).

On 4 May 2016, defendants filed the instant motions in the cause, seeking custodial release based upon their alleged inability to comply with the 2011 Contempt Order, and on the basis that their continued incarceration has become punitive and violates their due process rights. After a hearing at which defendants again refused to perform the attestation purge condition and admitted they would refuse to comply with the property-removal purge condition even if they were able, the trial court entered an order on 13 June 2016 denying their motions. Defendants now appeal from this 2016 order and have been in prison since entry of the 2011 Contempt Order.

II. Analysis

On appeal, defendants contend the trial court erred in denying their motions for custodial release by (1) failing to consider their alleged inability to comply with the 2011 Contempt Order, (2) failing to consider whether the purpose of the 2004

Summary Judgment Order could still be served by compliance, and (3) improperly concluding that their continued incarceration has not become punitive.

A. Review Standard

"The standard of review for contempt proceedings is limited to determining whether there is competent evidence to support the findings of fact and whether the findings support the conclusions of law." *Gandhi v. Gandhi*, ___ N.C. App. ___, ___, 779 S.E.2d 185, 188 (2015) (citation and quotation marks omitted). "Findings of fact made by the judge in contempt proceedings are conclusive on appeal when supported by any competent evidence and are reviewable only for the purpose of passing upon their sufficiency to warrant the judgment." *Id.* (citations and quotation marks omitted). Legal conclusions are reviewed *de novo*. *Tucker v. Tucker*, 197 N.C. App. 592, 594, 679 S.E.2d 141, 143 (2009) (citation omitted).

B. Alleged Statutory Errors

Defendants first contend the trial court erred by denying their motions for release on the ground that it failed adequately to consider their alleged inability to comply with the 2011 Contempt Order and, additionally, by failing to consider whether the purpose of the underlying order may still be served by compliance. Defendants' arguments miss the mark.

N.C. Gen. Stat. § 5A-21(a) (2015) provides in pertinent part:

> (a) Failure to comply with an order of a court is a continuing civil contempt as long as:

> (1) The order remains in force;
>
> (2) The purpose of the order may still be served by compliance with the order;
>
> (2a) The noncompliance by the person to whom the order is directed is willful; and
>
> (3) The person to whom the order is directed is *able to comply with the order or is able to take reasonable measures that would enable the person to comply with the order.*

(Emphasis added.) "A person who is found in civil contempt may be imprisoned as long as the civil contempt continues, subject to . . . limitations" inapplicable here. N.C. Gen. Stat. § 5A-21(b) (2015) (emphasis added).

"The purpose of civil contempt is not to punish but to coerce the defendant to comply with a court order." *Spears v. Spears*, ___ N.C. App. ___, ___, 784 S.E.2d 485, 494–95 (2016) (citation and quotation marks omitted). Thus, generally, before a trial court may impose punishment for civil contempt, it must determine that a defendant "ha[s] the present ability to comply, or the present ability to take reasonable measure that would enable him [or her] to comply, with the order." *Id.* at ___, 784 S.E.2d at 494 (citation and quotation marks omitted). However, "if a person is found in civil contempt for failure . . . to comply with a court order to perform an act that does not require the payment of a monetary judgment, *the person may be imprisoned as long*

as the civil contempt continues without further hearing." N.C. Gen. Stat. § 5A-21(b) (emphasis added).

In the 2011 Contempt Order, defendants were ordered to be confined indefinitely until they purged their contempt by (1) "presenting evidence . . . that [certain structures they own have] been removed completely from the property," and (2) "confirm[ing] in writing [their] agreement to never again go onto the property." Because these acts do not require defendants to pay a monetary judgment, they may be subject to remain in prison "without further hearing." N.C. Gen. Stat. § 5A-21(b). Since defendants were already serving an indefinite, conditional prison sentence for civil contempt at the time their motions for release were filed, the trial court was not adjudicating an initial or continuing contempt, and thus had no inherent statutory obligation to consider any of N.C. Gen. Stat. § 5A-21(a)'s enumerations; rather, the issue for the trial court, which is the subject of our review, is whether defendants satisfied their burden of showing they were subject to release.

N.C. Gen. Stat. § 5A-22(a) (2015) provides that "[a] person imprisoned for civil contempt must be released when his civil contempt no longer continues." Upon an incarcerated contemnor's motion, "the court must determine if he is subject to release and, on an affirmative determination, order his release." N.C. Gen. Stat. § 5A-22(b) (2015). Absent a showing that a contemnor purged their contempt, he or she may move for release based upon "a *present* inability to comply with the order . . . ." *United*

States v. Rylander, 460 U.S. 752, 757, 103 S. Ct. 1548, 1552, 75 L. Ed. 2d 521 (1983) (citations omitted); *Turner v. Rogers*, 564 U.S. 431, 442, 131 S. Ct. 2507, 2516, 180 L. Ed. 2d 452 (2011) ("A court may not impose punishment in a civil contempt proceeding when it is clearly established that the alleged contemnor is unable to comply with the terms of the order." (citation and internal quotation marks omitted)). But "[i]t is settled, . . . that in raising this defense, the [contemnor] has a burden of production." *Rylander*, 460 U.S. at 757, 103 S. Ct. at 1552 (citations omitted). It follows that a contemnor cannot satisfy this burden by testifying that, even if they could comply with the order, they would not. Such a showing would vitiate the inability-to-comply defense.

Here, defendants alleged in their motions that they were financially unable to comply with the 2011 Contempt Order. However, at the hearing, defendants readily admitted that they would not perform the property-removal purge condition, even if they could. This relevant exchange occurred between defendant Davis and opposing counsel:

> Q. *Regardless of how many orders exist or what judges tell you to do, you will never get off that land or move what you have on the land, will you?*
>
> A. *No, sir.*
>
> Q. *It's not that you can't do it, it's that you won't do it, right?*
>
> . . . .

> A. I-- we have been on that land all our days and that is where-- that is where I am at.
>
> . . . .
>
> Q. *So you simply refuse to do it?* Whether you can do it or not it doesn't matter to you, you just won't do it?
>
> A. They come there, they blew up the boat, sunk my boat, come and set my house on fire.
>
> THE COURT: Sir, you need to answer his question, not just start talking about things you want to talk about. *The question is, it's not a matter of whether you can't but whether you will.* That is his question.
>
> A. *I will not.*
>
> . . . .
>
> Q. *You will not do it?*
>
> A. *No.*

(Emphasis added.) This relevant exchange occurred between defendant Reels and opposing counsel:

> Q. So whether or not you have equipment, whether or not you have somebody that can use it, whether or not your mother will let you move it on her land, all of that doesn't matter because *you simply are not going to move it ever, are you?*
>
> A. *No, sir,* I don't-- I don't have the financial to move it because it's mine.
>
> Q. *What if you had the money?* What if you had social security disability, would you use that money to move it?

> . . . .
>
> A. *No, sir.*
>
> . . . .
>
> Q. Why not?
>
> A. Because it's mine.
>
> Q. *So this idea that you don't have money to move it, if you had money you still wouldn't use it to move it, would you?*
>
> A. *No, sir.*

(Emphasis added.)

In its order denying defendants' motions, the trial court made the following unchallenged, and thus binding, factual findings:

> 16. Defendants' counsel called both defendants to the stand to testify about their lack of income since they have been in jail, the heavy equipment and its condition, and their health but asked no questions about the defendants' willingness to "never again go upon the property."
>
> 17. On cross examination, both defendants confirmed they had testified under oath at least five times in the past decades of litigation (in court and in deposition).
>
> 18. Both defendants confirmed that in their prior testimony they said on every occasion that it was not they couldn't comply with the Contempt Order, it was they wouldn't comply.
>
> 19. Both defendants again confirmed that they would not stay off the property and interjected their continued commitment to their ownership of the property despite the decades of legal rulings to the contrary.

> 20. Both defendants testified that they did not care how many judges told them to stay off the property, they would not do so.
>
> 21. Both defendants testified that if they had the money to remove structures as required by the Contempt Order, they would not do so.
>
> 22. Other evidence was presented on other factual issues concerning the defendants' financial condition, the heavy equipment still owned by Melvin Davis and its condition, the expense of moving the structures off of the property, the defendants' health, and other issues.
>
> 23. The Court makes no finding as to these matters because defendants' failure to sign the necessary written document pledging to not again go upon the property, and their avowed insistence to the contrary they would indeed go back on the property, is dipositive on the controlling issue as to whether defendants have purged or are even willing to purge their contempt.

As reflected by the trial transcript and these findings, the trial court considered defendant's alleged inability defense but determined that making correlative findings would be futile in light of their outright refusals to purge their contempt. Since the purge condition acts did not require defendants to pay a monetary judgment, defendants may be imprisoned "without further hearing." And because the hearing was not an initial or continuing adjudication of contempt, the trial court had no obligation under N.C. Gen. Stat. § 5A-21(a) to make findings regarding defendants' ability to comply with the contempt order. Expenses inherent in removing structures and equipment is certainly relevant in determining whether defendants here can

comply with the property-removal purge condition. But based on their refusals to perform the attestation purge act, and their admissions that they would refuse to perform the property-removal purge act even if they were able, defendants effectively vitiated their inability defense. Under these circumstances, we hold the trial court did not err in refusing to make findings on defendants' alleged inability to comply with the contempt order.

Defendants also make a bare assertion that the trial court erred by failing to find that "the purpose of the order, or prior orders . . . , are served by the Defendants' continued incarceration." As concluded above, the hearing before the trial court was not an initial or continuing contempt adjudication, and therefore the trial court was under no statutory obligation to reconsider N.C. Gen. Stat. § 5A-21(a)(2) ("The purpose of the order may still be served by compliance with the order[.]"). Further, defendants argument misses the point. The relevant consideration is not whether the purpose of an order can be served by continuing to punish a contemnor, but whether its purpose can still be served by compliance. The record reveals that defendants have not removed their structures from plaintiff's property and thus the purpose of the 2004 Summary Judgment Order could still be served by compliance. *See, e.g., Plasman v. Decca Furniture (USA), Inc.*, ___ N.C. App. ___, ___, 800 S.E.2d 761, 773 (2017) ("Our review of the record reveals that the [contemnors] have yet to return the diverted funds. We need say little more than that the purpose of the

[underlying order]—to enforce compliance with the injunction's terms, including the requirement that funds diverted from Bolier's bank accounts be returned to Decca USA—could still be served by compliance with the [underlying order]").

C. Nature of Contempt

Defendants next contend the court erred by denying their motions for release on the ground that it erroneously concluded that their continued incarceration is not punitive. We disagree.

As an initial matter, we reject defendant's argument that the "2004 [Summary Judgment] Order, and subsequently, [the] 2011 [Contempt Order] . . . are abjectly unreasonable under the circumstances and clearly punitive." In *Adams Creek II*, defendants appealed, and this Court upheld, both the 2004 Summary Judgment Order, 227 N.C. App. at 467, 746 S.E.2d at 8, and the 2011 Contempt Order, *id.* at 472, 746 S.E.2d at 11. Thus, the reasonableness of those orders, or whether the 2011 Contempt Order imposed a civil contempt sanction, is the law of the case and is unreviewable. *See Plasman*, ___ N.C. App. at ___, S.E.2d at 775 (rejecting a similar collateral attack on an underlying order in the context of an appeal from a contempt order); *see also Daniels v. Montgomery Mut. Ins. Co.*, 320 N.C. 669, 676, 360 S.E.2d 772, 777 (1987) ("An erroneous order may be remedied by appeal; it may not be attacked collaterally." (citation omitted)).

Defendants further contend that the trial court's "ruling, [denying their

motions] wherein no consideration was given the current financial nor health conditions of defendants, . . . can only be characterized as punitive." We disagree.

"The paradigmatic coercive, civil contempt sanction, . . . involves confining a contemnor indefinitely until he complies with an affirmative command[,]" *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 828, 114 S. Ct. 2552, 2557, 129 L. Ed. 2d 642 (1994) (citations omitted), and incarceration for a fixed term similarly "is coercive when the contemnor is given the option of earlier release if he complies." *Id.* at 828, 114 S. Ct. at 2558 (citation omitted). This is because "the contemnor is able to purge the contempt and obtain his release by committing an affirmative act, and thus carries the keys of his prison in his own pocket." *Id.* (citations and internal quotation marks omitted).

"[C]onclusions about the civil or criminal nature of a contempt sanction are properly drawn, not from 'the subject intent of a State's laws and its courts,' but 'from an examination of the character of the relief itself[.]" *Id.* at 828, 114 S. Ct. at 2557 (quoting *Hicks v. Feoick*, 485 U.S. 624, 636, 108 S. Ct. 1423, 1431–32, 99 L. Ed. 2d. 721 (1988)); *see also Bishop v. Bishop*, 90 N.C. App. 499, 505, 369 S.E.2d 106, 109 (1988) (adopting the *Hicks* Court's bright-line rule test: "[W]hile it is true that underlying 'punitive' as opposed to 'remedial and coercive' purposes distinguish criminal from civil contempt orders, those respective purposes should be drawn from an examination of the character of the actual relief ordered by the court."). "If the

relief is imprisonment, it is coercive and thus civil if the contemnor may avoid or terminate his imprisonment by performing some act required by the court (such as agreeing to comply with the original order)." *Bishop*, 90 N.C. App. at 505, 369 S.E.2d at 109 (citing *Hicks*, 485 U.S. at 632, 108 S. Ct. at 1429).

Here, because the relief is imprisonment, and defendants may be released by performing affirmative acts required by the court, it is coercive and thus civil. The trial court's unchallenged findings addressing these matters support its conclusion that "[c]ontinuation of defendants' incarceration under the Contempt Order is not punitive." We overrule defendants' challenge to this issue.

III. Conclusion

Defendants have raised no meritorious argument with respect to any finding or conclusion in the trial court's order. Defendants were entitled to move the trial court "to determine if [they were] subject to release[,]" N.C. Gen. Stat. § 5A-22(b), but failed to produce sufficient evidence to support their alleged inability-to-comply defense. The court did not err by refusing to make findings on defendants' alleged inability to comply in light of their outright refusals to comply, even if they could. The trial court's unchallenged findings support its conclusion that defendants' continued incarceration is not punitive. Since defendants failed to demonstrate they were subject to release, the trial court properly denied their motions. We affirm.

AFFIRMED.

Judge TYSON concurs.

Judge STROUD dissents by separate opinion.

STROUD, Judge, dissenting.

Because I believe that the trial court and the majority opinion have conflated two separate requirements of N.C. Gen. Stat. §§ 5A-22 (2015) and 5A-21(a) (2015), I dissent. Willfulness and ability are two different things, and the trial court erred by not considering ability.

The majority has set out the long procedural history of this case well and I will not repeat it.

Defendants sought release under N.C. Gen. Stat. § 5A-22(a), which provides:

> (a) A person imprisoned for civil contempt must be released when his *civil contempt no longer continues*. The order of the court holding a person in civil contempt must specify how the person may purge himself of the contempt. Upon finding compliance with the specifications, the sheriff or other officer having custody may release the person without a further order from the court.

(Emphasis added).

Defendants have previously been held in civil contempt, but the question under N.C. Gen. Stat. § 5A-22 requires the trial court to consider whether a contemnor could still be held in civil contempt as of the time of his motion for release, since he must be released "when his civil contempt no longer continues." N.C. Gen. Stat. § 5A-22(a). We must then refer to N.C. Gen. Stat. § 5A-21(a) for the definition of "civil contempt" and to determine if the civil contempt *continues:*

> (a) Failure to comply with an order of a court is a *continuing civil contempt* as long as:

> (1) The order remains in force;
> (2) The purpose of the order may still be served by compliance with the order;
> (2a) The noncompliance by the person to whom the order is directed is willful; *and*
> (3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable the person to comply with the order.

(Emphasis added).

Here, the order remains in force and the purpose of the order may still be served by compliance. The defendants' dispute addresses subsections (2a) and (3), which are two separate and independent requirements, and the trial court must address both. The trial court, and the majority opinion, conflate these two subsections. Under N.C. Gen. Stat. § 5A-21(a), the trial court must find *both* that "[t]he noncompliance by the person to whom the order is directed is willful;" *and* "[t]he person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable the person to comply with the order." N.C. Gen. Stat. § 5A-21(a)(2a),(3).

Defendants' noncompliance is willful under N.C. Gen. Stat. § 5A-21(a)(2a). They stubbornly refuse to recognize that the land is not theirs, and they refuse to perform the one part of the order they have the ability to perform: signing a piece of paper with their promise not to go on the land. But to be in continuing civil contempt, defendants must also be "able to comply with the order" or "able to take reasonable

measures that would enable" them to comply with the order. N.C. Gen. Stat. § 5A-21(a)(3). Logically, they must be able to comply with *all* of the provisions of the order, or they cannot comply with the order. Being able to comply with a part of the order -- signing a promise not to go on the land -- is not the same as ability to comply with the entire order. Nor would the primary purpose of the order be served by this symbolic act, since the primary purpose of the order is to make the defendants remove the structures on the land.

But the trial court erred by failing even to consider defendants' evidence of their inability to comply with the order. The trial court specifically found it would not make findings regarding defendants' inability to comply only because defendants stated their intent not to comply:

> 22. Other evidence was presented on other factual issues concerning the defendants' financial condition, the heavy equipment still owned by Melvin Davis and its condition, the expense of moving the structures off of the property, the defendants' health, and other issues.
>
> 23. The Court *makes no findings as to these matters* because defendants' failure to sign the necessary written document pledging to not again go upon the property, and their avowed insistence to the contrary that they would indeed go back on the property, is dispositive on the controlling issue as to whether defendants have purged or are even willing to purge their contempt.

(Emphasis added).

The fact that defendants are obstinate and foolish does not absolve the trial court of its responsibility to consider that defendants may be obstinate, foolish, *and* unable to comply with the order. I will not recite defendants' evidence in detail, but it shows generally that although defendants once had the ability to demolish the structures on the property themselves, since they had the equipment to do this work, their ability to do the work themselves is gone. The equipment has been sitting idle since they were imprisoned in 2011 and the equipment was at one point submerged under water during a storm. Defendants also presented evidence that the demolition of the structures would cost approximately $46,000.00. Plaintiff does not dispute this cost. Defendant Davis presented evidence that his only income is from social security. He had about $100.00 in a bank account in 2011; he has no other savings or retirement accounts. He was 69 years old at the time of the hearing and had suffered a back injury while in jail when he fell down the stairs. Defendant Reels presented evidence he has no income, no bank account, no retirement account, and has had no income since 2011. He was 59 years old at the time of the hearing and had been diagnosed with diabetes. He has no medical insurance and has received medical treatment in jail. Their financial situation has not improved with incarceration since 2011. There is absolutely no reason to believe that their ability to do the demolition themselves will improve with time or that their financial circumstances will improve with continued incarceration.

In most contempt cases, the contemnor claims he is willing to perform, but unable; in such case, the trial court "must first make a finding of a defendant's present ability to comply with an order before concluding that a defendant is in civil contempt of an order." *Oakley v. Oakley*, 165 N.C. App. 859, 864, 599 S.E.2d 925, 929 (2004). At other times, the contemnor refuses to perform, but he is clearly able to perform. *See, e.g., Farr v. Pitchess*, 409 U.S. 1243, 1243, 34 L. Ed. 2d 655, 657, 93 S. Ct. 593, 593 (1973) (reporter who refused to disclose the names of his sources was found to be in civil contempt). The scenario before us in this case is a rare situation in which the contemnors maintain their unwillingness to perform, and they are in fact *unable* to perform, even if they wanted to. Perhaps this reference is obscure, but the defendants are essentially in the position of the Black Knight in the movie "Monty Python and the Holy Grail."[1] The Black Knight insists that "None shall pass" through the path in the forest which he guards; the defendants insist the same as to the land they claim. King Arthur -- who had the legal authority as king to order the Black Knight to let him pass -- seeks to pass through the forest, but the Black Knight refuses to comply with his order. King Arthur and the Black Knight then engage in a sword fight. Even after King Arthur has cut off both of the Black Knight's arms and legs, he still insists that he will continue to fight and that no one may pass --

[1] *Monty Python and the Holy Grail* (Michael White Prods. 1975).

although he cannot do anything. King Arthur simply says, "We'll call it a draw," and continues on his way, leaving the Black Knight with no one to listen to his protests.

Here, the trial court and the plaintiff should follow King Arthur's wise lead and leave defendants behind. If defendants do not have the ability to perform, or to take reasonable measures to perform, and there is no reason to believe that they ever will have the ability to perform, they should not remain incarcerated forever for "continuing civil contempt" under N.C. Gen. Stat. §§ 5A-21(a) and 5A-22. The United States Supreme Court has noted that if compliance is factually impossible, there is no reason for civil contempt:

> While the court is bound by the enforcement order, it will not be blind to evidence that compliance is now factually impossible. Where compliance is impossible, neither the moving party nor the court has any reason to proceed with the civil contempt action. It is settled, however, that in raising this defense, the defendant has a burden of production.

U.S. v. Rylander, 460 U.S. 752, 757, 75 L.Ed.2d 521, 528, 103 S. Ct. 1548, 1552 (1983) (citations omitted).

Defendants met their burden of producing evidence of their inability to perform and their inability to take reasonable measures to perform; their evidence was uncontroverted. The trial court simply refused to make findings of fact based upon their evidence. Based upon the standard used by the trial court and the majority opinion, assuming defendants continue to state their refusal to give up their land, no

matter what evidence they produce of their abject poverty and inability to perform, they will remain imprisoned for the rest of their lives. But the trial court is required by N.C. Gen. Stat. § 5A-21(a)(3) to make findings of fact regarding defendants' actual ability to comply or to take reasonable measure to comply, and the trial court failed to make these findings. I would therefore reverse and remand to the trial court for it to make findings of fact as to defendants' actual ability to perform all of the purge conditions of the 2011 Contempt Order, as well as any conclusions of law supported by those findings of fact.

This is a dissent, and the trial court may chose to ignore it completely. But this case will no doubt be considered again by the trial court in the future. I would encourage the trial court to consider some different method of dealing with this situation, preferably one which will not continue to waste hundreds of thousands of dollars in public funds and occupy space in the Carteret County jail.

Besides the trial court's error in failing to consider the evidence of defendants' inability to comply with the order, I must note the futility of this case and the tremendous cost it has imposed, and will continue to impose, on the taxpayers of North Carolina -- and particularly Carteret County. Indeed, this is one reason why a contemnor's *ability* to comply is crucial to continuing incarceration indefinitely for civil contempt; if the contemnor has no ability to comply, public funds and resources are wasted seeking to accomplish an impossibility. And since the majority has

approved the trial court's refusal to consider defendants' ability to comply, the costs will only continue to increase indefinitely. According to defendant's motion, the cost of housing each inmate in the Carteret County Jail is about $60.00 per day, or $21,900.00 per year, and any costs for defendants' medical care are not included in this amount. Both defendants suffer from conditions which require medical care. Defendants have been taking up space in jail since 2011 -- space sorely needed for actual criminals. Defendants' costs will most likely continue to increase, due to their ages and medical conditions. This simple property dispute has been transformed into a state-funded enforcement action for the benefit of the plaintiff. Plaintiff has incurred attorney fees for this matter for years, and I cannot fathom why plaintiff does not simply bulldoze the structures remaining on the property and proceed with whatever plans for development it may have. This would be far cheaper and more productive that continuing to insist that two destitute and stubborn men do something they are not capable of doing. Defendants will *never* have the ability or inclination to do the demolition for Plaintiff. If defendants are released from jail and enter the property -- and they probably will -- I have full confidence that Carteret County's law enforcement can handle the situation. Defendants may end up in jail again after they are arrested for trespassing. But at least defendants' inability to pay for the removal of structures from the property will be irrelevant in their criminal prosecution. And the penalty for trespassing is not life imprisonment.

I therefore respectfully dissent and would reverse and remand for the trial court to make findings of fact and conclusions of law as dictated by N.C. Gen. Stat. § 5A-21.

IN THE SUPREME COURT OF NORTH CAROLINA

No. 3A08-4

Filed 21 September 2018

ADAMS CREEK ASSOCIATES

v.

MELVIN DAVIS and LICURTIS REELS

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 810 S.E.2d 6 (2018), affirming an order denying motions in the cause entered on 13 June 2016 by Judge Benjamin G. Alford in Superior Court, Carteret County. Heard in the Supreme Court on 29 August 2018.

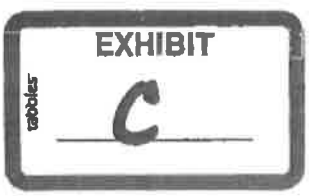
Armstrong Law Firm, P.A., by L. Lamar Armstrong, Jr. and L. Lamar Armstrong, III, for plaintiff-appellee.

Hairston Lane, P.A., by James E. Hairston, Jr., for defendant-appellants.

Tin Fulton Walker & Owen, PLLC, by William G. Simpson, Jr.; and Goldsmith Resolutions, by Frank Goldsmith, for North Carolina Advocates for Justice, amicus curiae.

PER CURIAM.

The decision of the Court of Appeals is vacated, and this case is remanded to the Court of Appeals for further remand to the trial court for findings of fact concerning defendants' ability to comply with the removal of the structures as a condition of the 2011 Contempt Order. In the trial court, defendants also are without



prejudice to advance claims not briefed or previously raised but discussed at oral arguments before this Court.

VACATED AND REMANDED.

STATE OF NORTH CAROLINA — GENERAL COURT OF JUSTICE

COUNTY OF CARTERET — SUPERIOR COURT DIVISION

FILE NUMBER: 02-CVS-1270

ADAMS CREEK LIMITED PARTNERSHIP, et al,
Plaintiffs,

V.

MELVIN DAVIS and LICURTIS REELS,
Defendants.

T R A N S C R I P T

Transcript of proceedings taken in the General Court of Justice, Superior Court Division, County of Carteret, at the March May 16, 2016 Civil Session, before the Honorable Benjamin G. Alford, Judge of said court.

APPEARANCES: Mr. L. Lamar Armstrong, Jr.
Smithfield, North Carolina,
Attorney for the plaintiffs.

Mr. James E. Hairston, Jr.
Raleigh, North Carolina,
Attorney for the defendants.

Amy R. Forbis
Registered Professional Reporter
Official Reporter, First Judicial District
121 Duck Woods Drive
Southern Shores, North Carolina 27949
E-mail: amyforbis@charter.net Phone: (252)261-2093

EXHIBIT
tabbies
D

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Davis, M.	14	19	21	25
Reels, L.	30	36	--	--
Bray, S.	41	44	--	--

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(Following proceedings took place on Monday, May 16, 2016:)

THE COURT: Madame Court Reporter, this will be in Carteret file 02-CVS-1270, Adams Creek Associates Limited Partnership, and others, versus Melvin Davis and Licurtis Reels. The matter is before the Court initially on the defendants' motion in the cause and also on the motion of the plaintiff for sanctions.

If counsel would identify themselves and whom they represent for the record, please?

MR. ARMSTRONG: Lamar Armstrong, on behalf of plaintiff, Adams Creek Associates.

MR. HAIRSTON: James Hairston, on behalf of the defendants, Melvin Davis and Licurtis Reels.

THE COURT: All right. Be glad to hear you, Mr. Hairston.

MR. HAIRSTON: Your Honor, first of all, from a logistical standpoint and before I get into the argument, as you are aware, my clients are incarcerated in Carteret County Jail. And I anticipate-- came into town last night, went to the jail to speak to them and I didn't see anybody moving around, didn't know what the protocol was to get access to my clients but I anticipate putting them on the stand today briefly.

And just a forecast of why I'm here and what

we're doing, I am uniquely aware of the land dispute that has permeated throughout this courthouse for a number of years and that is not why I'm here. I won't be arguing anything relative to the land dispute. It is only with regard to the efficacy of the continued incarceration for civil contempt summons, there is a civil contempt motion in the cause. So the Court can be aware of that.

However, the ability to pay financially is the issue here today that is inherent in the statute and always reviewable based on 5A-21 and 5A-23. The Court has to make specific findings of fact about the ability to pay.

So for purposes of today, my plan is to put on some evidence of the costs, to do either of the two things that are set out in Judge Jenkins' order.

I understand Your Honor had an order in this case in 2004. This matter continued to be before the Court. Eventually got before Judge Jack Jenkins in 2011 and it is from that order that the incarceration took place. So since May 17th, I believe, of 2011 these two gentlemen have been incarcerated in the Carteret County Jail for civil contempt.

Without getting too deep into the law, we have researched the facts of this case and there is not another case in the nation that sits on all fours with this case as far as the length and the time limit on the length of imprisonment that has occurred. And so in the argument that

we intend on making after I put on some evidence is that neither Mr. Reels nor Mr. Davis, after five years of incarceration, have the ability to comply with the Court's order. And if you don't have the ability to comply with the Court's order, which is the determinative fact based on Jolly, which is still good law, and surprisingly in the North Carolina Supreme Court the ability to pay is the predominant issue in all of the Jolly cases and its project. And we intend on putting on some evidence with current bank accounts and what's happened in the past five years relative to their income.

All of that in light of the order in 2011 which allows the developer, Adams Creek, the plaintiff, to incur whatever expense is necessary to clear the structures and homes from the property at my clients' expense. And to my knowledge as of this date that has not been done, that option has not been exercised.

So alternatively, and it's a reason why this was brought pursuant to Rule 11 is that there is no predominant case law whether or not the continued incarceration of Mr. Reels and Mr. Davis is actually punitive. That will be something the Court has a couple of different options on how it views this matter. The Court reviews it and looks at 5A-21 and goes through factors that the Court is obligated to do it and makes a determination

that the-- they don't have the ability to comply with the order.

Alternatively, and the reason why we move pursuant to Rule 11 is because there is the absence of case law on all fours. There's a lot of contempt cases out there regarding the distinctions between civil contempt, criminal contempt and whether or not-- interpretations on what constitutes the ability to pay. And the second part of the statute would be whether or not the defendants will take reasonable measures in order to comply with the Court's order.

So I respectfully submit that after the five years of imprisonment they don't have the ability to pay. The evidence, and I understand there's been prior hearings and I'm familiar with them but the argument that is going to be made today has never been made in this courtroom. Every other time this matter has been before the Court there is always some conjunctive argument regarding a continued land dispute and the ownership in this property. And that is not my task, that is not my job and I won't be arguing it. I don't even know about all of that. I'm familiar with it enough to be familiar with the underlying facts to the extent that that argument is of some importance is only for informational purposes. And I believe Your Honor is familiar with where we are.

THE COURT: Can you have those two defendants brought over? Please do.

MR. ARMSTRONG: Your Honor, first of all, I'm ready to go forward today except as to issues I've not had notice. This ability to pay is a new issue. The motion, they filed it in November, had nothing to do with that, it was simply a motion saying-- misreading actually Chapter 5A-21 and indicating that there had not been any reviews every 90 days, et cetera, which the rule is clear it doesn't have to be as long as the issue is something that they're forced to comply with. It's not monetary.

So I have had-- e-mailed Mr. Hairston, I pointed out that statute, asked him to withdraw the motion. Had none of the allegations that he just said about ability to pay. That motion that was filed in November, had nothing about that. He refused to withdraw and I filed a motion for sanctions. It was on for December 7th. He asked for it to be continued. We disagreed about that. I also calendared the motion for sanctions for December 7th.

What eventually happened is he had a death in the family. That, of course, changed things and we ended up putting off the motions with Ms. Holton's agreement and I have read, and I can provide the Court this, an e-mail last night where her last e-mail to us was I'm taking them off the calendars, you-all can re-calendar them next year. They

weren't withdrawn. Both motions sat there. It was simply going to be left to us to put them back on the calendar, which did not happen. And quite frankly, I was surprised to find it on the calendar because I had not been served with anything.

It is instructive in the motion and cause that they filed here recently that they still include some of the guts of the prior motion in the cause. But then they expanded and they expanded an unverified motion which is highly factual. And on behalf of the plaintiff, I object to that testimony, which would be in paragraphs 12, 13, 14, 15 and 16 dealing with financial conditions. And paragraphs 19, 20, 21 and 22, they are all matters that one would expect at least as an initial showing would be made by affidavit, none of which we have.

My objection is that there have been testimony as near as I can count about five times by Licurtis Reels and Melvin Davis. One of them was in 2004. Rob Weakly took a deposition. One of them was in 2006 before Judge Trawick here in open court. One of them was a civil contempt matter, which Judge Jenkins heard and received evidence of in March of 2011. One of them was in a motion to purge which they testified briefly to, may have been before Your Honor. And then finally I took their deposition because there was another case that was pending dealing with damages and I've

included in some materials that I'll hand up at an appropriate time the last of those five depositions-- the testimonies by the defendants.

Now what they have said at every point is it's not that they can't, it's that they won't. It's just that simple. Has been from the beginning, remains so. In fact, the testimony I have here from 2013, you let me out, I'm going back on the property.

So there is no confusion except when an attorney, a new one now, I have been through five attorneys too. But a new one comes in, files something, puts in a motion that makes it look like they're getting ready to stand up here and say I can't do it. It's not that I won't, it's that I can't. I would like to hear that at some point if that is where we are. It seems like that is being sprung at the last minute. I would like to be able to supplement the record if we go forward today. I have no objection bringing them down here. We're here to move forward with it. But there is a lot of the rest of the story. And if I may just hand this up?

THE COURT: Yes.

MR. ARMSTRONG: I tell Your Honor what I have provided to you, some of it is the testimony at the end that I was referring to. Some of it are orders entered that had history which of course are the law of the case. But we have

also had in the interim we had the final judgment. You may recall briefly-- it's been so long, there's so many things. But it started off with Mr. Weakly filing a lawsuit because criminal contempt hadn't gotten them off the property. They filed the lawsuit, took the deposition in that lawsuit, it came before Your Honor and that is where the remedy was provided for them to move. It was a partial summary judgment, damages were not addressed in that hearing.

Now that remained interlocutory forever but that case went in front of Judge Trawick and that is when they said on the stand I'm not getting off the property, found him in criminal contempt. And there was another issue that went up on appeal but it was interlocutory because summary judgment had not become final.

So there was one appellate opinion then, it comes back down and ultimately somewhere along that line I get involved. We have the civil contempt in front of Judge Jenkins in March of 2011. And they are already in fact incarcerated as a result of that civil contempt.

After that we ended up dismissing as to damages so we could go up on appeal, which was affirmed and came back down. We did re-file the damages. Your Honor, this is important because it fits into part of their argument about why you haven't gone out there and taken things down yourself. We were arguing did we have triable damages in

front of Your Honor and Terry Richardson was the attorney at that time, made the argument no, was an election of remedies. We looked at the Bishop case. And Your Honor agreed with him. But in your order dismissing the damages you said there's been an election of remedies, civil contempt remains intact, that is the remedy that's been elected by Adams Creek. And it is and it remains so today.

So if you look at that in light of the argument they're making about well, you had the option to tear it down yourself and an option to seek damages for that. Be it right or wrong, my client has said there will never be any peace in the neighborhood as long as there is not recognition that it's our land and we can use it as we need to use it. So there needs to be a recognition of that and the only way to do it is to comply with the court orders. Still hasn't been done.

So when we come forward from that we ended up with a final appellate opinion and then, the material is in front of you, somebody-- they did it pro se but somebody drafted it for them, did a petition to the North Carolina Supreme Court for habeas corpus making some of the same arguments they make right here, which is you cannot hold indefinitely. Filed it on June 1st, 2014. The Court-- the Supreme Court, I don't know when they physically got it. I know they wouldn't have got it for a day. So it took them

two days to deny, no chance to respond, they denied that summarily without a hearing, without a response and there was the same argument that's being made today. So I argue that is the law of the case.

In any event, now we're getting ready to hear some testimony, I suppose, and my objection to that is-- and the hearing, I would like to go forward with that so I'm not objecting to the hearing. I would like the opportunity to supplement because we have these depositions, I've gone into their equipment with them before when we were in front of Judge Jenkins back in March of 2011 when Melvin Davis was on the stand, he actually has a business card, runs a demolition business. So every time I depose-- even on that day talking to him about well what heavy equipment do you own, I have a dozer, I own this, I own that. Do you know people that can use it, yes. But you are not going to use it to move anything, no. And that has remained so today.

When I took their last deposition, part of which I have given to Your Honor, we were talking about the equipment and he actually had somebody move something off the land because it had important papers in it for him. So he had the ability to have somebody use his equipment to move the structure off the land, which he did. So I guess that is it for now.

THE COURT: What structure got moved?

MR. ARMSTRONG: It was like a little shed, wasn't a big building. It was a small shed, he had papers in it, he wanted it to be preserved he said in the deposition. And I haven't given you the full deposition because I didn't know the scope today, where it apparently is going.

If the Court doesn't have any questions, that is the--

THE COURT: You want to call a witness?

MR. HAIRSTON: I do, Your Honor. I've got a comment regarding what Mr. Armstrong just argued. Well first of all, the specific arguments that were made that went up to the appellate court prior to this case, every last one of them, I brought the appellate papers, and the sanctions were all relative to the continued argument regarding the efficacy of the land dispute and there were motions to set aside and motions to-- or reconsider a dispositive motion that's already heard. So I perfectly understand why Rule 11 was in effect at that time.

As Mr. Armstrong stated, this motion has never been argued before the Court, never. And there is testimony that I plan to elicit briefly that has never been argued to the Court. As a matter of fact, I've read every page of the transcript of the last hearing in this matter and the problems in that matter, and Judge Jenkins' recitation on the record all stem from the re-arguments of the land dispute

which we are not doing today. I think it's inherent in the statute that these matters be reviewed. It's inherent in the statute that circumstances may change after five years and it's also dispositive at every single contempt hearing in the State of North Carolina that the ability to pay is a predominant issue and those issues have not been addressed and no evidence has been elicited nor proffered to the Court before today, based on my knowledge of reading the prior transcripts.

So I would like to call Mr. Melvin Davis to the stand. Your Honor, may I approach?

THE COURT: You may.

MR. HAIRSTON: I've already handed Mr. Armstrong a copy of the notebook. If Your Honor will take a look, this is not the same motion. It was filed in November so argument has not been made.

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MELVIN DAVIS, a defendant, called as a witness on his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HAIRSTON:

Q. Afternoon, Mr. Davis, how are you doing?

A. Fine.

Q. Tried to come see you last night, couldn't get access to the jail, just letting you know why we're kind of cold here today.

I've got a few questions for you today relative to your financial condition.

A. Okay.

Q. Have you earned any income since the date of your incarcerated, which would have been March 17, 2011?

A. No, sir.

Q. Do you have a bank account?

A. I left some, a hundred dollars, something like that in there.

Q. Well do you receive any social security?

A. Yes.

Q. Do you know how much that is?

A. I don't know how much.

Q. Where do you bank?

A. Sound Bank.

Q. How long have you banked at Sound Bank?

A. Maybe 10 years, off and on.

Q. When is the last time you have seen a bank statement from Sound Bank?

A. Since 2011 when I got locked up.
Q. Who is Jacqueline Davis?
A. That was my friend that was staying with me.
THE COURT: I didn't catch the name.
MR. HAIRSTON: Jacqueline Davis.

BY MR. HAIRSTON:
Q. Do you recall what your account number is at Sound Bank?
A. Huh?
Q. Do you know what your account number is?
A. No.
Q. You don't have any idea what is in the account right now?
A. No.
Q. And in 2011 what is your approximation of what was in the bank at the time of the incarceration?
A. I've forgotten.
MR. HAIRSTON: Your Honor, may I approach?
THE COURT: You may.
MR. HAIRSTON: Unfortunately I don't have a copy of the bank statement this morning, do not have a copy to--
MR. ARMSTRONG: Your Honor, I object.
MR. HAIRSTON: Just want to show it to the

Court first.

MR. ARMSTRONG: Basis of my objection, he said he does not know. We're here today as to why he hasn't done something. To show him now something he hasn't either made an effort to look for, somebody provided it to him or to see before today does not bear on his mental decisions on what he's done or not done.

MR. HAIRSTON: Testimony was regarding his account. He knew he had an account at Sound Bank. He's been in prison for the last five years so I'm going to show him the statement. He didn't know what the amount was but he knew he had an account at Sound Bank.

THE COURT: Is this the entire--

MR. HAIRSTON: The latest bank statement from Sound Bank.

THE COURT: That is it, the whole thing, one page?

MR. HAIRSTON: That is what I asked for, that is the latest statement.

THE COURT: I'm not going to hear anything out of the audience.

MR. HAIRSTON: That is it. That is what I have.

THE COURT: The objection is sustained.

BY MR. HAIRSTON:

Q. Mr. Davis, when is the last time the equipment on that property had been used?

A. Since 2011.

Q. Okay. Do you know what the current condition of the equipment is?

A. No.

Q. You do not?

A. No, sir.

Q. Let me go back to your testimony regarding-- and I'm not clear-- how much money did you have in 2011, if you know?

A. It wasn't much. I'm going to say 200-and-some dollars. Now that social security check has been going there so I don't know.

Q. Outside social security? Do you have a retirement account?

A. No.

Q. Do you have a 401K?

A. No.

Q. Don't have any other savings accounts?

A. No.

Q. So outside of social security that will be the extent of the income that you would have earned since 2011?

A. Yes.

Q. Since you have been in prison you have not seen what that number may represent?

A. No.

Q. For the past five years?

A. No, sir.

Q. But outside social security there is nothing else?

A. No.

MR. HAIRSTON: I don't any further questions, Your Honor.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. ARMSTRONG:

Q. Mr. Davis, through the years I have had a number of opportunities to ask you questions, few of them in the courtroom, few of them in depositions. Do you recall that, sir?

A. Uh-huh.

Q. And do you recall on each of those occasions I asked you whether you could do what was required in the order or whether you just refused to do it, do you remember those questions?

A. It's been years.

Q. Sir, you're in jail because you simply will not ever agree to stay off the land or to move anything that you put on the land, isn't that true?

A. I have been on that land all my days.

Q. Yes, sir.

A. And I worked off of that land shrimping and stuff.

THE COURT: This is not answering his question. Ask the question again. Listen very carefully.

BY MR. ARMSTRONG:

Q. Regardless of how many orders exist or what judges tell you to do, you will never get off that land or move what you have on the land, will you?

A. No, sir.

Q. It's not that you can't do it, it's that you won't do it, right?

MR. HAIRSTON: Objection.

THE COURT: Overruled.

A. I-- we have been on that land all our days and that is where-- that is where I am at.

BY MR. ARMSTRONG:

Q. So you simply refuse to do it? Whether you can do it or not it doesn't matter to you, you just won't do

it?

A. They come there, they blew up the boat, sunk my boat, come and set my house on fire.

THE COURT: Sir, you need to answer his question, not just start talking about things you want to talk about. The question is, it's not a matter of whether you can't but whether you will. That is his question.

A. I will not.

BY MR. ARMSTRONG:

Q. You will not do it?

A. No.

MR. ARMSTRONG: No further questions.

THE COURT: Any follow-up?

MR. HAIRSTON: Yes, sir.

REDIRECT EXAMINATION

BY MR. HAIRSTON:

Q. How old are you, Mr. Davis?

A. Sixty-nine.

Q. Sixty-nine?

A. Yeah.

Q. Can you physically remove and demolish all the obstructions that exist on that property or would you have

to get somebody else to do it?

A. I will have to get somebody else to do it.

Q. Have you had any medical problems since you have been incarcerated in the Carteret County Jail?

A. I fell down the stairway and hurt my back.

Q. And have you-- do you have any employees right now?

A. No.

Q. Do you know anyone that would move or demolish that structure for free?

A. No.

MR. HAIRSTON: Approach, Your Honor?

THE COURT: Yes, sir.

MR. HAIRSTON: Your Honor, if we can have exhibits, my tab number three, approach the witness?

THE COURT: You may.

BY MR. HAIRSTON:

Q. Hand you what's been marked Defendant's Exhibit 1, take a look at that document, that picture, do you recognize it?

A. Yeah.

Q. What is that?

A. That is my backhoe.

Q. When is the last time you have seen it?

A. 2011.
Q. What about exhibit number 2?
A. Dump truck, 2011.
Q. Last time you have seen it?
A. Last time I saw it.
Q. Do you know if the dump truck or the backhoe is in operable or working order right now?
A. Well since we have been in here it's been a storm and the storm went about seven, eight foot up on the land so that stuff has been under the water.
Q. Salt water?
A. Yeah.
Q. Show you what's been marked Defendant's Exhibit Number 3?
A. Same thing.
Q. What is that?
A. A dump trailer, a trailer.
Q. Number 4?
A. Trucks.
Q. Trucks on the same land under water?
A. Yeah.
Q. Number 5?
A. Same thing.
Q. Do you recognize all those?
A. Yeah.

Q. Recognize all the pieces of equipment that have been shown to you previously?

A. Right.

Q. And that is your tractor trailer?

A. Right.

Q. Same picture as number 6, is that the tractor trailer?

A. Yeah.

Q. Number 7, what is that, do you recall?

A. That is the tractor.

Q. Number 8?

A. That is the Caterpillar, the tractor.

THE COURT: I can't even hear him and I'm sitting right beside him.

BY MR. HAIRSTON:

Q. One more. Number 9, do you recognize that?

A. That is the backhoe.

Q. Number 10?

A. That is the trailer. That is the trailer.

Q. Have we already seen a picture of exhibit 11, the backhoe, that is another picture of the backhoe?

A. Right.

Q. And finally number 12, what is that?

A. That is a pump.

Q. Pump?

A. Yes.

Q. All those pieces of equipment that you just identified still remain on the property, is your understanding that they were flooded?

A. Yeah.

Q. In salt water?

A. In salt water.

Q. So what would be the result of the damage done to the equipment based on your knowledge of the salt water damage?

A. I don't know. The motors might be stuck down where the water went in the motors and they have been setting up for five years. Then I don't know what somebody has been and done to them, had a lot of enemies out there, a lot have done destroyed that.

MR. HAIRSTON: I don't have any further questions, Your Honor.

RECROSS EXAMINATION

BY MR. ARMSTRONG:

Q. Mr. Davis, the photographs there in front of you, do you still have them there in front of you, 1 through 12?

A. They may be out of order.
Q. There is three photographs of the backhoe. You own one backhoe, right?
A. Yeah.
Q. How many dump trucks do you own?
A. I own three dump trucks.
Q. Are all three shown in these photographs?
A. Yeah.
Q. You also own a tractor?
A. Yeah.
Q. You also own a bulldozer?
A. Yeah.
Q. And you also own a flatbed trailer, correct?
A. Yes, sir.
Q. Now all of these items you owned in March of 2011, is that correct?
A. Yeah.
Q. And you were using those in part for a demolition company, you had a business card that actually promoted your demolition company?
A. Yes, sir.
Q. Do you know when these photographs were taken that you just looked at, 1 through 12?
A. No, sir, I don't.
Q. Do you know who took them?

A. No.

Q. And how have you-- you certainly have been in jail, you have not examined these to see what their condition is, have you?

A. No.

Q. Have you made any inquiry to have somebody look at them or fix them so they can be used?

A. No, sir.

Q. Have you ever tried to sell them since you have been in jail?

A. No.

Q. Have you ever asked anybody to use them to move anything off the land at issue?

A. No, sir.

Q. You did move a small structure off the land that had papers in it, didn't you?

A. Yeah, I moved some structure-- I didn't move it.

Q. You had somebody do it for you?

A. Yeah, before the storm and stuff.

Q. They used your equipment to do it, didn't they?

A. Well they didn't have to do nothing but use the truck and the trailer.

Q. Is that your equipment?

A. Yeah. The truck and the equipment, yeah.
Q. And you had to move that because it had what you believed were important papers in it, right?
A. I ain't going to say I had important papers. I had wrenches and stuff in it, power saws.
Q. But it's something you cared about so you wanted to move it off the land somewhere else, right?
A. Well in so much.
Q. I'm sorry, sir, in so much?
A. So much.
Q. All right. And you mentioned to me that it was a gentleman, I think you said he was from North Jersey, his name was Anthony. Is that the one that moved it for you or is that another person that operated your equipment?
A. Yeah, Anthony. He went-- I guess he went back home.
Q. He was a partner of yours?
A. No, just a cousin.
Q. Did he use the heavy equipment?
A. No. He could move the truck around but that was it.
Q. How do you know that salt water has damaged any pieces of equipment, how do you know?
A. Well any time the water go up on that land seven to eight foot it's going over the truck, it's going

over the motor anyway and into the body of the truck. So I know it done damage to them.

Q. On the date that you were put in jail all this equipment was sitting on the land that was at issue, correct?

A. Yeah.

Q. And you had somebody move it off that land onto adjoining land that your mother owns?

A. No. I just left it right there. Somebody might have moved it. I didn't.

Q. So you don't know who moved it?

A. Not really.

Q. Do you know if anybody has been using it?

A. How do you use it when it's been under the water and stuff?

Q. When was this water that you allege was 7 or 8 feet?

A. 2012. I was in here.

Q. And you have not asked anybody to examine the machinery or the equipment we just talked about to see whether they could be made operable at a reasonable price, you have not asked about that?

A. No.

MR. ARMSTRONG: No further questions.

THE COURT: You may step down.

THE WITNESS: Thank you, sir.

THE COURT: Any further evidence, Mr. Hairston?

MR. HAIRSTON: I have another client I would like to call to the stand, Mr. Reels. And I have one other witness after that, Your Honor.

THE COURT: All right, sir.

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LICURTIS REELS, a defendant, called as a witness on his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HAIRSTON:

Q. Good morning, Mr. Reels.

A. Morning.

Q. State your name for the record, please?

A. Licurtis Reels.

Q. How old are you?

A. 59.

Q. Where have you been in the past five years?

A. Incarcerated.

Q. During the past five years what income have

you earned?

A. None.

Q. Now prior to your incarceration-- let me ask another question. Do you have a bank account?

A. No.

Q. Do you have a retirement account?

A. No.

Q. 401K?

A. No.

Q. So the last time you earned any income was prior to March of 2011?

A. Right.

Q. Is that correct?

A. Right.

Q. The order that you have been imprisoned on orders you to remove or move all of the structures and/or the equipment off of the land, you recognize that, correct?

A. Yes, sir.

Q. Okay. Do you have the ability, physical ability to do that work yourself even if you had the equipment?

A. No.

Q. Do you have any money to pay anyone?

A. No.

Q. Do you think that demolition of the structure,

moving of the structure can be done for free?

A. No.

Q. So in your estimation it will be some cost involved?

A. Yeah.

Q. And do you receive social security benefits?

A. No.

Q. You don't? You receive nothing?

A. Nothing.

Q. And you earn nothing?

A. Right.

Q. You had a house on that property, correct?

A. Right.

Q. And approximately do you know how long that house was?

A. 52 by 28.

Q. Do you know what that equates to in square footage?

A. Uh-uh.

Q. I'm asking you, do you know the square footage?

A. 52 long and 28 wide.

Q. Was it finished?

A. Well just about.

Q. Sitting on a concrete slab?

A. Yeah.

Q. It is? And where in conjuncture with the room is that house sitting?

A. Out front on the paved road.

Q. And have you-- strike that, Judge. Have you ever inquired of anybody since you have been incarcerated about demolishing that property?

A. No, sir.

Q. Would you demolish that property yourself?

A. No, sir.

Q. Have you had any medical ailments since you have been incarcerated since 2011?

A. Yes, sir.

Q. Explain to the Court what that has been?

A. While I was in here I developed diabetes and they took me to the emergency room and the doctor said it was diabetes. And he said what brought this on is because of what I was going through, stress. And he said that maybe I'll get out of here and might would go away or might not, that it's just a risk that will be taken. That was it. My sugar was 999. Said another hour, day or two, they would have to roll me in there but I would have been dead.

Q. You saw me show Mr. Davis some pictures of the equipment that was on the property?

A. You can show them to me.

MR. HAIRSTON: Approach, Your Honor?

THE COURT: You may.

BY MR. HAIRSTON:

Q. Do you recognize exhibit number 1?

A. Yes.

Q. What is that?

A. Melvin backhoe.

Q. Exhibit number 2, what is that?

A. Melvin truck.

Q. Number 3?

A. Flatbed.

Q. Melvin's too?

A. Melvin's.

Q. Exhibit number 4?

A. Melvin truck.

Q. Exhibit number 5?

A. Melvin truck.

Q. Look at four again. How many trucks do you see in that photo?

A. Looks like 3.

Q. Dump trucks?

A. Yeah.

Q. Exhibit number-- they are out of order-- 6?

A. Melvin dump truck. Melvin truck.

Q. Pickup truck?
A. Yeah.
Q. 7?
A. His tractor.
Q. 8?
A. Caterpillar, his.
Q. Melvin's?
A. Yes.
Q. 9?
A. Backhoe.
Q. Already seen that. 10?
A. Flatbed truck.
Q. 11?
A. Backhoe again.
Q. And 12?
A. That is that thing that they drill to get water out the pond.
Q. Now the last time you saw all those pieces of equipment would have been in 2011?
A. Right.
Q. Did you personally operate all of that equipment that I just showed you?
A. None of it.
Q. None of it?
A. (Witness shakes head.)

Q. So that was Mr. Davis's here?
A. Yes, sir.
Q. Could you afford to have somebody operate the equipment to demolish the property as per court order?
A. No, sir. I don't have the income.
MR. HAIRSTON: I don't have any further questions, Your Honor.
THE COURT: Mr. Armstrong?

CROSS-EXAMINATION

BY MR. ARMSTRONG:
Q. Mr. Reels, you were asked the question about removing structures. The order only required that you remove your home, that is the only structure you had on the property, correct?
A. Correct.
Q. And it was on a piece of land that was cut out and conveyed to you by Melvin Davis, correct?
A. No, it was conveyed by Carl Tillman with my lawyer, he the one that issued my deed, he were the tax collector. He searched the books and they found that the land was my mother's and she and her mother and sister gave me that part of the land. That is what he found and he is the tax collector of Beaufort, Carteret County. And he

searched the books and the more I read to get the deed, my aunt died and he say he could not issue the deed at that moment right then because she had died and I would have to get all her kids to sign this paper for me to get the deed. And I done that and I took it back to him and he stamped it and then he gave my deed. That is how I got it, got it through my mother and her sister. And he said that the land was theirs and he checked the book and he is the tax collector.

THE COURT: I'm going to strike everything he's saying about what Mr. Tillman had to say. It's obviously hearsay.

BY MR. ARMSTRONG:

Q. Mr. Reels, how far away is your mother's land on this lot on which you built this house that we're talking about now?

A. About 30, 40 feet.

Q. 30 or 40 feet? Now once you were put in jail and you were asked, ordered by the Court, not asked, to move your house, you would have only had to move it 30 or 40 feet to put it on your mother's property, correct?

A. I was already on my mother's property. She gave me that.

Q. Did you ask your mother ever, can I move the

house where the Court said that I cannot--

THE COURT: Let him finish the question.

BY MR. ARMSTRONG:

Q. Where the Court says I cannot keep it, can I move it, mama, on your land and have it put there? Have you ever asked her that?

A. No, sir?

Q. Why not?

A. Because she gave it to me and I didn't thought I had to ask her. I got it through by her and her sister.

Q. Also about the equipment, you knew Melvin Davis owned all of this equipment, you have seen photographs of it?

A. Yes.

Q. Is the owner of that equipment, did you ever ask him whether someone else could use that equipment to move your house 30 or 40 feet on your mother's land?

A. No.

Q. Why not?

A. I didn't think I had to. It was mine.

Q. Truth of the matter, sir, is just as I asked Mr. Davis a little while ago, it's not that you can't do it, it's you won't do it, isn't that right?

A. It's my land. She gave it to me, or her

sister and Carl Tillman stamped everything, he looked in the books and it were hers, she gave it to me and that's the way it's been.

Q. So whether or not you have equipment, whether or not you have somebody that can use it, whether or not your mother will let you move it on her land, all of that doesn't matter because you simply are not going to move it ever, are you?

A. No, sir, I don't-- I don't have the financial to move it because it's mine.

Q. What if you had the money? What if you had social security disability, would you use that money to move it?

MR. HAIRSTON: Objection.

THE COURT: Overruled.

A. No, sir.

BY MR. ARMSTRONG:

Q. Why not?

A. Because it's mine.

Q. So this idea that you don't have money to move it, if you had money you still wouldn't use it to move it, would you?

A. No, sir.

Q. You indicated you have got diabetes. Have you

not applied for social security disability?

A. How can I apply for it? I'm in here.

Q. So the answer to that is no, you have not applied for it?

A. No.

Q. In terms of getting health care, the Sheriff took you to get medical treatment, right?

A. Right.

Q. Anything wrong with that medical treatment?

A. Ain't nothing wrong with it. They had to do it. If they wouldn't have did it, I would have died.

Q. As a result of that medical treatment did you change your diet? Did you take medicine? Are you controlling your diabetes?

A. Trying to control it.

Q. And you're getting medicine that the doctor says you need?

A. Yeah.

Q. Do you have any health insurance?

A. No.

MR. ARMSTRONG: No further questions.

THE COURT: Any redirect?

MR. HAIRSTON: No, Your Honor.

THE COURT: Thank you, sir. You may stand down. Be careful stepping down. Next witness.

MR. HAIRSTON: I call Mr. Steve Bray.

MR. ARMSTRONG: Your Honor, if I can be heard briefly about this witness?

THE COURT: Yes, sir.

MR. ARMSTRONG: I received an e-mail yesterday afternoon with the attached subpoena that was served last week on this gentleman. In fact, that is how I knew to look at the website to find that we're in court today. It wasn't served contemporaneously. This witness is somebody that if he's coming to testify about the cost of moving something I would say they haven't even laid a foundation and that makes the difference. And secondly, it could have been done by affidavit. So for the record, I object.

THE COURT: Objection is overruled. Swear the witness, please.

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STEVEN BRAY, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HAIRSTON:

Q. Good morning, Mr. Bray. State your name for the record, please.

A. My name is Steven Bray. I own Bray's House Moving and also Bray's Demolition. I'm president of the North Carolina House Movers Association, which is the second largest association in the United States.

Q. And what business are you in, Mr. Bray?

A. House moving, also sometimes demolition.

Q. How long have you been in that business?

A. I have been in business for 43 years. I've been here 28 years full time.

Q. Have you had an opportunity to visit the property out on Silver Dollar Road?

A. Yes, I did.

Q. And the first question I have for you is, is it possible to move all of the structures that sit on that land?

A. No, sir, it's not.

Q. Why not?

A. First of all, two of the structures are made out of cement block and so one of the structures that is out on the main part of the road is actually a cement block house that has what I call a floating floor, which is attached actually to the cement block wall. Theoretically, anything can be done on that house it could be the cost

would be so absorbant that it wouldn't be feasible. And by no means did either of these gentlemen ever have any of the equipment needed to move this home, not even close.

Q. Did you see some of the equipment out on the property when you went to visit?

A. I did, I saw some, yes.

Q. And in your business could you use any of their equipment to demolish the property?

A. No, sir.

Q. Could you use any of their equipment to move the property?

A. Absolutely not.

Q. If-- did you see three main structures out there?

A. I did. The structure I was speaking of is the one that was right on the road. The other structure that is a little further behind, that is-- it's impossible for that to be moved. It was actually built on a slab, there's no walls tying anything together, the roof line is just laid on top. There's just nothing but cement block walls with a roof. There's no way that can be moved. Very rear of the property there is a bigger house that is in somewhat disrepair, never finished or whatever else. Could that be moved? Certainly that could be moved. Could it be moved down that road? I'm not so sure. It's very tall, it's a

two-story home. You have wires, power lines, whether or not I could get the Department of Transportation to issue me a permit, that would be something I would have to further investigate.

Q. Let's talk about the demolition involving the structures and the cost. Do you have a ball park range based on what you have seen with your own eyes what it would cost to tear them down?

A. I would say right now being that the-- I guess they are re-using concrete now and they're recycling it, being they are cement block homes and they do have slabs, I would say the best case scenario for maybe the home out on the road would be somewhere maybe around $12,000. The second property that is a little bit further to the rear, I would say that would more like maybe 16, 17,000, somewhere in that neighborhood to get rid of it. And then even the home on the end, which you wouldn't have much recourse on that as far as recycling goes, that would have to go to the land field and of course fees and all that, I would say somewhere around 18,000 probably to demo that.

MR. HAIRSTON: Thank you, Mr. Bray. I don't have further questions.

CROSS-EXAMINATION

BY MR. ARMSTRONG:

Q. Mr. Bray, are you an engineer?

A. No, sir. I'm not.

Q. And your training in house moving is what?

A. It come from my father. My father did it, yes, sir. But I actually just moved the Rosenwall house. I don't know if you're familiar or not, it was on the-- actually on the news up here in Raleigh. It was a structure that was one of the first black schools that was done, only a few left that are being able to get moved and I just did that. And that is a historical structure. I do a ton of historical work. You can go to my web page, go to Bray's House Moving on Facebook. More than happy for you to take a look. I think you see that I'm way more than reputable.

Q. Do you involve an engineer when you are moving structures?

A. Not on necessarily moving structures because there's not a whole lot of information you can offer if you've never moved a structure. It actually has little to do with mathematics. It's more load-bearing walls and other mitigating factors as far as how it's constructed as far as roof lines that I use engineers constantly because I'm the only house mover in this part of the world that is also a commercial contractor. So when I move a home I actually do the foundations, the door steps and everything. And right

now I'm heavily involved in a FEMA program that is probably one of the largest ones in the country with 46 homes, outside of Sandy, New Jersey, are being done in Dare County.

Q. When did you go to the scene and investigate these structures?

A. I drove up there yesterday afternoon.

Q. When were you first contacted about being an expert witness in this case?

A. It's been some time ago. I can't give you the specifics because I can't remember. Mr. Hairston contacted me some time ago. I can't remember exactly how far but he gave me ample time.

Q. Are we talking weeks or months?

A. Several weeks.

Q. Did you do any written reports on the houses in terms of costs, the actual estimate?

A. I just gave it to you.

Q. You gave it to us orally here in court?

A. I have not been asked to written anything-- to write anything, excuse me.

Q. When you normally move houses, don't you put it on a piece of paper as to what you will do, how much it will cost to do it?

A. I do proposals, yes, sir.

Q. Are you bonded?

A. No, sir. I have had bonds but most of the time I am not bonded. I carry cargo insurance, an unlimited liability and all that. It's not required on most projects.

Q. Did you do any testing of insulation or other materials in the home to see whether there was asbestos or any other environmental hazardous material?

A. I did not have that type of access.

Q. So the answer will be no?

A. That will be the answer.

Q. In one of the photographs up there there is a bulldozer. Are you saying a bulldozer can't be used to demolish structures?

A. I would say that that dozer is pretty inefficient for this type of work, I would.

Q. Did you check any of the equipment to see if it was operable?

A. I did not but earlier the gentleman stated that the salt water may have come in contact with the equipment. Being 90 percent of my work is on the ocean, I can speak to that and say if salt water has contacted that equipment the bearings, the wiring, anything else would pretty much make it un-useable at this period of time.

Q. And why is it that a bulldozer is an inefficient way to demolish--

A. The size of the dozer. Look at the age of the

dozer and what it does. And if he were to give it to me, I wouldn't take it. It's inefficient.

Q. Too big or too small?

A. Too small and just too slow, too slow.

MR. ARMSTRONG: Thank you. No further questions.

THE COURT: Anything further?

MR. HAIRSTON: No further questions.

THE COURT: Thank you, sir. Further evidence from the defendant?

MR. HAIRSTON: No further evidence, Your Honor.

THE COURT: Will there by any evidence from the plaintiff?

MR. ARMSTRONG: No, Your Honor. Just tender the excepts of the prior testimony under oath by Licurtis Reels and Melvin Davis.

THE COURT: All right. Be glad to hear you, Mr. Hairston.

MR. HAIRSTON: Your Honor, as I stated when we started this, this particular bit of information has never been elicited in this courtroom before. Court of Appeals and sanctions motions and all of this but this has never been presented to the Court. And so I respectfully ask the Court to take a look up under my tab four what the law is that is in 5A-21.

As Your Honor is aware, in 5A-21, you have those 5A-21(a), failure to comply is a continuing civil contempt as long as one of the orders remains in force. The purpose of the order may still be served by compliance with the order. That is debatable but that is not where I am. 2-A is non-compliance by the person to whom the order is directed is willful. And we're way past that after five years.

And number 3, the person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable the person to comply with the order. And as I stated before, Your Honor, and behind that case you will see the North Carolina Supreme Court case on the same tab, Jolly versus Wright. That is the predominant case from the North Carolina Supreme Court on civil contempt. You'll notice that red flag up there and I would submit to the Court that the red flag simply is on the issue of-- was overruling with regard to Sixth Amendment right to counsel, the person being held on civil contempt. That issue was overturned and expanded out of courtesy. I put McBride in after Jolly. But if you take a look at Jolly on page seven on that case, the law in the State of North Carolina, even though most civil contempt cases that I've researched, Your Honor, I think this is true are either going to be child support and/or some sort of domestic case. This

is a matter of first impression based on the underlying facts as to why Mr. Davis and Mr. Reels have been held in civil contempt.

If you look at headnotes 12, 13 and 14 consistent throughout Jolly-- we can get into that a little later. The purpose of civil contempt is not to punish but rather the purpose is to use Court's power to impose fines or imprisonment as a method or coercing the defendant to comply with an order of the court.

Accordingly, defendant in a civil contempt action will be fined and incarcerated only after a determination is made defendant is capable of complying with an order of the court.

Well, despite-- despite Mr. Davis and Mr. Reel's position, which obviously is not to going change, that has nothing to do with whether or not they can comply with the court order. It does have everything to do with the second part of 5A-21, 3, are they able to take reasonable measures that would enable the person to comply. The Jolly case itself was a child support case, and as I stated before, most of them are domestic in nature. And regardless of whether or not they want to go to the land and move it, it really doesn't make a difference, they can't. They don't have the financial ability to move anything, and whether or not it's reasonable or not, Your Honor, with all due respect

to the Court, I submit that under the circumstances of this case normally complete legal history is and how long this legal fight has gone on, is it reasonable to ask them to tear down their own house?

I submit that I've got the ability to chop my left hand off. The question is, is it reasonable that I'm asked to do that? And so in addition to what Mr. Reels and Mr. Davis testified to, the most important thing they have testified to is they have not earned any income. And in this matter you can't even comply with the order by removing or demolishing houses for free.

You heard testimony from Mr. Bray. He does this for a living, demolishes houses and moves houses. The equipment that they have can't be used to support that function.

So regardless of what that underlying thought process is, regardless-- that is not an issue before the Court. It really is completely irrelevant what they think they can do. The question is do they have the financial ability to comply with the order and that is a predominant question throughout all of the cases.

I put McBride in after Jolly just for-- to show the Court that it's still good law. And if you take a look at-- actually the Willow case, Your Honor, the third one behind the tab. Specifically on pages four and pages five of

that opinion. If you take a look at four and five of the opinion, there is some language there that is-- bottom of page five, paragraph that says-- it's quoting a case, McMillan, which says this Court made it clear that the ability to have complied with a prior order is separate and distinct from the present ability to comply with the conditions for perjury and contempt, which the statute requires for a person imprisoned for civil contempt.

And so if it's separate and distinct, which it must be, from what happened five years ago, what their condition was, financial condition was five years ago doesn't have any bearing on their present ability to comply with the order. So if their underlying thought process is that they are going to never agree to what happened, doesn't have any bearing on whether or not they still should be imprisoned for civil contempt.

The only issue is whether or not they can comply and it's clear from the testimony that they don't have income. They have not earned any income and that property and the structure thereon are not going to be removed by osmosis.

And in this particular case, Your Honor, you look at Judge Jenkins' order, which will be behind my tab two, in paragraph three, you have to look at all of these facts in totality. And in looking at the facts in totality--

when I say behind tab three, I think it's Your Honor's order and Judge Jenkins' order follows that and I'm talking about paragraph three of Judge Jenkins' order. On page six, paragraph three. Should either or both defendants fail to purge contempt by removing structures as directed in this and previous orders Adams Creek retains the right it may exercise at any time to remove any and all the structures and equipment and to seek reimbursement for the expenses for such removal from the defendant who had failed to remove structures at issue.

So Adams Creeks controls whether or not Mr. Davis and Mr. Reels actually stay in prison because Adams Creek five years ago couldn't decide to spend $50,000 and clear up all that stuff off the property on which they own. That is the whole issue, they own the property and refuse to move. I would agree with Mr. Armstrong's prior arguments on sanctions that were before the court with other attorneys standing here before Your Honor and Judge Jenkins that that issue may be res judicata. I'm not here to argue that.

But the civil contempt, five years of imprisonment, there is not another case like this in the nation nowhere. I've researched it. I have got case law from Rhode Island, Oregon, Ohio. Nowhere in there is somebody that has been to prison for civil contempt for five years and never committed a crime. Never.

So what's the criminal penalty the Court has to inquire? What's the criminal penalty if they were released and they trespassed on the land? My partner practices criminal law so I asked him what is it? A Class Two misdemeanor punishable by a maximum of 45 days in prison. That is it. So lock them up for trespass. Try them for trespass. They don't have the ability and never will have the ability to comply with this order. That continued imprisonment then becomes, as we have made an alternative argument, now clearly punitive, clearly and unequivocally punitive. No other way to look at it. They have done ten times the amount of time they would have done on trespassing for not tearing down their own structures.

Is it reasonable to ask somebody to do that? I submit it is not. Do they have the current ability to comply, that is everything. Current ability to comply. The only evidence before the Court right now is that neither one of them have earned any income, didn't have any 401K, savings accounts. Nothing. Only getting social security. And Mr. Bray testified-- I tried to add in my head, 46, 47,000 just to tear it down. Moving it is maybe-- he actually testified, one, you can't move it, and the other is a question whether or not you can get a DOT permit. So you need to have 40 or $50,000 to comply. That is what it would take. Regardless of what the underlying thought process is, it doesn't make

any difference. Can they comply-- I mean, can they perform under the order right now with the current ability, current financial situation? I submit that they cannot.

Now Your Honor, I have also included, when I say we researched this issue to the hilt, the U.S. Supreme Court in Turner-- and I have got another case that is not in the notebook. Those cases all involve the Sixth Amendment right to counsel, whether or not counsel should be appointed for indigent defendants in civil contempt matters. And in the Supreme Court case you talk about the Fourteenth Amendment, it's always invoked any time somebody's liberty is in jeopardy. The question is, should they get a lawyer, not get a lawyer. It's all based on the facts and circumstances. And the reason that I included it is when I say we have researched it to the hilt, there is not a case on all fours.

There's one other case that we found but it was a criminal contempt case in Ohio. And the gentleman had been accused of fraud. This is a civil contempt case. And the Court says, you know, at some point in time the punishment becomes clearly punitive because you have got an obstinate witness. They have not committed a crime. So once the coercive effect is no longer or is not in existence then you have to release them.

So here you have got two ways to release these gentlemen from prison. Make a determination that the

coercive effect, they have not given any, offered testimony every single time on the stand but the coercive of effect obviously is not working. But the argument that I've made today on their behalf is that they don't have the ability to comply with the order as written. They don't have any money. The equipment is delipidated, water has damaged it. It's going to cost close to 50 grand to tear it down and they haven't done anything in five years to get access to the property. So as long as they wait and elect that remedy these gentlemen stay in jail regardless of what their thought processes are, regardless of whether or not they agree with what happened to them, which I submit is never going to occur. They're not going to agree. But should they be in the jail five years?

No where in the nation is it close. This case is an abomination with respect to how long these defendants have been incarcerated. So today's argument is pure and simple. They cannot comply with the order. If they get out of here and step a foot back on that property there is recourse. There is a remedy. Call the county Sheriff to come out there and arrest them and they get charged with trespassing. 45 days maximum. I submit they can trespass 20 times and will never deserve five years. They have done five years. It's time to release these gentlemen because they do not have the ability to comply and it has been proven in

court that they don't have the money. They don't have the equipment. They don't have what they need to comply with Judge Jenkins' 2011 order and after five years, and based on the Supreme Court precedence, this is clearly punitive. It's the only other way that I can explain it. Thank you.

THE COURT: Yes, sir?

MR. ARMSTRONG: North Carolina Supreme Court certainly didn't think so, two days to deny, that is basically the argument that-- when you have incarceration after a certain period of time it just sort of evolves into a matter of subjective analysis to punitive-- took them two days to say no.

Your Honor, we are a nation of laws, not of men which means we all in our social pack one with the other agree we're going to follow the law. We have our disputes. That is why we have courts. We have judges tell us when we're right or when we're wrong. But ultimately, that is where it ends. If it wasn't so we wouldn't have had a president at one point, when disputes finally got settled who was our president, Bush v. Gore. But when it's over, it's over. But it's not to these gentlemen. It's never over.

So we're here today essentially where we have an attorney, the newest attorney in this litany of attorneys I've had to deal with who shows up and he first argues civil contempt, 90 days. The statute, he just reads it wrong, it's

clearly not that way. And so we have cited that. But then on top of that the argument, Your Honor, is well, it doesn't really matter what my clients say. We're going to superimpose over that some sort of expert who comes here at the last minute who looks at it and gives him a thumb's analysis and says, well, I think it's going to be difficult. We have superimposed the other, the individuals who say never, won't do it, doesn't matter if can, I simply won't.

The order, by the way, does more than says remove the structures. It says and he confirms in writing and agreed to never again go onto the property. They are not willing to comply. We don't have to guess as to their thought processes. We heard it once again for the sixth time, at least they are true to that, same testimony that they have given before, ultimately give it again. So we can sit here and wave our arms about a number of things and it is unusual for it to be five years. But the ultimate bottom line when you get down to we're a nation of laws, not of men versus stubbornness, as the court system cannot simply allow somebody to wait it out and say if I'm stubborn enough and I've got the willpower to sit in jail, we may look at that and say it's stupid, it's unreasonable. But if I do it long enough the judge is going to come along and say, well, okay, we'll let you out because it's been a long time. It's been a long time.

At the outset what I said is it's been a long time for my client. They paid money for the property, wanted to develop it. Can't even ride down the road. Talk about going out on the property, we have extended family up and down the road. There's no way they can sell it to anybody. Been paying taxes, been paying the insurance. And they can't use it. And my client will probably die the owner of this business before he is able to use this property.

But the bottom line is the process of attitude adjustment. If we look down the road and say is there possibly some way for this matter to ever resolve, what is a given to that is that whomever is on Licurtis Reels and Melvin Davis's side, the extended family, they all have to look at this and say yeah, we don't own it, Adams Creek Associates owns it. Let's be neighbors. But that hasn't happened for decades.

And our view of going through the root of the civil contempt is just because what Mr. Hairston said. He said he talked to his partner, he said well, we have criminal trespass, Class Two misdemeanor. My clients have been there and done that. He's been in and out before any of this ever happened. There was criminal trespass and he'd come in, serve a few days and he was out. Made no difference at all. Was not an effective way to resolve the property and it wouldn't be in the future. They still have the keys in their

pockets. They still have time to put this to rest to have peace among the people who live next to each other. Those situations are never good. So we're still waiting and we hope that that will happen. But the law isn't such that there is a clock that when the bell strikes a certain number time is up, everything goes to the intention, their unwillingness to comply, which is patently evident from their testimony.

THE COURT: Mr. Hairston, assuming that the Court would find that they don't have the present ability to remove those structures, Judge Jenkins' order says also that they confirm in writing their agreement to never again go onto the property. I have heard both of them say, I'm going back on the property.

MR. HAIRSTON: However, I think they said they're still going by the belief they own it. But I can answer that question legally. Turn to the statute and that is where the argument comes on in 5A-21-3. Now what is not in front of the Court is that the Court must make specific findings of fact on their ability to comply with that order, and I think that is pursuant to 5A of 23, which I didn't submit to the Court but I'm pretty positive that is the case.

And so the question is, and the analysis by this Court, and this is why part of this motion is pursuant to Rule 11. This would be a case where the Court would have

to make a determination, you know, regardless of the evidence on ability to comply, whether or not it's reasonable for them to comply under the circumstances and if you take a look at-- or able to take reasonable measures that would enable a person to comply with the order. Well, is it reasonable to get them to sign a document saying I'm never going to go back out there again when they have testified that they think the property is theirs? The question is, is it reasonable?

THE COURT: Is it reasonable for them to thumb their nose at several courts of this land? The trial courts, the Federal and state courts have looked at it and said, gentlemen, you don't own it.

MR. HAIRSTON: With all due respect, Your Honor, what the appellate courts and the state courts have looked at is the continued land dispute. The issues that were raised today, issues that were raised, I brought those appellate opinions. I have researched them. Those issues are separate and distinct from what is brought before the court today. This argument has never been made. The only reason sanctions were granted is because of the continued argument about the ownership and the efficacy of the land. That is not the argument before the Court today. Before the Court today is regardless you can have defendants, you have got people that refuse to testify in front of a Grand Jury. There's some debate as to-- I've got the U.S. Supreme Court

case and I didn't put it as part of my materials but-- refused to testify against a court order. Court finally had to make a determination that the coercive effect-- they have not committed a crime, not one crime. But the coercive once it diminishes even with defendants like they are, they have-- they have refused to acknowledge what has happened legally. But despite that, they're still here on civil contempt. They have not committed a crime. So there is case law-- may I hand this up?

THE COURT: Yes, sir.

MR. HAIRSTON: Supreme Court case. You have these cases come up all the time where even in the predominant domestic area, child support, things of that nature where somebody is dug in and entrenched themselves, you know, courts have routinely said, and I have put some of these cases in back of the tab, even when you have contentious defendant it doesn't change the analysis. It may be a given, what Your Honor said. They are still in contempt. Still reviewed and it's inherent in the statute. It's always reviewed based on the inherent present conditions. This testimony has never been elicited, never been proffered to the Court. Even in conjunction with a continued fight about the land, which they're not doing today, I'm acknowledging as their counsel that that fight is not before the Court. Whether or not they agreed with the

prior court orders or not, can they be held when they don't have the ability to comply with the order. And they don't have the ability to comply and it's not reasonable.

Like I said earlier, Your Honor, I can chop my hand off but I have got to have the ability to do that, take a hatchet and whack it right off. Am I going to do it? Is it reasonable for me to do that? Is it reasonable for property that these gentlemen have lived on for all of their lives to just go and tear it down? No. Can they? They can't even do that now, that is the new testimony. They don't have the equipment. Equipment is delipidated, salt water has damaged it. So even if they could make a decision yeah, we can do this, they can't. And they can't afford it.

Those are the two predominant issues before the Court and I ask that you release them today.

THE COURT: All right. Let me study your writings and the submission of counsel for the plaintiffs and I will announce the decision by e-mail and you will both get it at the same time.

Anything further?

MR. ARMSTRONG: I was going to say on the issue of inability to comply, we have a courtroom full of people. There's been zero evidence of any effort made from anybody to try to solicit help to get something done. I mean, there just has been no evidence of-- since the day of incarceration

and incarceration through today that they have made any efforts through any third party at all, family or otherwise.

THE COURT: All right. Thank you for coming.

MR. ARMSTRONG: Thank you, judge.

(End of hearing.)

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NUMBER: 02-CVS-1270

ADAMS CREEK ASSOCIATES, a North Carolina Limited Partnership, et al,
Plaintiffs,
V.
MELVIN DAVIS and LICURTIS REELS,
Defendants.

CERTIFICATE OF DELIVERY

This is to certify that the transcript in the above-entitled case was requested of Amy R. Forbis on the 17th day of June, 2016, and was e-mailed to the attorney(s) of record as indicated below on the 30th day of July, 2016.

Amy R. Forbis

Amy R. Forbis
Registered Professional Reporter
Official Reporter, Superior Court

DELIVERED TO:
Mr. James E. Hairston
Two Hanover Square
434 Fayetteville Street, Suite 2350
Raleigh, North Carolina 27601
E-mail: hrosa@hlbnclaw.com

C E R T I F I C A T E

STATE OF NORTH CAROLINA)
)
COUNTY OF CARTERET)

I, Amy R. Forbis, the officer before whom the foregoing proceeding was taken, do hereby certify that said hearing is a true, correct and verbatim transcript of said proceeding.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of this action.

This the 28th day of July, 2016.

Amy R. Forbis

Amy R. Forbis
Registered Professional Reporter
Official Reporter, Superior Court

No. COA 16-1080

THIRD JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

****

ADAMS CREEK ASSOCIATES, A North Carolina Limited Partnership with Bill Dean Brown, General Partner,	)	
Plaintiff,	)	
v.	)	From CARTERET COUNTY File No.: 02 CVS 1270
MELVIN DAVIS and LICURTIS REELS,	)	
Defendants.	)	

FILED
2016 OCT 27 P 3:30
CLERK OF COURT

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NO. THIRD JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

****

ADAMS CREEK ASSOCIATES, A North Carolina Limited Partnership with Billy Dean Brown, Limited Partner,

Plaintiff,

v.

MELVIN DAVIS AND LICURTIS REELS,

Defendants.

From CARTERET COUNTY
File No.: 02 CVS 1270

****

STATEMENT OF ORGANIZATION OF THE TRIAL TRIBUNAL

****

Defendant-appellants appeals from the 13 June 2016 Order Denying Motions in the Cause, which was heard during the 16 May 2016 Civil Trial Session of Superior Court of Carteret County, the Honorable Benjamin G. Alford, Senior Resident Superior Court Judge presiding. The Defendants filed and served written notice of appeal on 11 July 2016.

Record on Appeal Filed 10-27-16
Docketed 10-28-16

Proposed Record on Appeal served by mail on 2 September 2016. Record on Appeal settled pursuant to App. R. 11(b)on October 12, 2016.

The record on appeal was filed in the Court of Appeals on October 27, 2016 and was docketed on October 27, 2016.

STATEMENTS

Pursuant to Rule 9 of the North Carolina Rules of Appellate Procedure, counsel stipulate to the following statements:

1. The Motions in the Cause were properly served on the Plaintiffs. There is no issue as to service on the Plaintiffs.

2. All other pleadings, motions, notices, or other documents required to be served and filed were properly served and filed in a timely fashion. In that no dispute or issue exists as to service, all notices of hearing, calendar requests, and certificates of service for these documents are excluded from the Record.

NORTH CAROLINA

CARTERET COUNTY

FILED
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CARTERET CO., C.S.C.
BY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 02 CVS 1270

ADAMS CREEK ASSOCIATES,
A North Carolina Partnership
Plaintiff

v.

MELVIN DAVIS and
LICURTIS REELS
Defendants

ORDER OF CIVIL CONTEMPT

Plaintiff's motion seeking enforcement of prior court orders herein, including civil contempt pursuant to G.S. §5A-21(a) ("the motion"), came on for hearing before the Honorable Jack W. Jenkins, Superior Court Judge Presiding ("the Court") on Thursday, 17 March 2011 in Carteret County Superior Court. L. Lamar Armstrong, Jr. was present in representation of plaintiff Adams Creek Associates ("Adams Creek"). Larry S. Haight was present in representation of defendants Melvin Davis ("Davis") and Licurtis Reels ("Reels").

The hearing of the motion was set on a date and time as agreed previously by counsel, and came before the Court without objection. Therefore, the motion was in all respects properly before the Court for hearing and disposition.

Having reviewed the plaintiff's motion, the previous court orders, the court file, and the extensive history of this case and collateral litigation, the Court heard evidence from witnesses and received exhibits. Based on all competent evidence before the Court, the law of the case, consideration of the law of North Carolina, and consideration of argument of counsel, the Court makes the following:

Findings of Fact

1. The extensive trial court file and the appellate opinion in this case (Adams Creek v. Davis, 186 N.C. App. 512, 516, 652 S.E.2d. 677, 680 (2007)) are "law of the case" and are incorporated by reference for the procedural history and facts established of record.

2. Adams Creek's title to the 13.25 acre tract of property abutting Adams Creek in Carteret County (referenced herein simply as "the property") has been established, is *res judicata*, and is not an issue before this Court.

3. On 16 September 2004, the Honorable Benjamin G. Alford filed his Order (the 2004 Order) in this case. It is incorporated in its entirety.

4. The 2004 Order required that Reels and Davis remove all their structures and equipment from the property and thereafter cease from trespassing on the property.

5. After Reels and Davis failed and refused to do either, they came before the Honorable Gary E. Trawick for a contempt hearing on 7 August 2006.

6. On 10 August 2006, Judge Trawick filed his Order (the 2006 Order) holding Reels and Davis in contempt for violation of the 2004 Order. It is incorporated in its entirety.

7. Despite the 2004 Order and the 2006 Order, defendants Reels and Davis have continuously used their structures on the property as set forth below.

8. Exhibit 5 is an aerial photograph taken in February 2009 that was admitted into evidence without objection during the hearing for civil contempt. It contains superimposed boundary lines for the property as of 3 February 2011.

9. Testimony by Surveyor James Powell established that the perimeter lines superimposed on Exhibit 5 fairly illustrate the location of the Adams Creek 13.25 acre tract.

10. Testimony from Powell and other witnesses, including Davis and Reels, confirmed the location and use of structures and other property shown on the map as being inside the Adams Creek perimeter lines and on the property.

11. Based on the verification of several witnesses, the structures visible on Exhibit 5 were numbered and identified as follows:

a. Lizartis Reels' House (#1)
b. Melvin Davis' Club (#2)
c. Melvin Davis' unfinished House (#3)
d. Melvin Davis' Shop with equipment and trailer surrounding (#4)
e. The Ice House by the middle pier on Adams Creek (#5)

12. All of these structures (#1 through #5) and Melvin Davis' equipment and a trailer located near the shop are on Adams Creek's property and have remained on Adam's Creek's property since the 2004 Order.

13. Lizartis Reels has continued to live in his house (structure #1) since the 2004 Order.

14. Without Adams Creek's consent, Reels obtained electrical service from Carteret-Craven Electric Cooperative ("CCEC") to a meter on the Lizartis Reels' House on the property (#1).

15. Reels has continued to receive electrical service from CCEC at the Lizartis Reels' House since the 2004 Order.

16. Davis has continued to occupy and use on a continuous basis the Club (#2), his unfinished House (#3), and the Shop (#4) since the 2004 Order.

17. Without Adams Creek's consent, Davis obtained electrical service from CCEC to a meter (in the name of Gertrude Reels) on the Davis Shop (#4) and to a meter in Davis' name on the Club (#2).

18. Davis has continued to receive electrical service from CCEC at the Shop and the Club for Davis' own personal and business use since the 2004 Order.

19. Davis is in the business of, among other things, demolition and structural moving.

20. Davis owns a bulldozer, a back hoe, a track hoe, and a dump truck.

21. Davis has parked and stored his equipment on the Adams Creek property near the shop on a continuous basis since the 2004 Order.

22. Davis caused or permitted the building of a barrier that blocks an entrance path into the property on the south termination of Silver Dollar Road. This barrier is shown on photographs, plaintiff's exhibits 8-1 through 8-5, which were admitted into evidence without objection during the hearing on motion for civil contempt.

23. Based on Davis' extensive use of the majority of the property and his ownership and use of heavy equipment that would have been necessary to create this barrier, and his refusal to answer questions at the hearing concerning this barrier, Davis is responsible for the barrier and is obligated to remove it.

24. In their continuous use of the property and the defendants' structures thereon, and their refusal to remove their structures and cease their trespass on the property, the defendants have willfully violated the 2004 Order.

25. Without Adams Creek's consent, CCEC extended service to a meter at the Ice House located next to a dock on the property (#5).

26. CCEC has continued to deliver electrical service to this meter since the 2004 Order.

27. All four (4) of these metered electrical services are on the property.

28. Adams Creek authorized none of these metered services and had requested CCEC to discontinue these unauthorized electric services.

29. Two transformers service all four (4) of these meters on the property, and a configuration of poles and wires that extend from CCEC main lines located off the property.

30. CCEC can remove all of the meters, transformers, poles, and wires without affecting electrical service to any other CCEC customers.

31. CCEC through its representative who testified at the hearing confirmed that a directive to remove all four (4) of the unauthorized meters, transformers, wires, and poles could be completed without any unintended adverse consequences to others.

32. The 2004 Order remains in force. No stay of the 2004 Order exists. No appellate court has overturned the 2004 Order.

33. The 2004 Order requires defendants Davis and Reels to leave the property, remove all of their structures and equipment from the property, and stay off the property in the future.

34. This purpose may still be served compelling the Davis' and Reels' compliance with the 2004 Order.

35. Davis' and Reels' noncompliance with the 2004 Order by their continued use of their structures on the property (and failure to remove them) over the past six and a half years has been willful.

36. Reels is able to comply with the 2004 Order or take reasonable measures that would enable him to comply with the 2004 Order by either moving his house off of the property, or demolishing it and removing the debris.

37. Once Reels has removed his house (#1) completely from the property, and has confirmed his willingness to forever cease from trespassing on the property, Reels will have purged his civil contempt.

38. Davis is able to comply with the 2004 Order or take reasonable measures that would enable him to comply with the 2004 Order by either moving his structures (Club #2, House #3, Shop #4, and barrier to access road) and all trailers and equipment off of the Adams Creek property, or demolishing it and removing the debris.

39. Once Davis has removed his structures (Club #2, House #3, Shop #4, and the barrier to the access road as shown on Exhibit 8-1 through 8-5) and all trailers and equipment completely from the property, and has confirmed his willingness to forever cease from trespassing on the property, Davis will have purged his civil contempt.

40. At the conclusion of the Court's order entered on the record at the hearing, Larry S. Height moved the Court to withdraw from future representation of defendants Davis and Reels in this case. Defendants consented. Counsel for Adams Creek did not oppose the motion.

Based upon these findings of fact, the Court makes the following:

Conclusions of Law

1. The 2004 Order imposes clear obligations on Reels and Davis to cease trespassing on the property and to remove their structures and equipment from the property.

2. Reels and Davis both understood these obligations and both had the ability to comply with them.

3. Both Reels and Davis have for six and a half years willfully violated the 2004 Order.

4. Based on his refusal to remove his house (#1) and his continued living in that house on the property, Lisartis Reels is in civil contempt of the 2004 Order pursuant to G.S. §5A-21(a).

5. Lisartis Reels may purge his civil contempt upon a showing that he has removed his house (#1) completely from the Adams Creek property, and has confirmed his agreement to never thereafter go onto the property.

6. Based on his refusal to remove the Club (#2), his House (#3), the Shop (#4) and his heavy equipment and trailer and his continued use of these on the Adams Creek property, and his construction of the barrier across the access road into the property, Melvin Davis is in civil contempt of the 2004 Order pursuant to G.S. §5A-21(a).

7. Melvin Davis may purge his civil contempt upon a showing that he has removed the Club (#2), his unfinished House (#3), the Shop (#4) and the barrier across the access path completely from the Adams Creek property, and has confirmed his agreement to never thereafter go onto the property.

8. Based upon the willful, continuous, and unlimited use Reels and Davis had made of their structures on the property over the past six and a half years, the sanction most appropriate to force the defendants' compliance with the 2004 Order is imprisonment until each purges his contempt.

9. CCBC must remove from the Adams Creek property all electrical wires, poles, transformers, and meters and should not extend service to any part of the Adams Creek property without specific authorization by the owner of the property (Adams Creek or any subsequent owner of the property).

10. The parties should bear their own costs and fees.

11. Larry S. Height should be permitted to withdraw as counsel for defendants.

Wherefore, based on the findings of fact and conclusions of law, the Court ORDERS that:

1. Licurtis Reels shall be imprisoned and remain in the custody of the Carteret County Detention Center until he purges his contempt by presenting evidence to the Court that his house (#1) has been removed completely from the property, and he confirms in writing his agreement to never again go onto the property.

2. Malvin Davis shall be imprisoned and remain in the custody of the Carteret County Detention Center until he purges his contempt by presenting evidence to the Court that his Club #2, House #3, Shop #4, and the barrier to the access road (as shown on Exhibit 8-1 through 8-5) and all trailers and equipment have been removed completely from the property, and he confirms in writing his agreement to never again go onto the property.

3. Should either or both of the defendants fail to purge contempt by removing the structures, barrier, and equipment as directed in this and previous Orders, Adams Creek retains the right it may exercise at any time to remove any or all of the structures and equipment and to seek reimbursement for the expense of such removal from the defendant who failed to remove the structure at issue.

4. Carteret-Craven Electric Cooperative shall remove all electrical service to the Adams Creek property. This includes all wires, poles, transformers, and meters. CCEC shall provide service to this property in the future based only on the request of the owner of the property.

5. Defendants Reels and Davis shall not directly or indirectly, cause or permit, the extension of electrical service onto any portion of the property from any outside meter located off of the Adams Creek property.

6. In any future enforcement of the 2004 Order, the 2006 Order, or this Order, the Carteret County Sheriff ("the Sheriff") shall exercise his discretion in the manner of removing the defendants or other trespassers from the property. The Court directs that the Sheriff upon reasonable notice provide security for Adams Creek or its contractors to access the property. However, the Court declines to otherwise direct the Sheriff to take any specific action other than use reasonable means under all of the then existing circumstances, with due consideration of the safety of all deputies and all others, to enforce all Orders.

7. Scheduling issues concerning discovery or the trial of the remaining issue of damages is not properly before this Court, and shall be handled according to customary local rules and procedures.

8. The parties shall bear their own costs, expenses and fees.

9. The Court retains jurisdiction over the matters embraced by this Order, specifically including the process whereby defendants Reels and Davis may prove either or both have purged their contempt. If the Court receives a filed stipulation by Adams Creek or its

counsel concerning either or both of the defendants' compliance with this Order, the Court will enter an immediate and appropriate Order ending the imprisonment of the defendant(s) who has (have) complied. Without a stipulation filed by Adams Creek that confirms compliance, the Court will consider any showing that either or both of the defendants may otherwise hereafter file and appropriately notice for hearing.

10. Larry S. Height is allowed to withdraw as counsel for defendants. An ORDER TO WITHDRAW has been executed contemporaneously with this ORDER OF CIVIL CONTEMPT, effective March 17, 2011 when the Court allowed the oral motion to withdraw in open court at the conclusion of the said hearing. Unless and until new counsel enters an appearance, both defendants are proceeding *pro se* and service on them may be made upon their custodial agent in the Carteret County Detention Center.

This ORDER OF CIVIL CONTEMPT is signed the 25th day of March 2011 but is effective as of the date and time the motion was allowed in open court by the undersigned at the conclusion of the civil contempt hearing on March 17, 2011.

Jack W. Jenkins

The Honorable Jack W. Jenkins
Superior Court Judge Presiding

NORTH CAROLINA

CARTERET COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
02 CVS 1270

ADAMS CREEK ASSOCIATES, L.L.C.
A North Carolina Limited Partnership with
Billy Dean Brown, General Partner

Plaintiff,
v.

MELVIN DAVIS and LICURTIS REELS,

Defendants.

MOTION IN THE CAUSE

NOW COMES Defendants Melvin Davis and LiCurtis Reels, and hereby moves this honorable court pursuant to N.C.G.S. §5A-21 *et seq.*, to enter an Order purging civil contempt and immediately release Defendants from the custody of the Carteret County Detention Center. In support of this Motion, the Defendants show unto the court the following:

1. That this matter has a long and complex legal history dating back many years, including appellate review, ostensibly over a property dispute. This Motion will only address the salient history relative to the issue of civil contempt.[1]

2. On September 15, 2004, the Hon. Benjamin G. Alford filed his Order in the matter *sub judice*, and the same is hereinafter referred to as "the 2004 Order".

[1] Defendants counsel is cognizant of the N.C. Court of Appeals rulings in *Adams Creek Associates v. Davis*, 748 S.E.2d 1 (2013) and *Adams Creek v. Davis*, 652 S.E.2d 677 (2007). The focus of this motion is solely limited to addressing the current efficacy of the Hon. Judge Jenkins' 2011 Civil Contempt Order. This motion specifically does not address any issues relative to the property dispute which precipitated the same, save and except for informational purposes.

3. The 2004 Order required, *inter alia*, that Defendants remove all their structures and equipment from the subject property and thereafter cease from trespassing on the property.

4. Defendants, while continuously litigating the property dispute and the efficacy of the Court's prior rulings in the matter regarding their ownership of the property, failed and/or refused to remove their structures and equipment from the subject property as required in the 2004 Order.

5. On August 10, 2006, Judge Trawick filed his Order (the 2006 Order) holding Defendants in civil contempt for violation of the 2004 Order.

6. The Defendants continued to use the structures and equipment on the subject property subsequent to the 2004 and the 2006 Orders.

7. On March 17, 2011, the Hon. Jack Jenkins heard Plaintiff's motion seeking enforcement of the prior orders of the court, and for civil contempt pursuant to N.C.G.S. §5A-21.

8. On March 25, 2011, Judge Jenkins entered an Order of Civil Contempt against Defendants, imprisoning them in the Carteret County Detention Center until they purge themselves of the contempt finding by presenting evidence that they have removed their homes, club, shop, structures, barrier and equipment from the subject property. (hereinafter "the 2011 Order")

9. That the 2011 Order, specifically paragraph 3, states,

> "Should either or both of the defendants fail to purge contempt by removing the structures, barrier, and equipment as directed in this and previous Orders, Adams Creek retains the right it may

> exercise at any time to remove any or all of the structures and equipment and to seek reimbursement for the expense of such removal from the defendant who failed to remove the structure at issue."

10. That upon information and belief, Adams Creek has not exercised its right to remove the structures and equipment from the property and seek reimbursement of its expenses as it is entitled to under the 2011 Order, as of this date, and has further failed and/or refused to do the same for more than four (4) years since the date of the Order.

11. Defendants have been imprisoned in the Carteret County Detention Center since the civil contempt hearing was before the court on March 17, 2011.

12. The Defendants have been imprisoned for a time period in excess of four (4) years and seven (7) months.

13. That North Carolina's civil contempt statute is codified in N.C.G.S. § 5A-21 (b)(2), and states in pertinent part:

> "[t]he period of imprisonment for a person found in civil contempt *shall not exceed 90 days for the same act of disobedience or refusal to comply with an order of the court.* A person who has not purged himself or herself of the contempt within the period of imprisonment imposed by the court under this subsection *may be recommitted for one or more successive periods of imprisonment, each not to exceed 90 days. However, the total period of imprisonment for the same act of disobedience or refusal to comply with the order of the court shall not exceed 12 months, including both the initial period of imprisonment imposed under this section and any additional period of imprisonment imposed under this subsection.* Before the court may recommit a person to any additional period of imprisonment under this subsection, the court *shall* conduct a hearing de novo. The court *must* enter a finding for or against the alleged contemnor on each of the elements of G.S. 5A-21(a), and must find that all of elements of G.S. 5A-21(a) continue to exist before the person can be recommitted. For purposes of this subsection, a person's failure or refusal to purge himself or herself of contempt shall not be deemed a

> separate or additional act of disobedience, failure, or refusal to comply with an order of the court." (Emphasis Added)

14. Upon information and belief, the Defendants imprisonment for civil contempt has never been reviewed by the court as is required by N.C.G.S. § 5A- 21 (b)(2) set out above.

15. The Defendants filed a "Motion to Purge Defendants of Civil Contempt" on December 21, 2011, nine (9) months after their initial imprisonment.

16. Upon information and belief, prior to the Motion to Purge filed by the Defendants, the court failed to conduct a *de novo* review of its civil contempt order as set out in N.C.G.S. §5A-21(b)(2), after 90 days, or on or around June 17, 2011.

17. The Defendants next filed their "Motion for Release from Custody" pursuant to Rule 62 of the N.C. Rules of Civil Procedure. The motion was heard on May 29, 2012 before the Hon. Benjamin G. Alford. The same was denied by Judge Alford on June 12, 2012.

18. Upon information and belief, Defendants have never had a *de novo* review by the Superior Court of Carteret County pursuant to N.C.G.S. §5A-21.

19. Pursuant to N.C.G.S. §5A-21(b)(2), the Defendants continuous and extensive Imprisonment contravenes the law, legislative intent, and public policy of the State of North Carolina, as their imprisonment significantly exceeds the twelve (12) month limitation period the legislature has placed on holding individuals in contempt for the same act of disobedience and non-compliance.

CERTIFICATE OF SERVICE

I hereby certify that today I caused Defendants' Motion in the Cause to be served on Plaintiff via First Class Mail, postage prepaid and addressed to:

L. Lamar Armstrong Jr.
The Armstrong Law Firm, P.A.
P.O. Box 27
Smithfield, North Carolina 27577
(919) 934-1575

This the 12th day of November, 2015

HAIRSTON LANE, P.A.

James S. Hairston, Jr.
N.C. Bar No: 19687
Two Hanover Square
434 Fayetteville Street, Suite 2350
Raleigh, North Carolina 27601
919-838-9285 (Telephone)
888-510-1160 (Facsimile)
Email: jhairston@hllpclaw.com
Attorney for Defendants

NORTH CAROLINA

CARTERET COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
02 CVS 1270

ADAMS CREEK ASSOCIATES,
A North Carolina Limited Partnership with
Billy Dean Brown, General Partner,

Plaintiff,

v.

MELVIN DAVIS and LICURTIS REELS,

Defendants.

MOTION IN THE CAUSE

NOW COMES Defendants Melvin Davis and LiCurtis Reels, and hereby moves this honorable court pursuant to N.C.G.S. §5A-21 *et seq.*, and/or Rule 11 of the North Carolina Rules of Civil Procedure, to enter an Order immediately releasing the Defendants from custody in the Carteret County Detention Center for civil contempt. In support of this Motion, the Defendants show unto the court the following:

1. That this matter has a long and complex legal history dating back many years, including appellate review, ostensibly over a property dispute. This Motion only addresses the salient history relative to the issue of civil contempt.[1]

2. On September 15, 2004, the Hon. Benjamin G. Alford filed his Order in the matter

[1] Defendants counsel is cognizant of the N.C. Court of Appeals rulings in *Adams Creek v. Davis*, 186 N.C.App. 512, 652 S.E.2d 677 (2007) (Adams Creek I) and *Adams Creek Associates v. Davis*, 227 N.C.App. 457, 746 S.E.2d 1 (2013) (Adams Creek II). The purpose of this motion is solely limited to addressing the current efficacy of the Hon. Judge Jenkins' 2011 Civil Contempt Order. This motion specifically does not address any issues relative to the property dispute which precipitated the same, save and except for informational purposes.

sub judice, and the same is hereinafter referred to as "the 2004 Order".

3. The 2004 Order required, *inter alia*, that Defendants remove all their structures and equipment from the subject property and thereafter cease from trespassing on the property.

4. Defendants, while continuously litigating the property dispute and the efficacy of the Court's prior rulings in the matter regarding their ownership of the property, failed and/or refused to remove their structures and equipment from the subject property as required by the 2004 Order.

5. Thereafter, on August 10, 2006, the Hon. Judge Tunwick entered an Order (the 2006 Order) holding Defendants in civil contempt for violation of the 2004 Order.

6. The Defendants continued to use the structures and equipment on the subject property subsequent to the 2004 and the 2006 Orders.

7. On March 17, 2011, the Hon. Jack Jenkins heard Plaintiff's motion seeking enforcement of the prior orders of the court for civil contempt pursuant to N.C.G.S. §5A-21., and for Rule 11 sanctions against the Defendants.

8. On March 23, 2011, Judge Jenkins entered an Order of Civil Contempt against Defendants, imprisoning them in the Carteret County Detention Center until they purge themselves of the contempt finding by presenting evidence that they have removed their homes, club, shop, structures, barrier and equipment from the subject property. (hereinafter "the 2011 Order")

16. That the Defendants' current financial condition, after five (5) years of imprisonment, effectively prevents them from having the ability to comply with the Court's order.

17. Notwithstanding the Defendants' current financial inability to comply with the Court's order, Defendants also respectfully proffer in addition and/or in the alternative that their continued imprisonment, without committing a criminal act, is unequivocally punitive in nature and the same amounts to a violation of the Defendants due process rights as afforded them by the Fourteenth Amendment to the United States Constitution.

18. To date, Defendants have been housed approximately five (5) years and two (2) months or approximately One Thousand Eight Hundred Eighty days (1,880) days.

19. Upon information and belief, the cost to house an inmate in the Carteret County jail is approximately Sixty Dollars ($60.00) per day.

20. Upon information and belief, the citizen taxpayers in Carteret County ultimately bear the burden of the costs of civil incarceration, amounting to approximately One Hundred Twelve Thousand Dollars ($112,000.00) to house Defendants.

21. That Defendant LiCurtis Reels suffers from Diabetes. He has required hospitalization in the past due to his condition and is required to have medical attention on a daily basis as a result of the same.

22. That Defendant Melvin Reels suffered from a fall while incarcerated and as a result has required dental attention for the same in addition to medical attention as a result of issues with his stomach.

WHEREFORE, for the reasons stated above, Defendants respectfully requests that the Court grant Defendants' motion in the cause, immediately release Defendants from the custody of the Carteret County Detention Center, and grant any other relief the court deems proper.

Respectfully submitted this the 4th day of May, 2016.

HAIRSTON LANE, P.A.

James R. Hairston, Jr.
N.C. Bar No: 19687
Two Hanover Square
434 Fayetteville Street, Suite 2350
Raleigh, North Carolina 27601
(919) 838-5295 Telephone
(888) 510-1160 Facsimile
Email: jhairston@hlhnclaw.com
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that today I caused Defendants' Motion in the Cause to be served on Plaintiff via First Class Mail, postage prepaid and addressed to:

L. Lamar Armstrong Jr.
The Armstrong Law Firm, P.A.
P.O. Box 27
Smithfield, North Carolina 27577
(919) 934-1575

This the 4th day of May, 2016.

HAIRSTON LANE, P.A.

James R. Williams, Jr.
N.C. Bar No: 19687
Two Hanover Square
434 Fayetteville Street, Suite 2350
Raleigh, North Carolina 27601
919-838-5295 (Telephone)
888-510-1160 (Facsimile)
Email: jwilliams@hllawfirm.com
Attorney for Defendants

James Hairston

From:	Benjamin Alford <judgealford@yahoo.com>
Sent:	Wednesday, May 18, 2016 11:25 AM
To:	Lamar Armstrong; James Hairston
Cc:	Lanie B Gray; Lynn Holton
Subject:	Adams Creek Associates v. Davis and Reels Carteret File: 01-CVS-1270

Defendants' Motion in the Cause is denied.

Judge Jenkins' Order Of Civil Contempt from March of 2011 has two components in order for the defendants to purge themselves of their contempt. The first component involves the removal of certain structures from the property in question. The second component requires each defendant to "confirm in writing his agreement to never again go onto the property".

This court does not reach the issue of whether the defendants have the ability to comply with that portion of Judge Jenkins' Order Of Civil Contempt requiring the removal of certain structures from the subject property. This is because there is no evidence whatsoever that either defendant has confirmed in writing his agreement to never again go onto the property. In fact, all the evidence about whether the defendants would comply, even if they had the ability to do so, is that they would not. The evidence further shows uncontroverted that neither defendant has any intention of confirming in writing that he will never again go upon the property.

The defendants' contumacious position regarding the ownership of the property in question is a rebuke of the rule of law in this country.

Benjamin G. Alford
Senior Resident Superior Court Judge
3B Judicial District
310 Broad Street
New Bern, North Caroline 28560

NORTH CAROLINA

CARTERET COUNTY

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 02 CVS 1270

Adams Creek Associates
Plaintiff

v.

Melvin Davis & Lourtis Reels
Defendants

Order Denying Motions in the Cause

Defendants' 12 November 2015 and 4 May 2016 Motions in the Cause (collectively referenced as "Motions") came on for hearing and were heard before the Honorable Benjamin G. Alford, Senior Resident Superior Court Judge Presiding (the Court), on 16 May 2016. James E. Hairston, Jr. was present in representation of defendants. L. Lamar Armstrong, Jr. was present in representation of plaintiff.

After hearing testimony and argument of counsel, the Court took the Motions under advisement. After considering the Motions, all testimony and argument, and all materials submitted by counsel, the Court makes the following:

Findings of Fact

1. Defendants through counsel filed a "Motion in the Cause" on or soon after 12 November 2015 (the November Motion) and noticed it for hearing on 7 December 2015.

2. At the request of defendants' counsel, the November Motion was removed from the 7 December 2015 calendar and was left open for counsel to calender at a later date.

3. Defendants did not file any withdrawal of the November Motion itself. The November Motion remained pending, and was pending at the time of the hearing of this matter before the Court.

4. The November Motion contended that N.C. Gen. Stat. §5A-21(b)(2) applied and required that defendants have hearings after no more than 90 days of incarceration.

5. The November Motion made no allegation that defendants had purged their contempt by complying with the March 2011 Contempt Order.

6. The November Motion did not allege that defendants wanted to comply.

7. The November Motion did not allege that defendants could not comply based on their financial condition or other factors.

8. The November Motion did allege that defendants had been wrongfully incarcerated for four years and seven months, that they had some health issues, and that continued incarceration was expensive for Carteret County, which the Court finds was equivalent to stating that hearing the November Motion involved a matter of urgency to defendants.

9. Despite the suggested urgency evident in the November Motion, defendants and their counsel did not calendar the November Motion for hearing after the 7 December 2015 calendar from which it was continued at their request.

10. Six months after filing the November Motion, on or soon after 4 May 2016, defendants through their counsel filed another Motion in the Cause (May Motion).

11. The May Motion was filed pursuant to N.C. Gen. Stat. §5A-21 and Rule 11.

12. Like the November Motion, the May Motion does not contend that defendants had purged their contempt or that they wanted to purge their contempt.

13. However, unlike the November Motion, the May Motion does set forth allegations about defendants' financial condition and alleged inability to pay to move structures from plaintiff's land.

14. The May Motion does not allege that either defendant had complied with the provision in the Contempt Order that "he confirms in writing to never again go upon the property" or that he would comply with such requirement.

15. At the hearing of the Motions, defendants' counsel stated twice in open court that he had not met with the defendants the night before although he had tried to do so.

16. Defendants' counsel called both defendants to the stand to testify about their lack of income since they have been in jail, the heavy equipment and its condition, and their health but asked no questions about the defendants' willingness to "never again go upon the property".

17. On cross examination, both defendants confirmed they had testified under oath at least five times in the past decades of litigation (in court and in deposition).

18. Both defendants confirmed that in their prior testimony they said on every occasion that it was not they couldn't comply with the Contempt Order, it was they wouldn't comply.

19. Both defendants again confirmed that they would not stay off the property and interjected their continued commitment to their ownership of the property despite the decades of legal rulings to the contrary.

20. Both defendants testified that they did not care how many judges told them to stay off the property, they would not do so.

21. Both defendants testified that if they had the money to remove structures as required by the Contempt Order, they would not do so.

22. Other evidence was presented on other factual issues concerning the defendants' financial condition, the heavy equipment still owned by Melvin Davis and its condition, the expense of moving the structures off of the property, the defendants' health, and other issues.

23. The Court makes no findings as to these matters because defendants' failure to sign the necessary written document pledging to not again go upon the property, and their avowed insistence to the contrary that they would indeed go back on the property, is dispositive on the controlling issue as to whether defendants have purged or are even willing to purge their contempt.

Based upon these findings of fact, the Court reaches the following

Conclusions of Law

1. N.C. Gen. Stat. §5A-21(b)(2) does not apply to this case because N.C. Gen. Stat. §5A-21(b) provides: *Notwithstanding subsection (b2) of this section, if a person is found in civil contempt for (. . . . child support) or failure to comply with a court order to perform an act that does not require the payment of*

a monetary judgment, the person may be imprisoned as long as the civil contempt continues without further hearing."

2. The Contempt Order in this case does not require the payment of a monetary judgment.

3. The November 2015 Motion in the Cause lacks justiciable issues of law because it relies on a statute that on its face does not apply.

4. The May Motion reasserts N.C. Gen. Stat. §5A-21 and Rule 11 of the North Carolina Rules of Civil Procedure as the authority upon which the Motion is based.

5. Both of these bases for the May Motion lack justiciable issues of law because neither apply to this case.

6. The May Motion is essentially a motion for the Court to find that contempt should be purged based on defendants' alleged financial inability to comply and that continued incarceration is punitive rather than coercive.

7. Because the May Motion cites to and relies upon inapplicable law as the basis for the motion, and does not allege that defendants either wanted to comply or that they were willing to comply with all the terms of the Contempt Order to attest in writing they will never again go upon the property, the May Motion lacks justiciable issues of law and fact.

8. Defendants' testimony confirmed defendants' continued refusal to recognize plaintiff as owner of the property and the defendants' obligation to never again go upon the property, which negated the whole premise of which a motion to purge must be based.

9. Despite over five years of incarceration, defendants' refusal to abide by the Contempt Order and accept the many other orders by which the legal system has repeatedly confirmed the plaintiff's ownership of the property was manifest and unchanged.

10. Continuation of defendants' incarceration under the Contempt Order is not punitive, because it has been for five years and remains a matter that is within the power of defendants to resolve and thereby purge their contempt – if they were willing to do so.

11. Both defendants' willful refusal to comply with the Contempt Order now in excess of five years cannot, based on the length of time they have

willingly endured their incarceration in order to not comply, be allowed to prevail over the rule of law they refuse to acknowledge.

12. Defendants' Motions in the Cause (November Motion and May Motion) are based on the frivolous position that it does not matter whether defendants want to comply with the equally important obligation to remain off this land; rather, it matters only that defendants have insufficient funds to complete the job of removing structures – the very tasks they testified they would not do even if they had the financial resources.

13. Under these circumstances, based on the defendants' testimony before this Court, the Court does not reach the issue of financial resources or ability to comply with obligations under the Contempt Order that both defendants have once again said they will never do.

14. Defendants have failed to prove they have purged their contempt.

15. Defendants have failed to prove that their incarceration is punitive or otherwise is improper.

Wherefore, based on these findings of fact and conclusions of law, the Court orders that the Motion in the Cause (including both the November Motion and the May Motion) are DENIED.

_____

The Honorable Benjamin G. Alford
Senior Resident Superior Court Judge Presiding
3B Judicial District

This the ___ day of June 2016, *nunc pro tunc* May 16, 2016.

NORTH CAROLINA CARTERET COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 02 CVS 1270
ADAMS CREEK ASSOCIATES, A North Carolina Limited Partnership with Billy Dean Brown, General Partner, Plaintiff, v. MELVIN DAVIS and LICURTIS REELS, Defendants.	NOTICE OF APPEAL

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Defendants Melvin Davis and LiCurtis Reels hereby gives notice of appeal to the North Carolina Court of Appeals from the order denying their release from custody for civil contempt. The matter was heard before the Superior Court of Carteret County on May 16, 2016 by the Hon. Benjamin G. Alford, Senior Resident Superior Court Judge presiding, and entered on June 13, 2016. The Defendants were not served with the Order pursuant to Rule 58 of the North Carolina Rules of Civil Procedure.

This the 7th day of July, 2016.

HAIRSTON LANE, P.A.

James B. Hairston, Jr.
N.C. State Bar No.: 19687
434 Fayetteville Street, Suite 2350
Raleigh, North Carolina 27601
919-838-5295 (Telephone)
919-838-5295 (Facsimile)
E-mail: jhairston@hlbnclaw.com
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that today I caused Defendants Notice of Appeal to be served on Plaintiff via First Class Mail, postage prepaid and addressed to:

L. Lamar Armstrong, Jr.
The Armstrong Law Firm
P.O. Box 27
Smithfield, North Carolina 27577

This the 7th day of July, 2016.

HAIRSTON LANE, P.A.

James B. Hairston, Jr.
N.C. Bar No.: 19687
434 Fayetteville Street, Suite 2350
Raleigh, North Carolina 27601
919-838-5295 (Telephone)
888-510-1160 (Facsimile)
Email: jhairston@hhlpnclaw.com
Attorney for Defendants

STATEMENT OF TRANSCRIPT OPTION

Per Appellate Rules 7(b) and 9(c), the verbatim transcript of the entire proceedings in this case, taken by Amy R. Forbis, Official Court Reporter, on 16 May 2016, consisting of 66 pages, numbered 1-66, bound in one volume, will be electronically filed by Amy R. Forbis promptly once a docket number is assigned to this appeal.

PROPOSED ISSUES ON APPEAL

Pursuant to Rule 10, Defendants-Appellants intend to present the following proposed issues on appeal:

1. Did the trial court err by failing to consider evidence of the Defendants' inability to comply with the Hon. Jack Jenkins' 2011 Order of Contempt?

2. Is that portion of the Hon. Jack Jenkins' 2011 Order of Contempt requiring the Defendants to "confirm" their willingness to never thereafter go onto the property a reasonable requirement to purge contempt?

3. Is that portion of the Hon. Jack Jenkins' 2011 Order of Contempt requiring the Defendants to remove their homes and structures from the property a reasonable requirement to purge contempt?

COUNSEL OF RECORD

For the Appellants: Hairston Lane Brannon, PA

James E. Hairston, Jr.
North Carolina Bar No. 19687
919-838-5295
jhairston@hlbnclaw.com

434 Fayetteville Street
Suite 2350
Raleigh, NC 27601

For the Appellees: The Armstrong Law Firm, P.A.

L. Lamar Armstrong
North Carolina Bar No. _____
919-934-1575
lamarIII@armstronglawyers.com

602 South Third Street (POB 27)
Smithfield, NC 27577

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing PROPOSED RECORD OF APPEAL on the opposing party by placing a copy, contained in a first-class postage-paid wrapper, into a depository under the exclusive custody of the United States Postal Service, this 2nd day of September 2016, addressed as follows:

L. Lamar Armstrong, Jr.
The Armstroug Law Firm, P.A.
602 South Third Street (POB 27)
Smithfield, NC 27577



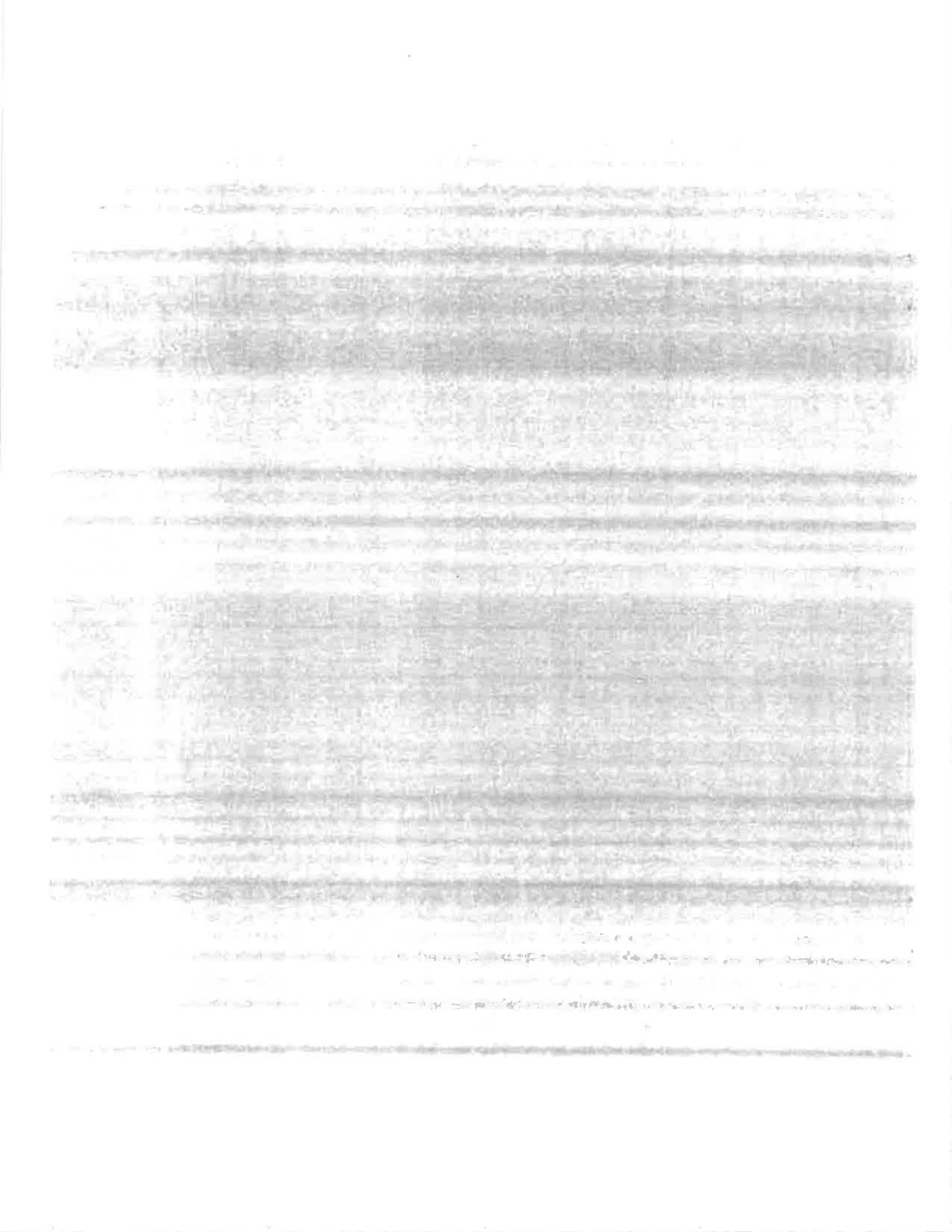
James E. Hairston, Jr.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing RECORD OF APPEAL on the opposing party by placing a copy, contained in a first-class postage-paid wrapper, into a depository under the exclusive custody of the United States Postal Service, this the 27th day of October, 2016, addressed as follows:

L. Lamar Armstrong, Jr.
The Armstrong Law Firm, P.A.
602 South Third Street (POB 27)
Smithfield, NC 27577

James R. Hairston



NO. COA 16-1080

THIRD JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

****

ADAMS CREEK ASSOCIATES, A North Carolina Limited Partnership with Bill Dean Brown, General Partner, Plaintiff, v. MELVIN DAVIS and LICURTIS REELS, Defendants.	)	From CARTERET COUNTY File No.: 02 CVS 1270

****

ADDENDUM TO RECORD ON APPEAL

****

2011 FEB -2 A 11:11

CERTIFICATE OF SERVICE

I hereby certify that today I caused the Addendum to the Record on Appeal to be served on Plaintiff-Appellee's counsel via First Class Mail, postage prepaid and addressed to:

L. Lamar Armstrong, Jr.
The Armstrong Law Firm
P.O. Box 27
Smithfield, North Carolina 27577

This the ~~1st~~ 2nd day of February, 2017.

HAIRSTON LANE, P.A.

By: _____
James E. Hairston, Jr.
Attorney for Defendant-Appellants
N.C. State Bar No. 19687
434 Fayetteville Street, Suite 2350
Raleigh, NC 27601
919-838-5295
jhairston@hlbnclaw.com

NORTH CAROLINA

CARTERET COUNTY

FILED
2016 JUN 13 A 11:45
CARTERET CO., C.S.C.
BY

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 02 CVS 1270

Adams Creek Associates
Plaintiff

v.

Melvin Davis & Lourtis Reels
Defendants

Order Denying Motions in the Cause

Defendants' 12 November 2015 and 4 May 2016 Motions in the Cause (collectively referenced as "Motions") came on for hearing and were heard before the Honorable Benjamin G. Alford, Senior Resident Superior Court Judge Presiding (the Court), on 16 May 2016. James E. Hairston, Jr. was present in representation of defendants. L. Lamar Armstrong, Jr. was present in representation of plaintiff.

After hearing testimony and argument of counsel, the Court took the Motions under advisement. After considering the Motions, all testimony and argument, and all materials submitted by counsel, the Court makes the following:

Findings of Fact

1. Defendants through counsel filed a "Motion in the Cause" on or soon after 12 November 2015 (the November Motion) and noticed it for hearing on 7 December 2015.

2. At the request of defendants' counsel, the November Motion was removed from the 7 December 2015 calendar and was left open for counsel to calendar at a later date.

3. Defendants did not file any withdrawal of the November Motion itself. The November Motion remained pending, and was pending at the time of the hearing of this matter before the Court.

4. The November Motion contended that N.C. Gen. Stat. §5A-21(b)(2) applied and required that defendants have hearings after no more than 90 days of incarceration.

5. The November Motion made no allegation that defendants had purged their contempt by complying with the March 2011 Contempt Order.

6. The November Motion did not allege that defendants wanted to comply.

7. The November Motion did not allege that defendants could not comply based on their financial condition or other factors.

8. The November Motion did allege that defendants had been wrongfully incarcerated for four years and seven months, that they had some health issues, and that continued incarceration was expensive for Carteret County, which the Court finds was equivalent to stating that hearing the November Motion involved a matter of urgency to defendants.

9. Despite the suggested urgency evident in the November Motion, defendants and their counsel did not calendar the November Motion for hearing after the 7 December 2015 calendar from which it was continued at their request.

10. Six months after filing the November Motion, on or soon after 4 May 2016, defendants through their counsel filed another Motion in the Cause (May Motion).

11. The May Motion was filed pursuant to N.C. Gen. Stat. §5A-21 and Rule 11.

12. Like the November Motion, the May Motion does not contend that defendants had purged their contempt or that they wanted to purge their contempt.

13. However, unlike the November Motion, the May Motion does set forth allegations about defendants' financial condition and alleged inability to pay to move structures from plaintiff's land.

14. The May Motion does not allege that either defendant had complied with the provision in the Contempt Order that "he confirms in writing to never again go upon the property" or that he would comply with such requirement.

15. At the hearing of the Motions, defendants' counsel stated twice in open court that he had not met with the defendants the night before although he had tried to do so.

16. Defendants' counsel called both defendants to the stand to testify about their lack of income since they have been in jail, the heavy equipment and its condition, and their health but asked no questions about the defendants' willingness to "never again go upon the property".

17. On cross examination, both defendants confirmed they had testified under oath at least five times in the past decades of litigation (in court and in deposition).

18. Both defendants confirmed that in their prior testimony they said on every occasion that it was not they couldn't comply with the Contempt Order, it was they wouldn't comply.

19. Both defendants again confirmed that they would not stay off the property and interjected their continued commitment to their ownership of the property despite the decades of legal rulings to the contrary.

20. Both defendants testified that they did not care how many judges told them to stay off the property, they would not do so.

21. Both defendants testified that if they had the money to remove structures as required by the Contempt Order, they would not do so.

22. Other evidence was presented on other factual issues concerning the defendants' financial condition, the heavy equipment still owned by Melvin Davis and its condition, the expense of moving the structures off of the property, the defendants' health, and other issues.

23. The Court makes no findings as to these matters because defendants' failure to sign the necessary written document pledging to not again go upon the property, and their avowed insistence to the contrary that they would indeed go back on the property, is dispositive on the controlling issue as to whether defendants have purged or are even willing to purge their contempt.

Based upon these findings of fact, the Court reaches the following

Conclusions of Law

1. N.C. Gen. Stat. §5A-21(b)(2) does not apply to this case because N.C. Gen. Stat. §5A-21(b) provides: *Notwithstanding subsection (b2) of this section, if a person is found in civil contempt for (. . . . child support) or failure to comply with a court order to perform an act that does not require the payment of*

a monetary judgment, the person may be imprisoned as long as the civil contempt continues without further hearing."

2. The Contempt Order in this case does not require the payment of a monetary judgment.

3. The November 2015 Motion in the Cause lacks justiciable issues of law because it relies on a statute that on its face does not apply.

4. The May Motion reasserts N.C. Gen. Stat. §5A-21 and Rule 11 of the North Carolina Rules of Civil Procedure as the authority upon which the Motion is based.

5. Both of these bases for the May Motion lack justiciable issues of law because neither apply to this case.

6. The May Motion is essentially a motion for the Court to find that contempt should be purged based on defendants' alleged financial inability to comply and that continued incarceration is punitive rather than coercive.

7. Because the May Motion cites to and relies upon inapplicable law as the basis for the motion, and does not allege that defendants either wanted to comply or that they were willing to comply with all the terms of the Contempt Order to attest in writing they will never again go upon the property, the May Motion lacks justiciable issues of law and fact.

8. Defendants' testimony confirmed defendants' continued refusal to recognize plaintiff as owner of the property and the defendants' obligation to never again go upon the property, which negated the whole premise of which a motion to purge must be based.

9. Despite over five years of incarceration, defendants' refusal to abide by the Contempt Order and accept the many other orders by which the legal system has repeatedly confirmed the plaintiff's ownership of the property was manifest and unchanged.

10. Continuation of defendants' incarceration under the Contempt Order is not punitive, because it has been for five years and remains a matter that is within the power of defendants to resolve and thereby purge their contempt -- if they were willing to do so.

11. Both defendants' willful refusal to comply with the Contempt Order now in excess of five years cannot, based on the length of time they have

willingly endured their incarceration in order to not comply, be allowed to prevail over the rule of law they refuse to acknowledge.

12. Defendants' Motions in the Cause (November Motion and May Motion) are based on the frivolous position that it does not matter whether defendants want to comply with the equally important obligation to remain off the land; rather, it matters only that defendants have insufficient funds to complete the job of removing structures – the very tasks they testified they would not do even if they had the financial resources.

13. Under these circumstances, based on the defendants' testimony before this Court, the Court does not reach the issue of financial resources or ability to comply with obligations under the Contempt Order that both defendants have once again said they will never do.

14. Defendants have failed to prove they have purged their contempt.

15. Defendants have failed to prove that their incarceration is punitive or otherwise is improper.

Wherefore, based on these findings of fact and conclusions of law, the Court orders that the Motion in the Cause (including both the November Motion and the May Motion) are DENIED.

The Honorable Benjamin G. Alford
Senior Resident Superior Court Judge Presiding
3B Judicial District

This the 3rd day of June 2016, *nunc pro tunc* May 16, 2016.

North Carolina Court of Appeals

DANIEL M. HORNE JR., Clerk
Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600

Fax: (919) 831-3615
Web: http://www.nccourts.org

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

From Carteret
(02CVS1270)

No. 16-1080

ADAMS CREEK ASSOCIATES,
Plaintiff,

v.

MELVIN DAVIS and
LICURTIS REELS,
Defendants.

ORDER

The following order was entered:

The motion filed in this cause on the 2nd of February 2017 and designated 'Motion for Extension of Time' is allowed. The attached addendum to the record on appeal is deemed timely filed, and shall be printed as an addendum to the record on appeal.

By order of the Court this the 14th of February 2017.

WITNESS my hand and official seal this the 14th day of February 2017.

Daniel M. Horne Jr.
Clerk, North Carolina Court of Appeals

Copy to:
Mr. James E. Hairston, Jr., Attorney at Law, For Davis, Melvin, et al
Mr. L. Lamar Armstrong, Jr., Attorney at Law
Hon. Pam A. Hanson, Clerk of Superior Court

