No. THREE B JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

IN THE MATTER OF	)	
	)	
MELVIN DAVIS AND LICURTIS REELS,	)	
PETITIONERS,	)	
V.	)	FROM CATERET COUNTY
	)	No. 02 CVS 1270
ASA BUCK, SHERIFF, CARTERET COUNTY, NORTH CAROLINA	)	
RESPONDENT	)	

****

PETITION FOR WRIT OF HABEAS CORPUS
N.C.G.S. §17-6

****

INDEX

TABLE OF CASES AND AUTHORITIES.....iii

PARTIES.....2

BRIEF STATEMENT OF THE CASE.....2

REASONS WHY WRIT OF HABEAS CORPUS SHOULD ISSUE.....4

I. THE LENGTH OF TIME HAS VITIATED THE 17th MARCH 2011 ORDER OF CIVIL CONTEMPT.....4

II. NORTH CAROLINA'S LAW OF DUTY TO MITIGATE DAMAGES COUPLED WITH ADAMS CREEK'S FAILURE TO ACT HAS RESULTED IN THE 17th MARCH 2011 ORDER OF CIVIL CONTEMPT BECOMING PUNISHMENT THEREYBY ENTITILING PETITIONERS TO BE DISCHARGED.....8

CONCLUSION.....9

ATTACHMENTS.....11

VERIFICATION.....12

CERTIFICATE OF SERVICE.....13

TABLE OF AUTHORITIES

Cases

Hoffman v. Edwards, 48 N.C. App. 559, 269 S.E.2d 311 (1980).....2

Jolly v. Wright, 300 N.C. 83, 265 S.E. 135 (1980).....5,7,9

Maggio v. Zeitz, 333 U.S. 56, 68 S. Ct. 401 (1948) 572 (1948).....5,7

Miller v. Miller, 273 N.C. 228 , 160 S.E.2d 581 (1968).....8

United States ex rel Thom v. Jenkins, 760 F2d 736 (7th Cir. 1985).....5

Statues

United States Const. Art. 1, s. 9.....6,10

North Carolina Const. Art.1, s.21.....1,6,10

N.C. Gen. Stat. § 5A-21(a).....3,4,7,9,10

N.C. Gen. Stat. § 5A-21(b).....3,4,7,9,10

N.C. Gen. Stat. § 17-1 et seq.....1

N.C. Gen. Stat. § 17-6.....1,2,6

N.C. Gen. Stat. § 17-33(2).....2,6,7,8,10

No. THREE B JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

IN THE MATTER OF	)	
	)	
MELVIN DAVIS AND LICURTIS REELS,	)	
PETITIONERS,	)	
V.	)	FROM CATERET COUNTY
	)	No. 02 CVS 1270
ASA B. BUCK, III, SHERIFF, CARTERET COUNTY, NORTH CAROLINA	)	
RESPONDENT	)	

****

PETITION FOR WRIT OF HABEAS CORPUS
N.C.G.S. § 17-6

****

TO: THE HONARABLE ASSOCIATE JUSTICE ROBIN E. HUDSON
OF THE SUPREME COURT OF NORTH CAROLINA

NOW COME Petitioners Melvin Davis and Licurtis Reels respectfully petitioning this Honorable Court pursuant to North Carolina General Statue (N.C.G.S.) § 17- 1 et seq. and the N.C. Const. art.1, § 21 for a Writ of Habeas Corpus without delay. Specifically this petition is filed pursuant to N.C.G.S. § 17-6(1) which grants concurrent jurisdiction in Habeas Corpus

matters to any of the Justices or Judges of the Appellate Division and N.C.G.S. § 17-33(2) which states "Where, though the original imprisonment was lawful, yet by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged". Hoffman v. Edwards, 48 N.C. App. 559, 269 S.E.2d 311 (1980)

PARTIES:

The above named **Respondent**, Asa B. Buck, III is the Sheriff, or the head official of the Carteret County Detention Center (Jail), located at 304 Craven Street, Beaufort, North Carolina and is thus subject to the jurisdiction of this Honorable Court.

The **Petitioners**, Melvin Davis, 67 years old, and Licurtis Reels, 57 years old, are inmates in the Carteret County Detention Center who are unlawfully and illegally being detained by the Respondent, Sheriff Asa Buck.

BRIEF STATEMENT OF THE CASE:

The reason for the Petitioners' unlawful, illegal and continued detention by the Respondent is that the Petitioners were found, held and jailed for civil contempt by the Honorable Jack W. Jenkins, Superior Court Judge presiding, Carteret County, North Carolina, on the 17 March 2011 and Contempt Order signed on 25 March 2011. (Attachment 1) The

17 March 2011 Order of Civil Contempt was based on the Petitioners' failure to obey a 2004 Order issued by The Honorable Benjamin G. Alford, Superior Court Judge presiding, Carteret County, North Carolina, on 14 September 2004. (Attachment 2)

The 14 September 2004 Order required the Petitioners, Melvin Davis and Licurtis Reels, to tear down their homes, structures, or remove them and to cease trespassing on the subject property described in the complaint in civil matter, 02 CVS 1270, Superior Court, Carteret County, North Carolina.

The Order Of Civil Contempt for which the Petitioners' are being unlawfully, illegally and continually detained, pursuant to N.C.G.S. § 5A-21(a), jailed the Petitioners and required the Petitioners to tear down their homes, structures and remove their equipment or remove their homes, structures and equipment and additionally required Petitioners to confirm in writing that Petitioners' would never again go onto the subject property, commit a future act of trespass. (Attachment 1) In addition the 17 March 2011 Order of Civil Contempt granted Plaintiff, Adams Creek Association (Adams Creek), 02 CVS 1270, Superior Court, Carteret County, North Carolina, the right to remove any and all structures and

equipment and to seek reimbursement for such removal from the Petitioners. (Attachment 1, Para. 3)

On 29 May 2012 the Petitioners, Melvin Davis and Licurtis Reels, filed a motion in the Superior Court of Carteret County, North Carolina for the release of the Petitioners. (Attachment 3) A hearing was held on the same day, 29th May 2012, before the Honorable Benjamin G. Alford, Superior Court Judge presiding, Carteret County, North Carolina. Petitioners Order for Release From Custody was denied by the Honorable Benjamin G. Alford on 29th May 2012 and signed 12th June 2012. (Attachment 4)

REASONS WHY WRIT OF HABEAS CORPUS SHOULD ISSUE:

I. THE LENGTH OF TIME HAS VITIATED THE 17th MARCH 2011 ORDER OF CIVIL CONTEMPT.

Petitioners were found and held in civil contempt by the Honorable Jack W. Jenkins, Superior Court Judge presiding, Carteret County, North Carolina on 17th March 2011. N.C.G.S. § 5A-21(a) and (b) provides North Carolina Judges with the power of indefinite confinement as a coercive measure. N.C.G.S. § 5A-21(b) allows a Judge to incarcerate a person for an indefinite period of time without the usual safeguards of due process to force an individual to perform an act or comply with an order of the court.

However insofar as civil contempt can be used to coerce compliance, incarceration for civil contempt can continue only so long as it serves a coercive purpose. The law is well established that a contemnor "will not be held in jail forever" for civil contempt. Maggio v. Zeitz, 333 U.S. 56, 76, 92 L.ed. 476, 68 S.Ct. 401 (1948). Once a court becomes convinced that the contemnor will steadfastly refuse to comply with the terms of the contempt citation, the court is obligated to release (him) since incarceration would no longer serve the purpose of the civil contempt order – coercing. United States ex rel. Thom v. Jenkins, 760 F.2d 736, 740 (7th Cir. 1985). The purpose of civil contempt is not to punish; rather, its purpose is to use the Court's power to impose fines or imprisonment as a method of coercing the defendant to comply with an order of the court. Jolly v. Wright, 300 N.C. 83, 265 S.E.2d 135, 142 (1980). The aforementioned cases establish the legal principle and law that once it becomes apparent to the Court that the contemnor will not comply, the civil contempt seizes to be coercive and becomes punishment and the Court must release the contemnor.

Petitioners' maintain that the 17th March 2011 Order of Civil Contempt Order has ceased to be coercive and Petitioners' are being punished, without due process, being held in jail unlawfully and restrained

of their liberty in violation of U.S. Const. art. 1, § 9; N.C. Const. art. 1, § 21; and N.C.G.S. § 17-1 thru 38; in particular N.C.G.S. § 17-33(2).

Petitioners' length of incarceration, four years (***one thousand four hundred and sixty-two days***) and counting, has vitiated the 17th March 2011 Contempt Order. Petitioner's length of incarceration has eroded and diminished the civil contempt order's coercive purpose: coercing Petitioners to demolish their homes and structures or to remove their homes, structures and equipment and requiring Petitioners to sign a statement not to commit a future trespass on the subject property. This last order, not to commit a future trespass, is punishment for a future act yet to occur.

North Carolina General Statue § 17-33(2) specifically addresses the present issue as to when does an order of civil contempt convert from coercion into punishment thereby entitling the contemnor(s) to discharge. Petitioners would argue their four year incarceration and counting, an event, in concert with Plaintiff's inaction, an omission, discussed infra, are the exact set of circumstances that have occurred after Petitioner(s) original incarceration that N.C.G.S. § 17-33(2) would and does require the discharge of the contemnor(s).

The Petitioners would argue that N.C.G.S. § 5A-21(a) & (b) did not envision nor intend that a citizen of the State of North Carolina could get life imprisonment for civil contempt. In this matter the Petitioners are currently serving a life sentence for civil contempt. Petitioners maintain that their length of time in jail, four years and counting, considered with their advance ages has led to their deteriorating health and well being, physically and mentally, and serve as evidence that the 17th March 2011 Order of Civil Contempt has cease to be coercion and is now punishment. This Honorable Court has held that the purpose of civil contempt is not for punishment. Jolly v. Wright, 300 N.C. 83, 265 S.E.2d 135, 142 (1980). The jailing of Petitioners, although initially lawful, has seize to serve its coercive purpose and has become strictly punishment thereby entitling the Petitioners to be discharged pursuant North Carolina General Statue § 17-33(2) and the N.C. Const. art. 1, § 21. The law is well established that a contemnor will not be held in jail forever for civil contempt, Maggio v. Zeitz, 333 U.S. 56, 76, 68 S.Ct. 401 (1948)

II. NORTH CAROLINA'S LAW OF DUTY TO MITIGATE DAMAGES AND ADAMS CREEK'S FAILURE TO ACT HAS RESULTED IN THE 17th MARCH 2011 ORDER OF CIVIL CONTEMPT BECOMING PUNISHMENT THERBY ENTITLING PETITIONERS TO BE DISCHARGED.

The North Carolina law of duty to mitigate damages addresses Plaintiff Adams Creek's duty to take affirmative action to minimize their damages. Miller v. Miller, 273. N.C. 228, 160 S.E.2d 65 (1968) The North Carolina law of duty to mitigate damages required Adams Creek take action to mitigate their damages so as to prevent further damages or an increase in damages, if any. Adams Creek, by law, cannot sit on its hands and take no affirmative action. Adams Creek's inaction, four years and counting, is an omission that has occurred since the Petitioners original incarceration, coupled with the length of Petitioners incarceration, that entitles Petitioners to be discharged pursuant to N.C.G.S. § 17-33(2).

The 17th March 2011 Order of Civil Contempt stated the plaintiff Adams Creek could at anytime remove the Petitioners' homes, structures and equipment from the subject property as of 17th March 2011. (Attachment 1 para. 3). However Adams Creek Association has failed to act or seek to mitigate any damages they may have had. In fact Adams Creek has failed to take any action in regards to the subject property the past four years and counting.

This fact, Adams Creek's legal authority to remove the structures from the subject property, distinguishes this matter from other civil contempt cases that seek to coerce the contemnor to act. Usually the contemnor and only the contemnor has the power to determine whether he/she remains in jail. In this matter Adams Creek has the power to keep Petitioners in jail and is using that power to keep Petitioners in jail by Adams Creek's failure to act and Adams Creek's insistence that the Court keep the Petitioners in jail.

Petitioners maintain Adams Creek has no damages due to its failure to act or mitigate its damages. Petitioners would argue in essence that by refusing to act and insisting that the Court keep the Petitioners jailed, Adams Creek is using the Court system to punish the Petitioners. N.C.G.S. § 5A-21(a) and (b) allow judges to jail someone as a coercive measurement not as punishment as in the present case. The purpose of civil contempt is not to punish. Jolly v. Wright, 300 N.C. 83, 265 S.E.2d 135, 142 (1980).

CONCLUSION

Although the Court acted within its power and pursuant to N.C.G.S. 5A-21(a) & (b) when it initially jailed the Petitioners, Petitioners length of incarceration and the unique facts of this matter, Adams Creek's failure to mitigate its damages as delineated above, have vitiated the coercive purpose

of the 17th March 2011 Order of Civil Contempt. Thereby causing the jailing of Petitioners to be illegal, unlawful and in violation of the N.C. Const. art. 1, § 21; N.C.G.S. § 17–33(2); N.C.G.S. § 5A-21 (a) & (b) and the U.S. Const. art. 1 § 9.

That based on the petitioners' knowledge and belief the legality of petitioners' imprisonment or restraint has not been adjudged by a prior writ of habeas corpus.

Wherefore, Petitioners Melvin Davis and Licurtis Reels pray: 1) that this Honorable Court issue a Writ of Habeas Corpus pursuant to the North Carolina Constitution art. 1, § 21; N.C.G.S. § 17–1 et seq.; and the U. S. Const. art. 1, § 9, instanter, 2) that this Honorable Court order a hearing on this matter, 3) that this Honorable Court order the immediate discharge of the Petitioners pursuant to N.C. Gen. Stat. § 17-33(b) and 4) that the Court grant any further relief that the Court deems just and appropriate.

Respectfully submitted,

Melvin Davis

Licurtis Reels
Pro Se
304 Craven Street
Beaufort, NC 28516

Sheriff/Deputy Sheriff

VERIFICATION

I, Melvin Davis, being duly sworn, depose and say:

Melvin Davis and Licurtis Reels are Petitioners in this action. The contents of the Petition for Writ of Habeas Corpus are true to my knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

I also certify that the documents attached to this Petition for Writ of Habeas Corpus are true and correct copies of the documents from the file in Carteret County Superior Court, including documents that were served or submitted for consideration.

Melvin Davis

Sworn to and subscribed before me
this 1 day of June, 2015.

Notary Public

My Commission Expires: ~~12-22-2016~~ JB
4-11-2019

JEFFREY BARRETT
NOTARY PUBLIC
Onslow County
North Carolina
My Commission Expires April 11, 2019

ATTACHMENTS

Attached to this petition for Writ of Habeas Corpus for consideration by the Court are copies of the following documents from the trial court record:

Attachment 1	17th March 2011 Order of Civil Contempt
Attachment 2	14th September 2004 Order
Attachment 3	29th May 2012 Motion for Release From Custody
Attachment 4	12th June 2012 Order Denying Motion for Release From Custody

CERTIFICATE OF SERVICE ON ATTORNEY

This is to certify that I have this day served Mr. L. Lamar Armstrong, Jr., with a copy of this Petition for Writ of Habeas Corpus by first class mail address P. O. Box 27 Smithfield, NC 27577 in the manner prescribed by Rule 5 of the North Carolina Rules of Civil Procedure.

This 1 day June, 2015.

Melvin Davis

RECEIVED
JUN 04 2015
BY:

NORTH CAROLINA

CARTERET COUNTY

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

FILED
2011 MAR 31 PM 1:46
CARTERET CO., C.S.C.
BY

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. Height 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. Licurtis 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. Licurtis 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 Licurtis Reels' House on the property (#1).

15. Reels has continued to receive electrical service from CCEC at the Lucurtis 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, Licurtis Reels is in civil contempt of the 2004 Order pursuant to G.S. §5A-21(a).

5. Licurtis 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. CCEC 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. Melvin 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
FILE NO. 02-CVS-1270

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

vs.

MELVIN DAVIS and LICURTIS REELS,
Defendants

ORDER

FILED
2004 SEP 16 PM 2:11
CARTERET CO. C.S.C.

JMT

THIS CAUSE coming on and being heard before the undersigned Benjamin G. Alford, Superior Court Judge presiding.

After notice of summary judgment being given to the Defendants this matter was calendared and heard on the August 23, 2004 term of Superior Court in Carteret County. C. R. Wheatly, III appeared on behalf of the Plaintiff and N. Jerome Willingham appeared on behalf of the Defendants.

After reviewing the pleadings and submissions from the Plaintiff as to its record title and considering the deposition of Melvin Davis which was presented on behalf of the Defendants and review of all documents submitted, the Court makes the following finding of fact:

1. The Plaintiff's title in this matter originates as a result of a Chapter 43 (torrens proceeding) which was filed with the Clerk of Superior Court of Carteret County bearing file number 73-SP-1. The Petitioner in said action was Shedrick Reels, a/k/a Shed Reels, and the Respondents consisted of various individuals one of whom being Gertrude Reels, mother of the Defendants.

2. A decree of registration was entered on or about 16 March 1979 and approved by the resident superior court judge on 19 March 1979 with the decree of registration being recorded in Book 4A, Page 241, Carteret County Registry.

3. The decree of registration provides that all parties "have been personally served with summons and copy of petition; that publication of the notice as required has been duly made and appears from the affidavit of the printer filed herein and duly adjudicated by the court;".

4. The property in the petition and the description as contained in the publication encompasses the property as set forth in the decree of registration.

5. Pursuant to said decree of registration, Registered Certificate 79-1 was issued to Shedrick Reels describing the property which was set forth in the decree of registration and the same property as described in the complaint of the Plaintiff in this matter.

6. The said certificate was released under the provisions of Chapter 43 for the purposes of conveyance only; said release being recorded in Book 4A, Page 489, Carteret County Registry.

7. Shedrick Reels and wife, Beatrice Reels, conveyed to Monroe Johnson and Charles B. Bissette, Jr., d/b/a Adams Creek Development, by deed dated 27 November 1985, recorded in Book 529, Page 399, Carteret County Registry.

8. The said Monroe Johnson and Charles B. Bissette, Jr., d/b/a Adams Creek Development, by deed dated 8 September 1986 conveyed said property to Adams Creek Associates; said deed being recorded in Book 546, Page 330, Carteret County Registry.

9. The Court further finds the Shedrick Reels brought an action against Melvin Davis and Gertrude Reels in the Superior Court of Carteret County, File No. 82-CVS-627, contending that Melvin Davis and Gertrude Reels were trespassing on the property of the Plaintiff, Shedrick Reels.

10. Order was entered on or about 4 November 1983 finding that Shedrick Reels was the owner of said property and that the defendants, their agents, servants or employees were not to enter upon or commit acts of trespass upon the lands described in the complaint.

11. That on or about September 20, 1985, Superior Court of Carteret County by order signed by The Honorable David E. Reid found that Melvin Davis should be held in contempt to violating the court order of November 4, 1983.

12. The Defendant, Melvin Davis, was given the opportunity to purge himself of the contempt by signing a statement drawn by Shedrick Reels' attorney.

13. Melvin Davis executed a statement wherein he acknowledged that the property belonged to Shedrick Reels and that he would not go upon the land for any purpose or cause anyone else to do so until he obtained an order or judgment of a court of competent jurisdiction allowing him to do so.

14. The Court further finds that Donald B. Pollock, Attorney at Law, filed a motion to set aside a Decree of Registration contending that one of the defendants in the original Chapter 43 proceeding (Torrens Proceeding) did not have proper service on Classy Reels Curley. The said motion is dated 28 October 1983 and nothing else appeared to show that she had taken any action involving said motion.

15. Melvin Davis has gone upon the property as described in the complaint in this cause contending that he had gotten a power of attorney from his mother in Classy's name to do what he wanted to do.

16. The Defendants have offered no affidavits from Licurtis Reels or any third parties nor introduced any further documentation other than the deposition of Melvin Davis.

17. The deed described in the complaint to Licurtis Reels which is recorded in Book 713, Page 881, is within the property as described in the decree of registration and the Certificate of Title of Shedrick Reels and by means of conveyance is the property of the Plaintiff in this cause. The deed in Book 713, Page 881, constitutes a cloud on the title of the Plaintiff and is a nullity and should be stricken from the records of Carteret County.

18. It appears to the Court there is no genuine issue to any material fact and that the Plaintiff is entitled to a partial summary judgment as a matter of law and is granted summary judgment against the Defendants and the Plaintiff is the owner of the lands described in the complaint and the Defendants have no right or title to said lands.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, their agents, servants, and employees will remove any structures, equipment, sheds, or trailers that they have placed upon the property as described in the complaint and that they will not enter upon or commit any act of trespass upon the lands described in said complaint and further, this action shall be tried by a jury on the issues of damages only.

This the 14th day of Sept, 2004.

Benjamin G. Alford
Judge Presiding

FILED
2012 MAY 29 AM 9:19
CARTERET COUNTY C.S.C.

STATE OF NORTH CAROLINA
CARTERET COUNTY

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

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

vs

MELVIN DAVIS and LICURTIS REELS,
Defendants

MOTION FOR RELEASE FROM CUSTODY

NOW COME the defendants, Melvin Davis and Licurtis Reels, by and through their attorney of record, pursuant to Rule 62 of the North Carolina Rules of Civil Procedure, and move the court to set reasonable conditions for their release from jail. Defendants want to appeal the trial court's decision awarding title to the waterfront property to the plaintiff. Defendants respectfully request the court to set reasonable conditions for their release that will not require the defendants to surrender their right to claim ownership of the subject property; and will protect the interest of the plaintiff to the land the trial court has awarded to it. The defendants are willing to comply with reasonable conditions that will preserve the status quo of the property while the appeal of the trial court's decision is being pursued.

Defendants respectfully request the court to set reasonable conditions for their release that will not require the defendants to surrender their right to claim ownership of the subject property; and will protect the interest of the plaintiff to the land the trial court has awarded to it.

Respectfully submitted on behalf of the defendants this 28th day of May, 2012.

Terry B. Richardson, Esq.
209 Princess Street
Wilmington, NC 28401
Telephone No.: (910) 763-7420
Fax No.: (910) 762-4176
State Bar No.: 10015
Email: TCRichardsonlaw@aol.com

NORTH CAROLINA

CARTERET COUNTY

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

Adams Creek Associates
Plaintiff

v.

Melvin Davis & Licurtis Reels
Defendants

Order Denying Motion For Release From Custody

Defendants Motion for Release from Custody (Motion) pursuant to Rule 62 of the North Carolina Rules of Civil Procedure came on for hearing and was heard before the Honorable Benjamin G. Alford, Senior Resident Superior Court Judge Presiding (the Court), on 29 May 2012. After considering the Motion, the Court File, the pending Order of Civil Contempt, argument of Counsel, and applicable North Carolina law, the Court in the exercise of its sound discretion denies the Motion.

Benjamin G. Alford

The Honorable Benjamin G. Alford
Senior Resident Superior Court Judge Presiding

This the 12th day of June 2012.

No. THREE B JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

IN THE MATTER OF	)	
	)	
MELVIN DAVIS AND LICURTIS REELS,	)	
	)	
PETITIONERS,	)	WRIT OF HABEAS CORPUS
	)	
v.	)	
	)	
ASA BUCK, SHERIFF, CATERET COUNTY	)	

TO: ASA BUCK, SHERIFF, CARTERET COUNTY:

You are ordered to bring Melvin Davis and Licurtis Reels, by whatever name he may be called, before Justice _____, on _____, together with the official records of their confinement.

This _____ day of _____, 2015.

THE HONORABLE _____
Supreme Court Justice

RETURN

RECEIVED on the ____ day of _____, 2015. Served by reading and delivering a copy to _____ on the _____ day of _____, 2015.

_____