

**IN THE COURT OF COMMON PLEAS OF MONROE COUNTY  
FORTY-THIRD JUDICIAL DISTRICT  
COMMONWEALTH OF PENNSYLVANIA**

**TOBYHANNA TOWNSHIP,**

**Plaintiff,**

**v.**

**TOBYHANNA TOWNSHIP  
VOLUNTEER FIRE COMPANY,**

**Defendant.**

**No. 4898 CV 2022**

**Motion for Contempt**

**OPINION**

This matter is before the Court on the Motion for Contempt and Sanctions filed by Plaintiff, Tobyhanna Township ("Township") against Tobyhanna Township Volunteer Fire Company ("TTVFC") for the TTVFC's alleged failure to comply with this Court's Order dated July 19, 2023.

**Factual Background**

The Township is a second-class township under the Pennsylvania Second Class Township Code. TTVFC is a Pennsylvania Nonprofit Corporation. TTVFC has a corporate purpose of maintaining a fire company "for the purpose of fighting fire and the protection of property from damage or destruction by fire." In 1985, the voters of the Township approved a non-binding referendum creating a fire tax. The funds raised through the fire tax were designated annually to the TTVFC and the other officially recognized fire company, Pocono Summit Volunteer Fire Company, for the acquisition of firefighting apparatus and equipment. The Township paid for many of the TTVFC's expenses, including maintenance on the buildings the TTVFC occupied. The Township

provided funds for TTVFC vehicles and equipment through the fire tax and other means. From 2013 until 2022, TTVFC received \$3,114,508.01 from the Township. Of the funds from the Township, \$1,231,238.16 was from the Township Fire Tax.<sup>1</sup> TTVFC was receiving eighty-three percent (83%) of the Township's fire tax prior to the enactment of the ordinance in August 2022. When a vehicle was purchased, TTVFC sought funds from the Township. After 1980, vehicles for TTVFC acquired through the use of the fire tax were titled in TTVFC's name.<sup>2</sup> The fire tax was for equipment and vehicle replacement and is only used for TTVFC vehicles. Both parties believed that the vehicles were owned by the Township residents.<sup>3</sup>

On August 15, 2022, the Township's Board of Supervisors enacted Township Ordinance Number 571 to be effective on August 20, 2022. One of the purposes of the ordinance was "to ensure basic oversight, control measures, procedures and regulations governing conditions which could impede or interfere with effective fire services in the Township." Counsel for the TTVFC sent two letters, dated August 12, 2022, and August 22, 2022, to the Township advising them that the TTVFC would no longer serve as an officially recognized fire company if the ordinance was enacted. The letters further advised the Township that the TTVFC would provide fire and emergency services to the citizens of the Township on a secondary basis at no cost to the Township. Prior to August 20, 2022, the TTVFC was one of two officially recognized fire companies in the Township.

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<sup>2</sup> Via testimony of John E. Kerrick an individual affiliated with TTVFC since the 1970's who was admitted by Mr. Tutrone as being the sole individual who can provide the best evidence regarding title to the fire vehicles [Transcript of Proceedings Trial, December 9, 2022, at pg. 64 & December 20, 2022, at pgs. 44-45]

<sup>3</sup> Via Kerrick [Transcript of Proceedings Trial, December 20, 2022, at pg. 49]

After Ordinance 571 was adopted, TTVFC removed itself from service as a recognized fire company within the Township. Shortly thereafter, the Township did not allow the TTVFC to respond to fires in the Township on a secondary basis, instructing Monroe County Control Center not to dispatch the TTVFC to any fire or emergency calls.

The ownership of the vehicles was not at issue until TTVFC removed itself from service within the Township.<sup>4</sup> On or around November 29, 2022, the Township instructed Monroe County Control Center not to dispatch TTVFC on any calls within the Township. Following this instruction, Monroe County Control Center TTVFC was not dispatched or self-dispatched to any fire or emergency in the Township.

### **Procedural Background**

On August 25, 2022, the Township filed a complaint seeking injunctive relief against TTVFC. As part of the injunctive relief requested, the Township sought an order that TTVFC transfer title to vehicles and possession of those vehicles to the Township because the residents of Tobyhanna Township contributed significantly toward the purchase of the vehicles of Tobyhanna Township Volunteer Fire Company. In response, TTVFC filed its answer and new matter on September 2, 2022. The Township further filed its reply to TTVFC's new matter on December 5, 2022.

On December 9, 2022 and December 20, 2022, hearings were conducted before this Court. Representatives for each party and their respective attorneys attended such hearings. Following such hearings each party submitted proposed

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<sup>4</sup> Transcript of Proceedings Trial, December 20, 2022, at pg. 53

findings and briefs toward their respective positions. An Opinion and Order was entered by this Court on July 19, 2023, in part in favor of the Township and against the TTVFC, finding, *inter alia*, and in pertinent part,

“All titles to [the] vehicles and *equipment* in the possession of [the Defendant] shall be transferred to [the Plaintiff] within twenty (20) days of this order and said vehicles and *equipment* shall be relinquished to [Plaintiff] within thirty (30) days of this Order.”<sup>5</sup> (emphasis added).

Shortly thereafter, Township filed the underlying Motion on August 22, 2023, seeking a finding of contempt and the imposition of sanctions against TTVFC, primarily for TTVFC's actions in removing equipment from the vehicles described in the Order of July 19, 2023. On December 18, 2023, we held an evidentiary hearing where both parties were present and represented by counsel.

#### **Testimony of Edward Tutrone**

At the time of such hearing, the Township called to testify Edward Tutrone (“Tutrone”), who acknowledged being the President of the TTVFC. Tutrone further admitted to receiving a copy of the Court's Order dated July 19<sup>th</sup> and also that Tutrone's attorney in this case corresponds with him quickly. Tutrone admitted he participated in the “stripping” of vehicles on August 5, 2023 with other individuals. He stated that days before the stripping of the vehicles occurred he directed an individual named Muzzy to cover indoor and outdoor surveillance cameras located in the fire station that were installed by the Township. He later testified the covering on the outside camera was removed shortly thereafter. He also stated he read an email sent to him by TTVFC's

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<sup>5</sup> Order – Order and Opinion, ¶12-b, *Tobyhanna Township v. Tobyhanna Township Volunteer Fire Company, C.D. Higgins, J, No. 4898-CV-2022*, (Docket entry 50, July 21 2023, Monroe Cty. C.P.)

attorney which included as an attachment a letter from the Township's attorney. Such letter dated August 5, 2023, which was entered in to the record as Plaintiff's Exhibit 4, in relevant part provided as follows:

You have advanced the position that TTVFC maintains that there are certain items in or around the five vehicles that are owned by TTVFC and were purchased by them independent of any financial support of the Township. We caution your clients that Judge Higgins Order does not draw this distinction or was any evidence or argument advanced on this point at the Hearings in December 2022 or in post trial briefing.

We propose the fire vehicles be transferred "as is" with no alterations or removal of fixtures or equipment as claimed by TTVFC. We can enter into a written agreement where both TTVFC and the Township will agree that no changes or alterations should be made to any vehicle by either TTVFC or the Township until the conclusion of the matter.

In the interim, TTVFC can provide the Township with a list of items claimed to be independently owned by them along with an invoice from purchase. We can discuss options at that junction. It naturally will be questioned what benefit parts of fire vehicles will inure to TTVFC by possession and ownership. I feel we should be able to resolve this issue.

Tutrone was questioned by the Township's counsel as to whether he read this letter, which he positively acknowledged. He further did not dispute the Township's counsel's assertion that he received the letter shortly after it was sent to him by email from TTVFC's attorney on August 5, 2023. Tutrone denied the Township counsel's assertion that stripping the vehicles made them useless, replying "they pump" and "they run."

He claimed in his testimony that the fixtures that were removed from the vehicles were not owned by the Township, but by the Tobyhanna Township Volunteer Fire Company Relief Association ("Association"). He stated every member of TTFVC is also a member of the Association. He further contended that the meeting he and other individuals attended on August 5, 2023 to strip vehicles was a meeting of Association

members, not members of TTVFC. He acknowledged, nonetheless, that the meeting that day to strip the vehicles was organized by the Chief of TTVFC, Troy Counterman ("Counterman"), who Tutrone also admitted is not the president or otherwise an officer of the Association. He further acknowledged that the text that Counterman sent to other individual TTVFC/Association members on the morning of August 5, 2023 "about an urgent work session was sent using his call number for the TTVFC. He testified Chris Bone was the president of the Association in August of 2023, yet Tutrone could not answer the attorney's question as to why Bone did not organize the cited meeting. Tutrone also acknowledged that despite receiving notice from TTVFC's counsel that the Township's attorney requested that the status quo continue, meaning that the equipment remain on the vehicles at the time of vehicle transfer, so that the parties could try to resolve the equipment issue, Tutrone would not agree to such an arrangement. The decision to strip the vehicles was made on August 5, 2024, according to his testimony. Tutrone stated one of the primary reasons for stripping the vehicles was to avoid potential sanctions being imposed by the Auditor General's Office for turning over the equipment to the Township since Tutrone claimed such equipment was actually owned by the Association.

Under questioning by counsel for TTVFC, Tutrone testified that none of the equipment removed from the vehicles was paid for by the taxpayers of Tobyhanna Township. He also testified that when he directed Muzzy to cover the surveillance cameras, Muzzy mistakenly covered the exterior camera, which Muzzy later rectified after notice from him. Tutrone also stated that none of the stripping of vehicles occurred

at the fire station, but rather at another location, being Murray's Towing in Pocono Summit.

### **Testimony of Troy Counterman**

The Township also called Troy Counterman to testify, who acknowledged his participation in the cited stripping work involving the vehicles, but stated he was only involved in what he described as the "removal team." He also qualified that such participation was only in his capacity as a member of the Association. He admitted, however, the text message he sent on the morning of August 5, 2023 regarding "an urgent work session" was not written in his capacity as a member of the Association. He further stated the stripping work was all performed solely at Murray's Towing, denying any work occurred at the fire station. Those who participated in the stripping tagged the Association equipment to be removed with green inventory stickers according to his testimony. Counterman was questioned about when the decision was made to strip the vehicles, to which he replied either Wednesday, August 2, 2023 or Thursday, August 3, 2023. When asked why the decision was made to strip the vehicles he responded that "because the fire company did not own the equipment," and also "it was bought with relief funds and the court order specifically stated Fire Tax Revenue." He admitted there was never a meeting of the Association that authorized the stripping of the vehicles, however, he stated that the stripping decision was discussed with the president of the Association, Chris Bone. Counterman denied that having the equipment that was stripped from the vehicles and placed in storage helps TTVFC.

Counterman was additionally questioned by counsel for TTVFC. Such counsel showed Counterman green colored stickers and then questioned him as to whether these were the same type of stickers he had testified to marking the equipment purportedly owned by the Association. He replied affirmatively to such question. Counterman was also asked about Plaintiff's exhibit 2, being the police incident report prepared by Officer Nero of the Pocono Mountain Regional Police Department. TTVFC's attorney questioned him as to whether the report indicates that according to Corporal Nero that the covering of the surveillance cameras occurred on August 1, 2023, to which he replied affirmatively. Upon the next question to him Counterman confirmed that the date of August 1, 2023 was before the decision was made to remove the equipment from the vehicles.

#### **Testimony of Charles J. Dickinson, II**

The third witness called by the Township was Charles J. Dickinson, II ("Dickinson") who testified to being employed as the Battalion Chief of Operations at Picatinny Arsenal Fire and Emergency Services. He indicated his separate affiliation with a separate fire company, Tobyhanna Township Bureau of Fire. Dickinson was asked what equipment and fixtures were taken and what was missing from the vehicles that were transferred by the Court's Order, to which he replied in pertinent part that "every piece of ancillary equipment that would be used to fight fires or respond to emergencies was removed from the vehicles, with exception of some hand lights." He also testified that after speaking with the supervisors the Glick company was requested to review the vehicles to ensure they met National Fire Protection Association standards. He denied the attorney's next question that after such review, did the Glick



company find the trucks to be "fine." Afterwards Dickinson was asked whether the vehicles as received from TTVFC could fight fires, to which he replied "the day they were received, absolutely not." He then explained such response by describing "the unknown status of the pumps whether they had completed their required annual testing, no fire hoses, no nozzles, no breathing apparatus, and other ancillary hand tools." He then upon questioning admitted his familiarity with a document, which the Plaintiff marked as Plaintiff's exhibit 11, noting that such document was a listing of equipment that the Township had purchased for utilization in the delivery of fire service. He testified the Township spent the total amount of \$212,660.79 to replace the equipment on such vehicles.

Upon examination by the attorney for TTVFC, Dickenson acknowledged that the Association is a separate corporate entity from TTVFC, including having separate officers and separate finances. He also admitted that a lot of the expenditures listed on Plaintiff's Exhibit 11 did not relate to the vehicles returned to the Township, but rather related to outfitting the new fire company that he is the chief of.

#### **Testimony of Joseph Colyer**

The final witness called by the Township was Joseph Colyer ("Colyer"), who testified to jointly being a member of the board of supervisors and Bureau Fire Engine 44. Colyer stated he conducted an investigation toward estimating the cost to refit the equipment that was stripped from the vehicles at issue. He testified it took him weeks to conduct his investigation. He estimated that if all of the hardware and bracketry stripped by TTVFC and/or the Association is returned to the Township it would cost between \$20,000.00 to \$40,000.00 per vehicle. However if all of the cited hardware

and bracketry is not returned, he also estimated it would cost between \$45,000.00 to \$60,000.00 per vehicle.

The attorney for TTVFC questioned Colyer about the methodology he used in creating the cited costs from his investigation to which Colyer replied he did not get estimates but priced the equipment and factored in the labor.

At the conclusion of the hearing both parties counsel requested a period in which to hold the record open for submission of proposed findings and briefs, which request was granted by the Court. TTVFC subsequently filed its proposed findings and brief in opposition to the motion, and the Township filed its proposed findings and brief in support thereafter.

After consideration of the proposed findings and briefs of the parties, the hearing testimony, as well as the record, we are ready to decide this matter.

### **DISCUSSION**

Courts have inherent power to enforce their orders through the power of contempt. *West Pittston Borough v. LIW Investments, Inc.*, 119 A.3d 415, 421 (Pa. Cmwlth. 2015).

It is well-settled that there are certain elements necessary to support a finding of civil contempt, namely: that the contemnor had notice of the specific order or decree which he disobeyed; that the act constituting the contemnor's violation was volitional; and that the contemnor acted with wrongful intent. *Marian Shop, Inc. v. Baird*, 670 A.2d 671, 673 (Super.Ct. 1996). To be punished for contempt, a party must not only have violated a court order, but that order must have been "*definite, clear, and specific-*

leaving no doubt or uncertainty in the mind of the contemnor of the prohibited conduct.”

Id.

To establish that a party is in civil contempt, there must be proof by a preponderance of the evidence. *In re Estate of Di Sabato*, 165 A.3d 987, 992 (Super.Ct. 2017). A party must have violated a court Order to be found in civil contempt. The complaining party has the burden of proving by a preponderance of evidence that a party violated a court Order. *Id.*

Here, the ultimate issue is whether TTVFC is in contempt of this Court's Order dated July 19, 2023 by its violation of such Order in not returning the equipment with the vehicles that TTVFC relinquished to the Township on or near August 18, 2023.

Initially, it is clear that Tutrone and the members of TTVFC had notice of the Court's Order dated July 19, 2023. Tutrone, the president of TTVFC, admitted to his receipt of such Order. He testified that he read the Court's Findings of Fact, Opinion and Order. He further stated the attorney representing TTVFC corresponds with him quickly. Further, the language of the July 19, 2023 Order was also definite, clear, and specific. By the plain terms of the July 19, 2023 Order, there can be no doubt that TTVFC was aware that it could not remove the equipment from the vehicles before relinquishing them to the Township. Moreover, the cited Order did not contain any qualifications or distinctions such as requiring only "Township taxpayer funded" equipment to be returned with the vehicles at issue. The notice and specificity elements of civil contempt were satisfied by Plaintiffs by a preponderance of the evidence.

A finding of civil contempt requires a certain mental state by the contemnor and this Court considers the volitional and wrongful intent elements together. Civil

contempt may be proved by circumstantial evidence and logical inference from other facts. *Commonwealth v. Reese*, 156 A.3d 1250, 1258 (Super.Ct. 2017). Additionally, when making a determination regarding whether a party acted with wrongful intent, the court should use common sense and consider context. *Id.*

The testimony and evidence clearly shows that TTVFC's actions were volitional. It is undisputed in this case from the testimony of Tutrone and Counterman that TTVFC acted volitionally when, starting on August 5, 2023, TTVFC removed the equipment from the subject vehicles before relinquishing the vehicles to the Township.

As for the wrongful intent prong of a civil contempt finding, the testimony of Tutrone and Counterman in context with the other evidence also shows that TTVFC acted with the requisite mental state. Initially, the Court finds the testimony of Tutrone and Counterman without credibility, particularly as to their claims that the removal of the equipment from the cited vehicles was done as such equipment was owned by the Association, as was their testimony that the meeting Tutrone, Counterman and other individuals attended on August 5, 2023 to strip vehicles was a meeting of Association members. Their further explanation during the testimony for the removal of equipment to protect TTVFC from potential sanctions from the Auditor General also strikes the Court as incredulous. The evidence also revealed, in essence, TTVFC's efforts to work in a cloak of secrecy in performing the stripping of the vehicles done upon an expedited basis.

The Court from the evidence also infers TTVFC's actions in removing the equipment was also an effort to spite the Township as a consequence of the partial injunctive relief being granted in the Township's favor. This evidence included the letter dated August 5, 2023 from the Township's counsel, which was forwarded to TTVFC by

its counsel the morning before the equipment removal occurred, clearly notifying TTVFC that the Order in question did not make any distinction about the equipment at issue. Finally, the Court infers the testimonial claims by Tutrone and Counterman that the removal of the equipment was done since such equipment was owned by the Association was contrived by viewing the record in this matter. The reason therefore is the evidence reveals that at no point from the time the Township filed its complaint for injunctive relief on August 25, 2022 through nearly a year later, on August 4, 2023, the day prior to the vehicle stripping, did TTVFC or its counsel ever advance this contention or file any type of motion or pleading with such assertion.

In sum, the Township met its burden, showing by a preponderance of evidence that TTVFC was on notice of this Court's July Order and that TTVFC violated the Order with volition and with wrongful intent.

In levying contempt sanctions, a court must exercise the least possible power suitable to achieve the end proposed. Com., Dep't of Env'tl. Prot. v. Cromwell Twp., Huntingdon Cty., 32 A.3d 639, 653 (Pa. 2011). Toward levying appropriate sanctions the Court finds the testimony of Joseph Colyer to be valuable and credible. He testified to conducting an investigation toward estimating the cost to refit the equipment that was stripped from the vehicles at issue. He acknowledged his investigation lasted for weeks. He reliably estimated that if all of the hardware and bracketry stripped by TTVFC and/or the Association is returned to the Township it would cost between \$20,000.00 to \$40,000.00 per vehicle. Thus, at a minimum amount of \$20,000.00 per vehicle, TTVFC should be sanctioned to compensate the Township for the cost to refit the equipment on the nine vehicles TTVFC transferred to the Township. Further, TTVFC should be

sanctioned by delivering such equipment, hardware and bracketry stripped from such vehicles to the Township. The remaining relief requested by the Township will be denied.

Accordingly, we enter the Order that follows.

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY  
FORTY-THIRD JUDICIAL DISTRICT  
COMMONWEALTH OF PENNSYLVANIA

TOBYHANNA TOWNSHIP,

Plaintiff,

v.

TOBYHANNA TOWNSHIP  
VOLUNTEER FIRE COMPANY,

Defendant.

:  
No. 4898 CV 2022

:  
Motion for Contempt

ORDER

**AND NOW**, this 22<sup>nd</sup> day of July, 2024, after a hearing regarding the Plaintiff's Motion for Contempt and Sanctions, and Defendant's response thereto, and considering the evidence presented, proposed findings and briefs of the parties, **IT IS ORDERED**:

1. Plaintiff's motion is **GRANTED** in part, and **DENIED** in part.
2. Defendant is found to be in contempt of this Court's Order dated July 19, 2023 by Defendant's willful, knowing, and wrongful non-compliance and violation of such Order by Defendant's removal of the equipment from the vehicles relinquished to Plaintiff under such Order.
3. As sanctions for such contempt, and to enable Defendant to purge itself of such contempt, Defendant shall comply with the following:
  - A. Defendant shall within twenty (20) days of the entry of this Order fully return the equipment removed from said vehicles, including but not limited to all

hoses, breathing apparatuses, hydraulic tools, hydraulic motors, radio equipment, and all bracketry and hardware, to a location determined by Plaintiff through correspondence between counsel for the parties.

B. Defendant shall within ninety (90) days of the entry of this Order, pay the sum of \$180,000.00 to Plaintiff to compensate Plaintiff for the expense of remedying the damage to the cited vehicles and otherwise remedying the reattachment of such equipment to the cited vehicles.

4. Plaintiff's further requests for relief are denied.

**BY THE COURT:**



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**C. DANIEL HIGGINS, JR., Judge**

cc: Harry Coleman, Esq.  
Fred Buck, Esq.



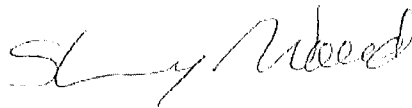
**COURT OF COMMON PLEAS OF MONROE COUNTY  
FORTY THIRD JUDICIAL DISTRICT  
COMMONWEALTH OF PENNSYLVANIA**

TOBYHANNA : No. 004898-CV-2022  
TOWNSHIP, :  
  
Plaintiff/s, :  
:  
vs. :  
:  
:  
TOBYHANNA :  
TOWNSHIP :  
VOLUNTEER FIRE :  
COMPANY, :  
Defendant/s :  
:  
:

**NOTICE OF ENTRY OF (ORDER)(JUDGMENT)(VERDICT)(OPINION AND ORDER)**

NOTICE IS GIVEN UNDER PENNSYLVANIA RULE OF CIVIL PROCEDURE 236(a)(2) THAT AN ORDER WAS ENTERED IN THIS CASE ON July 23, 2024.

GEORGE J. WARDEN, Prothonotary



By: \_\_\_\_\_  
Shirley Wood

cc: Harry T Coleman, Esq  
Fred Buck. Esq