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Environmental Site Assessment Plan/Civil Penalty: Indiana Appellate Court Addresses Whether Incarceration Pursuant to a Contempt Citation Can be Imposed Upon Auto Salvage Facility Owner

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The Court of Appeals of Indiana (“Court”) addressed in a December 29th Memorandum Decision (“Decision”) issues arising out of a lower court’s contempt citation which imposed incarceration on an individual for failure to pay a civil penalty and implement an environmental site assessment plan (“SAP”). See 2020 WL 7704414.

The civil penalty and SAP had been entered into between the Indiana Department of Environmental Management (“IDEM”) and an auto salvage business owner.

IDEM had brought an action against Wayne Handshoe (“Handshoe”) in relation to environmental issues arising out of his auto salvage business (“Business”). The property on which the Business is located in Muncie, Indiana, is stated to have been utilized as an automotive recycling center prior to his purchase in 2002. Handshoe is stated to currently use the property to sell tires and store cars that will be salvaged.

IDEM conducted various inspections of the business in May 2010, August 2012, and December 2012. The agency determined that Handshoe had allowed automotive fluids and shredder fluff to be released into the environment.

An IDEM Notice of Violation was issued to Handshoe. It contained an offer to enter into an agreed judgment that would require certain actions be undertaken to correct alleged violations.

IDEM subsequently issued an order to Handshoe requiring him to take immediate steps to:

- Capture any potential release of fluid during crushing activities,
- Remove all mercury switches from all vehicles, and
- Submit and implement an approved SAP

A petition was subsequently filed with a trial court seeking civil enforcement of the previously referenced order. Handshoe and IDEM entered into an agreed judgment which required that Handshoe:

- File a SAP
- Pay a civil penalty of \$10,250 to IDEM

Handshoe is stated to have never filed the SAP nor paid the civil penalty. The trial court granted an extension to file the SAP, which deadline was not met.

IDEM subsequently filed a Renewed Motion for Rule to Show Cause asking that the trial court find Handshoe in contempt because of his failure to:

- Submit the SAP report
- Pay the civil penalty

The trial court held a show cause hearing. Handshoe argued that because of financial issues he could not comply with the trial court's order. He cited as his only income social security, a General Motors pension, and small income from his auto parts store. No documentation is stated to have been presented to support the financial claims.

The trial court issued an Order of Contempt of Court finding Handshoe in contempt for failing to submit the SAP report and pay the civil penalty as ordered in the agreed judgment and the trial court's order. It determined Handshoe had the means to obtain sufficient funds to pay the civil penalty and ordered him to be incarcerated for seven days as a sanction for his contempt. The order was suspended on the condition that Handshoe pay the \$10,250 civil penalty by December 31, 2019.

Handshoe filed a motion to correct error, claiming that the trial court improperly determined he had sufficient assets to pay the civil penalty such that he willfully disobeyed the court's orders. He also argued that the incarceration order violated Article 1, section 22 of the Indiana Constitution. The trial court denied the motion and Handshoe appealed.

Handshoe raised two issues on appeal, which include:

1. Whether the trial court erred by finding him in contempt for failure to pay the civil penalty; and
2. Whether the trial court's order that Handshoe be incarcerated unless he paid the civil penalty was punitive or coercive

The Court on appeal finds that the trial court erred by finding Handshoe in contempt for failure to pay the civil penalty. It holds that money judgments are not enforceable by contempt. The Court further concludes that although Handshoe was in contempt for failure to submit the SAP, the trial court's sanction was punitive rather than coercive. As a result, the trial court sanction is deemed impermissible.

As a result, the Court reverses the trial court's sanction and remands with instructions for it to impose a sanction that is coercive in nature.

A copy of the Opinion can be downloaded [here](#).