

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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The Kwik Stop, Inc.,  
*Appellant-Defendant,*

v.

Lamar Advantage GP Company,  
LLC, d/b/a Lamar Advertising  
of Terre Haute  
*Appellee-Plaintiff,*

February 2, 2022

Court of Appeals Case No.  
21A-PL-1490

Appeal from the Vermillion Circuit  
Court

The Honorable Stephanie S.  
Campbell, Judge

Trial Court Cause No.  
83C01-1902-PL-3

**Robb, Judge.**

## Case Summary and Issue

- [1] The Kwik Stop, Inc. (“Kwik Stop”) appeals the trial court’s order enforcing its prior judgment requiring Kwik Stop to cooperate with Lamar Advantage GP Company, LLC (“Lamar”) and allow Lamar to remove a billboard from Kwik Stop’s property. Kwik Stop raises one issue for our review, which we restate as whether the trial court abused its discretion by enforcing its prior judgment that Kwik Stop cooperate with the removal of the billboard by Lamar.<sup>1</sup> Concluding the trial court did not abuse its discretion, we affirm.

## Facts and Procedural History

- [2] Lamar is the owner of a 30 feet by 36 feet steel electrified billboard (“Billboard”) located on Kwik Stop’s property. Until July 2018, Lamar leased the land the Billboard was located on from Kwik Stop. When the lease ended, Kwik Stop and Lamar agreed that Lamar would remove the Billboard by July 31, 2018. However, due to severe weather Lamar was unable to remove the Billboard by that date. Subsequently, Kwik Stop would not allow Lamar on the property to remove the Billboard and Kwik Stop claimed ownership of the Billboard. Extensive litigation regarding the ownership of the Billboard followed.

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<sup>1</sup> Lamar notes that the trial court has not yet held Kwik Stop in contempt, so there may not yet be a final, appealable judgment. Nevertheless, both sides suggest we should decide this appeal of a severable issue, and we have discretion to do so under Appellate Rule 66(B).

[3] On July 27, 2020, the trial court issued findings of fact and conclusions of law following a bench trial. The trial court concluded that the Billboard belonged to Lamar and ordered Lamar to remove the Billboard within sixty days. The trial court also ordered Kwik Stop to “disconnect the electrical power to the [Billboard], and to cooperate with Lamar in the removal of the [Billboard].” Appendix of Appellant, Volume II at 175.

[4] On August 9, 2020, Lamar’s counsel sent an email to Kwik Stop’s counsel requesting an email and phone number for Kwik Stop in order to facilitate the Billboard’s removal. The email went unreturned, and Lamar’s counsel emailed Kwik Stop’s counsel again on August 18, 2020, requesting contact information and reminding Kwik Stop that it needed to disconnect power to the Billboard so that it could be safely removed. Kwik Stop’s counsel responded to the August 18 email but provided no contact information or details regarding the electricity running to the Billboard. Instead, Kwik Stop’s counsel indicated that Kwik Stop would be filing a motion to correct error with the trial court. The motion to correct error filed on August 21, 2020, argued, in part, that the Billboard should have been declared the property of Kwik Stop.

[5] On August 24, 2020, the trial court issued amended findings of fact and conclusions of law. However, no changes were made regarding ownership of the Billboard, the time period to remove the Billboard, or Kwik Stop’s obligation to cooperate with Lamar. Kwik Stop filed a second motion to correct error again arguing the Billboard should be declared the property of

Kwik Stop. On October 8, 2020, the trial court denied the motion to correct error. Neither party appealed.

[6] In November 2020, Kwik Stop's counsel emailed Lamar indicating that because the time to appeal had passed, the two parties could finalize a time to remove the Billboard. A series of email exchanges between Lamar and Kwik Stop demonstrate an attempt by Lamar to take the necessary steps to remove the Billboard. However, Kwik Stop insisted that court-awarded attorney's fees and rental fees needed to be paid by Lamar prior to removal. A requirement that attorney's fees and rental fees be paid first was not a part of either the original or amended findings of fact and conclusions of law, which stated only that the Billboard was to be removed within sixty days.

[7] The parties disagreed on the amount of the payment needed and on December 10, 2020, Kwik Stop indicated that it would be seeking judgment on the payment owed. Kwik Stop also noted the sixty-day period to remove the Billboard had passed and expressed its opinion that Lamar was therefore precluded from removing the Billboard.

[8] On December 15, 2020, Lamar filed a motion for contempt, for enforcement of judgment, and for clarification. At a hearing on the motion, Kwik Stop entered into evidence an affidavit signed by its secretary indicating that electricity to the Billboard had been turned off in July 2020. However, Kwik Stop presented no evidence that it attempted to provide Lamar with such information, nor did it offer any explanation for its failure to respond to Lamar's requests for contact

information, insistence that payment be made prior to removal, or general lack of cooperation with Lamar in coordinating the Billboard's removal as ordered by the trial court. Lamar entered the emails discussed above into evidence and presented testimony regarding the circumstances between July 2020 and December 2020.

[9] At the conclusion of the hearing, the trial court ordered the following:

3. [The] Court finds that the order of possession of the [Billboard] to Lamar is not contingent upon the payment of attorney fees. Lamar is entitled to possession. . . .

4. The Court finds that Kwik Stop has failed to cooperate with Lamar to permit the removal of the [Billboard] pursuant to the Court's Amended Findings of Fact. [Kwik Stop] is to cooperate forthwith to permit the removal of the [Billboard] by Lamar[.]

\* \* \*

6. [The] Court further orders that [Kwik Stop], not [Kwik Stop's] counsel shall coordinate directly with Lamar's General Manager . . . within seven days from today's date (July 1, 2021) as to date and time to dismantle [the Billboard]. Lamar is then ordered within seven days thereafter weather permitting to dismantle [the Billboard] at Lamar's expense. . . . Parties [are] ordered to work in a peaceful and cooperative manner.

. . . [The] Court takes finding as to contempt under advisement pending compliance with this order.

App. of Appellant, Vol. II at 12-13.

[10] Kwik Stop now appeals the trial court's enforcement of its amended findings of fact and conclusions of law upon finding Kwik Stop failed to cooperate with Lamar in the removal of the Billboard from Kwik Stop's property.<sup>2</sup>

## Discussion and Decision

### I. Standard of Review

[11] We review a trial court's decision on a contempt petition for an abuse of discretion. *In re Paternity of Pickett*, 44 N.E.3d 756, 771 (Ind. Ct. App. 2015). In conducting our review, we will neither reweigh evidence nor judge the credibility of witnesses. *Id.* We will affirm the trial court's decision unless it is against the logic and effect of the facts and circumstances before it and we have a firm and definite belief that a mistake has been made. *Id.* The trial court has the inherent power to enforce compliance with its orders and decrees. *Id.* at

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<sup>2</sup> Kwik Stop also argues that the trial court erred in determining that Lamar owns the Billboard and was entitled to remove the Billboard. However, ownership and the ability to remove the Billboard were determined by the trial court's August 24, 2020, amended order. If it was Kwik Stop's desire to continue to litigate the ownership of and ability to remove the Billboard, it could have done so by timely filing a notice of appeal following the trial court's denial of Kwik Stop's motion to correct error on October 8, 2020. However, Kwik Stop did not pursue an appeal and instead continued to refuse to cooperate in the removal of the Billboard from its property. "A party's remedy for an erroneous order is appeal; disobedience of the order is contempt." *Lasater v. Lasater*, 809 N.E.2d 380, 388 (Ind. Ct. App. 2004); *see also State v. Combs*, 921 N.E.2d 846, 851 (Ind. Ct. App. 2010) (holding that the State could not use an appeal from the trial court's review on a motion for contempt as a vehicle for challenging the merits of the trial court's original order that the State Police pay a man's towing and storage fees). As Kwik Stop did not timely appeal Lamar's ownership of the Billboard and ability to remove the Billboard, we decline to address this issue.

770. As such, the trial court is given great deference in contempt actions. *Steele-Giri v. Steele*, 51 N.E.3d 119, 129 (Ind. 2016).

## II. Enforcement of Trial Court's Previous Order

[12] Kwik Stop argues that the trial court erred in determining that it had not cooperated with Lamar in the removal of the Billboard and enforcing its prior order that Kwik Stop cooperate in the Billboard's removal. However, the record is clear that Kwik Stop did not cooperate in the removal of the Billboard. Kwik Stop ignored Lamar's multiple attempts to facilitate removal in August 2020. Specifically, Kwik Stop did not provide Lamar with the necessary contact information or information regarding the Billboard's electricity. Instead, Kwik Stop responded by filing a motion with the trial court to correct error arguing that Kwik Stop was the true owner of the Billboard. Kwik Stop again filed a motion to correct error following the trial court's amended findings of fact and conclusions of law on August 24, 2020, which left unchanged its decision about Lamar's ownership of the Billboard and the requirement that Kwik Stop cooperate with Lamar in the Billboard's removal.

[13] Not until after the trial court denied Kwik Stop's second motion to correct error in October 2020 and the time to appeal the trial court's decision that the Billboard belonged to Lamar had passed, did Kwik Stop begin communicating with Lamar regarding the Billboard's removal. However, even when Kwik Stop initiated talks with Lamar, Kwik Stop would not cooperate in the Billboard's removal until Lamar paid Kwik Stop's attorney's fees. Such a

requirement was not part of the trial court's order. When talks regarding payments broke down, Kwik Stop indicated that the time for removing the Billboard had passed. But Kwik Stop had created barriers to Lamar's ability to comply with the trial court's order to remove the Billboard within the specified timeframe by failing to respond to Lamar's emails in August 2020, filing multiple motions to correct error, and unnecessarily requiring payment of fees prior to cooperating in the Billboard's removal. As a result, the trial court found Kwik Stop failed to cooperate with Lamar and ordered Kwik Stop to comply with the Billboard's removal. We cannot say that such a determination by the trial court is an abuse of discretion.

Although Kwik Stop contends the trial court's order that it cooperate with Lamar in the removal of the Billboard is too indefinite for Kwik Stop to know what it was required to do, the language is clear. Kwik Stop was to cooperate in attempts made by Lamar to remove the Billboard. Further, if Kwik Stop found its duties under the trial court's order to be ambiguous, it was incumbent upon Kwik Stop to either appeal or ask the trial court to clarify. However, Kwik Stop did neither. *See Combs*, 921 N.E.2d at 851 (reasoning, in part, that the trial court's original order compelling the State Police to pay a man's towing and storage fees would not be reversed for ambiguity because rather than seek clarification from the trial court or pursue an appeal, the State Police simply refused to comply with the order). Therefore, we find Kwik Stop's argument unavailing.



[14] Additionally, Kwik Stop also argues that Lamar could have done more to remove the sign within the court-ordered sixty-day timeframe, such as obtain the requested contact information through alternative means. Yet, such an argument ignores that although it was Lamar that was ordered to remove the Billboard, it was Kwik Stop that was ordered to cooperate with Lamar's removal attempts. Lamar made attempts prior to Kwik Stop's multiple motions to correct error as well as after those motions were denied by the trial court. Kwik Stop simply refused to comply. Willful disobedience of a lawfully entered court order of which the offender has notice is considered indirect contempt which the trial court can rectify through coercive or remedial means. *Winslow v. Fifer*, 969 N.E.2d 1087, 1093 (Ind. Ct. App. 2012), *trans. denied*. Accordingly, the trial court was well within its discretion to find that Kwik Stop had failed to cooperate with Lamar and order Kwik Stop to comply with the Billboard's removal.

## Conclusion

[15] The trial court did not abuse its discretion in finding that Kwik Stop had failed to cooperate with Lamar's removal of the Billboard as required by its amended findings of fact and conclusions of law and ordering that Kwik Stop comply in the future with Lamar's removal attempts. The trial court's order is affirmed.

[16] Affirmed.

Riley, J., and Molter, J., concur.