

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF: )  
 )  
JOHN O. GRUWELL, JR. ) CASE NO. 05-41435  
 )  
 )  
Debtor )

**DECISION ON ORDER TO SHOW CAUSE**

At Fort Wayne, Indiana, on January 7, 2008.

A hearing was scheduled to be held on October 10, 2007, on the trustee's motion to dismiss. When debtor's counsel failed to appear for that hearing, the court continued it to December 12, 2007 at 10:00 a.m. The order doing so specifically ordered debtor's counsel to appear for the continued hearing. Even though she was specifically ordered to appear, when the case was called on December 12, debtor's counsel was nowhere to be seen. As a result, the court ordered debtor's counsel, Wanda Hayes, to show cause, in writing, within ten days why she should not be held in civil contempt of court for her failure to appear.

Counsel filed a timely response to the order to show cause. In it, she states that she has been ill, and, as of December 9, indicated to the trustee in this case that she would be seeking local counsel to take over her cases pending cases for the foreseeable future. The response also states that the trustee had indicated to her that "he was withdrawing the Gruwell matter from the docket." Show Cause Order Response, ¶4. Counsel further states that due to her illness she knew she would be unable to attend any hearing on December 12 and would have arranged to have local counsel appear in her stead had she not assumed that the hearing would be removed from the court's calendar. She also admits that after her discussions with the trustee she did not review the docket in this case to

check on the status of the pending hearing. Counsel does not state that she did not receive the order or that she did not understand it. Rather, counsel made assumptions about the substance of the upcoming hearing which led her to conclude that her presence would not be required that day.

The court's civil contempt power lies in its inherent authority to enforce compliance with court orders. See e.g., Jones v. Lincoln Electric Co., 188 F.3d 709, 737 (7th Cir. 1999); D. Patrick, Inc. v. Ford Motor Co., 8 F.3d 455, 459 (7th Cir. 1993); Ferrell v. Pierce, 785 F.2d 1372, 1378 (7th Cir. 1986). To hold a party in contempt requires the court to "point to a decree . . . which set[s] forth in specific detail an unequivocal command" which the party violated. H.K. Porter Co., Inc. v. National Friction Products Corp., 568 F.2d 24, 27 (7th Cir. 1977). "Such proceedings are coercive and remedial, but not punitive, in nature and sanctions" are designed to compel compliance with an existing court order. International Union, United Mine Workers of America v. Bagwell, 512 U.S. 821, 826-28, 114 S.Ct. 2552 (1994). These are matters committed to the court's discretion. Walaschek & Associates v. Crow, 733 F.2d 51, 53 (7th Cir. 1984). There is no requirement that the failure to comply be willful in order to find a party in contempt. See, Commodity Futures Trading Comm'n v. Premex, Inc., 655 F.2d 779, 784 n.9 (7th Cir. 1981). A party may be in contempt if it was not "reasonably diligent and energetic in attempting to accomplish what was ordered." American Fletcher Mortgage Co. v. Bass, 688 F.2d 513, 517 (7th Cir. 1982).

The court's order of November 14, 2007, specifically stated that the hearing of November 7, 2007 was continued to December 12, 2007 at 10:00 a.m. and that "[d]ebtor's counsel, Wanda Hayes, shall appear at the continued hearing." Order dated Nov. 14, 2007. While the court is sympathetic to the counsel's present condition and ordeal, it does not excuse her failure to appear. The order in question provided an unequivocal command requiring her appearance at the hearing of

December 12 – a matter which counsel does not dispute and of which she was clearly aware.

As to counsel's statement that her conversations with the trustee led her to believe that the motion would be withdrawn and, that as a result, the hearing would be removed from the court's calendar, she appears to be operating on a fundamental misunderstanding as to where the authority to decide to remove hearings lies. It does not rest with the parties or the trustee, but with the court. Just because the trustee stated that he would be withdrawing the motion does not cancel the scheduled hearing or the court's command to appear. Even if it did, the trustee did not file anything prior to the hearing which might indicate that he no longer wanted the court to dismiss this case. Had counsel reviewed the docket, fulfilling her responsibility to monitor the progress of her cases and the court's docket, Fox v. American Airlines, Inc., 389 F.3d 1291, 1294 (D.C. Cir. 2004); United States, ex rel. McAllan v. City of New York, 248 F.3d 48, 53 (2nd. Cir. 2001); Williams v. Hatcher, 890 F.2d 993, 995 (7th Cir. 1989); DeRango v. United States, 864 F.2d 520, 523 (7th Cir. 1988); In re DeLaughter, 295 B.R. 317, 320 (Bankr. N.D. Ind. 2003), she would have become aware that the hearing remained on the calendar and would be held as scheduled.

Counsel received a copy of the order requiring her presence at the hearing of December 12. She did not attend. Her failure to comply with that order was, at a minimum, the result of her inattentiveness to the litigation, if not willful, as she knew well before the hearing that she would not attend, Response to Order to Show Cause ¶ 4, and failed to make arrangements for someone to appear in her stead, seek a continuance, or inform the court of her situation. Counsel is in contempt of court for her failure to obey the court's order of November 14, 2007, and the court believes that, in order to deter similar conduct in the future, some type of affirmative sanction is in appropriate. Counsel will be required to pay the clerk of this court the sum of \$150.00 within fourteen (14) days.

An order doing so will be entered.

/s/ Robert E. Grant  
Judge, United States Bankruptcy Court