

STATE OF NORTH CAROLINA
GUILFORD COUNTY

STEVEN MCRAE,

Plaintiff,

v.

KYLE RUSSELL CURTIS,

Defendant.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 8163

**ORDER TO SHOW CAUSE AND
NOTICE OF HEARING**

1. THIS MATTER is before the Court, yet again, as a result of Defendant Kyle Russell Curtis' ("Mr. Curtis") failure to comply with an order of this Court. This pattern of noncompliance has become all too familiar in this case.

2. The Court does not repeat but incorporates by reference the procedural history in this matter as stated in the Court's 19 April 2021 Order on Amended Motion to Show Cause. ("19 April 2021 Order" ¶¶ 2–11, ECF No. 57.)

3. In addition, the Court incorporates by reference its Findings of Fact and Conclusions of Law as set forth in the Court's 30 June 2021 Order to Show Cause and Notice of Hearing. ("30 June 2021 Order" ¶¶ 5–45, ECF No. 66.)

Additional Findings of Fact

4. On 30 June 2021, following two prior unsuccessful attempts to hear from Defendant on a show cause order, the Court enter an Order on Amended Motion to Show Cause, ("30 June 2021 Order," ECF No. 66), setting a hearing (the "Third Show Cause Hearing") to give Mr. Curtis a third opportunity to show cause why he should not be held in civil contempt pursuant to section 5A-21 of the North Carolina

General Statutes for failure to comply with the Court’s Partial Judgment by Default (the “Judgment”) entered on 23 January 2020, (ECF No. 17). The hearing was set for 15 July 2021 at 10:00 AM in courtroom 3D of the Guilford County courthouse.

5. Given his absence from the previously scheduled 25 June 2021 hearing (the “Second Show Cause Hearing” set by Order dated 13 May 2021), Mr. Curtis was also ordered to show cause why he should not be held in criminal contempt for the separate offense of failing to appear as earlier ordered.

6. The Wake County Sheriff’s Department served the 30 June 2021 Order. (ECF No. 68.)¹

7. At the 15 July 2021 hearing, Plaintiff was present through counsel, and the State of North Carolina was represented. All parties were prepared to proceed with respect to both the civil contempt charge and the plenary hearing required for indirect criminal contempt. Once again, Mr. Curtis failed to appear.

8. Mr. Curtis has been both absent from and silent with respect to these proceedings for months. Counsel for Plaintiff reported having had no communications with Mr. Curtis regarding the hearing. The Court received no communication from Mr. Curtis at all, much less one that would explain his absence.

Additional Conclusions of Law

9. Mr. Curtis remains required to show cause why he should not be held in civil contempt for his continuing failure to comply with the Judgment.

¹ Given the Court’s finding that probable cause existed to conclude that Mr. Curtis would not voluntarily appear, the Court also issued an Order for Arrest (“OFA”). (ECF No. 67.) However, despite service of the Order to Show Cause and Notice of Hearing, the OFA was not effectuated by the time of the 15 July 2021 hearing date.

10. Separately, Mr. Curtis' failure to comply with the Court's 13 May 2021 Order, (ECF No. 61), and to appear for the Second Show Cause hearing held 25 June 2021, as well as his failure to comply with the Court's 30 June 2021 Order and to appear for the Third Show Cause hearing on 15 July 2021, absent cause, would constitute two instances of indirect criminal contempt.

11. Mr. Curtis has been warned, and is again warned here, that the punishment for each offense of criminal contempt may be censure, imprisonment up to 30 days, fine not to exceed \$500, or any combination of the three. N.C.G.S § 5A-12. A person who is found in civil contempt may be imprisoned for a period that lasts as long as the civil contempt continues.

12. The Court will hold a plenary hearing on 13 August 2021 at 2:30 PM in Courtroom 3H of the Guilford County Courthouse, 201 South Eugene Street, Greensboro, North Carolina 27401. Mr. Curtis is ORDERED to appear and show cause why he should not be held in criminal contempt and sentenced in accordance with N.C.G.S. § 5A-12(a) for his failure to follow the Court's 13 May 2021 Order and its 30 June 2021 Order.

13. Also on 13 August 2021 at 2:30 PM in Courtroom 3H of the Guilford County Courthouse, the Court will conduct a show cause hearing with respect to the civil contempt matter pending as a result of Mr. Curtis' continuing failure to comply with the Court's Judgment. Mr. Curtis is again directed to paragraph 19 of the Court's 13 May 2021 Order for a list of the documents and information he is required to provide Plaintiff.

14. Mr. Curtis has the right to assistance of counsel, which he may exercise or waive at his election, and if he is determined by the Court to be indigent, counsel will be appointed for him. Should he retain counsel, a Notice of Appearance should be filed at least three days prior to the 13 August 2021 hearing. Should he wish the Court to consider indigency, he may contact the Court's clerk at Ashley.K.Collette@nccourts.org to obtain the form for an affidavit of indigency.

15. Given Mr. Curtis' pattern of noncompliance with this Court's orders, and upon consideration of the Plaintiff's affidavit, (ECF No. 65), the Court finds probable cause to conclude that Mr. Curtis will not appear as ordered. Therefore, pursuant to N.C.G.S. §§ 5A-16(b) and 15A-305, contemporaneously with this Order, the Court also issues an Order for Mr. Curtis' arrest.

Conclusion

16. IT IS HEREBY ORDERED that Defendant Kyle Russell Curtis SHALL APPEAR before the Court at 2:30 PM on Friday, 13 August 2021, in Courtroom 3H of the Guilford County Courthouse, 201 South Eugene Street, Greensboro, North Carolina 27401, to SHOW CAUSE why he should not be found in criminal contempt for failing to comply with the Court's 13 May 2021 and 30 June 2021 Orders; and

17. IT IS FURTHER ORDERED that Defendant Kyle Russell Curtis SHALL APPEAR before the Court at 2:30 PM on Friday, 13 August 2021, in Courtroom 3H of the Guilford County Courthouse, 201 South Eugene Street, Greensboro, North Carolina 27401, to SHOW CAUSE why he should not be found in civil contempt for failing to comply with the Judgment in this matter.

18. IT IS FURTHER ORDERED that Mr. Curtis immediately update his address on the Court's electronic-filing system to reflect his current residence and that he follow the directions the Court has provided to associate himself with the case in the Court's electronic-filing system. Should Mr. Curtis change his address in the future, he is ORDERED to update that change on his user profile in the Court's electronic-filing system within 24 hours of his change of address.

IT IS SO ORDERED, this the 19th day of July, 2021.

/s/ Julianna Theall Earp

Julianna Theall Earp
Special Superior Court Judge
for Complex Business Cases