

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

May 19, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VERNON BLACK,

Defendant - Appellant.

No. 22-8084
(D.C. No. 2:19-CV-00188-ABJ)
(D. Wyo.)

ORDER AND JUDGMENT*

Before **BACHARACH, KELLY, and MORITZ**, Circuit Judges.**

Defendant-Appellant Vernon Black, appearing pro se, appeals from the district court's Second Order of Civil Contempt. R. 91–93. The contempt order imposed specific, unavoidable requirements and a sanction, so our jurisdiction arises under 28 U.S.C. § 1291. See Consumers Gas & Oil, Inc. v. Farmland Indus., Inc., 84 F.3d 367, 370 (10th Cir. 1996). Finding no abuse of discretion, we affirm.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

** After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Background

The parties are familiar with the facts so we need not restate them in detail here. In 2020, Mr. Black entered into a consent decree with the government, which, among other things, (1) required he pay civil penalties for prior infractions of the Packers and Stockyards Act of 1921, 7 U.S.C. §§ 181–231 (“P&SA”); (2) forbade him to engage in business activity subject to the P&SA without fully complying with it, such as obtaining bonding and registering with the Secretary of the United States Department of Agriculture (“USDA”); and (3) cautioned that future violations of the P&SA may result in additional civil penalties or contempt actions. R. 24–30. The court retained jurisdiction for enforcement.

Soon afterwards, Mr. Black was found in contempt for failing to respond to the government’s lawful discovery requests. R. 48–49. Thereafter and for separate reasons, the government successfully sought an order to show cause as to why Mr. Black should not be held in contempt for violating the consent decree. R. 85–88. After conducting an evidentiary hearing, the court found Mr. Black in contempt for: (1) engaging as a dealer under the P&SA and filing a false 2020 Annual Report, in violation of 7 U.S.C. § 222¹; (2) failing to file a 2021 Annual Report, in violation of 9 C.F.R. § 201.97; and (3) refusing to provide an agent of the USDA with records of his business upon request, in violation of 7 U.S.C. § 221. R. 91–93. Given these acts violated the P&SA, the district court found they violated the consent decree. The

¹ This section incorporates 15 U.S.C. § 50 which prohibits willful false entries or statements in required reports.

district court ordered a full review of Mr. Black’s business records upon request of a USDA Agent, and suspended Mr. Black from operating under the P&SA for 16 scheduled livestock sales. R. 92–93. The court provided that Mr. Black could purge himself of contempt by filing accurate 2020 and 2021 Annual Reports. R. 92. This appeal followed.²

Discussion

Given Mr. Black proceeds pro se, we liberally construe his pleadings, but we will not act as his advocate. Yang v. Archuleta, 525 F.3d 925, 927 n.1 (10th Cir. 2008). “We review a district court’s determination of civil contempt for abuse of discretion.” United States v. Ford, 514 F.3d 1047, 1051 (10th Cir. 2008) (quoting FTC v. Kuykendall, 371 F.3d 745, 756 (10th Cir. 2004)). A district court abuses its discretion where its determination “is based upon an error of law or a clearly erroneous finding of fact.” John Zink Co. v. Zink, 241 F.3d 1256, 1259 (10th Cir. 2001) (quoting Reliance Ins. v. Mast Constr. Co., 84 F.3d 372, 375 (10th Cir. 1996)).

In contempt proceedings, the government bears the “burden of proving, by clear and convincing evidence, that a valid court order existed, that the defendant had knowledge of the order, and that the defendant disobeyed the order.” Ford, 514 F.3d at 1051 (quoting Reliance Ins. v. Mast Constr. Co., 159 F.3d 1311, 1315 (10th Cir. 1998)). If it meets this burden, then Mr. Black bears the burden to demonstrate

² On December 12, 2022, Mr. Black lodged a “request for removal of all mentioned parties” from the case with the district court, R. 94, which the district court construed as an appeal of its decision. R. 101.

compliance or inability to comply with the order. Id.

Mr. Black does not challenge that there was a valid court order in the form of the 2020 consent decree or that he had knowledge of it. Instead, he argues (1) he is not a dealer under the P&SA and that the USDA agent, John Uecker³, gave false testimony on that point; (2) his “incomplete” 2020 Annual Report cannot be false as he did not sign it; and (3) the government, when it provided a draft of the contempt order, added “items” that the district court did not make explicit in its oral findings at the end of the evidentiary hearing. Aplt. Br. 1–2; Aplt. Reply Br. 1–5.

Mr. Black’s arguments are without merit. The evidence supports the district court’s finding that Mr. Black was a dealer⁴ within the scope of the P&SA in 2020 as he purchased 175 head of cattle and then sold 79 of them to a packer out of state. See III Supp. R. 7–8; II Supp. R. 36; see also Solomon Valley Feedlot, Inc. v. Butz, 557 F.2d 717, 720 (10th Cir. 1997); United States v. Rauch, 717 F.2d 448, 450 (8th Cir. 1983) (holding that where a self-described farmer buys cattle with intent to resell to a packer and not to increase his own herd, he is a dealer within the meaning of the P&SA); Abingdon Livestock Exch., Inc. v. Smith, 594 F. Supp. 2d. 688, 695 (W.D. Va. 2009) (concluding two buyers acted as dealers even though the cattle were not resold immediately but rather were fed for months at feedlots prior to being sold).

³ Mr. Uecker is a USDA employee assigned to “review the records of registered livestock dealers and livestock markets” in Wyoming and Montana. II Supp. R. 30.

⁴ A dealer is defined as “any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser.” 7 U.S.C. § 201(d).

Moreover, there is no basis for Mr. Black's contention that Mr. Uecker's testimony was false. In fact, Mr. Black conceded Mr. Uecker's testimony concerning his dealer activities in 2020 were true. II Supp. R. 60. Thus, the district court properly held Mr. Black in contempt for violating the P&SA and thereby the consent decree when he filed his false 2020 Annual Report because it omitted his dealer activities for that year.⁵ See III Supp. R. 1–4.

As for the remaining violations, Mr. Black conceded he did not file his 2021 Annual Report, and that he refused to disclose his business records to Mr. Uecker upon request. See II Supp. R. 61–62. Both those actions violate the P&SA and thus necessarily violate the consent decree. Mr. Black's final argument that the government impermissibly added new violations or "items" when it drafted the contempt order is factually incorrect. Aplt. Br. at 1. The order accurately reflected the district court's orally announced findings at the end of the evidentiary hearing. See II Supp. R. 70–74.

AFFIRMED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge

⁵ Mr. Black seems to argue that since his 2020 Annual Report lacked his signature it cannot be deemed falsified. Aplt. Reply Br. at 1. He cites to no authority for this point and in fact conceded the authenticity of the report and stated it was accurate. See II Supp. R. 61. We need not address this point further.