

Commonwealth of Kentucky
Court of Appeals

NO. 2004-CA-000841-MR

RANDY SKAGGS; THE TRIXIE
FOUNDATION

APPELLANTS

v. APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE LEWIS D. NICHOLLS, JUDGE
CIVIL ACTION NO. 00-CI-00550

TRI-COUNTY ANIMAL SHELTER;
NORA GRUBB

APPELLEES

OPINION
AFFIRMING

** ** * * * * * * * * * *

BEFORE: WINE, JUDGE; BUCKINGHAM AND HENRY, SENIOR JUDGES.¹

BUCKINGHAM, SENIOR JUDGE: Randy Skaggs and The Trixie Foundation (Skaggs) appeal from an order of the Greenup Circuit Court denying their motion to hold Donald R. Grubb in contempt. Skaggs argues that Grubb was in contempt of court for failing to

¹ Senior Judges Michael L. Henry and David C. Buckingham sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute 21.580.

comply with an order of the court to produce certain records of the Tri-County Animal Shelter² (Shelter) pursuant to Skaggs's Open Records request. We affirm.

This case comes to us for the second time.³ The procedural history and facts were set out succinctly in the first unpublished appeal and cross-appeal and need not be repeated here.

The facts essential to this appeal are that Skaggs initiated a request for documents and information from the Shelter pursuant to the Kentucky Open Records Act.⁴ Grubb, operator of the Shelter, was not willingly forthcoming with the requested information. Ultimately, the Greenup Circuit Court ordered that the Shelter provide Skaggs with the requested information.

Skaggs, unhappy with the information supplied by Grubb, moved the court to enter a show cause order as to why Grubb should not be held in contempt. Following the show cause hearing, the court entered an order holding Grubb in contempt of court and directing him to provide Skaggs with the requested information.⁵

Unsatisfied with most of Grubb's responses, Skaggs again moved for a show cause order. Following the second contempt hearing, the court denied the motion,

² Nora Grubb, wife of Donald, is apparently the owner of the Shelter.

³ *See* 2001-CA-001097-MR (direct) and 2001-CA-001197-MR (cross).

⁴ Kentucky Revised Statutes (KRS) 61.870-.884.

⁵ Skaggs requested the net income of the shelter, the number of animals accepted into the shelter, the total fees charged, the number of animals euthanized and by what method, the number of animals adopted, the identity of persons adopting animals, copies of public contracts, and the total income received from each county.

finding that Grubb had complied with the order and provided the requested information to the best of his ability. This appeal followed.

Skaggs argues that the trial court erred when it denied his motion to hold Grubb in contempt. We find no abuse of discretion in this regard.⁶

The power of the court to punish for contempt is inherent. *Newsome v. Commonwealth*, 35 S.W.3d 836, 839 (Ky.App. 2001); *Arnett v. Meade*, 462 S.W.2d 940, 947 (Ky. 1971); *Underhill v. Murphy*, 117 Ky. 640, 78 S.W. 482, 484 (1904). Contempt has been defined in Kentucky as “the willful disobedience of - or open disrespect for - the rules or orders of a court.” *Commonwealth v. Bailey*, 970 S.W.2d 818, 820 (Ky.App. 1998) citing *Commonwealth v. Burge*, 947 S.W.2d 805, 808 (Ky. 1996).

Civil contempt, of which Skaggs argues Grubb is guilty, consists of failure of one to do something under order of the court, generally for the benefit of a party. *Id.* at 808; *Campbell v. Schroering*, 763 S.W.2d 145, 148 (Ky.App. 1988). The purpose of civil contempt is “to coerce, rather than punish.” *Shillitani v. United States*, 384 U.S. 364, 370, 86 S.Ct. 1531, 1535, 16 L.Ed.2d 622 (1966).

Here, Grubb was under an order of the court to provide Skaggs with certain information regarding the Shelter pursuant to a valid open records request. After the court's order, Grubb did provide Skaggs with information. However, Skaggs complains that Grubb's written responses were either not believable or lacking altogether. Skaggs contends that Grubb's alleged failure to comply with the order amounts to civil contempt.

⁶ A trial court's power to hold in contempt is subject to review under an abuse of discretion standard. See *Smith v. City of Loyall*, 702 S.W.2d 838 (Ky.App. 1986).

To settle the issue, the court heard extensive evidence directly from Grubb regarding the information allegedly being withheld from Skaggs. The court questioned Grubb regarding each contested response. Although it found that Grubb was a “terrible record keeper and (was) a cantankerous witness”, it nevertheless found that he had complied with the order.⁷

The mere fact that Skaggs is unsatisfied with the responses is not evidence that Grubb is guilty of civil contempt. Skaggs offers no relevant proof otherwise. As Grubb's counsel readily admits, Grubb “is hard-headed, and can be belligerent”. However, the court was satisfied that Grubb complied with its order to the best of his ability in view of his shoddy record-keeping. Under the facts, we cannot say that the court abused its discretion in denying Skaggs's motion to hold Grubb in contempt.

The order of the Greenup Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Robert L. Caummisar
Grayson, Kentucky

BRIEF FOR APPELLEE:

James W. Lyon, Jr.
Greenup, Kentucky

⁷ The tape recording of the hearing before the trial court was inadvertently taped over and is therefore unavailable for our review.