

Exhibit

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« FEDERAL COURT IN DENVER TO RULE ON
RIGHT TO LIE AS FIRST AMENDMENT RIGHT
CITY POLICE HAVE ARREST POWERS OUTSIDE
OF CITY »

**A COURT OF APPEALS JUDGE
HAS ISSUED A TEMPORARY** [Back To Law Reader](#) | [Close This Window](#)
**RESTRAINING ORDER AGAINST A RULING BY GRANT
CIRCUIT JUDGE STEPHAN BATES.**

Defense attorney Tasha Scott of Florence, Ky. sought injunctive relief from the Court of Appeals due to a contempt ruling by Judge Bates who ,”without notice to the Petitioner or his counsel and without allowing a hearing on the matter, found the Petitioner to be in indirect criminal contempt and ordered that the Petitioner be held in the custody of the Grant County Sheriff.”

Tasha Scott stated in her brief, “. This contempt finding was made outside of the personal presence of the Court and without sufficient evidence being presented in order to make said ruling. The Court has not made any written findings in this matter nor entered a written order.”

It is reported that several items of equipment were repossessed by a creditor, and that Judge Bates considered this a sale by the defendant Michael A. Stamper.

The temporary order from the Court of Appeals ordered that Stamper be immediately released from custody. The full Court of Appeals will now consider the ex parte order.

It appears from the brief by Tasha Scott that a litigant who violates some court order out of the presence of the court is entitled to a due process hearing which includes the opportunity to introduce proof and to have advance notice of the issues in the hearing.

Tasha Scott’s brief was issued within hours of Judge Bates order.

The Tasha Scott Brief to the Ct. of Appeals- May 20, 2011:

COMMONWEALTH OF KENTUCKY

COURT OF APPEALS

CASE NO. _____

MICHAEL A. STAMPER

PETITIONER

v.

STEPHEN L. BATES, CIRCUIT COURT JUDGE

GRANT CIRCUIT COURT

and

MIA R. STAMPER, REAL PARTY IN INTEREST

RESPONDENTS

PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS

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Comes now Michael A. Stamper, by and through counsel, and states that Respondent Judge erroneously, without notice to the Petitioner or his counsel and without allowing a hearing on the matter, found the Petitioner to be in indirect criminal contempt and ordered that the Petitioner be held in the custody of the Grant County Sheriff, who has lodged him in the Grant County Detention Center. Petitioner petitions the Court of Appeals for a Writ in the nature of prohibition voiding the contempt Order issued by the Hon. Stephen L. Bates, Circuit Court Judge, Grant Circuit Court, and to release the Petitioner from the confines of the Grant County Detention Center and to set bail in accordance with the statutes of this Commonwealth until such time as a hearing can be held on this matter. Without the intervention of the this Court, the Petitioner will be irreparably harmed by the actions of the Circuit Court. This Petition is brought under Civil Rule 81, as well as in accordance with the Kentucky Revised Statutes. **INTRODUCTION**

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Petitioner states the following grounds in support of his Petition:

1. The case in which this issue arises is styled Mia R. Stamper v. Michael A. Stamper, Grant Circuit Court Case No. 07-CI-00050.
2. The trial judge is Hon. Stephen L. Bates, c/o Grant County Courthouse, 224 S. Main Street, Williamstown, KY 41097, phone: 859-824-7516, fax: 859-824-6494, e-mail: unknown.
3. Mia Stamper is represented by Joanne Grogan, 9824 Prechtel Road, Cincinnati, OH 45252, phone: 513-385-7025, fax: 513-385-7025, e-mail: jgrog@fuse.net.
4. Michael Stamper is represented by Tasha K. Scott, 6900 Houston Road, Bldg. 700, Suite 34, Florence, KY 41042, phone: 859-491-1011, fax: 859-491-1899, e-mail: tasha@tashascott.com, and Amy H. Anderson, 27 East Fourth Street, Covington, Kentucky 41011, phone: 859-957-0154, fax: 859-491-1343, e-mail: anderson-amy@hotmail.com.

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FAIR AND ACCURATE SUMMARY OF EVIDENCE

NECESSARY FOR THIS PETITION

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1. Petitioner is the spouse of Mia Stamper. Their dissolution of marriage proceeding was

filed on January 29, 2007 and, after numerous delays, was scheduled for trial on May 18, 2011, with Judge Stephen L. Bates presiding.

2. On the second day of trial, the Petitioner presented a witness in his case-in-chief who was a disinterested third party bank vice-president who testified to a repossession of certain equipment held by the Petitioner post-separation. The testimony revealed that the equipment was ultimately sold by the Bank to Petitioner's father.

3. At the beginning of the third day of trial, without notice to the Petitioner or to his counsel, Judge Bates ordered that the Petitioner was in contempt for allegedly disposing, destroying or otherwise selling marital assets by the sale of property to a third party, in violation of a previous order prohibiting that action. This contempt finding was made outside of the personal presence of the Court and without sufficient evidence being presented in order to make said ruling. The Court has not made any written findings in this matter nor entered a written order.

4. Judge Bates ordered the Petitioner to be held in the custody of the Grant County Sheriff and he was placed in the Grant County Detention Center. The Judge denied Petitioner's motion to set bail. Petitioner is being held without bond in the Grant County Detention Center. Petitioner has not been sentenced, but is merely being held without bond or release date.

5. Upon objection by counsel for the Petitioner, Judge Bates stated that after court had adjourned, he pondered the matter and decided that the witness' testimony proved to him that Petitioner had violated the said prior order prohibiting the sale, transfer or conveyance of the marital assets. He further stated, in response to counsel's objection, that "[f]rom his [bank vice-president's] testimony, and as I pondered this, regardless of what the Respondent might testify or what his father might testify, which would be the only other parties that might be involved, that would not in any way be adequate to contradict the clear testimony of this gentleman as to how this went down.." It is important to note that Petitioner's father, a non-resident of this state, has been made a "de facto party" to this case, a term which has yet to be defined. Further, Petitioner's father's counsel has not actively participated in this matter on the father's behalf. Petitioner's father is represented by Hon. Daniel Guidugli, a retired Court of Appeals Judge.

A transcription of the morning proceedings is as follows:

5-20-11 at 8:31:49 am

Judge: Before we start today, I am advising Mr. Stamper I find him in contempt of Court for violation of this Court's Order of April the 2nd of 2007. It says he will not dispose, destroy or otherwise sell any assets. Based on the testimony from Whitaker Bank yesterday, although he [Stamper] has not testified, not his father, anything they say will be self-serving. The evidence is clear from that testimony that you are in contempt of Court. You are in custody of the Sheriff at this time and you may not leave this building. I will decide on your ultimate penalty at the end of today's proceedings. If you leave the courthouse in any way, without my authority, you will be charged with escape the next time the grand jury meets which is a Class D felony. Are you aware of that sir?... Thank you. Your next witness, please.

Scott: Your Honor, on behalf of my client, on that finding of the Court, I would object on his

behalf. And on the grounds that I believe he is entitled to, under case law for contempt that occurs outside of the presence of the Court, that he would be entitled to Due Process at a minimum, notice and a right to be heard.

Judge: I think he has been heard. I've ruled as I have, I'll consider that later, if I choose to do so, thank you. Your next witness, please.

6. Petitioner was not put on notice that there would be a contempt hearing independent of the underlying proceeding, nor was he told that the bank vice-president's testimony would be considered in a contempt action. Rather, the bank vice-president testified only as a witness in the underlying matter, the dissolution of marriage, relative to the repossession of business assets. Further, Petitioner was not given an opportunity to be heard on the issue, and was not permitted to address the contempt issue by recalling the bank president as a witness to clear up any misconceptions by the Judge.

7. The Judge acted summarily in violation of Petitioner's Constitutional right of due process in that he has not been provided notice of the alleged finding of contempt and he has not had the opportunity to be heard and present evidence in a Court of law in his defense.

8. A transcript of the applicable portion of the Court's afternoon proceedings is as follows:

5-20-11 at 1:40:11

Judge: Any other issues you would like to address today, then?

Scott: Judge, I think we have a couple things we need to put on the record.

Judge: Please.

Scott: I think we had talked in Chambers, you had expressed you, um, I'm searching for the word here, I don't know if disgust is too strong...

Anderson: Belief...

Scott: Belief that there had been some subterfuge between, um, I guess Mr. Stamper and either his father or Mr. Arnold, I'm not quite certain what you were referring and I do not want to put words in your mouth and I think based upon that testimony of Mr. Arnold you have chosen to find Mr. Stamper in contempt of this Court's prior Orders not to sell assets, am I correct?

Judge: Not to sell, transfer or convey.

Scott: OK. I have objected to your finding of contempt. I understand that it is criminal contempt, because of the type of contempt, whether it is civil or criminal, I believe, is determined by the type of punishment the Court assesses. And because it is a punishment to punish, not to actually accomplish any other goal, that he would be... I guess then you look at whether it was direct contempt or indirect contempt. Direct contempt being committed in the presence of the Court, indirect contempt being without the presence of the Court. Since these actions occurred outside the presence of the Court I believe he is entitled to a hearing under Cooke v. United States. I believe he is entitled to a hearing that requires the presentation of evidence and due process and notice. And none of those items have occurred, in our opinion. On the basis of that, I object to the finding of contempt against my client.

I understand, as you had stated in Chambers, your belief that Mr. Stamper is not entitled to a jury trial. I would concede that he is not entitled to a jury trial on that issue, but that instead he would be entitled to a hearing on that issue.

Judge: Anything else you have to say?

Scott: I would ask the Court to set a bond.

Judge: The motion to set a bond is denied. The type of contempt, I will determine by an Order that I will issue in this regard. But that the finding is based on the testimony of a disinterested witness, the bank, that you called. From his testimony, and as I pondered this, regardless of what the Respondent might testify or what his father might testify, which would be the only other parties that might be involved, that would not in any way be adequate to contradict the clear testimony of this gentleman as to how this went down. And I'm gonna say this further, and it should be said that the discussions in Chamber were about dates being moved and those type things and in my accommodation for counsel for Respondent to not come out here at four o'clock and tell him he was not going home. As a courtesy, to try to tell you that.

Scott: I appreciate that.

Judge: That was the reason it came up. But the other part of this is this. This has been kicked around in my Court for about 6 months, and the representations has always been there are not trucks.

ARGUMENT IN SUPPORT OF POINTS AND AUTHORITIES

"Civil contempt" is defined as when someone fails to follow a court order to do something,

with that something usually being for the benefit of a party litigant. A judge may incarcerate someone for civil contempt in order to motivate the person to obey the court order, but the contemptuous one is entitled to be released upon compliance with the court's order. In contrast, "criminal contempt" is when a person disobeys a court order out of disrespect for the rules or orders of court. The primary purpose of criminal contempt is to punish the contemptuous conduct.

"Indirect criminal contempt" is committed outside the presence of the court and requires a hearing and the presentation of evidence to establish a violation of the court's order; it may be punished only in proceedings that satisfy due process. U.S.C.A. Const.Amend. 14.

The facts upon which Judge Bates relied was committed outside the presence of the court, as it involves actions in the repossession and sale of marital assets which occurred in 2009, after the separation of the parties.

In the recent case of *Gormley v. Judicial Conduct Commission*, Ky., 332 S.W.3d 717 (2010), the Supreme Court held that a proceeding that satisfies due process is required before a judge can hold a party in indirect criminal contempt in a case. Specifically, it states that "while a court has the power to hold a person in contempt of court for actions that occur outside the sensory perception of the judge, the court may not exercise that power without holding a hearing that provides the person with advance notice of the contempt proceeding and with a full opportunity to be heard that is conducted in full accord with a person's rights to due process of law." That case, factually similar to the within action, involved actions that occurred in the courthouse hallway, about which the Judge held an impromptu criminal contempt of court hearing. Unlike that case, and even more egregious because of it, Petitioner in this case was not even told that contempt was being considered for his actions. The *Gormley* court held that this amounted to bad faith on the part of the judge.

Respectfully submitted,

Tasha K. Scott, KBA #89114

6900 Houston Road

Bldg. 700, Suite 34

Florence, KY 41042

859-491-1011

859-491-1899 (fax)

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CERTIFICATE OF SERVICE
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I hereby certify that a true and correct copy of the foregoing Petition for Writ of Prohibition was served via regular U.S. Mail, postage prepaid, on the _____ day of May, 2011, on the following:

Kentucky Court of Appeals

Sam Givens, Clerk

360 Democratic Drive

Frankfort, KY 40601

Hon. Stephen L. Bates

Circuit Court Judge

224 S. Main Street

Williamstown, KY 41097

Via fax 859-824-6494

Joanne F. Grogan, Esq.

9854 Prechtel Road

Cincinnati, Ohio 45252

Via fax 513-385-7025

Tasha K. Scott

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