

VERMONT SUPERIOR COURT

Environmental Division
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Docket No. 116-9-16 Vtec

Vermont Agency of Natural Resources,
Plaintiff,

v.

Kyle Blakeman, d/b/a Blakeman's
Towing & Recovery, and Karina C. Moore
Executor of the Estate of Brian Blakeman,
Defendants.

Decision on Third Petition for Order to Show Cause

Presently before the Court is a petition for an order to show cause as to why Kyle Blakeman and the Estate of Brian Blakeman, (together “Respondents”) should not be found in contempt of multiple stipulated orders in the above-captioned matter. The Respondent Estate owns property located at 143 Vermont Route 110 in Tunbridge Vermont (“the Tunbridge property”). Respondent Kyle Blakeman operates an automobile towing and recovery business known as Blakeman’s Towing and Recovery on the Tunbridge property. We note that this is the Third Petition for a Post-Judgment Order to Show Cause since the initial Assurance of Discontinuance was entered as a Judgment Order of this Court on June 7, 2017. The previous two contempt petitions were resolved by stipulated agreement.

Procedural Background

Much of this procedural background is drawn from the stipulated Assurance of Discontinuance issued by this Court as a Judgment Order on June 7, 2017. The remainder has been drawn from the subsequent contempt orders.

The history of enforcement against Respondents began in October 2013, when the Vermont Agency of Natural Resources (“ANR” or “the Agency”) first received a complaint alleging use of the Tunbridge property as a salvage yard. At the time, Kyle Blakeman’s father, Brian Blakeman, was alive, was the record owner of the Tunbridge property and, the record suggests, co-operator of Blakeman’s Towing. In November 2013, the Agency conducted an inspection at the property and confirmed to its satisfaction that the Blakemans were storing junk motor vehicles and other junk on the property without the necessary permits. ANR issued a notice of violation concerning this storage and the possible releases of hazardous materials to the environment. ANR then received information that junk motor vehicles were being moved to another property owned or managed by the Blakemans in Sharon, Vermont, which also was not a licensed salvage yard. After inspecting the Sharon property, ANR issued an additional notice of violation for that property. In February 2014, ANR and the Respondents agreed to a schedule by which Respondents would remove junk motor vehicles from the Tunbridge property.

The agreed-upon schedule was not met to ANR’s satisfaction and on July 22, 2016, ANR issued an Administrative Order (“AO”) to Respondents. That AO was filed with the Court on September 27, 2016, thereby commencing this enforcement action. Shortly thereafter, Brian Blakeman passed away, and the Estate of Brian Blakeman, with Karina C. Moore as Executor, was substituted for him as a party in these proceedings. Respondents requested a hearing on the AO, and the Court immediately thereafter conducted an initial scheduling conference. The Court encouraged the parties to reach a voluntary resolution of the matter.

The parties successfully agreed to an Assurance of Discontinuance (AOD), which was entered as an Order of this Court on June 7, 2017. The AOD required Respondents to pay a penalty of \$25,000 in installments; to immediately cease accepting junk and junk motor vehicles at the Tunbridge and Sharon properties; to submit an application to the Town of Tunbridge for a Certificate of Approved Location (“COAL”) to operate a salvage yard on the Tunbridge property, and if

that application was approved, to apply for a Certificate of Registration from the Agency. If Respondents elected not to apply for a COAL or if their application was unsuccessful, they were to remove all junk and junk motor vehicles from the Tunbridge property and properly dispose of them at a certified salvage yard and provide documentation of the same to the Agency within 30 days.

Respondents were also to remove all junk and junk motor vehicles from the Sharon property and properly dispose of them by July 1, 2017. Respondents were forbidden from operating a salvage yard at the Tunbridge or Sharon properties without the proper state and local approvals.

Alleging that these conditions were not followed, ANR on December 1, 2017, filed its first post-judgment petition for an order to show cause why Respondents should not be held in contempt. That led to the First Post-Judgment Stipulation and Order, entered January 17, 2018, which required Kyle Blakeman to provide documentation to the Agency demonstrating the removal of all junk and junk vehicles from the Sharon property and to complete this removal after snow melted that spring. In November 2018, ANR filed its second petition for a post-judgment order to show cause, after observing what it alleged was junk, including junk motor vehicles, at both the Sharon and Tunbridge properties. In that second petition, ANR noted that Respondents had applied to the Town of Tunbridge for a COAL permit to operate a salvage yard, which application was denied in December 2017. That denial made the deadline to remove all junk from the Tunbridge property under the original AOD to be before the end of January 2018.

This second contempt petition led to the Second Post-Judgment Stipulation and Order, entered February 25, 2020. From that Order, it may be gleaned that Mr. Blakeman had subsequently begun storing vehicles at a third property, in Randolph, Vermont ("the Randolph property"). The Second Stipulation and Order again required Kyle Blakeman to remove all junk vehicles from the Sharon property, although seven vehicles deemed "hobby vehicles," as a result of their actual or prospective use for racing and demolition derby events, could be brought to the Tunbridge property and stored there. Mr. Blakeman was

to provide ANR by March 2, 2020, with an inventory of vehicles kept across his properties, designating each as “registered and inspected,” “junk”, “hobby,” “customer vehicle” or “U-Haul.”¹ He was to update this inventory after scrapping any vehicles identified as scrap and transferring all hobby vehicles to the Tunbridge property, by March 16, 2020. He was also to provide ANR with evidence of having competed in multiple races or demolition derby events in calendar year 2020 by February 15, 2021, to substantiate the claim of certain vehicles being hobby vehicles. The Order included a new \$25,000 sanction against Mr. Blakeman, given the non-compliance with earlier orders, which could be fully purged through timely compliance with the above conditions.

On December 7, 2020, ANR filed its third post-judgment contempt petition for an order to show cause, claiming fresh violations of the AOD and/or the Second Stipulation and Order. On March 1, 2021, the Court held a remote hearing on that petition using WebEx technology. At that hearing, ANR was represented by Attorney Randy J. Miller. Respondent Kyle Blakeman was represented by attorney Nathan Stearns. Respondent Karina Moore, as Executor of the Estate of Brian Blakeman (“Estate”), was represented by attorney Stephen Ankuda.

ANR presented three witnesses and Mr. Blakeman testified on his own behalf. At the conclusion of testimony, the parties requested an opportunity to file proposed findings of fact and conclusions of law, which ANR did on April 30, 2021. Mr. Kyle Blakeman submitted his final corrected response to ANR’s proposed findings on June 15, 2021, at which point the motion came under advisement. The Court regrets that other commitments and writing assignments have delayed our ruling in this matter until now.

Based upon the credible evidence presented at the March 1, 2021, hearing on the pending third contempt petition, the Court renders the following Findings

¹ Although not precisely clear from the record, the Court understands that Kyle Blakeman currently or once operated a U-Haul rental service and that he stored U-Haul owned trucks, trailers, and other vehicles on one or more of the properties and occasionally rented these vehicles out to U-Haul customers.

of Fact, Conclusions of Law, and Order. We have organized our Findings to mirror the directives contained in the original June 7, 2017, Assurance of Discontinuance and Order, the first post-judgment Stipulation and Order of January 17, 2018, and the second post-judgment Stipulation and Order of February 25, 2020. Where appropriate, we have also referenced the obligations that still exist against either Respondent under each of the prior Orders.

Findings of Fact

1. The Estate continues to be the owner of the Tunbridge Property upon which Kyle Blakeman continues to operate his business.²

2. Mr. Blakeman, doing business as Blakeman Towing & Recovery, continues to operate an automobile towing and recovery service from the Tunbridge Property.

*1. Compliance with the June 7, 2017, Assurance of Discontinuance (“AOD”)*³

3. The 2017 AOD contains nineteen agreement terms, some of which imposed specific obligations upon Respondents. Plaintiff’s Exhibit 1 at 5 – 8. These agreement terms are listed in the AOD as ¶¶ A through S, inclusive.

4. At hearing, the undisputed and credible evidence showed that Respondents have paid the \$25,000.00 penalty imposed by ¶ A and the reimbursement of ANR’s enforcement expenses imposed by ¶ B.

5. Pursuant to ¶ C of the AOD, the parties agreed that, upon the satisfaction of all the obligations under the AOD, all ANR claims against Respondents shall be deemed resolved and result in the dismissal of the underlying Administrative Order. Since Respondents did not satisfy all obligations under the AOD, as detailed below, the underlying Administrative Order remains in full force and effect and Respondents remain obligated to satisfy the terms of the AOD.

² Our reference to the Estate as owner of the property is meant as shorthand. We understand that Vermont law recognizes an executor as the holder of lawful title to estate property and the beneficiaries of an estate to be the equitable title holders to estate property.

³ A copy of the 2017 AOD was admitted at our hearing as ANR Exhibit 1.

6. Paragraph D of the AOD obligated the Respondents to “immediately cease accepting junk and junk motor vehicles . . . at the Tunbridge and Sharon properties.” We regard this term as an obligation that was solely imposed upon Kyle Blakeman, since he has been (since his father’s death) the only entity operating an automobile towing and recovery business from the properties.

7. While Kyle Blakeman contested ANR’s claims, the credible evidence presented at our hearing convinced the Court that, despite the obligations agreed to within ¶ D of the AOD, Respondent Blakeman has continued to accept or allow junk and junk motor vehicles to be deposited on the Tunbridge and Sharon properties.

8. Paragraph E of the AOD obligated Respondent Blakeman, no later than July 7, 2017, to “either: 1) submit an application for a COAL to the Town of Tunbridge . . . or 2) remove all junk and junk motor vehicles from the subject property and properly dispose of them at a certified salvage yard or shredder.” Id. at 6.

9. Respondent Blakeman did submit a COAL application to the Town. However, the Town denied that application in December of 2017.

10. Paragraphs F and G of the AOD are not applicable to this proceeding, since they were only made applicable if the Town had approved Respondent Blakeman’s COAL application.

11. Because the Town denied Mr. Blakeman’s COAL application, he was required pursuant to ¶¶ H and I of the AOD to “remove all junk and junk motor vehicles from the [Tunbridge] property and properly dispose of them at a certified salvage yard, permitted solid waste disposal facility, hazardous waste disposal facility or shredder” by January of 2018 and, by the middle of February 2018 “shall provide documentation of proper disposal to the Agency, including identification of the certified salvage yard and date of disposal and cease all unpermitted activity on the” Tunbridge property.

12. Mr. Blakeman failed to remove all junk and junk motor vehicles from the Tunbridge property by the end of January 2018 and failed to provide complete

and accurate documentation to the Agency of the disposal of such junk and junk motor vehicles.

13. Paragraph J of the 2017 AOD required Respondent Blakeman to “remove all junk and junk motor vehicles from the Sharon property and properly dispose of them at a certified salvage yard or shredder no later than July 1, 2017.”

14. Junk and junk motor vehicles remained on the Sharon property beyond the July 1, 2017, deadline.

15. Paragraph K of the 2017 AOD directed Respondent Blakeman to “not operate, establish, or maintain a salvage yard on the Tunbridge or Sharon propert[ies] unless and until all applicable environmental permits are issued.” Despite this agreed-upon directive, Mr. Blakeman has continued to operate and maintain a salvage yard, as more specifically described below, on the properties.

16. Paragraph L of the 2017 AOD provided that an “extension to any of the deadlines set forth in paragraphs D — J of this Assurance may be granted at the discretion of the Agency to address any difficult and unforeseen design or construction issues, inclement weather, or any other reasonable cause . . . [provided that a]ny request for an extension shall be made prior to the expiration of the applicable deadline.” *Id.* at 8.

17. There was no credible evidence presented at our March 1, 2021, hearing that a timely extension of those deadlines was requested or granted.

18. The remaining terms of the 2017 AOD, specifically ¶¶ M through S, contain governance and interpretation provisions of the parties’ agreement and are not applicable to this contempt proceeding. *Id.* at 8 – 9.

II. Compliance with the First Post-Judgment Stipulation and Order of Jan. 2018

19. When all the terms of the 2017 AOD were not satisfied, ANR on December 1, 2017, filed its first post-judgment petition for an order to show cause why Respondents should not be held in contempt of the 2017 AOD. As the Court began to schedule that petition for hearing, the parties reached an agreement, which led to the First Post-Judgment Stipulation and Order, accepted by the Court and filed on January 17, 2018.

20. The 2018 Stipulation and Order extended the deadlines for Respondent Blakeman to dispose of junk and junk motor vehicles “that were formerly located on the . . . Sharon [property]”, to provide ANR with documentation verifying such disposal, to allow ANR to conduct inspections of the Sharon property, and to reimburse ANR for its filing costs of \$297.57. *Id.* at 1–2.

21. The 2018 Stipulation and Order further provided that ANR withdrew its contempt petition, subject to the right “to refile in the event that Respondents fail to comply” with the terms and obligations of the 2018 Stipulation and Order. *Id.* at 2.

III. Compliance with the Second Post-Judgment Stipulation and Order of Feb. 2020

22. Respondent Kyle Blakeman failed to satisfy the terms and conditions of the January 17, 2018, Stipulation and Order. Therefore, on November 7, 2018, ANR refiled its petition for an order directing Respondent Blakeman to show cause as to why he should not be held in contempt of the prior Court Orders.

23. As the Court worked to schedule that contempt petition for hearing, the parties negotiated a further Stipulation and proposed Order, which were both filed with the Court on February 25, 2020. The Court reviewed, accepted, and filed the Order, based on the parties’ Stipulation, that same day.

24. The 2020 Order required Respondent Blakeman to complete the following:

- (1) provide updated and more detailed inventories of the vehicles located at the Tunbridge and Sharon properties and to allow ANR officials onto the properties to inspect and monitor the inventoried vehicles;
- (2) dispose of all “Scrap Vehicles” identified by the Inventories on the properties and verify the off-site scrapping of such vehicles with receipts and photos;
- (3) move all “Hobby Vehicles” identified in the submitted Inventories to the Tunbridge property, submit photos to ANR to verify that the Hobby Vehicles had been removed from the Sharon property, and provide an updated Inventory of the vehicles on the Tunbridge property;
- (4) provide ANR with evidence of his competition prior to February 15, 2021, in “multiple demolition derby and race events with the

[Hobby Vehicles] from the vehicle inventory for the Tunbridge Property”; and

(5) pay an additional \$25,000.00 as a “sanction”, in the event that he does not comply with the above stated obligations by the deadlines stated in the 2020 Order.

Id. at 1–3.

25. At our hearing on the pending contempt motion, Mr. Blakeman initially asserted that he had removed all junk vehicles as required by the February 25, 2020, Stipulation and Court Order. He also asserted that the vehicle inventories he provided to ANR were complete and accurate. However, both at the hearing and in the post-hearing affidavit he filed on June 15, 2021, with his Corrected Response to ANR’s Proposed Findings of Fact, Mr. Blakeman admitted that his inventories omitted some junk vehicles that remained on the properties and that some of the junk motor vehicles which he had stipulated would be removed from the properties remained on those properties after the stipulated removal dates. In fact, Mr. Blakeman has allowed some new junk vehicles and other junk to be moved onto those properties.

26. The vehicle inventory that Mr. Blakeman submitted to ANR on March 2, 2020, (ANR Exhibit 5), listed 8 vehicles under “junk—going to scrap.” However, credible testimony by ANR officials, detailed below, convinced the Court that Mr. Blakeman made material misrepresentations and omissions on the inventories delivered to ANR. In fact, in his Corrected Affidavit, Mr. Blakeman admits to multiple mistakes and omissions in the inventories supplied to ANR.

27. Mr. Blakeman also stated at trial and in his sworn statement that “[a]t various points in time, including during the COVID pandemic I have collected scrap metal and abandoned vehicles until I had enough to justify the cost of a trip to a salvage yard.” Blakeman Corrected Affidavit dated May 18, 2021, at 4, ¶ 17.

28. Mr. Blakeman provided no explanation for how he could lawfully bring scrap metal and abandoned vehicles onto his property and store them there without the proper local or state authorizations to do so.

29. On August 14, 2020, ANR Environmental Enforcement Officer (EEO) Mason inspected the property. He photographed at least one pickup truck and one dump truck filled with scrap metal, the pickup truck having spraypainted on its side with the following request or directive: “fill me.” Both were in the front of the property. Also in the front of the property, EEO Mason photographed a pile of scrap metal. Plaintiff’s Exhibit 8.

30. Mr. Blakeman testified at the hearing that the instruction “fill me” on the pickup truck filled with scrap metal was an instruction to his employees, directing them to fill the truck with scrap already on site, as part of cleaning up the Tunbridge property.

31. We do not find Mr. Blakeman’s explanation credible, since the sign didn’t contain any directive to employees, nor was it located in the area where employees worked, which was behind fencing. Rather, the “fill me” sign was painted on a truck parked near the public highway right of way, where it could be readily seen by passing members of the public.

32. On October 26, 2020, EEO Mason again visited the property and photographed a white van with the directive “Junk Cars Wanted” spray painted on it and displayed prominently along the roadway. Plaintiff’s Exhibit 9.

33. Mr. Blakeman testified at the hearing that the white van was only on his property for ten days and only spray-painted “Junk cars wanted” for two or three of those days and that he did not receive any vehicles in response to the solicitation. He testified that the solicitation was meant to suggest he would tow junk motor vehicles to a salvage yard, not an invitation for others to drop vehicles off at the property. We also find this explanation not credible and are compelled to conclude that this van, with “Junk Cars Wanted” painted on it next to the highway was a clear effort by Mr. Blakeman to solicit additional junk vehicles to be brought to his unpermitted salvage yard.

34. A further explanation was offered that any junk motor vehicles on the property were there as a result of being towed, which is Mr. Blakeman’s legitimate business. However, no explanation was offered as to how Mr. Blakeman could store the towed junk vehicles on his property without the proper

local and state permits. We cannot accept that merely because Mr. Blakeman operates a towing business that he has any authority to store junk vehicles on his property without salvage yard permits.

35. To support our conclusion of Mr. Blakeman's non-compliance, we reference the following, which does not include a complete listing of his non-compliance generally referenced above and credibly shown at trial:

- i. EEO Mason credibly testified that he observed 5 vehicles on the property during his March 17, 2020, site inspection that were not on the March 16 inventory:
 - a) Ford Explorer; VIN: 1FMEU73EX6UA76073; ANR Ex. 7-2. Mr. Blakeman stated in 2020 that this vehicle was not on the inventory because it was sold to an employee. However, at trial, he stated that this same vehicle was either towed or donated to the property and that it was only on the property for short time.
 - b) Toyota Camry; VIN: 4T1BG22K9WU380144; ANR Ex. 7-5. Mr. Blakeman conceded in 2020 that this vehicle was mistakenly not added to the inventory but was a demo car, which he would add to the inventory as such. At trial, Mr. Blakeman stated this vehicle was included at line 57 of his February 24, 2021, inventory, and that it had been scrapped. However, the vehicle at line 57 is not annotated as having been scrapped.
 - c) Ford; VIN: 5Y81A886066; ANR Ex. 7-1. Mr. Blakeman stated in his post-hearing affidavit that this car was the Ford listed at line 44 under the category "race cars" on his March 16, 2020, inventory, a vehicle whose VIN was listed as "unreadable." However, at the hearing, Mr. Blakeman claimed that this vehicle was a 1973 Lincoln Continental. Even when his attorney attempted to correct him and ask whether it was a 1973 Oldsmobile, he stuck to this description and said the label of an Oldsmobile on the inventory was a mistake. We conclude that Mr. Blakeman misrepresented the status of these vehicles, both in his March 16, 2020, inventory and his trial testimony.
 - d) Ford Wagon; VIN: 2_ABP44F4FX16_3; ANR Ex. 7-3. In his affidavit, Mr. Blakeman stated that this vehicle was inadvertently omitted from the inventory. Mr. Blakeman asserted that this vehicle was included on the February 24, 2021, inventory and was listed as having been sold to a third party. However, at trial, Mr. Blakeman still claimed that this vehicle was subsequently sold (he said it was sold on Jan. 10, 2021), but then later claimed that *it* was the Ford with an unreadable VIN at Line 44 under "race cars" in the March 16, 2020, inventory. We were left to wonder which of Mr. Blakeman's various representations were accurate.

- e) Mazda RX7; VIN: JM1FB3314C0662818; ANR Ex. 7-4. Mr. Blakeman explained that this vehicle was not listed on his inventory because it had been sold and he was waiting for the new owner to pick it up. However, when EEO Mason again visited the property on March 17, 2020, the Mazda remained. Mr. Blakeman explained that it was “our mistake to not have it inventoried.”
- ii. Mr. Blakeman’s inventories included a category listed as “antique vehicles” which was a category not previously used or authorized by ANR.
- iii. After this current petition for an order to show cause was filed, Mr. Blakeman provided ANR with two further inventories representing both vehicles then present on his Tunbridge property and vehicles that had been scrapped since the Second Stipulated Order. The most recent of those inventories was dated February 24, 2021, one week before the contempt hearing.
- iv. On February 25, 2021, EEO Mason visited the property and observed discrepancies with the February 24th inventory. Specifically, six vehicles identified on the inventory as being registered and inspected had either expired plates or expired inspections (or both). Further, there were 12 vehicles on the property that he could not clearly identify by reference to the inventory. At least 3 of those 12 vehicles, which Mr. Mason did not believe belonged to customers, also had expired plates and/or inspections.
- v. Mr. Blakeman did not provide ANR with evidence of competing in multiple races or demolition derbies in 2020. On his January 25, 2021, inventory, Mr. Blakeman annotated four vehicles as “raced and scrapped.” At the hearing, Mr. Blakeman testified that he competed in multiple races in 2020. He testified that he did not compete in any demolition derbies, as none were held in Vermont due to the COVID-19 pandemic.

36. Mr. Blakeman did not provide any evidence that he has paid the \$25,000.00 sanction imposed by the February 25, 2020, Order.

37. Per the relevant statute, a salvage yard is “any place of outdoor storage or deposit for storing, keeping, processing, buying, or selling junk,” as well as “any outdoor area used for operation of an automobile graveyard.” 24 V.S.A. 2241. An automobile graveyard is “a yard, field, or other outdoor area on a property owned or controlled by a person and used or maintained for storing or depositing four or more junk motor vehicles,” *Id.*, and a junk motor vehicle is “a discarded, dismantled, wrecked, scrapped, or ruined motor vehicle or parts thereof, or a motor vehicle, other than an on-premise utility vehicle, which is allowed to remain unregistered or uninspected for a period of 90 days from the

date of discovery.” Id. Exceptions are provided, however, for, among others, “(A) an area used by an automobile hobbyist to store [hobby vehicles];” and “(D) an area used or maintained for the parking or storage of operational commercial motor vehicles, as that term is defined in 23 V.S.A. § 4103(4), that are temporarily out of service and unregistered but are expected to be used in the future by the vehicle operator or owner.” Id.

38. The undisputed evidence presented at our March 2021 hearing was that ANR incurred expenses, including staff salaries and wages, directly related to its efforts to prosecute Respondent Blakeman’s contempt of the prior Orders from this Court in these proceedings, totaling \$2,731.16.

Conclusions of Law

This Court has the power to hold a party in contempt, and to impose appropriate sanctions, “to secure both ‘the proper transaction and dispatch of business’ [and] the respect and obedience due to the court and necessary for the administration of justice.” State v. Allen, 145 Vt. 593, 600 (1985) (quoting In re Cooper, 32 Vt. 253, 258 (1859)); see also 12 V.S.A. § 122 (empowering trial courts to hold parties that violate a court order in contempt). The orders previously issued by this Court informed Mr. Blakeman in clear and definite terms of the conduct expected of him, as is required prior to a finding of contempt. Stalb v. Stalb, 171 Vt. 630, 631 (2000). Given his actions and the deficiencies of the inventories he has supplied to ANR, we conclude that Mr. Blakeman has failed to satisfy the clear and definite terms of this Court’s prior Orders. For these reasons, we find him in contempt of those orders.

By his own admission and by the weight of the evidence produced at our hearing, Mr. Blakeman has continued to solicit, accept, and/or bring junk, including scrap metal and junk motor vehicles, to the Tunbridge property since the initial Assurance of Discontinuance was issued in 2017. On this basis, we find him in civil contempt of the AOD, specifically Conditions D and H thereof. The evidence also establishes that as of March 2, 2020, Mr. Blakeman had more than three junk motor vehicles on his Sharon property and that as of August 14,

2020, Mr. Blakeman was storing junk on his Tunbridge Property. Thus, as of each of those dates, Mr. Blakeman was operating the Sharon and Tunbridge properties, respectively, as unlicensed salvage yards under the statutes quoted above. On this basis, we find him in civil contempt of Conditions J and K of the AOD. Furthermore, by his own admission and by the weight of the evidence produced at our hearing, Mr. Blakeman has filed inventories of vehicles on his property with ANR on March 16, 2020, and February 24, 2021, that were incomplete or contained material errors. We therefore find him in contempt of the February 25, 2020, Stipulation and Order, specifically Condition 1 thereof.

When deciding what sanction is necessary to compel compliance with the AOD, we are mindful of the long period of time—nearly nine years—during which ANR has sought to enforce the state salvage yard law against Respondents. However, we are encouraged by the fact that Mr. Blakeman has, to a limited extent, complied with the terms of the Second Stipulation and Order of February 25, 2020. He properly disposed of some of the junk motor vehicles that were or should have been on his inventory at the time, moved what were designated as hobby vehicles from the Sharon property to the Tunbridge property, and provided evidence (even if not in the form desired by ANR) of having competed in multiple races in 2020.⁴ He also provided timely inventories to ANR of the vehicles on the properties, although there were some material discrepancies between those inventories and the actual materials on site as documented by ANR staff in March 2020 and February 2021.

According to the most recent inspection before our hearing on this post-judgment motion, however, a number of vehicles with expired registrations, expired license plates, and/or unreadable or missing vehicle identification numbers (VINs) remained on the Tunbridge property. The presence especially of vehicles with unreadable VINs has made enforcement and adjudication unnecessarily difficult in this case. The relevant statute allows the storage of up

⁴ We also believe there should be some lenity as to this requirement, given the unprecedented nature of the Covid-19 pandemic related lockdown in 2020, that, according to uncontradicted testimony, led to many or all demolition derbies being cancelled.

to three junk motor vehicles on a property without a salvage yard permit and contains some notable exemptions from the definition of an automobile graveyard. See 24 V.S.A. §§ 2241(6), (7), (15). However, we do not understand that the law goes so far as to allow an operator, especially one subject to multiple orders concerning non-compliance with the salvage yard statute, to bring multiple vehicles with unreadable VINs or expired registrations and plates onto a property. In particular, we note that Mr. Blakeman admitted that he continued to solicit and accept junk motor vehicles at his properties in clear violation of the 2017 AOD, and that the inventories he provided to ANR of vehicles on his property were not fully accurate.

No evidence was presented to the Court to demonstrate that Respondents did not pay the \$25,000 penalty ordered as part of the 2017 AOD. As for the \$25,000 purgeable sanction agreed to in the Second Stipulation and Order, we conclude that at least a portion of it must be paid, due to our finding of contempt and Mr. Blakeman's failure to provide fully accurate inventories to ANR, as a means to compel compliance with all our previous Orders.

Order

We order as follows:

We do not conclude that the Respondent Estate has caused the actions that are contrary to, and in contempt of, this Court's prior Orders. Therefore, we impose no fines or penalties upon the Estate at this time. However, since we understand that the Estate remains the owner of the Tunbridge property, we reserve the authority to compel the Estate, as owner and lessor, to cause Mr. Blakeman to cease the use of its property until Mr. Blakeman comes into compliance with this Court's Orders.

As to Mr. Blakeman, we direct as follows:

- A. Mr. Blakeman shall pay the sum of \$10,000.00 as a contempt sanction for failing to purge the fine stipulated in the Second Stipulation and Order of 2020. As a further sanction, we direct that Respondent Blakeman reimburse ANR for the \$2,731.16 that ANR incurred in its prosecution of Respondent Blakeman's contempt of the prior Orders from this Court in these proceedings. Thus, the total due by Respondent Blakeman under

this paragraph A shall be **\$12,731.16**. He shall present the Court, within 90 days of the entry of this Order, with evidence either of having made this payment in full or of a signed payment plan agreed to in writing by ANR for payment of this sum within one year of entry of this Order. Payment will be by check made payable to “Treasurer, State of Vermont” and delivered to the following address:

Administrative Services Coordinator
Agency of Natural Resources
Environmental Compliance Division
1 National Life Drive, Davis 3
Montpelier, VT 05620—3 803

B. In a further attempt to compel compliance, we order Mr. Blakeman to:

1. reduce his inventory of hobby and antique vehicles—including all vehicles designated on the February 24, 2021, inventory as race cars or demolition derby vehicles—to no more than a total of six (6) vehicles, within 90 days of this Order and
2. thereafter keep no more than six antique and hobby vehicles on any property he owns, leases, manages, or controls in whole or in part, on his own behalf or through a business he operates.

C. The remaining \$15,000.00 due pursuant to the 2020 Second Stipulation and Order, or a payment plan for same agreed to in writing by ANR, shall be due on August 31, 2022. However, this contempt sanction will be fully purgeable if Mr. Blakeman completes **all of** the following:

- (i) Any remaining scrap metal and other junk at the Tunbridge, Sharon, and Randolph properties must be properly disposed of at a certified salvage yard by **July 1, 2022**. Receipts for this disposal shall be provided to ANR **prior to July 15, 2022**. Mr. Blakeman will not solicit or bring any further junk onto these properties until he is licensed to do so.
- (ii) Any vehicle with an unreadable Vehicle Identification Number must be properly disposed of at a certified salvage yard **by July 1, 2022**. Receipts for this disposal shall be provided to ANR **prior to July 15, 2022**. Mr. Blakeman will henceforward not keep any vehicles with unreadable Vehicle Identification Numbers on the property.
- (iii) No later than 5:00 pm on **July 1, 2022**, Mr. Blakeman will provide ANR with an updated inventory of all motor vehicles on the Tunbridge Property, with vehicles identified as either “registered and inspected personal vehicle,” “hobby,” “junk,”⁵ “customer vehicle,” “operational commercial motor vehicle,” or “U-Haul.” All vehicles designated as

⁵ No more than three vehicles may be designated as junk, in keeping with 24 V.S.A. § 2241.

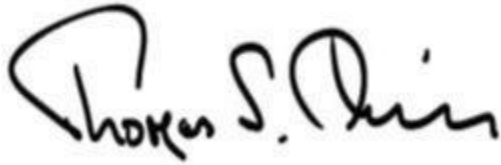
registered and inspected personal vehicles must have up-to-date registrations and inspections.

- (iv) Mr. Blakeman **and the Estate** will subsequently grant ANR personnel access to inspect the Tunbridge, Sharon and Randolph properties at any time, subject to ANR providing at least 48 hours prior notice of its officials' intent to inspect, so that ANR officials may confirm Mr. Blakeman's progress in compliance of this order and so ANR may ensure the accuracy of any future inventories provided by Mr. Blakeman and the absence of any other junk or junk vehicles having been brought on the properties. If the parties have a disagreement about the designation of any vehicle or any other discrepancy with the inventory, they will expend every effort to resolve such disagreement without the involvement of the Court.
- (v) No later than August 1, 2022, ANR will provide the Court with either its certification that Mr. Blakeman is in compliance with the terms of this Order and our previous orders, or an explanation of any remaining disagreements about compliance.
- (vi) Mr. Blakeman will henceforward keep documentary evidence (preferably an entry form or, failing that, photographic evidence) for each race or demolition derby in which he participates.

D. Provided Mr. Blakeman meets all the terms of this Order, we recommend that ANR notify the Vermont State Police of his compliance, so that they may return his business to the rotation list of companies to be called when the state police identify a situation that requires a tow truck.

It is our expectation that this Order concludes these proceedings. We must warn Mr. Blakeman of the seriousness of being found multiple times in contempt of a court order. We are concerned that our imposition of fines to date have not convinced Mr. Blakeman to come into compliance with the original AOD and subsequent Orders. Should ANR present an additional contempt petition that is supported at hearing by credible evidence, we will attempt to find new ways to convince Mr. Blakeman to come into compliance. Such new ways could include further fines, an order to cease the use of the Tunbridge property for commercial purposes, or imprisonment as a coercive sanction.

Electronically signed at Newfane, Vermont on Wednesday, May 4, 2022,
pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin". The signature is stylized with a large, looped initial "T" and a cursive "Durkin".

Thomas S. Durkin, Superior Judge
Superior Court, Environmental Division