

VERMONT SUPERIOR COURT  
Environmental Division  
32 Cherry St, 2nd Floor, Suite 303,  
Burlington, VT 05401  
802-951-1740  
www.vermontjudiciary.org

Docket No. 105-9-19 Vtec



**Town of Pawlet v. Daniel Banyai**

**ENTRY REGARDING MOTION**

Title: Further Request to Impose Contempt Sanctions

Filer: Merrill E. Bent, attorney for Town of Pawlet

Filed Date: July 21, 2022

Response filed on August 4, 2022, by Robert J. Kaplan, attorney for Daniel Banyai.

Reply filed on August 18, 2022, by Merrill E. Bent, attorney for Town of Pawlet.

In this motion, the Town of Pawlet (the “Town”) asks the Court to impose sanctions on Mr. Banyai for contempt of two prior orders: the Interim Order issued April 21, 2022, and the Judgment Order issued March 5, 2021. We **DENY** the Town’s request as it relates to the Interim Order and **DEFER** ruling on the request for sanctions for contempt of the Judgment Order until after the conclusion of the evidentiary hearing started on April 18, 2022.

We provide the following procedural history solely for the purpose of contextualizing the instant motion.<sup>1</sup> The Court issued a Decision on the Merits and Judgment Order in this matter on March 5, 2021. The Decision and Judgment Order imposed certain fines, enjoined Mr. Banyai from conducting unpermitted activities on his property, required him to complete and disclose an accurate site plan, and ordered him to remove all unpermitted buildings from his property. The Town filed multiple motions for contempt and to compel post-judgment discovery in the months following the Order, and we held an evidentiary hearing on the Town’s Renewed and Amended Motion for Civil Contempt of the Judgment Order and Motion to Set Fines on April 18, 2022. We could not conclude the April 18 hearing, however, in large part because of Mr. Banyai’s failure to produce answers to the Town’s post-judgment interrogatories and failure to submit a site plan that complied with the requirements of the Judgment Order. The Interim Order of April 21, 2022 reiterates the steps and deadlines set out on the record of the April 18 hearing that Mr. Banyai must follow to complete post-judgment discovery. To motivate Mr. Banyai’s timely compliance, we attached purgeable civil contempt fines of \$5,000 to the requirement that he file a revised survey with the Court by July 18, 2022, and to the requirement that he respond to the Town’s post-judgment interrogatories by May 18, 2022. The Interim Order also included a requirement that Mr. Banyai allow the Town to conduct a site inspection by May 18, 2022, on foot or with the use of ATVs.

---

<sup>1</sup> The brief overview provided in this paragraph is not a complete account of the procedural history in this matter.

With the instant motion, the Town argues that Mr. Banyai is in contempt of both the Interim Order, specifically Paragraphs 3, 4, and 5, and the Judgment Order. Accordingly, the Town asks the Court to require him to pay both \$5,000 contempt fines from the Interim Order, to immediately demolish all structures on his property except for the permitted garage/apartment as set out in the Judgment Order, and to imprison him until he demonstrates compliance with both. The Town also asks for other relief including attorney's fees and, similar to the request in the Motion to Set Fines, for fines of \$200.00 per day from March 6, 2021 to the date Mr. Banyai brings his property into compliance with the Judgment Order.

#### *Interim Order*

The Court declines to impose sanctions on Mr. Banyai for contempt of the Interim Order despite the issues the Town raises with Mr. Banyai's compliance with the directives in Paragraphs 3, 4, and 5.

Looking first at Paragraph 3, the Town correctly asserts that Mr. Banyai failed to comply with the July 18 deadline for filing a revised site plan. The Town filed the instant motion on July 21, 2022, and Mr. Banyai did not file his Updated Site Plan until 5:37 PM on July 21, 2022, as shown by the electronic Odyssey timestamp on the document. While the Town seeks payment of the \$5,000 purgeable fine attached to Paragraph 3 on this basis, we find it unnecessary to impose such a significant fine for this delay.

The purpose of the contempt sanction was to compel Mr. Banyai to file the revised site plan, which he has now done. The delay was minor and perhaps unintentional, considering the evidence suggesting that the surveyor misunderstood the timeline for completing the site plan. However, we reserve the ability to impose sanctions upon a showing that the Updated Site Plan does not in fact comply with the requirements of the Judgment Order, as specified in the Interim Order.

In Paragraph 4 of the Interim Order, we directed Mr. Banyai to provide complete responses to the Town's Post-Judgment Interrogatories and Requests to Produce by May 18, 2022. We attached a \$5,000 purgeable fine to this requirement because of Mr. Banyai's repeated failure to comply with response deadlines in the past. The Town argues that we should impose this fine along with other contempt sanctions because Mr. Banyai's responses were incomplete or untruthful, as the Town believes is shown by the discrepancy between his responses to questions about his finances in the Interrogatories and similar questions in his deposition.

The Discovery Certificate filed by Attorney Kaplan on behalf of Mr. Banyai confirms that Mr. Banyai served the responses to the Town on May 18, as required by Paragraph 4, and the Town does not assert otherwise. The Court does not have enough information on the record of this motion to assess the completeness of Mr. Banyai's responses to the Interrogatories and does not believe that sanctions would be appropriate at this time based upon the discrepancy the Town cites. The Town may instead question Mr. Banyai about his finances and this discrepancy when we continue the evidentiary hearing started on April 18, and we may later find that the incomplete or unresponsive nature of Mr. Banyai's testimony impacts his ability to raise an inability to pay defense, or justifies further sanctions.

Lastly, the Town also argues for the imposition of sanctions because Mr. Banyai did not allow the Town to use ATVs, as specified in Paragraph 5 of the Interim Order, during the site visit that occurred on May 10, 2022. The Court notes Mr. Banyai's refusal to allow the Town to use ATVs despite our orders to the contrary, and the understandable difficulty of conducting an inspection of the large property on foot. We take Mr. Banyai's noncompliance seriously, especially considering the

Town's health and mobility reasons for requesting the use of ATVs. We reserve the right to take his decision not to comply with this provision into account where relevant in later calculations of fines but do not find that the refusal justifies the imposition sanctions at this time. The Town was able to conduct the site visit within the May 18 deadline specified in Paragraph 5 of the Interim Order and does not allege that Mr. Banyai restricted access to any structure or area of the property. While the Town asserts it was unable to inspect the entire property by foot, it does not provide specifics, so it is not clear how much of the property it could not inspect, or whether it would have been possible to inspect those areas even with the use of ATVs. If the Town remains concerned that it does not have an adequate understanding of the property between the Updated Site Plan and the site visit it conducted on foot on May 10, Mr. Banyai appears to represent in his Response that he would not object to the use of a drone to inspect the less accessible areas of the property if the Town were to make that request.

The purpose of the Interim Order was to compel Mr. Banyai to allow the post-judgment discovery necessary for the evidentiary hearing initiated on April 18 on the Town's motions for contempt and fines. While Mr. Banyai did not comply with all aspects of the Interim Order, we find that he has done so to an extent sufficient for us to resume the April 18 hearing. This approach aligns with the Town's request in its reply in support of the instant motion that the Court resume the hearing.

#### *Judgment Order*

While we deny the Town's motion as to the Interim Order, we defer ruling on the Town's request for sanctions for contempt of the Judgment Order. The Town argues that Mr. Banyai remains in violation of the Judgment Order the Court issued on March 5, 2021, specifically citing the provision requiring Mr. Banyai to deconstruct and remove all buildings on his property that were not authorized by a valid zoning permit. The Town has submitted a number of photos from the site visit in support of its position that Mr. Banyai has not complied with this provision and continues to build new unpermitted structures. In response, Mr. Banyai asserts that the structures the Town identifies in support of its request are predominantly agricultural buildings that are not subject to zoning regulations under 24 V.S.A. § 4413(d). He also argues that the Town's zoning regulations do not apply to the shooting ranges or other structures when used for private recreational purposes.

We explained in the Interim Order that we will postpone consideration of Mr. Banyai's compliance with the terms of the Judgment Order until the conclusion of the hearing initiated on April 18, 2022, and the Town's presentation of evidence as to the Motion for Contempt of the Judgment Order and Motion to Set Post-Judgment Fines. We consequently also defer ruling on the Town's request in the instant motion for sanctions for contempt of the Judgment Order.

So that we may coordinate the scheduling of an in-person<sup>2</sup> hearing to complete our review of the Town's pending motions, we direct the parties to submit their unavailable dates **by Noon on Wednesday, September 7, 2022**, for a one-day hearing to be held sometime between September 15 and Nov. 15, 2022.

At the hearing, the Court will also allow Mr. Banyai the opportunity to make a showing that certain structures are not in violation of the NOV issued in August 2019 and the Court's subsequent order upholding it, which the VSC affirmed on appeal on January 14, 2022, in Town of Pawlet v.

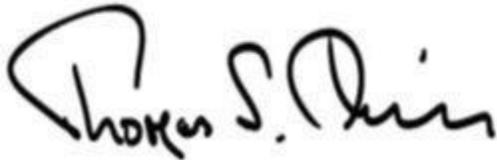
---

<sup>2</sup> Effective September 6, 2022, Administrative Order 49 is amended to remove the presumption of remote proceedings. Pursuant to V.R.C.P 43.1, the Environmental Division may order that proceedings be conducted remotely. Due to the ongoing issues in this matter, the number of individuals involved, and the expected length of the hearing, we conclude that in-person proceedings are most appropriate.

Banyai, 2022 VT 4. *See Stanion NOV*, No. 129-11-15 Vtec, slip op. at 4 (Vt. Super. Ct. Env'tl. Div. July 18, 2017) (Walsh, J.) (landowner claiming exemption from zoning regulation has burden of proving that the exemption applies) (citing Town of Sandgate v. Colehamer, 156 Vt. 77, 87 (1990)). We wish to make clear, however, that this is not an opportunity to collaterally attack the NOV or to raise arguments that the VSC already considered on appeal from the March 2021 Order. As the VSC explained, the NOV became final and binding under 24 V.S.A. § 4472 when Mr. Banyai failed to appeal it, making the violations cited within enforceable regardless of their merit. *Id.* at ¶¶ 15 – 18, 40. The VSC consequently held in response to the argument that the shooting ranges are private recreational land uses not subject to municipal zoning that Mr. Banyai is “precluded from arguing his uses detailed in the notice of violation are either not subject to the Bylaws or in conformance with the Bylaws.” *Id.* at 18. If Mr. Banyai believes his arguments are different from those already dismissed by the VSC, he will need to make that distinction clear.

The Court will set this matter for an in-person hearing once the parties have filed unavailable dates as specified above. Mr. Banyai remains under the obligation to comply with the Judgment Order and the NOV, as well as the terms of the Preliminary Injunction Order, which the Court made permanent in its Merits Decision. *See Town of Pawlet v. Daniel Banyai*, No. 105-9-19 Vtec, slip op. at 13, 21 – 22 (Vt. Super. Ct. Env'tl. Div. Mar. 5, 2021) (Durkin, J.). The Court is prepared to impose civil contempt measures, which could include imprisonment, upon a showing that Mr. Banyai remains in non-compliance of the Judgment Order.

Electronically signed at Brattleboro, Vermont on Friday, September 2, 2022, pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink that reads "Thomas S. Durkin". The signature is written in a cursive, somewhat stylized font.

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