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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A06-2264**

County of Blue Earth,  
Appellant,

vs.

Russell H. Vigness,  
Respondent,

Brunz of Southern Minnesota Construction Co., Inc.  
Respondent.

**Filed February 12, 2008  
Affirmed  
Peterson, Judge**

Blue Earth County District Court  
File No. 07-C5-03-2319

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Construction Co., Inc.)

Considered and decided by Willis, Presiding Judge; Peterson, Judge; and Wright,  
Judge.

## UNPUBLISHED OPINION

**PETERSON**, Judge

This appeal is from an order that (1) grants appellant's motion for an order finding respondent Russell H. Vigness in contempt of court; (2) denies appellant's motion for an order finding respondent Brunz of Southern Minnesota Construction Co., Inc. in contempt of court; and (3) denies appellant's motion for sanctions against either respondent. We affirm.

### FACTS

In 2001, respondent Russell H. Vigness sold the land where he lived to respondent Brunz of Southern Minnesota Construction Co., Inc. As a part of the transaction, Vigness retained a life estate on a portion of the property. Vigness had operated a salvage yard on the property, and, at the time of the sale, there were old cars, trailers, mobile homes, thousands of tires, and other items on the property.

In October 2003, appellant Blue Earth County initiated this action against Brunz and Vigness to get them to clean up the property. The county requested an injunction enjoining Brunz and Vigness from using the property in violation of various county land-use ordinances.

In March 2004, the district court held a hearing that all of the parties attended. At the hearing, the parties agreed to a proposed clean-up schedule. The clean-up schedule provided deadlines for removing various items from the property and a timeline for removing the thousands of tires. It also required Vigness to move his personal property to his life estate and to obtain licenses for the vehicles and trailers that he wanted to keep

on his life estate. The district court issued an order adopting the parties' agreement regarding the clean-up schedule.

In April 2005, the county brought a motion seeking to have Vigness and Brunz found in contempt of court for failing to abide by the clean-up schedule. At the May 2005 hearing regarding the contempt motion, the county admitted that Brunz had complied with much of the order and that the only remaining issue for Brunz was the tires. The county indicated that Vigness had not complied with the order and that he had not done much to comply with the order. The district court found both Brunz and Vigness in contempt for not complying with the clean-up schedule and ordered the parties to comply with an amended clean-up schedule. The court ordered each party to submit affidavits outlining their compliance with each requirement on the schedule on or before each deadline. The order stated that if Brunz or Vigness failed to comply with a requirement of the amended clean-up schedule, Vigness and Brunz's president would be jailed until the requirement was satisfied.

In September 2006, the county again brought a motion asking the district court to find Vigness and Brunz in contempt of court and impose a fine and incarceration for their noncompliance with the amended clean-up schedule. At the October 2006 hearing on the county's motion, John Kronlokken, a solid-waste officer for the county, testified that vehicles, mobile homes, and much debris remained on or near the Vigness life estate and that a lot of tires remained on the Brunz property. Kronlokken agreed that, other than the tires, Brunz had substantially complied with the court-ordered clean-up schedule. Kronlokken also admitted that, before August 2006, he did not know the specific

boundaries of Vigness’s life estate and that all of the remaining items—other than the tires—were generally around Vigness’s house. During the hearing, Vigness agreed that he did not comply with the order, but he asserted that he was financially unable to comply.

The district court found that Brunz substantially complied with the clean-up order and that Vigness did not comply with the order. The district court denied the motion for an order finding Brunz in contempt of the clean-up order and granted the motion for an order finding Vigness in contempt of the clean-up order.<sup>1</sup> But the court did not sanction Vigness because he was physically and financially unable to perform the ordered clean-up. This appeal by the county followed.

## D E C I S I O N

The district court has broad discretion to exercise its contempt powers, but contempt is appropriate only when a party “has acted contumaciously, in bad faith, and out of disrespect for the judicial process.” *Minn. State Bar Ass’n v. Divorce Assistance Ass’n*, 311 Minn. 276, 284, 248 N.W.2d 733, 740 (1976). We review a district court’s contempt decision for an abuse of discretion. *Mower County Human Servs. v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996). A district court’s findings in a contempt order are subject to reversal only if they are clearly erroneous. *Id.*

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<sup>1</sup> On appeal, Vigness does not challenge the finding that he is in contempt.

1. *Compliance*

A court may hold a person in contempt for “disobedience of any lawful judgment, order, or process of the court.” Minn. Stat. § 588.01, subd. 3(3) (2006). The supreme court has stated that “our contempt case law explains that the purpose of the court’s contempt order can be either remedial or punitive.” *State v. Tatum*, 556 N.W.2d 541, 544 (Minn. 1996) (emphasis omitted). Civil-contempt orders are remedial and “are designed to induce future performance of a valid court order, not to punish for past failure to perform.” *Mahady v. Mahady*, 448 N.W.2d 888, 890 (Minn. App. 1989). Criminal-contempt orders are punitive. *Tatum*, 556 N.W.2d at 544.

The county asserts that Brunz did not substantially comply with the ordered clean-up schedule. But the county stated numerous times throughout this litigation that it was satisfied with Brunz’s progress in cleaning up the property. At the March 2004 hearing, the county attorney stated that “environmental services have been very pleased with Brunz Construction and the efforts that they have been making.” At the May 2005 hearing, the county attorney again indicated that Brunz was making progress. And at the October 2006 hearing, Kronlokken agreed that Brunz had substantially complied with the clean-up order. Aside from the tires, the parties agree that Brunz has complied with the order as it pertains to the property that is not subject to Vigness’s life estate.<sup>2</sup>

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<sup>2</sup> There has been some confusion about the location of the property that is subject to Vigness’s life estate. Aerial photographs of the site show that some of the items are on land that is not subject to the life estate, but Brunz asserts that it assumed—based on conversations with Vigness—that the land was subject to the life estate.

The county, nevertheless, contends that the district court should have found Brunz in contempt because it did not clean up the property that is subject to Vigness's life estate. The county argues that "Brunz did have the authority to clean up the Vigness [life estate] in this case because it was ordered by the district court to do so." But neither the clean-up schedule nor the amended clean-up schedule ordered Brunz to clean up Vigness's life estate. Both clean-up schedules state that Brunz "shall remove and properly dispose of all derelict mobile homes and unlicensed truck trailers remaining on its lands, in which [Vigness] does not retain a life estate."

The county asserts that, at the March 2004 hearing, Brunz agreed to clean up Vigness's life estate. But the record indicates that Brunz only agreed to follow the clean-up schedule, not to clean up Vigness's life estate. The county also argues that Brunz's "entry on the Vigness life estate cannot be trespass because it is not illegal. It is authorized by the district court order." But the district court found that Brunz "has no right, to enter the life estate or to perform clean-up duties there. Because [Brunz] has no right, it certainly has no duty, and this court has created no such duty."<sup>3</sup> This statement indicates that the district court did not interpret the clean-up orders as requiring Brunz to enter Vigness's life estate and clean it up. "We defer to a district court's interpretation of its own order." *LaChapelle v. Mitten*, 607 N.W.2d 151, 162 (Minn. App. 2000), *review denied* (Minn. May 16, 2000). Because Brunz substantially cleaned up its property and

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<sup>3</sup> The district court found that Vigness, as a life tenant, had the right to exclude Brunz. This is the general rule. *See Denzer v. Prendergast*, 267 Minn. 212, 215, 126 N.W.2d 440, 442 (1964) (stating that a life tenant "is entitled to exclusive possession of the premises until [the life tenant's] death").

was not required to clean up Vigness's life estate, the district court's finding that Brunz substantially complied with the order was not clearly erroneous, and the district court did not abuse its discretion when it denied the county's motion for an order finding Brunz in contempt.

## 2. *Sanctions*

The county argues that the district court abused its discretion when it refused to sanction either party. While the district court's contempt powers are discretionary, "confinement should not be directed to compel a party to do something which [the party] is wholly unable to do." *Hopp v. Hopp*, 279 Minn. 170, 174-75, 156 N.W.2d 212, 216-17 (1968). The defendant has the burden to demonstrate the inability to comply. *Id.*

Because Brunz complied with the court's order, the district court did not abuse its discretion when it chose not to sanction Brunz. And although the district court found that Vigness did not comply with the court's clean-up order, the district court also found that Vigness was physically and financially unable to comply with the order. The district court based these findings on Vigness's physical appearance and the fact that his home was in foreclosure. The county disputes these findings, but they are supported by the record. It is undisputed that Vigness's property was in foreclosure. Also, the record contains a letter from Vigness to the court indicating that he does not have any income besides social security benefits. After receiving the letter, the district court appointed counsel to represent Vigness. The county asserts that other junkyards would buy the items on Vigness's land, but nothing in the record—other than the county's assertions—indicates that Vigness could sell the items. Also, given the number and the nature of the

items that the county is seeking to have removed from the property, the district court's finding that Vigness is physically unable to move them is not clearly erroneous. Therefore, under *Hopp*, the district court did not abuse its discretion when it chose not to sanction Vigness for failing to comply with the clean-up order. 279 Minn. at 174-75, 156 N.W.2d at 216-17.

**Affirmed.**