

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

**PRINCE GEORGES FERAL FRIENDS,)
 SPCA, INC.)
 c/o Mr. Timothy Saffell, President)
 P.O. Box 1036)
 Bowie, Maryland 20718)**

Plaintiff/Petitioner

v.

**PRINCE GEORGE'S COUNTY, MD.)
 14741 Gov. Oden Bowie Drive)
 Upper Marlboro, Maryland 20772)**

Defendant/Respondent

CAL 10-21374

Clerk of the
 Circuit Court
 2012 JAN 21 11:09:49
 PR GEO CO 100 #70

**MOTION TO HOLD DEFENDANT IN CONSTRUCTIVE CONTEMPT OF COURT
 AND REQUESTS FOR SHOW-CAUSE HEARINGS¹**

*"One of the most striking differences between a cat and a lie is that a cat has only nine lives."
 Pudd'n head Wilson, Mark Twain, 1894.*

Plaintiff Prince Georges Feral Friends, SPCA (PGFF SPCA) brings this motion to hold Defendant in contempt of this court's January 3, 2012 ruling and order.² Defendant's contempt is flagrant and provocative; the conduct at issue is Defendant's having falsified this court's January 3, 2012 declaratory ruling at the County's official public information website; the falsehood is on-going: *"Prince George's County Circuit Court Dismissed Case Filed by Prince George's County Feral Friends, SPCA against the County as Moot"*³ This case's history is

¹ This motion alternatively requests this court to issue a summons for criminal contempt and for civil contempt. Criminal and civil contempt must be charged in separate charging documents that have different requirements, so the charging documents supported by this motion are attached as two separate requests for show-cause and the related orders.

² The court issued a Declaratory Judgment on January 3, 2012. The judgment provides, in pertinent part, "A person is not an animal's or animals' "owner" within the meaning of Prince George's County Code, Animal Control 3-101 et seq. merely because that person feeds the animal(s)." The court dismissed the Open Meetings Act and other claims as moot.

³ Plaintiff made this discovery on January 13, 2012 although the contempt could have begun earlier. A copy of the County Webpage is attached as Pl. Ex. 1. More evidence of Defendant's criminal contempt is

significant because it demonstrates that Defendant deliberately published the falsehood to mock this court and the ruling.

Defendant is in contempt of the implied order in all rulings, which is to tell the truth. This court did not order Defendant to publish the ruling however Defendant did so anyhow. This ruling, like any other, contains the implicit order that it must be published truthfully if it is published at all -- especially at an official government public information website.

This court has inherent power to sanction behavior that thwarts, abuses or ignores the court and its rulings. That power derives from the court's plenary power to enforce the integrity of the judicial process. Absent the power to sanction obstreperous conduct, the court's power is illusory, its rulings are meaningless and the court is beholden to Defendant's whims. See generally Gertz v. Dep't of Environment, 199 Md. App. 413 (2011).

Contempt must be a willful violation of the court's ruling or order. There is no dearth of evidence that Defendant's violation is willful.⁴ On November 10, 2011 this court issued the declaratory ruling from the Bench and ordered Defendant to draft a judgment that reflected the ruling by December 9, 2011. On the record, Defendant conceded "agreement" to the court's ruling but balked outside the courtroom. Subsequently, Defendant refused to draft the order despite hours of requests, explanations, pleas and demands from Plaintiff. On December 8th, after hours of discussion and email correspondence, Defendant filed an ill-timed motion to dismiss even though the court already had ruled in Plaintiff's favor on one count, dismissed the others and had ordered Defendant to draft the judgment. In the motion to dismiss, Defendant tells us that the November round of time-consuming rancor was motivated by Plaintiff's First Amendment activity; Plaintiff published statements about this court's authority or power to enforce the ruling in the press and Defendant took umbrage.⁵

the recently-issued "Warning" to Ms. Sue Brown. That Warning directly contradicts this court's ruling and states that 'feeding animals outdoors (on her own property) makes her their "Owner"'. Defendant has a history with Ms. Brown and is well aware that she is one of Plaintiff's members. The Warning is attached as Pl. Ex. 3.

⁴ The parties' email correspondence is attached as Pl Ex. 2, particularly the December 1, 2011 email from Kristin Dorsey to Anne Benaroya.

⁵ Plaintiff published a Press Release declaring feeding doesn't necessarily make ownership ruling could be enforced by "immediate injunction." Defendant took umbrage and the rest is proverbial 'history'. The Press Release is attached as Pl. Ex. 4. See also Pl. Ex. 2 (email correspondence).

When the parties appeared in court again on December 9th, Defendant candidly advised the court that it had not drafted the ruling because of Plaintiff's statements to the press. The court again ordered Defendant to draft the judgment, this time without mentioning "agreement". Defendant balked again. So the parties engaged in yet another round of time-consuming email exchange that lasted two more weeks until counsel, who was contemplating surgery the next business day (known to Defendant), offered to file a motion for judgment/contempt to resolve the matter. At that point Defendant drafted the judgment as ordered and submitted it to the court for signature. The court signed the ruling on January 3, 2012 and Defendant published the false statement at the County's official public information website nine days later – a false statement about a ruling that Defendant itself had drafted.

Md. Rule 15-201 et seq. distinguishes direct from constructive contempt, the latter being a residual category. Direct contempt interrupts the court's proceedings whereas constructive contempt does not.⁶ Constructive contempt addresses acts that occur outside the courtroom. Since the contempt in this case occurs at the county's official public information website, this is a case of constructive contempt.

Constructive contempt may be criminal or civil. That distinction defines the parties' rights to procedure and remedies.⁷ The court may initiate a proceeding for constructive criminal contempt by issuing a summons (Md. Rule 15-205(b)). Criminal contempt is the court's tool for punishing defiance of its rulings/orders, particularly those that implicate the public's rights or interest. Criminal contempt also has a deterrent purpose because it specifically deters a defendant from recidivism and sends a general deterrent message to the public.

In this case, the ruling is declaratory and clarifies the public's rights within the meaning of Prince George's County Code, so the public rights and the public's access to knowledge of

⁶ See e.g., Roll v State, 15 Md. App. 21 50-62 (Md. 1972) (constructive criminal contempt found for unjustified refusal to answer subpoena to testify in grand jury proceeding); compare Murphy (W. Jr.) v. State, 46 Md. 138 (1980) (direct contempt, attorney's failure to appear for trial).

⁷ A criminal contempt violation may not be found on a civil contempt petition; hence the duplication in this filing. Howard County v. Shack Pack, Inc., 138 Md. App. 720 (Md. 2001) (civil versus criminal contempt in declaratory ruling/injunction; case remanded for evidentiary hearing). The child support contempt rules and cases are inapposite because that issue has its own unique enforcement rubric pursuant to Md. Rule 15-207 and the progeny of Lynch v. Lynch, 342 Md 509 (1996) (inability to comply with order may be defense only in criminal contempt proceeding for non-support).

those rights are directly at issue. Since Defendant's falsehood deliberately misleads the public as to those rights, Defendant's conduct rises -- or sinks -- to the level of criminal contempt. Defendant's contempt is falsifying this court's declaratory judgment at the official government public information website. That is no different than misrepresenting the law in the 'lawbook' at the public library. Accordingly, Plaintiff can prove criminal contempt beyond a reasonable doubt; and, the court should issue the attached charging document and Summonses to Defendant's agents to show-cause why this court should not sanction Defendant for criminal contempt.

Plaintiff's requested sanction is uniquely tailored to the circumstances. A fine would not be appropriate as that would come from public funds since Defendant's agents are in the taxpayer's employ. Instead, the remedy requested is that this court order Defendant to (1) correct the falsehood at the County's official website; and (2) to purchase conspicuous space in all Prince George's County editions of the Prince George's County Gazette for an editorial written by Plaintiff to run for three consecutive weeks; the editorial shall begin with Defendant's quoted admission in bold-face type stating,

“The Animal Management Division of the Prince George's County Department of the Environment Hereby Apologizes to the Residents Of Prince George's County for Misrepresenting The Circuit Court Ruling in PGFF SPCA v. PG County at The County's Official Government Website. The Animal Management Division will be Revising its Practices In Order To Comply with The Judge's Ruling.”

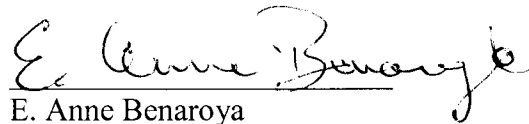
Alternatively, Defendant is in civil contempt of this court's ruling. Civil contempt has a lower burden of proof, preponderance of the evidence, and is remedial or coercive in nature; hence the remedy must contain a purge provision to allow the defendant to 'purge the contempt' or to remedy the situation. Ordinarily, the parties with an interest in civil proceedings are private parties, as contrasted with the public's rights being at issue in a criminal case. In this case Defendant is and was in civil contempt. That began November 10, 2011, as demonstrated by the attached exhibits, and is ongoing. Should this court find civil contempt appropriate, Plaintiff respectfully requests that this court schedule this motion for a show-cause hearing.

The attached purge provision allows Defendant to purge the contempt by (1) publishing the ruling truthfully at the County's official website for the amount of time the agency normally publishes this type of information; and, (2) publishing the ruling truthfully with apology for having misrepresented it at the County's official website in all Prince George's County editions

of the Gazette newspaper in a conspicuous place for three consecutive weeks; and (3) reimbursing Plaintiff for the attorney's fees expended in prosecuting this petition in the amount of \$6,000 (six-thousand) dollars . Defendant may argue that the contempt abated for the period that elapsed from the time Defendant sent the ruling to the court and January 12, 2012 or whenever Defendant published the false statement. But this is disingenuous because Defendant's hard-won compliance with the court's order to draft the ruling did nothing to abate or otherwise ameliorate the contempt occurring prior to or subsequent to that grudging piece of compliance.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests that this court issue the attached show-cause orders and docket this matter for a show-cause hearing.

Respectfully Submitted,

A handwritten signature in cursive script that reads "E. Anne Benaroya". The signature is written in black ink and is positioned above a horizontal line.

E. Anne Benaroya
5625 Hogenhill Terrace
Rockville, Maryland 20853
(410) 977-3331
Attorney for Plaintiff, PGFF SPCA, Inc.