

STATE OF INDIANA)
)
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
SS: CRIMINAL DIVISION, ROOM 13
CAUSE NO. 49G13-1306-IF-051563

STATE OF INDIANA,)
)
Plaintiff,)
)
v.)
)
COSTELLO SPIVEY,)
)
Defendant.)

FILED
JUN 18 2014
MARION COUNTY
COURT

ORDER ON DEFENDANT'S MOTION FOR RULE TO SHOW CAUSE

Defendant Costello Spivey (“Spivey”) moved for a Rule To Show Cause, asserting that the Indiana Bureau of Motor Vehicles (the “BMV”) did not comply with an order of this Court regarding Spivey’s driving privileges and record. On April 25, 2014, the Court conducted a hearing on Spivey’s motion at which the parties submitted evidence and the Court heard argument.

FINDINGS OF FACT

On June 15, 2013, the Indiana State Police issued Spivey an electronic traffic citation for Driving While Suspended, a Class A Infraction, and Speeding, a Class C Infraction. Spivey did not contact the Court within 60 days of the citation’s issuance to request a trial, nor did he pay the fines for the charged offenses, so on August 27, 2013, the Court entered a Default Judgment against Spivey.

Upon entry of judgment against Spivey, the Court sent a “Certification of Indiana Abstract of Court Record” (the “SR16”) to the BMV, in which the Court notified the BMV that Spivey had failed to pay the fines for the offenses. Because Spivey failed to pay the fines, the

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BMV imposed an indefinite suspension of Spivey's driving privileges. The BMV added entries to Spivey's Indiana Driver Record for the Driving While Suspended and Speeding violations. Moreover, upon receipt of the SR16, the BMV sent Spivey a request for proof of financial responsibility. Spivey did not respond to the BMV's request that he provide proof of financial responsibility. As a result of Spivey's noncompliance with the BMV's request, on October 30, 2013, the BMV further suspended Spivey's driving privileges for Failure To File Insurance. The BMV updated Spivey's Driver Record to reflect a "Failure To Provide Proof Of Insurance To Bureau" conviction, and a "Failure To File Insurance – Bureau" driver's license suspension.

On December 9, 2013, Spivey moved to set aside the Default Judgment entered against him. The Court granted Spivey's motion on that same day. On December 10, 2013, the Court issued the "Order Vacating Judgment," which set aside the Default Judgment against Spivey, and further specifically stated, "The Court NOW ORDERS the Indiana Bureau of Motor Vehicles to expunge any record of or reference to this cause from the defendant's driving record, including any points assessed for this conviction or any suspension resulting from a failure to pay and/or appear in this action."

The BMV amended Spivey's Driver Record, removing the Driving While Suspended and Speeding entries. The BMV did not, however, remove the entries for either Failure To Provide Proof Of Insurance To Bureau or Failure To File Insurance – Bureau from where they appeared in the Convictions and Suspension Information sections of Spivey's Driver Record.

On February 28, 2014, Spivey filed his "Motion For Rule To Show Cause," asserting that the BMV did not comply with the Court's Order Vacating Judgment because the Failure To File Insurance – Bureau driver's license suspension that the BMV issued against Spivey was still in

effect, despite the Court's order "to expunge any record of or reference to" the Driving While Suspended and Speeding default judgments that the Court had set aside.

CONCLUSIONS OF LAW

Spivey asks that the BMV show cause why it is not in contempt of this Court's Order Vacating Judgment. "A person who is guilty of . . . any order lawfully issued . . . by any court of record . . . is guilty of an indirect contempt of the court that issued the . . . order." Ind. Code § 34-47-3-1. If the party accused of contempt "answers to the facts set forth in the rule by . . . showing that, even if the facts set forth are all true, they do not constitute a contempt of the court, or . . . denying, or explaining, or confessing and avoiding the facts, so as to show that no contempt was intended . . . the court shall acquit and discharge" the accused party. Ind. Code § 34-47-3-7(b). "Indirect contempt is the willful disobedience of any lawfully entered court order of which the offender has notice." *City of Gary v. Major*, 822 N.E.2d 165, 169 (Ind. 2005) (citations and original emphasis omitted).

The BMV amended Spivey's Driver Record, removing the Driving While Suspended and Speeding entries and the related Failure To Pay entries. There is no argument that the BMV failed to comply with the Court's order in this regard. Instead, Spivey asserts that the BMV failed to remove the entries for Failure To Provide Proof Of Insurance To Bureau entry in the Convictions section and the Failure To File Insurance – Bureau entry in the Suspension Information section of Spivey's Driver Record. Spivey contends that the sole reason the BMV requested that Spivey submit proof of financial responsibility was his now-vacated Driving While Suspended and Speeding judgments. Spivey proposes that the insurance suspension logically followed from the failure to pay for the Driving While Suspended and Speeding

convictions and suspensions, and thus should have been expunged just as the BMV expunged the entries related to Spivey's default judgment.

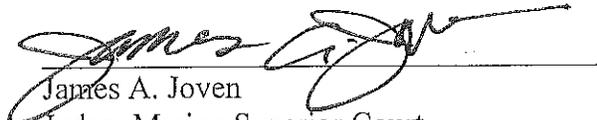
Spivey's arguments are not persuasive. While in certain cases the BMV must "determine whether the [BMV] is *required* . . . to send to the person named in the judgment, abstract, or other court order a request for evidence of financial responsibility," Ind. Code § 9-25-9-1(a) (emphasis added), the BMV has the authority to require Indiana driver's license holders to provide such proof at any time. An Indiana driver license holder must maintain financial responsibility continuously as long as a motor vehicle is operated on any public highway in Indiana. Ind. Code § 9-25-4-3(a). The BMV "may, *at any time*, verify that a person has financial responsibility in effect as required . . ." Ind. Code § 9-25-4-3(b) (emphasis added). The BMV is required to suspend the driving privileges of a person who fails to maintain financial responsibility. Ind. Code § 9-25-4-3(c). In the present case, and indeed for any Indiana driver's license holder, the BMV has the statutory authority to require submittal of proof of financial responsibility at any time. Upon failure to submit such proof, the BMV must suspend that license holder's driving privileges. The BMV's statutory authority to verify financial responsibility renders Spivey's now-expunged Driving While Suspended and Speeding judgments immaterial for purposes of the insurance suspension. The BMV is authorized at any time to request that Spivey submit proof of financial responsibility, and the BMV was required to impose the suspension when Spivey failed to provide such proof upon request.

ORDER

For the foregoing reasons, the Court DENIES Spivey's Motion For Rule To Show Cause. The BMV complied with the Court's Order Vacating Judgment, properly expunging any record of or reference to the Default Judgment entered against Spivey on August 27, 2013. The entries

on Spivey's Driver Record for "Failure To Provide Proof Of Insurance To Bureau" in the Convictions section, and "Failure To File Insurance – Bureau" in the Suspension Information section are not a record of or reference to the default judgment. Rather, those entries are related to the BMV's request that Spivey provide proof of financial responsibility, and Spivey's failure to comply with the request.

ENTERED this 17th day of June, 2014.


James A. Joven
Judge, Marion Superior Court

DISTRIBUTION:

Prosecutor
Defendant
Counsel for BMV