

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Merrimack County

Merrimack Superior Court

**Leonard Giles, Trustee of Leonard L. Giles Revocable Trust of 2000 v David
Lidstone
217-2016-CV-00523**

ORDER

The defendant David Lidstone appeared in court this morning, by WebEx, having been arrested on a civil bench warrant in connection with the plaintiff's motion for contempt. The court held a civil contempt hearing.

Judgment issued in this case on January 12, 2017 when the court issued a permanent injunction requiring the defendant to vacate a cabin he built on the plaintiff's property. Although the case was not crisply pled as an action to quiet title, in effect that was what the court did. The defendant did not appeal from the judgment. He did not seek a new trial.

Defendant has steadfastly continued to violate the permanent injunction. This is the second time the defendant has been arrested for violating the injunction. During the long post-judgment history of the case, the court appointed counsel for the defendant who conducted a title search that did not provide grounds for revisiting the judgment.

Defendant claims the benefit of prior permissive use of the property. He admits he has no deed. He claims the benefit of an unwritten, no-consideration promise of a life estate by plaintiff's predecessor-in-title. All of this is to say that during this brief hearing it is clear that: (a) defendant has no titled interest, (b) defendant has no adverse possession rights, and (c) the Statute of Frauds bars any claim for a life estate without consideration. Additionally, defendant's use of the property violates the Town ordinance and the plaintiff's common use designation.

In short, the court's final judgment and permanent injunction will be enforced.

The court inquired of defendant several times whether he would vacate the cabin, and not return to the property except with a law enforcement officer for the purpose of reclaiming his property. Defendant repeatedly refused. He also refused to provide the court with any alternative. He said that as soon as he is released he will return to the property. It was impossible to reason with the defendant who unleashed a barrage of profanity.

Despite defendant's seemingly direct criminal contempt, the court holds the defendant only in civil contempt. The purpose of a civil contempt sanction is to coerce compliance with the court's order. It is not punitive. Defendant holds the key to the jailhouse door. To gain release all he needs do is agree to live by the judgment in this case.

DEFENDANT IS COMMITTED TO THE HOUSE OF CORRECTION for civil contempt pending further order of the court. He shall appear tomorrow morning so that the court can determine whether further sanctions are necessary.

Plaintiff may notify animal welfare authorities so that defendant's cats (and chickens) are cared for.

July 15, 2021



Andrew R. Schulman,
Presiding Justice