

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

Douglas Arnold and Thomas
Arnold,

Plaintiffs-Appellees,

v.

Trident Resources, LLC,
American Power Company, Inc.
and American Power Group
Corporation

Defendants and Appellees,

Thomas Lockhart, individually
and as an officer and director of
Trident Resources, LLC and
American Power Group, Inc.

Defendants and Appellant,

SUPREME COURT NO. 20190322

Civil No. 31-2015-CV-00208

BRIEF OF APPELLANT THOMAS LOCKHART

APPEAL FROM ORDER ON PLAINTIFF'S MOTION FOR CONTEMPT DATED
OCTOBER 17, 2019

THE HONORABLE RICHARD L. HAGAR, DISTRICT COURT
STATE OF NORTH DAKOTA, MOUNTRAIL COUNTY
NORTH CENTRAL JUDICIAL DISTRICT

Respectfully submitted,

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STATEMENT OF THE ISSUES

- I. THE DISTRICT COURT ABUSED ITS DISCRETION BY ORDERING SANCTIONS BEYOND THE SCOPE OF CHAPTER 27-10 OF THE NORTH DAKOTA CENTURY CODE.**
 - A. The sanctions ordered by the District Court are an abuse of discretion because the imposition of punitive sanctions was not sought by the state's attorney of a county, the attorney general, or a special prosecutor appointed by the court.**
 - B. The sanctions ordered by the District Court are an abuse of discretion because they exceed the amount required to compensate the complainant for the loss or injury suffered as a result of the contempt.**
 - C. The punitive sanctions ordered by the District Court are an abuse of discretion because the District Court did not expressly find that the sanctions specified in N.D.C.C. 27-10-01.4(a)-(d) would be ineffectual to terminate a continuing contempt.**
 - D. The District Court's Order is an abuse of discretion because it was not designed to ensure compliance with a previous order of the court and because it did not make an express finding that the statutory remedial sanctions would be ineffectual to terminate Lockhart's contempt.**

STATEMENT OF THE CASE

[¶1] Chapter 27-10 of the North Dakota Century Code governs the authority of courts with regards to contempt of court and sanctions for such contempt. While courts have an inherent power of contempt, that power may be limited by the legislature. Chapter 27-10 is an express limitation by the legislature on the courts' contempt power.

[¶2] In the instant case, the district court held the Appellant Thomas Lockhart ("Lockhart") in contempt of court; an action that was within the district court's authority. However, in fashioning the remedy for that contempt, the district court exceeded the limitations placed upon it by the legislature. Furthermore, the district court failed to follow the express procedures set forth in Chapter 27-10 before assessing punitive sanctions against Lockhart. As such, the district court's Order of October 17th, 2019 must be reversed.

STATEMENT OF THE FACTS

[¶3] This matter arises out of a business dispute related to Trident Resources, LLC. In 2013, Plaintiffs Thomas Arnold and Douglas Arnold made an agreement with Defendant Thomas Lockhart to explore creating a business for the capture of compressed natural gas (“CNG”) so that it could be sold and marketed for various uses. [App. 14] Lockhart and the Arnolds agreed that Lockhart would provide the funding for the venture, while the Arnolds would do the “legwork” of demonstrating the technology, advertising for business, and other tasks aimed at creating opportunities for the business. *Id.*

[¶4] At that time, no business entity had been created. The agreement between the parties was that if a business was created, the Arnolds would each receive a fifteen percent (15%) share of the business, and that Lockhart would own the remaining seventy percent (70%). [App. 15] The Arnolds engaged in legwork, and Lockhart procured funding for necessary equipment, including two well processing units (“WPU”) that were used for the capture of CNG. *Id.*

[¶5] The WPUs were purchased from a company called Saddle Butte Pipeline II, LLC (“Saddle Butte”). [App. 113] Lockhart negotiated and executed the purchase. *Id.* There were issues with payments from Lockhart to Saddle Butte which resulted in litigation (Case No. 08-2015-CV-00598). In that litigation, Lockhart claimed that issues had arisen because the payment for the WPUs had been made to the trust account of an attorney who lived in the Cayman Islands. Lockhart had claimed that the attorney had fallen ill and later passed away, and thus, he was unable to transfer the funds to Saddle Butte. [App. 62-63] The litigation was later settled, and Saddle Butte received payment in full for the WPUs. [App. 113]

[¶6] By the summer of 2015, the relationship between Lockhart and the Arnolds had soured. [App. 16] Lockhart was attempting to negotiate a business deal for the CNG technology with American Power Group, Inc. (“APG”). Lockhart and the Arnolds had a falling out, and the Arnolds ceased working with Lockhart. *Id.* In July of 2014, Lockhart created and registered Trident Resources LLC (“Trident”) with the North Dakota Secretary of State’s Office. [App. 20] Lockhart failed to include the Arnolds as members/co-owners of the newly formed entity. Thereafter, in 2015, Lockhart consummated an agreement between Trident and APG. [App. 21]

[¶7] On November 18, 2015, the Arnolds commenced the present lawsuit against Lockhart, individually and as officer/director of Trident, Trident, and APG. [App. 13] The Arnolds sought compensatory damages in excess of one million dollars (\$1,000,000.00) and reformation of Trident’s member control and operating agreements to reflect the Arnolds’ ownership interests. [App. 18] As part of that litigation, the Arnolds propounded discovery requests to Lockhart. [App. 35] Those discovery requests included Interrogatory No. 17, an interrogatory seeking information about the issues which precluded timely payment to Saddle Butte for the purchase of the WPU’s. [App. 44] Lockhart answered the interrogatory, reiterating his narrative pertaining to the claimed issues with payment being sent to the trust account of the attorney in the Cayman Islands. [App. 62]

[¶8] On February 23, 2018, the Arnolds filed a Motion for Sanctions against Lockhart, claiming that Lockhart’s answer to Interrogatory No. 17 was “substantially fabricated and [had] no basis in fact.” Index No. 70. Lockhart denied the Arnolds’ allegations, and on July 2, 2018, a hearing was held on the Arnolds’ motion. At that hearing, the district court found that the answer to Interrogatory 17 was false and ordered sanctions against Lockhart. [App.

99-100]

[¶9] On July 31, 2018, a bench trial was held. At trial, the Arnolds attempted to argue that they were entitled to a greater ownership of Trident than their respective 15% ownership interest. Lockhart admitted that the Arnolds were entitled to their 15% ownership interest, but resisted the contention that the Arnolds were entitled to anything further. [App. 112] On March 28, 2019 the district court entered its Judgment, finding that Lockhart had breached his contract with the Arnolds, and awarding the Arnolds their respective 15% ownership interests in Trident. [App. 111] No appeal was taken.

[¶10] Lockhart began searching for buyers for Trident's assets. On February 19, 2019, the Arnolds filed a Motion for Temporary Restraining Order seeking to enjoin Lockhart from disposing of any of Trident's assets. [App. 101] Thereafter, Lockhart and the Arnolds entered into a Stipulation whereby they agreed that Lockhart would not sell or otherwise dispose of Trident's assets without permission from the district court or the Arnolds. [App. 107]. Lockhart and the Arnold's further agreed that any funds from any such sale would be placed on deposit with the court, or in the trust account of the Arnolds' attorney (the "Trust Account"). *Id.*

[¶11] Subsequent to the Stipulation, Lockhart informed the Arnolds that he had received an offer from Black Butte Resources ("Black Butte") to purchase one of the WPU's for the amount of three hundred thousand dollars (\$300,000.00). [App. 126] The Arnolds consented to that price on the condition that the funds from the sale would be deposited in the trust account of the Arnolds' attorney; Lockhart agreed. [App. 127.128] Shortly thereafter, and prior to any funds being deposited in the Trust Account, the WPU was moved from its storage facility. [App. 121]

[¶12] On April 12, 2019, the Arnolds filed an emergency motion seeking to discover the location of the WPU and the funds from the sale. *Id.* A hearing was held on May 9, 2019. Prior to the hearing, Lockhart caused one hundred thousand dollars to be deposited into the Trust Account. [App. 167] At the May 9th hearing, the district court ordered Lockhart to provide information to the court, including the location of the WPU, the date the WPU was transferred, then name of the entity that transferred the WPU and the costs associated with the transfer, information on the buyer of the WPU to include contact information of the owners and officers, purchase agreements, and information on when the remaining two hundred thousand dollars would be paid to the Trust Account. [App. 146-147] The court's order provided that failure to provide the information within fifteen days would result in a sanction of \$5,000.00 and an additional \$1,000.00 for every week thereafter until the information was provided. *Id.* Lockhart was also ordered to pay the amount of \$1,500.00 for the Arnolds' attorney's fees. *Id.* The order on the emergency motion was entered on May 24, 2019. *Id.*

[¶13] On June 6, 2019, Lockhart filed an affidavit, purchase agreement, and Wire Activity Summary with the court. [App. 148-156] The affidavit contained Lockhart's answers to the court's questions. [App. 148-149] The purchase agreement purported to show the terms of the sale of the WPU from Trident to Black Butte. [App. 150-153] The Wire Activity Summary showed that an additional two hundred thousand dollars (\$200,00.00) had been deposited in the Trust Account. [App. 156] Lockhart did cause a total of three hundred thousand dollars (\$300,000.00) to be deposited into the Trust Account. [Tr. 19:13-15]

[¶14] Shortly thereafter, Douglas learned that the WPU had not been sold to Black Butte,

but had instead been sold to a company called Geo Petro. [App. 186] He also learned that the actual sale price had been five hundred thousand dollars (\$500,000.00), not \$300,000.00 as had previously been believed. [App. 186] The Arnolds took further action to confirm the information in Lockhart's affidavit, but were unable to do so. [App. 185-186]

[¶15] On August 15, 2019, the Arnolds filed their Motion for Contempt and their Brief in Support of Motion for Contempt, alleging that Lockhart's Affidavit filed on June 6, 2019 was filled with false statements and that the WPU was sold for a greater price than he had told the Arnolds. Index No. 170-172. The Arnolds Brief requested the following relief: (a) that Lockhart forfeit the entirety of the \$300,000.00 deposited in the Trust Account; (b) that Lockhart forfeit all interest in the remaining Trident Resources property and that the Arnolds be declared the sole owners of the same; (c) that Lockhart be ordered to personally pay the Arnolds' attorney's fees; (d) additional sanctions, including jail time, as allowed by N.D.C.C. § 27-10-1.4; (e) that Lockhart be forced to indemnify the Arnolds against future lawsuits connected to the sale of the WPU to Geo Petro; (f) that Lockhart not be allowed to conduct business on behalf of Trident; and (g) that Lockhart be forced to turn over control and custody of all of Trident's property and assets to the Arnolds. Index No. 172.

[¶16] On September 30, 2019, a hearing on the Arnolds contempt motion was held. At the outset of that hearing, Lockhart admitted that the statements in his Affidavit were false. [Tr. 5:8-15] The court found him to be in contempt, but then took testimony from Lockhart and the Arnolds to determine the relief to be granted. [Tr. 7:17-9:7] At the close of testimony, the Arnolds' attorney requested that Lockhart be removed from "any sort of

authority on behalf of Trident Resources;” that Lockhart “turn over all of the property of Trident Resources to the [Arnolds] to deal with;” and that Lockhart not receive any portion of the \$300,000.00 held in the Trust Account. [Tr. 49:21-32; 50:15-17; 51:10-16]

[¶17] Lockhart’s attorney argued that N.D.C.C. § 27-10-01.4 provided the available remedies for contempt. [Tr. 53:23-54:3] It was argued that “nowhere in [N.D.C.C. § 27-10-01.4] does it ... dictate that their remedy for contempt is rewriting a partnership agreement or an LLC agreement or changing ownership or removing personal property or property of the company. Nothing that they have asked for in the brief is provided for by statute.” [Tr. 54:5-10] Lockhart’s attorney further argued that “the request that Mr. Lockhart forfeit any share of the \$300,000 as a punitive sanction is not supported by statute. So if the Court is going to fashion a remedy [Lockhart] would ask that that remedy be fashioned in accordance with the statute.” [Tr. 54:12-17]

[¶18] In ordering sanctions against Lockhart, the court stated:

THE COURT: Well, this is what I believe I should do here, Mr. Lockhart. I am going to agree with what Mr. Kalil is asking for here as apart as the contempt [sic]. And again, Mr. Black, you always have the option to appeal this if you think I am outside the bound of the law which is allowed. I am going to take the \$300,000 that’s already in the bank account of Mr. Kalil, I guess it’s his trust account, I would assume.

MR. KALIL: Yes, Your Honor.

THE COURT: That will be the compensation to Mr. and Mr. Arnold for their half of their portion of whatever Trident owned in the first WPU. So that one’s a done deal. Any costs that were associated in selling the WPU will be absorbed by the \$200,000 that you get out of that 500,000. And my understanding is you paid all those. So the 200,000 is your share and 300,000 goes to them to do with what they please.

The second WPU still belongs to Trident. I presume you are going to sell it. Because it probably doesn’t do any good to

you.

MR. KALIL: Yes, Your Honor.

THE COURT: Once it is sold, you make an accounting. The accounting will go to all the members of Trident which include Mr. Lockhart. I think that's it. That's all I am going to do.

[Tr. 62:17-63:17]

[¶19] The district court entered its Order on Plaintiffs' Motion for Contempt on October 17, 2019. [App. 192-193] That Order stated that:

a. Defendants Thomas Lockhart and Trident Resources, LLC have no right, claim or interest in the \$300,000.00 placed into escrow with the Plaintiffs' attorney. The Plaintiff's attorney may immediately disperse this money to the Plaintiffs. Any remaining debts owed by Trident Resources, LLC, with the exception of any unpaid storage fees from May 1, 2019 forward, shall be paid using the \$200,000.00 received by Thomas Lockhart and which he failed to disclose to the Court.

b. With regard to any remaining property of Trident Resources, LLC, Thomas Lockhart shall have no right whatsoever to dispose of, assign, or sell said property. The sale of any remaining property shall be negotiated solely by the Plaintiffs, but all contracts shall be signed by Thomas Lockhart and the Plaintiffs, with each person signing in their capacity as members and with Lockhart additionally signing as an officer/director of the LLC.

Id.

[¶20] The district court made no express findings that the sanctions specified in N.D.C.C. § 27-10-01.4(a)-(d) would be ineffectual to terminate a continuing contempt, nor did the district court find that there was a continuing contempt.

[¶21] Lockhart timely appealed from the district court's October 17, 2019 Order.

ARGUMENT AND AUTHORITIES

STANDARD OF REVIEW

[¶22] With regard to its review of contempt decisions, this Court has noted that:

“[t]he district court has broad discretion in making contempt decisions. This Court will disturb a district court’s contempt determination only if the court abused its discretion. A district court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner; its decision is not the product of a rational mental process leading to a reasoned determination; or it misinterprets or misapplies the law. This Court’s review of a district court’s determination on contempt is very limited.”

Upton v. Nolan, 2018 ND 243, ¶ 18, 919 N.W.2d 1819 (citing *Rath v. Rath*, 2017 ND 128, ¶ 9, 895 N.W.2d 306; *Sall v. Sall*, 2011 ND 202, ¶ 7, 804 N.W.2d 378)(internal quotation marks omitted).

I. THE DISTRICT COURT ABUSED ITS DISCRETION BY ORDERING SANCTIONS BEYOND THE SCOPE OF CHAPTER 27-10 OF THE NORTH DAKOTA CENTURY CODE.

[¶23] “Although this Court has recognized courts’ inherent contempt powers, we have also recognized that those powers may be limited by the legislature.” *Nygaard v. Taylor*, 2017 ND 206, ¶ 17, 900 N.W.2d 833(citing *Blomdahl v. Blomdahl*, 2011 ND 78, ¶ 9, 796 N.W.2d 649; *Investors Title Ins. Co. v. Herzig*, 2010 ND 138, ¶ 41, 785 N.W.2d 863; *Millang v. Hahn*, 1998 ND 152, ¶ 10, 582 N.W.2d 665).

[¶24] Chapter 27-10 of the North Dakota Century Code governs contempt proceedings.

Under this chapter, “contempt of court” is defined as one of the following:

(a) Intentional misconduct in the presence of the court which interferes with the court proceeding or with the administration of justice, or which impairs the respect due the court;

(b) Intentional nonpayment of a sum of money ordered by

the court to be paid in a case when by law execution cannot be awarded for the collection of the sum;

(c) Intentional disobedience, resistance, or obstruction of the authority, process, or order of a court or other officer, including a referee or magistrate;

(d) Intentional refusal of a witness to appear for examination, to be sworn or to affirm, or to testify after being ordered to do so by the court;

(e) Intentional refusal to produce a record, document, or other object after being ordered to do so by the court;

(f) Intentional behavior in derogation of any provision of a summons issued pursuant to rule 8.4 of the North Dakota Rules of Court; or

(g) Any other act or omission specified in the court rules or by law as a ground for contempt of court.

N.D.C.C. § 27-10-01.1

[¶25] A court of record may impose a remedial or punitive sanction for contempt of court.

N.D.C.C. § 27-10-01.2. A “[p]unitive sanction” includes a sanction of imprisonment if the sentence is for a definite period of time. A sanction requiring payment of a sum of money is punitive if the sanction is not conditioned upon performance or nonperformance of an act, and if the sanction's purpose is to uphold the authority of the court.” N.D.C.C. § 27-10-01.1 Remedial sanctions include “sanction[s] that are conditioned upon performance or nonperformance of an act required by court order. A sanction requiring payment of a sum of money is remedial if the sanction is imposed to compensate a party or complainant, other than the court, for loss or injury suffered as a result of the contempt.” *Id.*

[¶26] Upon a finding of contempt, courts may impose the following remedial sanctions:

(a) Payment of a sum of money **sufficient to compensate a party or complainant, other than the court, for a loss or injury suffered as a result of the contempt**, including an

amount to reimburse the party for costs and expenses incurred as a result of the contempt;

(b) Imprisonment if the contempt of court is of a type included in subdivision b, c, d, e, or f of subsection 1 of section 27-10-01.1. The imprisonment may extend for as long as the contemnor continues the contempt or six months, whichever is shorter;

(c) A forfeiture not to exceed two thousand dollars for each day the contempt continues;

(d) An order designed to ensure compliance with a previous order of the court; or

(e) A sanction other than the sanctions specified in subdivisions a through d **if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt.**

N.D.C.C. § 27-10-01.4(1)(emphasis added).

A. The sanctions ordered by the District Court are an abuse of discretion because the imposition of punitive sanctions was not sought by the state’s attorney of a county, the attorney general, or a special prosecutor appointed by the court.

[¶27] As noted above, “a sanction requiring a payment of a sum of money is punitive if the sanction is not conditioned upon performance or nonperformance of an act, and if the sanction’s purpose is to uphold the authority of the court.” N.D.C.C. § 27-10-01.1(3). “When considering an alleged contempt, the district court must first decide whether a remedial or punitive sanction is applicable, and then apply the appropriate procedures for imposing the sanction.” *Holkesvig v. Welte*, 2012 ND 14, ¶ 9, 809 N.W.2d 323

[¶28] N.D.C.C. § 27-10-01.3(b) governs the procedure for punitive contempt sanctions and states:

The state’s attorney of a county, the attorney general, or a special prosecutor appointed by the court may seek the imposition of a punitive sanction by issuing a complaint

charging a person with contempt of court and reciting the sanction sought to be imposed. The state's attorney, attorney general, or special prosecutor may initiate issuance of the complaint or may issue the complaint on the request of a party to an action or proceeding in a court or of the judge presiding in an action or proceeding.

N.D.C.C. § 27-10-01.3(b)

[¶29] The district court's Order mandating that Lockhart forfeit his right to any of the \$300,00.00 held in the Trust Account was not conditioned upon the performance or nonperformance of the act. The hearing transcript makes it clear that this sanction was being imposed to uphold the authority of the court. As such, the forfeiture of Lockhart's share of the \$300,000.00 was clearly a punitive sanction.

[¶30] The procedure set forth in N.D.C.C. § 27-10-01.3(b) is clear and unambiguous. Punitive sanctions can only be awarded upon the issuance of a complaint charging a person with contempt of court, and said complaint must be issued by a state's attorney, the attorney general, a special prosecutor appointed by the court.

[¶31] No complaint was ever issued which charged Lockhart with contempt of court. There was only the Motion for Contempt filed by the Arnolds and their attorney. As such, the district court abused its discretion in levying punitive sanctions against Lockhart. As such, the district court's Order on Plaintiff's Motion for Contempt of October 17, 2019 must be reversed.

B. The sanctions ordered by the District Court are an abuse of discretion because they exceed the amount required to compensate the complainant for the loss or injury suffered as a result of the contempt.

[¶32] N.D.C.C. § 27-10-01.4(a) notes that the sum of money awarded as a sanction for contempt is to be sufficient to compensate a party for a loss or injury suffered as a result of the contempt, including an amount to reimburse the party for costs and expenses incurred

because of the contempt.

[¶33] The Arnolds were each entitled to 15% of Trident. Regardless of the purchase price for the WPU, they were not entitled to any amount above 15%. Had the sale been for \$300,000.00, they would have each been entitled to \$45,000.00. Under the actual purchase price of \$500,000.00, they were each entitled to \$75,000.00. It is undisputed that, by the time of the September 30, 2019 hearing, Lockhart had caused \$300,000.00 to be deposited into the trust account of the Arnolds' attorney. This amount was more than sufficient to cover the combined \$150,000.00 to which the Arnolds were entitled. Lockhart, as the 70% owner of Trident, was entitled to the remaining \$350,000.00 from the sale of the WPU.

[¶34] While the \$300,000.00 deposited into the Trust Account was not the full amount received from the sale, it was double the amount that the Arnolds were entitled to. As such, there was simply no loss or injury to the Arnolds. Their just proportions of the sales proceeds were already in their attorney's trust account.

[¶35] The Arnolds presented no evidence of any other loss or injury incurred as a result of Lockhart's contempt. They presented no evidence with regard to their attorney's fees or costs incurred as a result of the contempt. There was simply no basis in law or fact to award them an additional \$150,000.00 from the sale of Trident's assets. As such, the district court's Order on Plaintiff's Motion for Contempt of October 17, 2019 must be reversed.

C. The District Court's Order is an abuse of discretion because it was not designed to ensure compliance with a previous order of the court.

[¶36] The sanctions fashioned by the district court cannot be seen as being formulated to ensure compliance with a previous order of the court. At the time of the September 30, 2019 hearing, Lockhart cured the contempt. The trial judge noted that he had complied with the prior order. [Tr. 52:23-53:19].

[¶37] In *Nygaard v. Taylor*, this Court contemplated the limitations of a court’s inherent contempt power. *Nygaard*, 2017 ND 206, 900 N.W.2d 833. In *Nygaard*, the contempt arose from custody disputes between a mother and the fathers of her minor children. *Id.* at ¶ 2. The fathers were awarded primary residential responsibility for the children. *Id.* The mother eventually fled with minor children. *Id.* The mother was found in contempt for violating multiple orders of the district court by refusing to return the children to the fathers. *Id.* at ¶ 3. The mother was taken into custody for contempt in November of 2015. *Id.*

[¶38] At a December 2015 hearing, the mother argued that she did not have the ability to return the children. *Id.* at ¶ 4. In January of 2016, a judicial referee rejected her arguments. *Id.* The mother requested a review of the contempt findings, and in March of 2016, the referee confirmed the prior rulings, ordering that the mother “shall remain in custody until such time as she returns the minor child[ren] to” their fathers. *Id.* The mother requested a review by the district court, and in April of 2016, the court affirmed and adopted the referee’s orders. *Id.* The mother refused to return the children to their fathers and remained incarcerated.

[¶39] In October of 2016, the mother filed motions requesting immediate release from imprisonment, arguing that she had been incarcerated for contempt longer than the six month period authorized by N.D.C.C. § 27-10-01.4(1)(b). *Id.* at ¶ 5. The court denied her request and she remained incarcerated. *Id.* She then appealed to the North Dakota Supreme Court. *Id.*

[¶40] On appeal, the mother argued that N.D.C.C. § 27-10-01.4(a)(b) applied because she was ordered to be incarcerated, and because that incarceration exceeded six months. *Id.* at ¶ 14. The fathers argued that the district court’s order was “an order designed to

ensure compliance with a previous order of the court” under N.D.C.C. § 27-10-01.4(a)(b).

Id. This Court agreed with the mother. *Id.*

[¶41] In finding that the mother could not be held longer than the statutory period of six months, the Court found that the fathers’:

“reliance on subdivision (d) is unavailing to extend the six-month limitation on imprisonment. As a remedial sanction, the sanction is by definition conditioned on performance of an act required by a court order.... Because it is conditional, every remedial sanction of imprisonment is ‘designed to ensure compliance with a previous order.’ To read subdivision (d) as allowing imprisonment beyond six months would render the specific limitations in subdivision (b) superfluous.”

Id. at ¶ 18.

[¶42] The *Nygaard* case governs the present action because the district court’s October 17, 2019 Order was not designed to ensure compliance with a previous order of the court. The district court noted that Lockhart did comply with the May 24, 2019 Order by submitting the Affidavit, even if the information contained therein was false. [Tr. 52:23-53:19]. Lockhart provided the correct information at the September 30, 2019 hearing.

[¶43] The imposition of \$150,000.00 worth of sanctions was a punitive sanction. It was not done to coerce a behavior, but to punish him for previous behavior. These sanctions were not for the purpose of ensuring compliance with a previous order of the court. As such, district court’s Order on Plaintiff’s Motion for Contempt of October 17, 2019 must be reversed.

D. The sanctions ordered by the District Court are an abuse of discretion because the District Court did not expressly find that the sanctions specified in N.D.C.C. 27-10-01.4(a)-(d) would be ineffectual to terminate a continuing contempt.

[¶44] In order to impose sanctions outside the scope of N.D.C.C. § 27-10-01.4(a)-(d), a

district court must make express findings that those sanctions would not be sufficient to terminate a continuing contempt. N.D.C.C. § 27-10-01.4(e). The district court made no findings, on the record or in its October 17th Order, that can be construed as express findings that sanctions under (a)-(d) would be ineffectual.

[¶45] The *Nygaard* Court also addressed the applicability of N.D.C.C. § 27-10-01.4(e). In finding that subdivision (e) was also inapplicable to the mother’s case, the Court found that the orders of the referee and the district court did “not contain an express finding that imprisonment for six months under N.D.C.C. § 27-10-01.4(1)(b) would be ineffectual to terminate [the] continuing contempt.” *Id.* at ¶ 19. The Court noted that the North Dakota Legislature had “taken into account that courts may exercise inherent authority in excess of the six-month limitation ... ‘if the court expressly finds that [the six-month limitation] would be ineffectual to terminate a continuing contempt.” *Id.* (citing N.D.C.C. § 22-10-01.4(1))(emphasis in the original).

[¶46] The district court did not make an express finding that the sanctions authorized by section 27-10-01.4(1)(a)-(d) would be ineffectual to terminate a continuing contempt. In fact, it did not make a finding that there was even a continuing contempt. Lockhart’s false information was corrected at the September 30, 2019, hearing, thus ending the contempt. Lockhart also complied by causing \$300,000.00 to be deposited in the Trust Account.

CONCLUSION

[¶47] The district court abused its discretion by failing to follow statutory procedures before assessing punitive sanctions against Lockhart. The district court further abused its discretion by assessing sanctions in an amount that far exceeded the loss or injury suffered by the Arnolds, assessing sanctions that were not designed to ensure compliance with a

prior order of the court, and by failing to make findings required by statute.

[¶48] **WHEREFORE**, Lockhart respectfully requests this Court **REVERSE** the district court's October 17, 2019 Order.

Respectfully submitted this 3rd day of February, 2020.

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CERTIFICATE OF COMPLIANCE

[¶49] The undersigned, as attorney for the Petitioner/Appellant in the above matter, hereby certifies, in compliance with Rule 32 of the North Dakota Rules of Appellate Procedure, that the above brief was prepared with proportionally spaced, 12 point font typeface, and the total number of pages of the above Brief totals 22 pages, inclusive.

Dated this 3rd of February, 2020.

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CERTIFICATE OF SERVICE

[¶50] I hereby certify that on February 3, 2020, I filed and served the foregoing document on the following by electronic mail transmission, pursuant to Rules 25 and 31 of the N.D.R.App.P.:

Clerk of the Supreme Court
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Thomas Kalil
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**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

Douglas Arnold and Thomas
Arnold,

Plaintiffs-Appellees,

v.

Trident Resources, LLC, American
Power Company, Inc. and American
Power Group Corporation

Defendants and Appellees,

Thomas Lockhart, individually and
as an officer and director of Trident
Resources, LLC and American
Power Group, Inc.

Defendants and Appellant,

AFFIDAVIT OF SERVICE

SUPREME COURT NO. 20190322

Civil No. 31-2015-CV-00208

[1] I, Sarah Broker, being duly sworn, deposes and says that I am of legal age and not a party to this action, and that I served the following document(s):

1. **Appendix to the Brief of Appellant Thomas Lockhart;**
2. **Brief of Appellant Thomas Lockhart; and**
3. **Affidavit of Service.**

[2] On February 6, 2020, by sending a true and correct copy thereof by electronic means only to the following email addresses, to wit:

None.

[3] To the best of affiant's knowledge, the email address above given is the actual email address of the party intended to be served. The above documents were emailed in accordance with the provision of the Rules of Civil Procedure.

[4] I further certify that copy of the foregoing documents will be mailed first class mail, postage paid, to the following non E-filing participants:

American Power Company
PO Box 187
Algona IA 50511

American Power Group Corporation
213 N Lantry St
Algona IA 50511

[5] The addresses of each party served are the last reasonably ascertainable post office address of such party.


Sarah Broker

Subscribed and sworn to before me this 6th day of February, 2020.


Notary Public

