

IN THE CIRCUIT COURT OF CLAY COUNTY, WEST VIRGINIA

THOMAS C. AUXIER, pro/se
Petitioner

Date: 8-21-06

AUG 22 2006

vs.

Billy R. Truman,
Respondent.

Case No.: 05-p-33

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

CLAY COUNTY
COURT
AUG 21 PM 2:58
ACCEPTED TO RECORD

BRIEF IN SUPPORT OF APPEAL
(Motion for Contempt)

Comes now the Petitioner, Thomas C. Auxier, pro/se, to Appeal Motion for Contempt based on the following facts:

1. Was sent copy of Motion for Contempt - Case 05-p-33 - by Mr. Billy R. Truman's attorney, Jerome Novlibilski, which motion was dated October 20, 2005. It did not have the Judge's signature.
2. No date or time of hearing was given on this Motion for Contempt.
3. Was sent letter of hearing, which was dated 11-07-05, and was mailed from the Clay County Courthouse/ Clay Post Office by First Class Mail on that date. I was supposed to have had 10 days notification to prepare for a hearing. This hearing was scheduled for Thursday, 11-10-05. This allows only 3 days for preparation, assuming that I would have received the letter the same day it was mailed, which I did not. Friday, 11-11-05, was a holiday.
4. Do not know when letter was received at the Indore, West Virginia Post Office which is where I get my mail.
5. This notice of hearing for Motion for Contempt was not picked up from the post office until Saturday, November 12, 2005, as verified by Postmaster, Eva June Tanner. Ms. Tanner will also verify that my mail is not normally picked up from the post office more than once or twice a week. Due to my living in such a rural setting, I do not normally go to the post office every day.
6. I attempted to set an audience before Judge Jack Alsop in order to explain my reasons for not being at the hearing. He has refused to grant me that audience. Judge Alsop knows from past experience, that when notified in a timely manner, I have never missed a hearing date. I have proof that I had not disobeyed his previous ruling to take down my fence and remove it from the travel portion of the road (see enclosed Photo Page D). The Respondent, Mr. Billy R. Truman, had brought the injunction against me to get the fence taken down. Judge Alsop, ordered the fence taken down to where it did not obstruct the travel portion of the roadway. I complied, and as you can see from the photo, the roadway was not blocked and my fence in laying in the grass.

I am desiring that my case be heard before Judge Jack Alsop to be able to present my side of this dispute. I was not given adequate time to respond to this Motion for Contempt, and to date

I have had no adequate representation in court.

Thomas C. Auxier

Thomas C. Auxier, pro/se

P.O. Box 55

Indore, WV 25111

STATE OF WEST VIRGINIA
COUNTY OF CLAY, to wit:

VERIFICATION

I, Thomas C. Auxier, after being duly sworn, days that the facts and allegations contained in the foregoing BRIEF IN SUPPORT OF APPEAL, are true insofar as they are therein stated to be on information and belief, and that insofar as they are so stated, they are believed to be true.

Aug 21, 2006
Date

Thomas C. Auxier
Thomas C. Auxier

STATE OF WEST VIRGINIA,
COUNTY OF CLAY, to wit:

The foregoing instrument was acknowledged before me this the _____ day of _____ by Thomas C. Auxier.

My commission expires _____

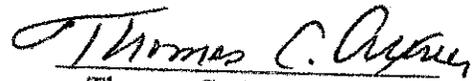
Notary Public

STATE OF WEST VIRGINIA
COUNTY OF CLAY, to wit:

CERTIFICATE OF SERVICE

I, Thomas C. Auxier, Petitioner pro/se, do hereby certify that I have served a copy of the foregoing BRIEF IN SUPPORT OF APPEAL upon Jerome Novobilski, Counsel for Respondent, Billy R. Truman, by mailing a copy to him at the following address on this the 21st day of August, 2006:

Jerome R. Novobilski
P.O. Box 699
Clay, West Virginia 25043
(304)587-4171


Thomas C. Auxier, pro/se
P.O. Box 55
Indore, WV 25111
(304) 587-7293