

STATE OF INDIANA
IN THE MARION COUNTY SUPERIOR COURT

CAUSE NUMBER 49D10-2002-PL-006192

STATE OF INDIANA,

Plaintiff,

v.

WILDLIFE IN NEED AND
WILDLIFE IN DEED, INC.,
TIMOTHY STARK, and
MELISA LANE,

Defendants.

**STATE'S MOTION FOR
SANCTIONS HEARING AND
DISSOLUTION HEARING**

Plaintiff, the State of Indiana (the "State"), hereby moves the Court to order an October 2020 hearing on contempt sanctions against Defendants Timothy Stark and Wildlife in Need and Wildlife in Deed, Inc. and a November 2020 hearing for judicial dissolution of Wildlife in Need and Wildlife in Deed, Inc. The State, in support of its Motion, states as follows:

1. On September 14, 2020, the State moved for the issuance of a Rule to Show Cause against Defendants Timothy Stark and Wildlife in Need and Wildlife in Deed, Inc. ("WIN") due to Defendants' removal and concealment of approximately \$169,500 worth of animals prior to the Indianapolis Zoological Society ("Receiver") arriving at WIN's premises to take custody of animals.

2. On September 14, 2020, a hearing was held on the State's Rule to Show Cause Motion.
3. On September 16, 2020, the Court issued an order finding Defendants Stark and WIN in contempt of Court and issued a writ of body attachment over Defendant Stark. The Court ordered, "Stark is immediately remanded to the custody of the Marion County Sheriff until further order of the Court."
4. To date, over \$100,000 worth of animals remain missing and Defendant Stark remains absconded from the Court's writ of body attachment.
5. Defendant Stark was seen fleeing the property of WIN at a high rate of speed immediately following the Court's issuance of the writ of body attachment.¹
6. Regarding the State's requested sanction of default judgment against Stark and WIN, the Court held on September 16, 2020, "Sanctions for WIN are taken under advisement."
7. The State now moves for a sanctions hearing in October 2020, and if necessary, a hearing in November 2020 for judicial dissolution of WIN.
8. The State requests a hearing to address sanctions for the Court's finding of Stark and WIN in contempt. Stark and WIN have

¹ See WHAS 11 news story "Warrant issued for Wild Life in Need owner Tim Stark."
<https://www.whas11.com/video/news/crime/warrant-issued-for-tim-stark-wild-mlife-in-need/417-9b8b9cc4-e4bf-4964-9f9e-c32389e15cfa> (Last visited on September 28, 2020).

demonstrated a severe disregard for the Court's orders, and any relief besides a default judgment would be inadequate.

- a. "Contempt of court involves disobedience of a court which undermines the court's authority, justice, and dignity." *S.W. ex rel. Wesolowski v. Kurtic*, 950 N.E.2d 19, 21-22 (Ind. Ct. App. 2011) (citation omitted). A party who has been injured or damaged by the failure of another person to conform to a court order may seek a finding of contempt. *Kurtic*, 950 N.E.2d at 22. Once a party is found in contempt, the trial court has the inherent authority to fashion an appropriate contempt sanction that is "coercive and remedial in nature." *Meyer v. Wolvos*, 707 N.E.2d 1029, 1031 (Ind. Ct. App. 1999), trans. denied. *Indy Diamond, LLC v. City of Indianapolis*, 132 N.E.3d 417, 424 (Ind. Ct. App. 2019).
- b. The Indiana Court of Appeals has held, "[a]lthough an order dismissing an action or granting a default judgment is the ultimate sanction a trial court may issue, a trial court is not necessarily required to first issue a lesser sanction." *Marshall v. Woodruff*, 631 N.E.2d 3, 5 (Ind. Ct. App. 1994).
- c. Trial courts have the inherent power to punish parties in the course of "maintaining its dignity, securing obedience to its process and rules, rebuking interference with the conduct of business, and punishing unseemly behavior." *Prime Mortg. USA, Inc. v. Nichols*,

885 N.E.2d 628, 650 (Ind. Ct. App. 2008) (quoting *City of Gary v. Major*, 822 N.E.2d 165, 169 (Ind. 2005).

d. “This is especially true when the disobedient party has demonstrated contumacious disregard for the court’s orders, ‘and the conduct of that party has or threatens to so delay or obstruct the rights of the opposing party that any other relief would be inadequate.’” *Nesses v. Specialty Connectors Co., Inc.*, 564 N.E.2d 322, 326 (Ind. Ct. App. 1990) (quoting *Whitewater Valley Canoe Rental, Inc. v. Bd. of Franklin County Comm’rs*, 507 N.E.2d 1001, 1008 (Ind. Ct. App. 1987), trans. denied).

9. If necessary, the State requests a hearing to demonstrate sufficient grounds exist for the judicial dissolution of WIN.

a. Pursuant to the Indiana Nonprofit Corporations Act, “If after a hearing the court determines that a ground for judicial dissolution described in section 1 of this chapter exists, the court may enter a decree dissolving the corporation and specifying the effective date of the dissolution.” Ind. Code § 23-17-24-4.

b. A Court may dissolve a nonprofit corporation in a proceeding brought by the Attorney General if one (1) of the following is established: (1) the corporation obtained the corporation’s articles of incorporation through fraud, (2) the corporation has continued to exceed or abuse the authority conferred upon it by law, (3) the

corporation's assets are being misapplied or wasted, or (4) the corporation is no longer able to carry out the corporation's purposes. Ind. Code § 23-17-24-1(a).

WHEREFORE, the State requests the Court order an October 2020 hearing on contempt sanctions against Defendants Timothy Stark and Wildlife in Need and Wildlife in Deed, Inc. and a November 2020 hearing for judicial dissolution of Wildlife in Need and Wildlife in Deed, Inc.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 28, 2020, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS). I also certify that on September 28, 2020, the foregoing document was served upon the following persons via IEFS:

J. Clay Culotta, Counsel for Defendants Wildlife in Need and Wildlife in Deed, Inc.
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I further certify that the foregoing document was served upon the following USPS mail, postage prepaid on September 28, 2020.

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