

STATE OF INDIANA)
) SS:
COUNTY OF FOUNTAIN)

IN THE FOUNTAIN CIRCUIT COURT
CAUSE NO. 76 C 225

CLIFFORD S. GERDE and
MIRIAM W. GERDE,
 Plaintiffs,

vs

CY GERDE, WINTON GERDE
and KEMLA GERDE,
 Defendants.

FILED

MAY 24 1979

Rachel Mather
CLERK, FOUNTAIN COUNTY

PETITION FOR ORDER TO SHOW CAUSE

Comes now the plaintiff and respectfully requests the Court to issue its order compelling defendants Winton and Cy Gerde to show cause why they should not be held in contempt of Court for failing and refusing to obey the orders of this Court, and in support of such motion plaintiff would show the Court as follows:

1. The Court's order in this matter was entered on January 16, 1979, ordering Cy Gerde and Winton Gerde to return certain items of personal property in their possession which had been adjudicated to be the property of plaintiff herein.

2. On or about January 18, 1979 the defendant Cy Gerde filed a motion for stay of execution of the judgment pending disposition of defendant's motion to correct errors.

3. On or about January 24, 1979, the defendants Winton and Kemla Gerde filed a similar motion for order staying execution of the judgment pending disposition of the motion to correct errors.

4. On January 26, 1979, the Court issued its order staying execution of the money portion of that judgment, but finding "that portion of the motion to stay with respect to the exchange of personal property including the return of certain carriage books, etc. is denied."

5. Defendants' motion to correct errors were overruled on March 16, 1979 and March 19, 1979.

6. On March 30, 1979, the Court suspended execution of the judgment pending appeal effective upon the filing of an appeal bond with surety to the approval of the Court in the amount of \$100,000.

7. Defendants have failed to obtain the necessary appeal bond, accordingly there is no present stay of execution or enforcement of the judgment and has not been a stay of execution of that portion of the judgment calling for the return of personal property since the judgment was entered four months ago.

8. Immediately after the judgment entry Winton Gerde returned certain items of personal property belonging to Clifford Gerde that had been in his possession, but still retains a number of valuable carriage lamps which have been requested and not returned. Cy Gerde has to date totally ignored all efforts to secure the return of any portion of the property that he is ordered to return, as indicated in the attached correspondence made a part of this motion including letters by the undersigned to David Bray dated February 21, 1979, March 8, 1979, David Bray's letter to the undersigned dated March 12, 1979, the undersigned's letter to David Bray dated April 18, 1979, David Bray's letter to the undersigned dated April 27, 1979, and my letter to David Bray dated May 2, 1979.


9. It is apparent at this point that neither Cy Gerde nor Winton Gerde appear to be willing to obey the order of the Court with respect to the return of personal property belonging to Clifford Gerde and in their possession, in spite of repeated attempts over the past four months to secure compliance with that order.

WHEREFORE, plaintiff respectfully requests the Court to order defendants at the earliest possible date to show cause why

they should not be held in contempt of court for failing and refusing to obey the orders of the Court with respect to the return of personal property and to otherwise assist plaintiffs in obtaining the enforcement of the orders of the Court, plus costs in this proceeding and all other and proper relief.

ICE MILLER DONADIO & RYAN

By


James R. Fisher

ICE MILLER DONADIO & RYAN
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WALLACE, CAMPBELL, BUNCH & SHAMBACH
Box 128
Covington, Indiana 47932

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has this 24th day of May, 1979 been deposited in the United States mail, postage prepaid, addressed to:

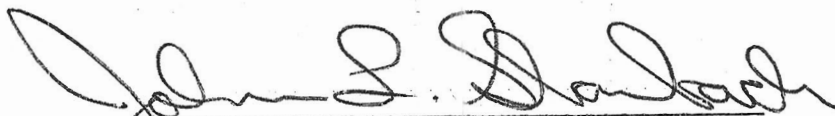
Mr. R. David Bray
WHITE, WHITE & BRAY
3 Fountain Square
Covington, Indiana 47932

Mr. Cy Gerde
HANNA & GERDE
Lafayette Bank & Trust Building
P. O. Box 1098
Lafayette, Indiana 47902


James R. Fisher

VERIFICATION

The undersigned affirms and represents, under the penalties for perjury, that the foregoing representations are true; that he and said James R. Fisher are two of the attorneys for the above named plaintiffs, and that they are authorized to make this verified petition for and on behalf of plaintiffs this 24th day of May, 1979.


John L. Shambach