

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 VERIFIED MOTION
FOR SANCTIONS**

Plaintiff, the State of Indiana (the "State"), hereby moves the Court to enter an order pursuant to Trial Rules 37(B)(2)(a) and 37(B)(2)(b) establishing facts related to the State's discovery request to Timothy Stark and prohibiting Stark from asserting claims and defenses related to matters encompassed in the State's discovery request. The State, in support of its Motion states as follows:

1. This matter was brought under the Nonprofit Corporations Act against Wildlife in Need and Wildlife in Deed, Inc. ("WIN"), its president, Timothy Stark ("Stark"), and its former treasurer, Melisa Lane.
2. WIN is an Indiana nonprofit corporation whose stated purpose is the rescue and rehabilitation of wildlife.

3. The action seeks, among other relief, judicial dissolution of WIN, liquidation of its corporate assets, recovery of misappropriated assets, and placement of all WIN's animals into court-approved animal sanctuaries.
4. Among the allegations in its Complaint, the State claims that WIN and Stark have misapplied or wasted corporate assets and that WIN can no longer carry out its stated purpose due to its inability to provide proper care to its animals.
5. On May 8, 2020, Pro Se Defendant Stark was served with the State's First Set of Interrogatories and Requests for Production of Documents to Defendant Timothy Stark via USPS mail and email.
6. Pursuant to Trial Rules 33(C) and 34(B), Stark's discovery response was due on June 8, 2020.
7. On June 10, 2020, the undersigned counsel called Stark to inquire when he would be providing the discovery response. Office of Attorney General Deputy Director of Investigations Matthew Broadwell was present with the undersigned counsel on the phone call to Stark.
8. On the June 10, 2020 phone call, the undersigned counsel reminded Stark that his discovery response was due on June 8, 2020. Stark stated he was out of town and would respond to the State's discovery response "when [he] feel[s] like it," that the lawsuit "is all a game," and told the undersigned counsel "Go f-ck yourself."

9. The undersigned counsel again asked Stark what date Stark would be providing a discovery response and he again stated, “whenever I feel like it.” Stark hung up the phone without the undersigned counsel being able to secure a date for Stark’s discovery response.
10. On June 10, 2020, the State filed its Verified Motion to Compel Discovery from Timothy Stark.
11. On June 28, 2020, a hearing was held addressing the Court’s temporary restraining orders, the State’s motions for preliminary injunction, Stark’s violations of court orders, and Stark’s noncompliance with discovery.
12. On July 6, 2020, the Court issued an order compelling discovery from Stark in which Stark was ordered to fully respond to the State’s First Set of Interrogatories and Requests for Production of Documents to Defendant Timothy Stark by July 20 and to show cause in writing by July 20 why the Court should not award attorney fees to the State.
13. As of today’s date, the State has not received a response to the State’s May 8, 2020 discovery request to Stark.
14. Stark has additionally not submitted his show cause filing as ordered by the Court.
15. On July 21, 2020, Stark emailed counsel for the State indicating that he was “sick” the previous weekend and had not completed his discovery responses. See Exhibit 1.

16. Stark claimed that he would try to provide the State his discovery response by July 27, however, the Court has already ordered Stark to produce a full discovery response by July 20.
17. The State received information that Stark was at TNT Exotics in Shelbyville, Indiana over the weekend of July 18, 2020 and brought a spider monkey with him from WIN to TNT Exotics.
18. On July 23, the undersigned counsel contacted the phone number listed on TNT Exotics' website and spoke to a person purporting to be Twanna Simpson of TNT Exotics.
19. The person purporting to be Twanna Simpson confirmed that Stark was at TNT Exotics with a spider monkey over the weekend and that Stark over the past "3-4 weeks" brought a wallaby to TNT Exotics and the wallaby is still there.
20. Stark's lack of discovery compliance even after the issuance of an order compelling discovery is another instance of defiance of the legal proceedings by Stark. This Court already found Stark in contempt on July 6 for transferring animals in violation of court orders, acquiring animals in violation of court orders, exhibiting animals in violation of court orders, failing to timely report animal births and deaths in violation of court orders, and failing to provide proper care for animals in violation of court orders.

21. Under Trial Rule 37(B)(2)(a), the State requests this Court establish facts the State sought to settle with its discovery request in which Stark has failed to comply.
22. Under Trial Rule 37(B)(2)(b), the State requests this Court prohibit Stark from asserting claims and defenses related to matters encompassed in the State's discovery request.
23. Trial courts have broad discretion to issue discovery sanctions. *Whitaker v. Becker*, 960 N.E.2d 111, 115 (Ind. 2012). This discretion allows trial courts to issue sanctions ranging from intermediate sanctions under Trial Rule 37 to issuing a default judgment against a party that has failed to timely respond to discovery requests. *Id.*
24. The State's May 8, 2020 discovery request to Stark requested Stark to identify animals acquired and/or purchased from known animal dealers, breeders, and/or exhibitors. See Exhibit 2.
25. The purpose of Interrogatories 14 and 15 in Exhibit 2 was to establish that animals at WIN were acquired using WIN's money although Stark claims to personally own the animals at WIN.
26. While WIN advertises to the public that it provides "safe harbor" to animals and that the public's donations go towards feeding, housing, and providing care for impliedly "rescued" animals at WIN, Stark's discovery response, if answered fully and truthfully, would likely show that WIN's funds have been used to purchase animals. Using bank

records acquired from a civil investigative demand to New Washington State Bank, the State has already been able to pinpoint wire transfers totaling hundreds of thousands of dollars from WIN's bank account to known and/or suspected animal dealers.

27. Stark's discovery response also would show that Stark, has for over 20 years, lacked the personal income to purchase animals himself.
28. Due to Stark's noncompliance with discovery, the State requests that the Court establish the fact that the animals at WIN and animals sent from WIN to "off-site" animal care providers are the property of WIN and not the property of Stark.
29. Due to Stark's noncompliance with discovery, the State requests that Stark be prohibited from asserting claims and/or defenses that he is the owner of the animals at WIN.
30. Interrogatory 17 and RFP 6 of the State's discovery request to Stark sought documentation related to real property improvements at 3320 Jack Teeple Road and/or its adjacent plots of land and the responses, if answered fully and truthfully, likely would have shown that improvements on the land were paid for using WIN's funds. See Exhibit 2.
31. Due to Stark's noncompliance with discovery, the State requests that the Court establish the fact that real property improvements at 3320

Jack Teeple Road and its adjacent plots of land used by WIN were paid for using WIN's funds.

32. Interrogatory 10 of the State's discovery request to Stark sought information related Stark's use of WIN funds to pay his personal credit card bills, to pay for purchases at restaurants, to pay Stark's bills including Dish Network payments, to pay for legal representation in Stark's personal lawsuit in Oklahoma, and other personal uses. See Exhibit 2.
33. Due to Stark's noncompliance with discovery, the State requests that the Court establish the fact that Stark has misappropriated WIN assets for his own personal uses contrary to WIN's charitable purpose as a nonprofit public benefit corporation.
34. Due to Stark's noncompliance with discovery, the State requests that Stark be prohibited from asserting claims and/or defenses that he had any legal right to use WIN moneys for any purposes besides for the feeding, housing, and veterinary care of animals.
35. Given the time sensitive nature of the proceedings, which will involve placing animals where they will receive proper care upon the dissolution of WIN, the Court should use its authority to issue sanctions under Rule 37(B) as the facts sought to be established through discovery go towards the State's forthcoming motion for Stark to surrender the animals upon dissolution of WIN. The animals at

WIN and animals sent from WIN and/or Stark to “off-site” animal care providers are corporate assets subject to liquidation upon the dissolution of WIN.

- a. There was evidence presented at the June 26, 2020 hearing that animal(s) at WIN have recently died due to a lack of veterinary care.
- b. There was evidence presented at the June 26, 2020 hearing that WIN and Stark cannot afford to properly care for the animals at WIN if Stark does not have a USDA exhibitor license.
- c. As of the date of this filing, Stark does not have an exhibitor license and the U.S. Court of Appeals for the Seventh Circuit denied Stark’s request to stay his exhibitor license revocation during the petition to review proceedings.

36. Stark’s conduct of failing to provide a complete discovery response by July 20 is yet another occurrence of noncompliance in Stark’s already extensive history of disobeying court orders in this case and the conduct warrants the Court using its authority to issue discovery sanctions under Trial Rule 37.

37. The State’s request for the Court to establish facts and foreclose claims and defenses under Rule 37 is wholly reasonable as case law goes as far as to permit trial courts to issue default judgments based on parties failing to timely respond to discovery requests. *See Whitaker v. Becker*,

960 N.E.2d 111, 115 (Ind. 2012), *Mallard's Pointe Condo. Ass'n, Inc. v. L&L Inv'rs Grp., LLC*, 859 N.E.2d 360, 364 (Ind. Ct. App. 2006), *Nesses v. Specialty Connectors Co., Inc.*, 564 N.E.2d 322, 327 (Ind.Ct.App.1990) (The trial court is not required to impose lesser sanctions before imposing the ultimate sanction of default judgment).

WHEREFORE, the State respectfully requests that this Court grant its Motion for Sanctions and issue relief under Trial Rule 37(B) by establishing facts related to the State's discovery request to Timothy Stark and prohibiting Stark from asserting claims and defenses related to matters encompassed in the State's discovery request.

VERIFICATION

I hereby affirm under the penalties of perjury that the foregoing factual representations are true, to the best of my knowledge and belief.

Date: July 24, 2020

By: /s/ Philip G. Rizzo

Respectfully submitted,

By: /s/ Philip G. Rizzo
Philip G. Rizzo
Deputy Attorney General
Atty. No. 34170-49

/s/ Tamara L. Weaver
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CERTIFICATE OF SERVICE

I certify that on July 24, 2020, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS). I also certify that on July 24, 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.
clay@culottalaw.com

I further certify that the foregoing document was served upon the following USPS mail, postage prepaid on July 24, 2020.

Melisa Lane, Pro Se Defendant
1927 Harmony Circle
Charlestown, IN 47111

Timothy Stark, Pro Se Defendant
3320 Jack Teeple Road
Charlestown, IN 47111

Respectfully submitted,

By /s/ Philip G. Rizzo
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