

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF ALPENA,

Plaintiff-Appellee,

v

TOM SHAW, INC, and TOM SHAW,

Defendants-Appellants.

UNPUBLISHED

June 9, 1998

No. 202542

Alpena Circuit Court

LC No. 92-000262 CZ

Before: Wahls, P.J., and Jansen and Gage, JJ.

MEMORANDUM.

Following a remand for additional proceedings conforming with due process requirements, *City of Alpena v Tom Shaw, Inc*, unpublished opinion per curiam of the Court of Appeals, issued September 17, 1996 (Docket No. 176267), the trial court entered an order in this contempt proceeding imposing court costs against defendants as a civil remedial sanction. Defendants appeal as of right from the entry of this order. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

When this Court vacated the entry of the default in the contempt action below, the contempt action returned to its pre-default posture. See e.g., *Gavulic v Boyer*, 195 Mich App 20; 489 NW2d 124 (1992). In light of the fact that the pre-default posture of the contempt proceedings was that a finding of criminal contempt had been made against defendant Shaw by the trial court, on remand, defendant Shaw was entitled to notice and a hearing with regard to the civil remedial sanctions the court sought to impose, *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995), such sanctions being predicated upon an exercise of the court's inherent powers to recompense itself, or the taxpayers who fund judicial operations, for the expenditures incurred as a result of the misconduct of defendant Shaw, *In re Thurston*, 226 Mich App 205; 574 NW2d 374 (1997).

On remand, the court conducted a prehearing conference at which it informed the parties that it was "reaffirming" its imposition of civil remedial sanctions. The court also informed defendant Shaw that before it entered an order imposing the sanctions, Shaw would be allowed to file written objections to entry of the sanctions order, and to have a hearing at which Shaw could attempt to establish the

merits of his objections. While defendant Shaw agreed to file written objections, he waived his right to a hearing, on the record. On this record, the civil sanctions were imposed in a manner consistent with due process and defendant Shaw's waiver of his right to a hearing now precludes Shaw from upsetting the sanctions order on due process grounds. *Weiss v Hodge (After Remand)*, 223 Mich App 620, 636; 567 NW2d 468 (1997).

To the extent that defendants argue that the trial court should have set aside the judgment in favor of plaintiff because this Court vacated the entry of default which served as the predicate for the entry of that judgment, defendants are precluded from raising this issue because the instant appeal is limited to the matter that occurred on remand, and further because defendants failed to appeal from the entry of the judgment in favor of plaintiff, depriving this Court of jurisdiction over such issue. See e.g., *People v Jones*, 394 Mich 434; 231 NW2d 649 (1975); *Gherardini v Ford Motor Co*, 394 Mich 430; 231 NW2d 643 (1975); *People v Pickett*, 391 Mich 305; 215 NW2d 695 (1974).

Affirmed.

/s/ Myron H. Wahls
/s/ Kathleen Jansen
/s/ Hilda R. Gage