

STATE OF MICHIGAN
COURT OF APPEALS

KEVIN HALASH, DEBBIE HALASH, CHRIS
MURPHY, DAWN MURPHY, TOM MASSELL,
EMOKE MASSELL, WILLIAM SMITH,
CHERYL SMITH and WILLIAM BORON,

UNPUBLISHED
February 28, 2008

Plaintiffs-Appellees,

v

TOWNSHIP OF EXETER ZONING BOARD OF
APPEALS,

No. 274368
Monroe Circuit Court
LC No. 05-019810-AA

Defendant-Appellee,

and

JON GRECA,

Intervening Defendant-Appellant.

Before: Wilder, P.J., Saad, C.J., and Smolenski, J.

PER CURIAM.

Intervenor Jon Greca appeals by leave granted an order declaring him to be in civil contempt and revoking his prior legal non-conforming use of his land. Because we conclude that the trial court exceeded the scope of its civil contempt authority, we vacate the lower court's order and remand with instruction to enter an order consistent with its civil contempt power.

This appeal arises out of the lower court's finding that Greca had acted in contempt of its December 5, 2005 order, which affirmed the Exeter Township Zoning Board of Appeals' April 18, 2005 order. The zoning board had ordered Greca to utilize his land in a manner consistent with the land's use in 1987, which was the year that the Greca's predecessor was granted a prior legal non-conforming use to operate a used car lot and salvage yard on the property. When Greca failed to abide by the lower court's December 5, 2005 order, Exeter Township brought a motion to show cause, which the trial court granted. At a later hearing, the trial court found Greca to be in civil contempt. As a sanction for that contempt, the lower court revoked Greca's right to maintain the prior legal non-conforming use.

On appeal, Greca argues that the lower court exceeded its civil contempt power when it revoked his right to maintain the prior legal non-conforming use. We agree.

This Court reviews a lower court's ruling on a motion for contempt for an abuse of discretion. The factual findings of the lower court are reviewed for clear error while any questions of law are reviewed de novo. *DeGeorge v Warheit*, 276 Mich App 587, 591; 741 NW2d 384 (2007).

The common-law power to punish all contempts of court is inherent in Michigan courts of record. *In re Contempt of United Stationers Supply Co*, 239 Mich App 496, 499; 608 NW2d 105 (2000). This Court has previously recognized that there is a distinction between criminal contempt and civil contempt. *DeGeorge, supra* at 591. While the sanction for criminal contempt is designed to be punitive, the sanctions for a civil contempt are remedial or coercive in nature. *Id.* at 591-592. "Civil contempt proceedings seek compliance through the imposition of sanctions of indefinite duration, terminable upon the contemnor's compliance or inability to comply. By contrast, the purpose of criminal sanctions is to punish past disobedient conduct by imposing an unconditional and definite sentence." *Id.* at 592 (citations omitted). Because the purpose and possible outcomes of criminal and civil contempt hearings are different, so too are the available defenses. In order to be guilty of criminal contempt, a party must show willful disobedience of a court order. *Id.* But to be liable for a civil contempt, a party need only be neglectful or violate a duty imposed by the court. *In re Contempt of United Stationers Supply Co, supra* at 501.

In the present case, the parties and the lower court clearly understood the contempt proceedings to be civil in nature. As a result, any sanction issued by the lower court had to be coercive or remedial, not punitive. *DeGeorge, supra* at 591-592. Yet the revocation of Greca's right to maintain a prior legal non-conforming use of his land was not a coercive or remedial sanction. Rather, the sanction was clearly imposed as punishment for Greca's failure to comply with the court's order. Accordingly, it was a criminal sanction. Because the trial court did not conduct a criminal contempt proceeding, it was without the authority to impose a criminal sanction. See, e.g., *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 713-714, 716-718; 624 NW2d 443 (2000).

We vacate the trial court's contempt order and remand with instruction to enter a sanction consistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Henry William Saad
/s/ Michael R. Smolenski