[Cite as *Benjamin v. Credit Gen. Ins. Co.*, 2004-Ohio-6354.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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| Ann H. Womer Benjamin, Superintendent of Insurance, | : | |
| | : | |
| Plaintiff-Appellee, | : | |
| v. | : | No. 04AP-459 (C.P.C. No. 00CVH11-9867) |
| Credit General Insurance Company et al., | : | (ACCELERATED CALENDAR) |
| Defendants-Appellees, | : | |
| (Robert Lucia, | : | |
| Contemnor-Appellant). | : | |

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O P I N I O N

Rendered on November 30, 2004

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*Jim Petro,* Attorney General; *Dinsmore & Shohl, LLP, George H. Vincent, Stephen G. Schweller, William M. Mattes* and *Andrew B. Demers*, Special Counsel to the Attorney General for plaintiff-appellee.

*Rinehart & Rishel, Ltd.*, and *James R. Rishel*, for contemnor-appellant.

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APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

**{¶1}** Contemnor-appellant, Robert Lucia, appeals an order of the Franklin County Court of Common Pleas, which found him in contempt for violation of orders issued by the court, placing defendant-appellee, Credit General Insurance Company ("CGIC"), in rehabilitation and in liquidation upon the complaint of plaintiff-appellee, Ann H. Womer Benjamin, the Superintendent of the Ohio Department of Insurance ("ODI").[1]

**{¶2}** Facts pertinent to the current appeal reveal that Lucia was President, Chief Executive Officer, and sole owner of PRS Insurance Group, also known as Phoenix,[2] which was the parent company of CGIC. As a part of Lucia's compensation package, Phoenix/PRS purchased and paid the premiums for two MetLife life insurance policies (which were later combined into one policy) for Lucia. As part of his estate planning, in 1997, Lucia transferred his interest in the policy to a family trust. As security for the premium payments, the trust apparently gave Phoenix/PRS an interest in the cash value of the policy, executing a "Split Dollar Insurance Agreement," which assigned to Phoenix/PRS an interest in the greater of the cash value of the policy or the aggregate amounts of premium payments it made. In 1998, the trust transferred its share of the interest in the policy back to Lucia.

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[1] The orders were sought in 2000 and 2001 by Benjamin's predecessor, J. Lee Covington, II. A more complete history of the underlying facts of this case may be found in this court's prior decisions in *Benjamin v. Pipoly*, 155 Ohio App.3d 171, 2003-Ohio-5666; and *Covington v. Lucia*, 151 Ohio App.3d 409, 2003-Ohio-346.

[2] At various times, and in various parts of the record, the parties and the court have alternated use of the names Phoenix and PRS. Because the identity of this entity at any given point in time is not critical to issues raised in this appeal, we will simply refer to PRS and Phoenix collectively as "Phoenix/PRS."

**{¶3}** In June 2000, CGIC came under the supervision of ODI. In September 2000, Phoenix/PRS assigned its interest in the policy to CGIC.[3] Apparently, although the supervision order required the supervisor to approve transfers greater than $10,000, there is no record that the supervisor, Mr. Rubenstein, approved the Phoenix/PRS transfer of the policy, valued at over $300,000, to CGIC. In November 2000, ODI's supervision of CGIC ended, and CGIC came under a rehabilitation order. In December 2000, Lucia executed a release giving Phoenix/PRS's interest in the policy back to himself, with no mention of a prior transfer of Phoenix/PRS's interest to CGIC. Lucia then sent a cash surrender request to MetLife to redeem the full value of the policy. In January 2001, the trial court placed CGIC into liquidation and, a few weeks later, MetLife issued a check to Lucia for approximately $350,000.

**{¶4}** On motion by ODI, the trial court found Lucia in contempt. Although Lucia argued that CGIC never had a right to the cash surrender value of the policy, only the cash value of the policy, the court determined that it was not for Lucia to determine for himself whether the policy was subject to the rehabilitation and liquidation orders. The court stated:

> Neither party disputes the existence of and Mr. Lucia's knowledge of the Rehabilitation and Liquidation Orders. Thus, the sole issue to be determined is whether Mr. Lucia violated the Court's Orders when he redeemed the life insurance policy for its cash surrender value. Those Orders barred him from disposing or interfering with any assets or claimed assets of CGIC. The Magistrate found that the Liquidator had not proven by clear and convincing evidence that CGIC was claiming an interest in the policy. Mr. Lucia argues that without the admission of Exhibit J, such proof could not be shown. The Court disagrees.

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[3] Lucia apparently disputes that there was evidence of this assignment.

> Mr. Lucia testified that he discovered in November of 2000 that Phoenix had purportedly assigned its interest in the policy to CGIC. Mr. Lucia further expressed his belief that the liquidator was trying to steal the policy. Even without the admission of the assignment between Phoenix and CGIC, his testimony is clear and convincing evidence that CGIC was claiming an interest in the policy.
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> The Court recognizes Mr. Lucia's arguments that the purported assignment may not be valid as it was not approved by Mr. Rubenstein and further that Phoenix's interest in the policy was limited to its cash value upon his death, and therefore, he could have requested the cash surrender value at any time. Mr. Lucia's arguments may have merit.
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> Regardless, it was not his place to unilaterally determine that the assignment was invalid or that he had a right to redeem the policy. The Liquidation Order specifically provides that if a party believes that his property is wrongfully being included as an asset of CGIC, then he can file a motion seeking return of that property. Although fully aware of this procedure, Mr. Lucia testified that he did not have to "go to court to take back what was [his]." Mr. Lucia is incorrect. As CGIC claimed an interest in the policy, Mr. Lucia violated the Court's Orders when he redeemed it for the cash surrender value.
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> Mr. Lucia's testimony and his Memorandum Contra express his resounding exasperation with CGIC's claimed interest in the policy. However, his opinion regarding the validity of CGIC's claim did not entitle him to frustrate the liquidation process and ignore the Court's Orders. Placing CGIC into liquidation began the complicated and time-consuming process of properly accounting for and securing its assets with the goal of compensating as many policyholders and creditors as possible. The Liquidation Order provides a mechanism for the return of any assets that do not belong within the Liquidation Estate. This process is greatly hindered when individuals decide that they do not "need to go to court to take back" what is theirs.

**{¶5}** Lucia has appealed from this order of contempt and assigns the following as error:

**FIRST ASSIGNMENT OF ERROR:**

THE COURT ERRED IN FINDING THAT THE PHOENIX INSURANCE GROUP, INC. ("PHOENIX") HAD ASSIGNED ITS INTEREST IN THE METLIFE POLICY OF INSURANCE ON ROBERT LUCIA'S LIFE TO CREDIT GENERAL INSURANCE COMPANY.

**SECOND ASSIGNMENT OF ERROR:**

THE COURT ERRED IN HOLDING ROBERT LUCIA IN CONTEMPT OF THE COURT'S REHABILITATION AND LIQUIDATION ORDERS WITHOUT FIRST DETERMINING THAT THE SUPERINTENDENT HAD A LEGAL BASIS TO CLAIM AN INTEREST IN THE POLICY.

**{¶6}** Lucia's assignments of error are related and will be addressed together.

**{¶7}** A court has the inherent power to determine the kind and character of conduct that will constitute contempt and, pursuant to R.C. 2705.01, may punish conduct that "tends to embarrass, impede or obstruct a court in the performance of its functions." *Citicasters Co. v. Stop 26—Riverbend, Inc.*, 147 Ohio App.3d 531, 2002-Ohio-2286, at ¶47; *Windham Bank v. Tomaszczyk* (1971), 27 Ohio St.2d 55, 56. Courts have an inherent power to punish contempts and must hold substantial deference in the exercise of this power. *State v. Christon* (1990), 68 Ohio App.3d 471, 475, citing *Cincinnati v. Cincinnati Dist. Council 51* (1973), 35 Ohio St.2d 197. Even an order constituting reversible error must be obeyed so long as the order is made within the lawful scope of a court's authority. Id., citing *Fawick Airflex Co. v. United Elec. Workers* (1951), 90 Ohio App. 24. Nevertheless, a finding of contempt must be premised upon: (1) a valid court order; (2) knowledge of the order; and (3) violation of the order. *Arthur Young & Co. v. Kelly* (1990), 68 Ohio App.3d 287, 295.

**{¶8}** The standard of review of a trial court's finding of contempt is abuse of discretion. *Allen v. Allen*, Franklin App. No. 02AP-768, 2003-Ohio-954, at ¶15, citing *State ex rel. Ventrone v. Birkel* (1981), 65 Ohio St.2d 10. Thus, to find an abuse of discretion, we must determine that the trial court's decision was unreasonable, arbitrary,

or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217.

**{¶9}** In *Windham Bank,* a bank foreclosed on the appellant's residential property and, during the interim between the sheriff's sale and the entry of confirmation of the sale, the appellant entered the residence and removed carpeting, drapes, and curtain rods. When the purchaser reported the removals to the bank, the bank obtained an order of contempt on the grounds that the appellant defied a court order by removing fixtures from the home. On appeal, the appellant argued that, before finding him in contempt, the trial court was required to find beyond a reasonable doubt that appellant intended to commit the contempt, and, because there had been no showing that the items removed from the premises were, in fact, fixtures, contempt could not lie.

**{¶10}** The Ohio Supreme Court, in *Windham Bank*, rejected this argument, stating, at 57-59:

> It is apparent from the facts in this case that appellant acted in good faith, without subterfuge and only after seeking the advice of his counsel as to what he could remove from the house. It is clear that he did not knowingly attempt to violate the court's order, that he intended no disrespect to the court, and did not intend to interfere with the execution of the court's order. He did only what he believed he had a right to do. The question is, does such conduct constitute contempt?
>
> The purpose of civil contempt proceedings is to secure the dignity of the courts and the uninterrupted and unimpeded administration of justice.
>
> "* * * the purpose of sanctions in a case of civil contempt is to coerce the contemnor in order to obtain compliance with the lawful orders of the court. * * *" * * *
>
> Such being the case, proof of *intent* is not required in *civil* contempt.

> As the Supreme Court said in *McComb v. Jacksonville Paper Co.* (1949), 336 U.S. 187, 191:
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> "The absence of willfulness does not relieve from civil contempt. Civil as distinguished from criminal contempt is a sanction to enforce compliance with an order of the court or to compensate for losses or damages sustained by reason of noncompliance. * * * *Since the purpose is remedial, it matters not with what intent the defendant did the prohibited act.* The decree was not fashioned so as to grant or withhold its benefits dependent on the state of mind of respondents. It laid on them a duty to obey specified provisions of the statute. An act does not cease to be a violation of a law and of a decree merely because it may have been done innocently. The force and vitality of judicial decrees derive from more robust sanctions. * * *" (Emphasis added.)
>
> We come now to appellant's argument that the removed items were personalty. It is apparently appellant's belief that if the items were not fixtures they could be removed without permission of the court. Although, at the time the items were removed, the foreclosure decree had been entered and the property sold, confirmation of the sale had not been accomplished. Therefore, the property remained under such control of the court that any action taken to remove anything from the premises without prior court approval would constitute an obstruction to the court in carrying out the foreclosure proceedings. In such circumstances it is of no consequence whether the removed property was fixtures or personalty.

(Emphasis sic.)

**{¶11}** Similarly, in the case at bar, the rehabilitation and liquidation orders served to restrict Lucia from disposing of or interfering with any assets or claimed assets of CGIC. Lucia does not dispute that he knew when he obtained the cash surrender value of the policy that the superintendent was claiming the policy as an asset pursuant to the rehabilitation and liquidation orders. Like the appellant in *Windham Bank,* however, his defense is that he disagreed with the trial court that the asset seized

was subject to the orders. *Windham Bank* makes clear that Lucia's intent was not relevant. As long as appellee had at least a colorable claim to assets alleged to be part of the liquidation estate, Lucia could not dispose or interfere with them.

**{¶12}** Regardless of the pending determination of the issue of Lucia's claimed entitlement to the cash surrender value of the policy, and regardless of whether the evidence, as it was known to the trial court at the time of the contempt ruling, conclusively established that Phoenix/PRS had transferred its interest in the policy to CGIC, the court was within its discretion in finding Lucia in contempt. Therefore, Lucia's assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

PETREE and DESHLER, JJ., concur.

DESHLER, J., retired of the Tenth Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

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