IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Harry J. Darrah and Darrah’s Motorsports, LLC, Appellants v. Springettsbury Township	: : : : : : :	 1959 C.D. 2009

Harry J. Darrah and Darrah's Motorsports, LLC, Appellants v. Springettsbury Township	: : : : : : :	 2390 C.D. 2009 Submitted: May 7, 2010

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH FILED: September 9, 2010

Harry J. Darrah and Darrah’s Motorsports, LLC, (Appellants) appeal from the orders of the York County Court of Common Pleas (trial court), dated September 8, 2009, and November 10, 2009, which, respectively, granted Springettsbury Township (Township) a permanent injunction and held Appellants in contempt of the permanent injunction. We affirm.

Appellants’ property, at 1190 Graham Street, Springettsbury Township, York County, Pennsylvania, is located in an open space zoning district and a floodplain. On May 14, 2007, Appellants wrote to the Township zoning officer to confirm that Appellants were permitted to use the building on the

property to work on privately owned race cars and to use the surrounding property to store empty trailers without first acquiring zoning approval. The Township responded that Appellants could use the building on the property to work on race cars but were not permitted to store trailers on the property. On December 17, 2007, and March 3, 2008, the Township again notified Appellants that, pursuant to sections 325-73 and 325-78 of the Township's zoning ordinance (Ordinance), the storage of trailers was not a permitted use in an open space district or a floodplain and that Appellants must remove the trailers or apply for a use variance with the Zoning Hearing Board (Board).

On April 11, 2008, Appellants applied to the Board for a special exception to store trailers on the property, pursuant to section 325-78(F)(2)(f) of the Ordinance.[1] The Board denied Appellants' application for a special exception, concluding that the thirty-five trailers Appellants intended to store on the property were buoyant and could not be readily removed from the area within the time available after a flood warning, as required by the Ordinance. The Board also concluded that the proposed use of the property was not equal to or more

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[1] Section 325-78(F)(2)(f) provides the following use permitted by special exception in a floodplain:

> Storage of materials and equipment, provided that they are not buoyant, flammable or explosive and are not subject to major damage by flooding, provided that such material and equipment is firmly anchored to prevent flotation or movement and/or can be readily removed from the area within the time available after flood warning. Nothing in this subsection shall permit the storage of materials that could (in times of flooding) be injurious to human, animal or plant life.

(Reproduced Record (R.R.) at 595a.)

restrictive than a prior non-conforming use, approved by the Board in 2002, as a granite cutting business, as required by Ordinance section 325-193(E). Appellants appealed to the trial court, asserting that the Board erred by addressing, sua sponte, the nonconforming use of the property as a granite cutting business. On January 13, 2009, the trial court affirmed the Board's decision, concluding that Appellants, not the Board, raised the nonconforming use of the property as an alternative to the application for a special exception, both in a letter to the Board and again at the hearing before the Board. (R.R. at 610a.) The trial court further concluded that the Board's holding regarding the nonconforming use was supported by substantial evidence. Appellants did not appeal the trial court's order.

Nonetheless, Appellants continued to store trailers on the property surrounding the building. On July 23, 2009, the Township filed a complaint seeking a permanent injunction, and on August 2, 2009, the Township filed a petition for a preliminary injunction. By order dated August 6, 2009, the trial court granted the Township a preliminary injunction, which directed Appellants to remove all trailers from the property except two that were used for Appellants' motorsports business. On August 26, 2009, the trial court held an evidentiary hearing at which Appellants sought to introduce evidence that the use of the property to store trailers was consistent with the prior nonconforming use of the property as a granite cutting business. The same day, the trial court issued its findings, concluding that the issue of non-conforming use had already been decided by the Board and affirmed by the trial court in its January 13, 2009, opinion and order. On September 8, 2009, the trial court granted the Township's request for a permanent injunction,[2] and Appellants filed a timely notice of appeal.

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[2] In pertinent part, the permanent injunction provides as follows:

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On October 5, 2009, the Township filed a motion for civil disobedience of the permanent injunction, averring that Appellants continued to store more than the two approved trailers on the property in violation of the permanent injunction. The trial court held an evidentiary hearing on October 28, 2009, at which the Township presented photographs, taken mid-afternoon on intermittent days, of trailers parked on the property. The trial court concluded that although the Township did not present photographs for each of the days from September 29, 2009, to October 28, 2009, the circumstantial evidence was sufficient, under a preponderance of the evidence standard, to establish that Appellants continuously stored trailers on the property in violation of the permanent injunction.[3] Thus, the trial court issued an order on November 10,

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> [I]t is hereby ORDERED, ADJUDGED, and DECREED as follows.
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> 1. Defendants shall within twenty (20) days of this date remove all trailers stored on the property located at 1190 Graham Street, Springettsbury Township, York, Pennsylvania. Only two trailers identified more particularly as a red transporter with the number 89 on it, so long as it is attached to a tractor, and a white transporter, with a number 89 on its side, may remain on the property on a regular basis.
> 2. Defendants shall refrain from any outside storage on the property in trailers or otherwise, located at 1190 Graham Street, Springettsbury Township York County, Pennsylvania.
> 3. This Permanent Injunction shall remain in effect until further Order of Court.

(R.R. at 347a.)

[3] In a proceeding for civil contempt, the complaining party has the burden to prove noncompliance with a court order by a preponderance of the evidence. Cecil Township v.
(Footnote continued on next page…)

2009, which held Appellants in contempt of the permanent injunction, awarded a daily penalty of $500 beginning September 29, 2009, to continue on a daily basis until the offending trailers were removed, and awarded counsel fees to the Township. Appellants filed a motion for reconsideration on November 20, 2009, which the trial court denied on November 30, 2009, and Appellants then filed a notice of appeal from the trial court's contempt order. The appeals from the trial court's September 8, 2009, order granting the permanent injunction and the November 10, 2009, order for contempt were consolidated by order of this Court.

With regard to the permanent injunction, Appellants contend that the trial court erred by excluding evidence that the use of the property to store trailers was a continuation of the preexisting nonconforming use of the property as a granite cutting business. Specifically, Appellants argue that the trial court erred by holding that this issue was already decided and could not be revisited pursuant to the doctrine of collateral estoppel. Appellants further aver that the evidence would have demonstrated that Appellants were using the property in a manner consistent with the preexisting nonconforming use and that the trial court, therefore, erred by granting the permanent injunction.[4]

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Klements, 821 A.2d 670 (Pa. Cmwlth. 2003). A finding of contempt is not warranted unless a specific term of a court order has been violated. Lachat v. Hinchcliffe, 769 A.2d 481 (Pa. Super. 2001). The complainant must prove the following: (1) that a contemnor had notice of the court order allegedly violated; (2) that the contemnor acted with volition; and (3) that the contemnor acted with wrongful intent. Harcar v. Harcar, 982 A.2d 1230 (Pa. Super. 2009). Any ambiguities or omissions in the court order must be construed in favor of the contemnor. Lachat.

[4] Our scope of review from an order granting a permanent injunction is limited to determining whether the trial court abused its discretion or committed an error of law. City of Allentown v. Down Low Nightclub, 993 A.2d 331 (Pa. Cmwlth. 2010).

The doctrine of collateral estoppel prevents the relitigation of an issue already decided in a former action even if the current cause of action is different from the one previously litigated. Pucci v. Workers' Compensation Appeal Board, 707 A.2d 646 (Pa. Cmwlth. 1998). Collateral estoppel applies if the issue in the former action is identical to the issue in the current action, there was a final judgment on the merits, the party against whom collateral estoppel is asserted was a party to the former action, and the party had a full and fair opportunity to litigate the issue. Plaxton v. Lycoming County Zoning Hearing Board, 986 A.2d 199 (Pa. Cmwlth. 2009).

Here, in its January 13, 2009, order and opinion, the trial court held that the Board did not err by addressing the nonconforming use of the property as an alternative to Appellants' application for a special exception and that the Board's finding that the proposed use of the property to store trailers was not equal to or more restrictive than the prior nonconforming use as a granite cutting business was supported by substantial evidence. These issues are identical to those Appellants attempted to raise by introducing evidence of the prior nonconforming use at the August 26, 2009, evidentiary hearing pertaining to the injunction. As parties to the former action, Appellants had a full and fair opportunity to litigate issues concerning the property's prior nonconforming use. Therefore, the trial court in the instant appeal did not err by concluding it was foreclosed from reconsidering the evidence Appellants sought to introduce.

Appellants next argue that the trial court erred in holding Appellants in contempt of the injunction.[5] Appellants contend that the trial court did not have

[5] Our scope of review for an appeal from a contempt order is limited to determining whether the trial court abused its discretion or committed an error of law. Jackson v. Hendrick,
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sufficient evidence to conclude that Appellants stored trailers on the property continuously from September 28, 2009, through October 28, 2009. Specifically, Appellants allege that the photographs admitted at the evidentiary hearing demonstrate only that trailers were stored on the property for nine of the twenty-nine days at issue. Appellants further assert that, since the photos submitted by the Township were taken at approximately mid-afternoon each day, they do not establish that the trailers remained on the property continuously, as required to violate the injunction.

However, as the finder of fact, the trial court was entitled to draw any reasonable inference from the evidence presented. Commonwealth v. $259.00 Cash U.S. Currency, 860 A.2d 228 (Pa. Cmwlth. 2004). Here, the trial court concluded the evidence was sufficient to demonstrate that, more likely than not, Appellants used two white trailers on the property for storage and that these trailers remained on the property continuously from September 28, 2009, through October 28, 2009, in violation of the preliminary injunction. Specifically, the trial court inferred from Appellants' testimony that two of the trailers depicted in the photographs were used to store spare parts for resale. The trial court also inferred from the pictures depicting the trailers in similar, if not identical, locations on intermittent days from September 29, 2009, through October 28, 2009, that the trailers were stored on the property continuously.[6] We conclude that these

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764 A.2d 1139 (Pa. Cmwlth. 2000). In reviewing an appeal from a contempt order, our Court must place great reliance on the discretion of the trial judge. Harcar.

[6] Although Appellants testified that the trailers were removed from the property at the close of business each day, the trial court concluded that Appellants' testimony was not credible in light of the "exceptionally strong photographic evidence to the contrary." (R.R. at 5a). **(Footnote continued on next page…)**

inferences were reasonable and that the trial court did not err in holding Appellants in contempt of the permanent injunction.

Finally, Appellants contend that the trial court erred by imposing liability on Harry J. Darrah and Darrah Motor Sports, LLC, collectively, when the property is owned exclusively by Darrah Motor Sports, LLC. However, the record reflects that Darrah failed to preserve this issue for appellate review. See Nabisco Brands, Inc. v. Workers' Compensation Appeal Board (Tropello), 763 A.2d 555, 558 n.6 (Pa. Cmwlth. 2000) (an issue must be raised at every stage in the proceeding; otherwise it is waived). Furthermore, the argument in Darrah's brief pertaining to this issue consists of only a few sentences unsupported by any authority; therefore, we also conclude that this issue is not sufficiently developed for purposes of appellate review. Rapid Pallet v. Unemployment Compensation Board of Review, 707 A.2d 636 (Pa. Cmwlth. 1998) (arguments not properly developed in a brief will be deemed waived by this Court).

Accordingly, we affirm both the trial court's September 8, 2009, order granting the Township a permanent injunction and the trial court's November 10, 2009, order holding Appellants in contempt of the permanent injunction.

PATRICIA A. McCULLOUGH, Judge

Senior Judge Kelley concurs in the result only.

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Credibility determinations are within the exclusive jurisdiction of the trial court and will not be disturbed on appeal. Picknick v. Washington County Tax Claim Bureau, 936 A.2d 1209, (Pa. Cmwlth. 2007).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Harry J. Darrah and Darrah's Motorsports, LLC, Appellants	:	1959 C.D. 2009
v.	:	
Springettsbury Township	:	

Harry J. Darrah and Darrah's Motorsports, LLC, Appellants	:	2390 C.D. 2009
v.	:	
Springettsbury Township	:	

ORDER

AND NOW, this 9th day of September, 2010, the orders of the York County Court of Common Pleas, dated September 8, 2009, and November 10, 2009, are hereby affirmed.

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PATRICIA A. McCULLOUGH, Judge