

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Greenfield Township Municipal Authority,	:	
	:	
Appellant	:	
	:	No. 1965 C.D. 2010
v.	:	Submitted: January 14, 2011
	:	
D.R. Burket Trust	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: March 18, 2011

This second appeal between the present parties involves the reluctance of a homeowner to connect to and use a chlorinated public water system operated by the Greenfield Township Municipal Authority (Authority). We previously affirmed an order of the Court of Common Pleas of Blair County (trial court) which required the homeowner to connect to the water system. Greenfield Twp. Mun. Auth. v. D.R. Burket Trust, 959 A.2d 522 (Pa. Cmwlth. 2008). In this appeal, the Authority argues the trial court erred in denying its subsequent petition for contempt. We affirm.

D.R. Burket Trust owns a house in Greenfield Township, Blair County. An elderly couple, Donald Burket and Janet Burket, reside in the house. For many years a private well provided water for the house.

The Authority constructed a public water system (System). Greenfield Township Ordinance 03-03 (Ordinance) required owners with property abutting the System to connect with and use the System. The Ordinance authorized the Authority to enter private lands to connect to the System. Additionally, the Authority treated the System's water with chlorine.

The Burket property abutted the System's water mains. The Authority directed the Burkets to connect the property to the System. Mr. Burket refused because of medical concerns. He contended chlorine adversely impacted his wife's health. Mrs. Burket's sensitivity to chemicals was documented by her inclusion on the state's Pesticide Hypersensitivity Registry.

The Authority filed a motion for injunctive relief with the trial court. The Authority asked the trial court to direct the Burkets to allow the Authority "to enter upon [the] property ... to make the lawful connection to the public water system." Motion for injunctive relief (injunction motion) at 5; Reproduced Record (R.R.) at 82a.

After hearing, the trial court granted the injunction motion and ordered the Burkets to allow the Authority "or its designated contractor, to enter [the property] to make the lawful connection to the public water system." Trial Ct. Order, 12/3/07 (injunction order); R.R. 84a. The trial court concluded the Authority "has the right and authority to seek a mandatory connection from Burket." Trial Ct., Slip Op., 12/3/07, at 2 (emphasis in original). The trial court

acknowledged Mrs. Burket’s health issues, but found the Burkets did not sufficiently investigate other options. Id.

The Burkets appealed. This Court identified the issue on appeal as “whether the public interest is served where the Authority enforces connection when a citizen is allergic to chlorine in public water” Burket, 959 A.2d at 523. The Burkets did not challenge the legality of the Ordinance. Rather, the Burkets argued existing case law did not protect “people with medical needs that will be compromised by connecting to a public water system or balance a person's private health, safety and welfare interest with the general public's interest.” Id. at 527. The Burkets asked this Court to create a medical necessity exception to the connection requirement.

This Court held the plain language of Section 2603 of The Second Class Township Code¹ prevented us from creating a medical necessity exception. We noted Section 2603 authorized a board of supervisors to require property owners to connect to and use an abutting public water system. We held the Ordinance complied with the plain language of Section 2603. We also held, “The fashioning of an exception by the courts could hardly be described as following the legislative intent as disclosed by the plain language.” Id. at 527. Accordingly, we affirmed the trial court.

Several years later, the Authority filed a petition for contempt with the

¹ Act of May 1, 1933, P.L. 103, added by Section 1 of the Act of November 9, 1995, P.L. 350, as amended, 53 P.S. §67603.

trial court. The Authority averred the Burkets temporarily connected to the System, but then “intentionally altered the water lines in the residence to avoid using the public water.” Pet. for Civil Contempt at ¶8, R.R. at 121a. The Authority asked the trial court to require the Burkets to fully connect and use the System, to pay contempt fines; and to pay the Authority’s attorney’s fees.

The trial court conducted a hearing on the contempt petition. Mr. Burket and his daughter testified. Mr. Burket stated he borrowed money to pay to install the lateral sewer line to his house because he wanted “to abide by [the trial court’s] rules” Hearing of 3/29/10, Notes of Testimony at 8, R.R. at 139a. Similarly, Mr. Burket testified he followed the trial court’s discussion and installed a filtration system, but it did not fully remove the chlorine. Id. at 6-7, R.R. at 137a-38a. Both Mr. Burket and his daughter expressed concern about Mrs. Burket ingesting any amount of chlorine. Mr. Burket’s daughter acknowledged that her mother’s condition deteriorated since the injunction proceeding.

The Authority presented the testimony of the Authority’s manager (Manager) and the Township’s Chief of Police (Chief). The Manager testified his first inspection of the property showed the house was fully connected to the System. He testified he inspected the property several months later. The Manager stated this second inspection revealed modifications to the plumbing system. In particular, only a sink in the basement was now connected to the System. The rest of the house was connected to the private well. The Manager expressed concerns about the possibility of well water commingling with the System’s water. However, he acknowledged his examination of the property did not show

commingling.

The Chief stated he accompanied the Manager for the second inspection. The Chief testified Mr. Burket stated, “He would pay the minimum bill, but he wasn’t using the water regardless of what the judge said and that he would go to jail if he had to.” Id. at 33.

The trial court denied and dismissed the contempt petition. In its contempt order, the trial court directed the Burkets to maintain the well water quality and to keep the well water plumbing distinct from the System’s plumbing. The trial court authorized the Authority to inspect the property at reasonable times and intervals to ensure there is no interconnection. Lastly, the trial court stated, “This Order is entered **without prejudice** to the Authority to mandate a connection to the [System] upon the conveyance of the subject real property to a third party.” R.R. at 175a (emphasis in original).

In explaining its decision, the trial court noted contempt requires not just noncompliance with an order, but also a finding of wrongful intent. The trial court found Mr. Burket credible. The court determined Mr. Burkert acted in good faith and had no wrongful intent. Further, the trial court concluded Mr. Burket substantially complied with the prior injunction order. Lastly, the trial court acknowledged the Authority’s legitimate concerns about use and commingling. The trial court explained it constructed the contempt order to address these

concerns. The Authority appeals the trial court's contempt order.²

The Authority asks four questions. First, may the Authority seek enforcement of the Ordinance? Second, where the Ordinance contains no exemption provision, must Burket connect to the public water system? Third, did the trial court err in denying the contempt petition? Fourth, did the trial court violate principles of *res judicata* and collateral estoppel by reversing the prior injunction order? The Burkets are not participating in this appeal.

The first two questions were answered in this Court's opinion in the earlier Burket case, which involved the injunction. We decline the invitation to recover the same material.

As to the contempt order, the Authority argues the trial court erred. The Authority argues the evidence clearly established the Burkets acted willfully by disconnecting the house from the System and reconnecting it to the well. The Authority acknowledges, however, the trial court's prior injunction did not address use of the System. Nevertheless, the Authority argues the injunction required the Burkets to make a "lawful connection," and a "lawful connection" under the Ordinance required the Burkets to use the water.

In order to sustain a finding of civil contempt, the complainant must prove certain distinct elements by a preponderance of the evidence: (1) that the

² Our standard of review of the trial court's contempt order is whether there has been an abuse of discretion. Commonwealth v. Pruitt, 764 A.2d 569 (Pa. Super. 2000); Commonwealth ex rel. Ermel v. Ermel, 469 A.2d 682 (Pa. Super. 1983).

contemnor had notice of the specific order or decree which she is alleged to have disobeyed; (2) that the act constituting the contemnor's violation was volitional; and, (3) that the contemnor acted with wrongful intent. Harcar v. Harcar, 982 A.2d 1230 (Pa. Super. 2009). The order alleged to be violated must "be *definite, clear and specific*--leaving no doubt or uncertainty in the mind of the contemnor of the prohibited conduct and is to be strictly construed." Gunther v. Bolus, 853 A.2d 1014, 1017 (Pa. Super. 2004) (citation and quotation omitted) (emphasis in original).

Appellate courts grant significant deference to a trial court's contempt determination:

Each court is the exclusive judge of contempts against its process. The contempt power is essential to the preservation of the court's authority and prevents the administration of justice from falling into disrepute. When reviewing an appeal from a contempt order, the appellant [sic] court must place great reliance upon the discretion of the trial judge. On appeal from a court order holding a party in contempt of court, our scope of review is very narrow. We are limited to determining whether the trial court committed a clear abuse of discretion.

Langendorfer v. Spearman, 797 A.2d 303, 307-08 (Pa. Super. 2002) (citation omitted).

We discern neither error nor abuse of discretion. The record supports the trial court's determination that the Burkets substantially complied with the injunction order, and that the Authority did not carry its burden of proving the Burkets acted in willful violation or with wrongful intent. The injunction order did not require the Burkets to consume water from the System; rather, it required

connection to the System. Further, findings regarding connection to the System, payment of all service-related bills, and state of mind are supported by the testimony of Mr. Burket and his daughter, together with favorable inferences.

The Authority's arguments essentially ask this Court to make findings of fact contrary to those made by the trial court. The trial court, however, is the sole finder of fact, and we afford its findings great deference. Langendorfer. Here, the record supports the trial court's findings.

The Authority argues the trial court erred in reversing its prior injunction order. The Authority argues the trial court violated principles of *res judicata* and collateral estoppel.

In general, *res judicata* and collateral estoppel preclude parties from litigating claims and issues already decided. Callowhill Ctr. Assocs., LLC v. Zoning Bd. of Adjustment, 2 A.3d 802 (Pa. Cmwlth. 2010). We conclude the trial court did not violate these principles, for several reasons.

First, the issues addressed in a motion for permanent injunction are different than those addressed by a motion for contempt. "In Pennsylvania, a permanent injunction will issue if the party establishes [a] clear right to relief. The party need not establish either irreparable harm or immediate relief, as is necessary when seeking a preliminary injunction, and a court may issue a final injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at law." Bd. of Revision of Taxes, City of Phila. v. City of Phila. ___ Pa.

___, ___, 4 A.3d 610, 627 (2010) (citations and quotations omitted). Our Supreme Court has also explained: “To justify the award of a permanent injunction, the party seeking relief ‘must establish that his right to relief is clear, that an injunction is necessary to avoid an injury that cannot be compensated by damages, and that greater injury will result from refusing rather than granting the relief requested.’” Kuznik v. Westmoreland Cnty. Bd. of Comm’rs, 588 Pa. 95, 117, 902 A.2d 476, 489 (2006) (quoting Harding v. Stickman, 823 A.2d 1110, 1111 (Pa. Cmwlth. 2003)).

In contrast, to justify a finding of civil contempt, there must be inquiry into state of mind of the alleged contemnor and clarity of the prior order. These are not issues addressed in a permanent injunction proceeding. Because these latter issues were not litigated before, and were not relevant to the earlier proceedings, the trial court was not precluded from making its findings here.

Second, the Authority mischaracterizes the effect of the trial court’s contempt order. The injunction order required the property to be connected to the System; the contempt order does the same. The trial court did not reverse itself on this point.

Third, we are required to read strictly orders that are subject to a contempt petition. Gunther. In this case, the trial court correctly observed that its prior injunction order only directed the Burkets to connect the property to the System, and the order was “silent as to any directive that the [Burkets] had to actually use/consume the public water.” Trial Ct. Op. and Order, 9/8/10, slip op. at

4, R.R. at 174a. Thus, rather than reversing itself, the trial court recognized that the injunction order was not so definite, clear and specific as to use of the System to support a finding of contempt. Id.

As discussed earlier, the record supports the trial court's findings and conclusions. For these reasons, we affirm the trial court's contempt order.

ROBERT SIMPSON, Judge

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Greenfield Township Municipal Authority,
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ORDER

AND NOW, this 18th day of March, 2011, the September 8, 2010 Order of the Court of Common Pleas of Blair County is **AFFIRMED**.

ROBERT SIMPSON, Judge