

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania, :
Department of Agriculture :
 :
v. : No. 2177 C.D. 2010
 : Submitted: December 17, 2010
Scott Fay, Eugene Mosher, Connie :
Adams and Tammy Long :
 :
Appeal of: Scott Fay :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: January 20, 2011

Scott Fay appeals from the January 11, 2010, order of the Court of Common Pleas of Tioga County (trial court), which entered judgment on the pleadings in favor of the Commonwealth of Pennsylvania, Department of Agriculture (Department), finding Fay in contempt of a Settlement Agreement between Fay and the Department. We affirm.

The Department filed a complaint with the trial court, seeking an order to enjoin Fay from operating a kennel without a proper kennel license.¹ Fay and the Department subsequently entered into a Settlement Agreement on December 30,

¹ Section 102 of the Dog Law, Act of December 7, 1982, P.L. 784, *as amended*, 3 P.S. §459-102, defines “kennel,” in part, as an establishment in or through which at least twenty-six dogs are kept or transferred in a calendar year.

2008, which the trial court approved on January 6, 2009. The relevant paragraphs stated:

1. Defendants consent to a permanent injunction . . . enjoining each and all of them from operating a kennel . . . without a valid license which shall include the following terms:

(a) Defendants Fay, [Connie] Adams and [Tammy] Long may own, possess, harbor or control a total of five dogs. . . .

(b) After the puppies reach the age of eight weeks, all puppies will be transferred without compensation to a Humane Society or nonprofit kennel. . . .

(g) Defendants Fay, Adams and Long will have ninety (90) days from the date of this Agreement to transfer all the dogs possessed in excess of the number o[f] dogs permitted under [Paragraph 1(A)]

(h) At the expiration of ninety (90) days, any dog not permitted to be possessed by Defendants . . . will be transferred without compensation to a Humane Society or nonprofit kennel approved by the Department.

(R.R. at 9a-11a, 14a) (emphasis added).

On March 26, 2009, just prior to the expiration of the ninety-day period, Fay sent an email to the Department requesting an extension of thirty days. The email stated, in part, “Please let me know if the Department would agree to a thirty (30) days extension as [Fay] believes he will then have placed all required dogs. This

would be in lieu of surrender and destruction of the dogs by the Department as is contemplated by the Agreement.”² (R.R. at 46a.)

The Department agreed to an extension of two weeks, placing the new deadline in mid-April. The email in response to Fay’s request stated, in part, “One correction, if the confiscation of the dogs becomes necessary[,] the Bureau [of Dog Law Enforcement] in no way is seeking their destruction. The Bureau will, however, transfer the dogs to the Humane Society or nonprofit kennel.”³ (R.R. at 47a.)

On July 10, 2009, state dog wardens learned that Fay had thirty-four dogs in his possession. (Department’s Answer to Fay’s Petition for Contempt (Fay’s Petition), ¶ 4, R.R. at 23a.) On July 13, 2009, Fay requested authorization from the Department to remove the excess dogs. (*Id.*, ¶ 12, R.R. at 29a.) On July 23, 2009, the Department removed the excess dogs. (*Id.*; Fay’s Petition, ¶ 12, R.R. at 16a.) On August 6, 2009, the Department issued non-traffic citations to Fay for operating a kennel without a proper license and other offenses. (Fay’s Petition, ¶¶ 9-10, R.R. at 16a.)

On September 28, 2009, Fay filed a petition for contempt against the Department, seeking an order finding the Department in contempt of the Settlement

² We note that the Settlement Agreement does not state that, at the end of ninety days, Fay must surrender the excess dogs to the Department for their destruction.

³ The Settlement Agreement does **not** provide for the Department’s confiscation of the excess dogs. Thus, the scenario described in this email would only occur if Fay failed to comply with the Settlement Agreement.

Agreement and directing the Department to withdraw the non-traffic citations. Fay asserted that he possessed the excess dogs only because the Department would not authorize their removal as required by Paragraph 1(h) of the Settlement Agreement. (Fay's Petition, ¶¶ 6-11, R.R. at 16a.)

The Department filed an answer and new matter, denying that Paragraph 1(h) of the Settlement Agreement required the Department to authorize removal of the excess dogs. The Department also asked the trial court to find Fay in contempt of the Settlement Agreement because Fay possessed more than five dogs at the end of the extended deadline, because Fay was operating a kennel without a proper kennel license and because, at the end of the extended deadline, Fay failed to remove the excess dogs. (Department's Answer to Fay's Petition, R.R. at 33a-37a.)

In his reply to new matter, Fay asserted that Paragraph 1(h) of the Settlement Agreement required that the excess dogs be transferred to a Humane Society or nonprofit kennel "approved by the Department," and the Department never approved a transfer to any location. (Fay's Reply, ¶ 22, R.R. at 40a.) Fay further asserted that the parties understood in negotiating the deadline extension that Fay's removal of the dogs before expiration of the extended deadline would be "in lieu of surrender and destruction of the dogs by the Department as i[s] contemplated by the Agreement." (Fay's Reply, ¶ 24, R.R. at 41a.)

The trial court scheduled a hearing for November 18, 2009, but, on November 16, 2009, the Department filed a motion for judgment on the pleadings. In response, Fay asserted that: (1) the motion was improper because it delayed the

scheduled hearing, (Fay’s Answer, ¶ 5, R.R. at 61a); (2) there are genuine issues of material fact regarding the proper interpretation of Paragraph 1(h); (3) the Department’s original draft of Paragraph 1(h) stated that Fay would “sign over extra dogs at [the] end of 90 days”; (4) Paragraph 1(b) required the transfer of puppies to a Humane Society or nonprofit kennel without the Department’s approval, suggesting that the approval by the Department in Paragraph 1(h) was significant; and (5) in negotiating the deadline extension, the Department stated that it would “transfer the dogs to the Humane Society or nonprofit kennel.” (Fay’s Answer, ¶ 11, R.R. at 63a.)

After argument on the matter, the trial court granted judgment on the pleadings to the Department. In doing so, the trial court stated that the language of the Settlement Agreement was clear and unambiguous in establishing that Fay was responsible for removal of the excess dogs.⁴ Fay sought reconsideration, which the trial court denied. Fay now appeals to this court.⁵

⁴ When the words of an agreement are clear and unambiguous, the intent of the parties is to be ascertained from the language used in the agreement, which will be given its commonly accepted and plain meaning. *LJL Transportation, Inc. v. Pilot Air Freight Corporation*, 599 Pa. 546, 559, 962 A.2d 639, 647 (2009).

⁵ In reviewing a trial court’s decision to grant judgment on the pleadings, our review is plenary. *Montour School District v. Township of Collier*, 944 A.2d 113, 117 n.11 (Pa. Cmwlth. 2008). We confine our consideration to the pleadings filed and any documents properly attached to them, accepting as true all well-pled statements of fact and admissions. *Id.* We will sustain a trial court’s grant of judgment on the pleadings only where the moving party’s case is so clear and free from doubt that a trial would prove fruitless. *Id.*

Fay argues that the trial court erred in concluding that the language of Paragraph 1(h) clearly and unambiguously required Fay to remove the excess dogs at the expiration of the extended deadline. We disagree.

Paragraph 1(g) allowed Fay ninety days to transfer the excess dogs to persons of his choosing, with the possibility of Fay receiving compensation for them. Paragraph 1(h) established restrictions on Fay's transfer of the excess dogs after the expiration of ninety days, stating that any excess dogs will be transferred only to a Humane Society or nonprofit kennel approved by the Department and without the possibility of compensation for Fay. The fact that Fay was required to transfer the dogs to a facility "approved by the Department" does not mean that the Department was responsible for transferring the dogs. Indeed, if the Department had become responsible for transferring the excess dogs after ninety days, there would have been no reason for the Department to approve any particular facility.

Stated succinctly, once the extended deadline expired, Fay was required to locate a Humane Society or nonprofit kennel willing to take any of the excess dogs and seek the Department's approval of the transfer. Fay did nothing, and, when the Department discovered that Fay still possessed thirty-four dogs in July, long after the mid-April extended deadline, Fay claimed that the Department was required to remove the excess dogs, or approve their removal, and failed to do so. As indicated, nothing in Paragraph 1(h) makes the Department responsible for removing the excess dogs, and the Department had nothing to approve until Fay arranged for the transfer of the excess dogs to a particular facility.

Accordingly, we affirm.⁶

ROCHELLE S. FRIEDMAN, Senior Judge

⁶ Fay also argues that the trial court should have summarily dismissed the Department's motion because it was filed only six days before the scheduled hearing. We disagree. Under Pa. R.C.P. No. 1034(a), a party may move for judgment on the pleadings after the relevant pleadings are closed, but within such time as not to unreasonably delay the trial. Here, there was no need for a trial; therefore, we cannot conclude that the Department's motion unreasonably delayed a trial.

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ORDER

AND NOW, this 20th day of January, 2011, the order of the Court of
Common Pleas of Tioga County, dated January 11, 2010, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge