IN THE COMMONWEALTH COURT OF PENNSYLVANIA

East Penn Township	:	
	:	
v.	:	No. 2490 C.D. 2009
	:	No. 2491 C.D. 2009
Clair F. Troxell and	:	No. 2492 C.D. 2009
Diana T. Troxell, his wife,	:	No. 2493 C.D. 2009
Appellants	:	Submitted: September 14, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: January 5, 2011

Clair F. Troxell and Diana T. Troxell, his wife, (the Troxells) appeal from four final orders of the Court of Common Pleas of Carbon County (trial court), which denied their petitions to stay enforcement of the East Penn Township Zoning Ordinance (Ordinance) against them pending appeal. We affirm.

This appeal deals with four separate actions filed by the East Penn Township (Township) against the Troxells between October 2007 and June 2008 for violations of the Ordinance. The Troxells did not file timely answers to any of the complaints and consequently default judgments were entered against them.[1]

[1] In one of the cases, following entry of a default judgment, the Township filed a petition for purposes of framing a decree. Thereafter, the Troxells and the Township entered into a stipulation, which was entered as an order by the trial court. Having failed to comply with the terms of the order, the Township filed a petition for contempt. Following a hearing, the trial

(Continued....)

On July 29, 2009, the Troxells petitioned for stay of execution of all judgments on the basis that the validity of the Ordinance was being challenged in an unrelated matter pending before the trial court, Messina v. East Penn Township (Carbon County, No. 08-2254). The Troxells asserted that if the Ordinance is declared void *ab initio*, then the trial court would be without jurisdiction to engage in enforcement proceedings against them.

By orders dated October 2, 2009, the trial court denied their petitions for stay. From these decisions, the Troxells filed four appeals with this Court on November 25, 2009, which have been consolidated for review. On December 27, 2009, the trial court directed the Troxells to file concise statement of errors complained of on appeal pursuant to Pa. R.A.P. 1925(b). On February 3, 2010, the trial court entered an opinion in support of its orders.

The Troxells raise the following issues for our review:

1. Whether the trial court erred in not granting the stay of enforcement of the Ordinance against the Troxells while a validity challenge is on appeal which could affect the jurisdiction of the trial court to enforce the Ordinance in its entirety.

2. Whether the trial court has jurisdiction to enforce the Ordinance against the Troxells when the validity of the entire Ordinance is being challenged in another matter, which if successful would void the Ordinance *ab initio*.

3. Whether the trial court erred in ordering the Troxells to file a Pa. R.A.P. 1925(b) statement prior to the filing of its opinion as required by Pa. R.A.P. 1925(a).

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court found the Troxells in contempt and imposed fines and costs against them. The Troxells have not purged themselves of contempt. The Troxells filed a petition for reconsideration of the contempt order *nunc pro tunc*, which the trial court denied. The trial court has not framed decrees in the other three matters due to the present appeal.

The Troxells contend that the trial court erred in denying their petitions for stay when the Ordinance applied against them was being challenged in another proceeding, which if successful would render the Ordinance void *ab initio* and deprive the trial court of jurisdiction to enforce the Ordinance. We disagree.

A court in which the execution proceedings are pending has an inherent power to stay the proceedings where it is necessary to protect the rights of the parties. City of Easton v. Marra, 862 A.2d 170 (Pa. Cmwlth. 2004); Kronz v. Kronz, 574 A.2d 91 (Pa. Super. 1990). Rule 3121 of the Pennsylvania Rules of Civil Procedure authorizes a court to stay an execution upon the showing of a legal or equitable ground therefor. "The grant of a stay of execution is within the sound discretion of the trial court, and its decision will not be disturbed absent a clear abuse of that discretion." In re Upset Sale, Tax Claim Bureau of Berks, 505 Pa. 327, 339, 479 A.2d 940, 946 (1984).

While the courts have inherent authority to stay the execution of judgments in the interest of justice, a court should not stay an execution unless the facts warrant an exercise of judicial discretion. City of Easton; Kronz. Our Supreme Court has held that a stay or supersedeas should be granted only if:

1. The petitioner makes a strong showing that he is likely to prevail on the merits;
2. The petitioner has shown that without the requested relief he will suffer irreparable injury;
3. The issuance of a stay will not substantially harm other interested parties in the proceedings; and
4. The issuance of a stay will not adversely affect the public interest.

Public Utility Commission v. Process Gas Consumers, 502 Pa. 545, 552, 467 A.2d 805, 808 (1983).

"The doctrine of void *ab initio* is a legal theory stating that a statute held unconstitutional is void in its entirety and is treated as if it had never existed." Hawk v. Eldred Twp. Bd. of Supervisors, 983 A.2d 216, 219 (Pa.Cmwlth.2009). An ordinance is presumed valid and constitutional unless proven otherwise. Hager v. West Rockhill Township Zoning Hearing Board, 795 A.2d 1104 (Pa. Cmwlth. 2002); Ficco v. Board of Supervisors of Hempfield Township, 677 A.2d 897 (Pa. Cmwlth. 1996). A challenger must meet a heavy burden of proving otherwise. Id.

Here, the Troxells seek to stay the execution of judgments entered against them based upon a challenge to the Ordinance's validity in an unrelated matter. The Troxells themselves have not challenged the validity of the Ordinance or alleged the Ordinance is void *ab initio*. Only after default judgments were entered against them and their petitions to re-open judgment denied, did the Troxells seek to stay the execution of judgments.

The Troxells have failed to meet, let alone sufficiently address, the criteria of Process Gas in their petitions to stay enforcement. The Troxells have not made a strong showing that they are likely to prevail on the merits because the Ordinance is presumptively valid. Moreover, the validity challenge upon which the Troxells rely has been unsuccessful. The trial court upheld the validity of the Ordinance in Messina v. East Penn Township, 9 Pa. D. & C. 5th 55 (2008). This decision was affirmed by this Court on May 26, 2010 in Messina v. East Penn Township, 995 A.2d 517 (Pa. Cmwlth. 2010).[2] Even if the validity challenge was successful and the Ordinance declared void *ab initio*, such declaration would not void every decision ever made in accordance therewith as only parties still engaged

[2] On June 25, 2010, a petition for allowance of appeal was filed with the Pennsylvania Supreme Court and was granted on December 7, 2010. Messina v. East Penn Township, *(Continued....)*

in active litigation may take advantage of a change. Luke v. Cataldi, 883 A.2d 1114, 1119 n.12 (Pa. Cmwlth. 2005), rev'd and remanded on other grounds, 593 Pa. 461, 932 A.2d 45 (2007). The instant matters were already fully litigated at the time the Troxells filed their petitions to stay. See Commonwealth v. Holder, 569 Pa. 474, 805 A.2d 499 (2002) (an issue is actually and finally litigated when it is properly raised, submitted for determination, and then actually determined). For these reasons we conclude that the trial court did not err or abuse its discretion in denying the Troxells' petitions to stay.

The Troxells further contend that the trial court erred in ordering the Troxells to file a Pa. R.A.P. 1925(b) statement prior to the filing of its opinion as required by Pa. R.A.P. 1925(a). We disagree.

Rule 1925 of the Pennsylvania Rules of Appellate Procedure governs the procedures intended to produce trial court opinions that adequately address alleged errors on appeal. Rule 1925 provides, in relevant part:

> (a) Opinion in support of order.
>
> > (1) General rule.--Except as otherwise prescribed by this rule, upon receipt of the notice of appeal, the judge who entered the order giving rise to the notice of appeal, ***if the reasons for the order do not already appear of record***, shall forthwith file of record at least a brief opinion of the reasons for the order, or for the rulings or other errors complained of, or shall specify in writing the place in the record where such reasons may be found.
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> > ***
> >
> > (b) Direction to file statement of errors complained of on appeal; instructions to the appellant and the trial court.--If the judge entering the order giving rise to the notice of appeal ("judge") ***desires clarification of the errors***

__ Pa. __, __ A.3d __ (No. 452 MAL 2010, filed December 7, 2010).

> ***complained of on appeal, the judge may enter an order directing the appellant to file of record in the trial court and serve on the judge a concise statement of the errors complained of on appeal*** ("Statement").

Pa. R.A.P. 1925 (emphasis added).

Here, the trial court was uncertain as to the issues the Troxells sought to raise on appeal and therefore directed the Troxells to file a concise statement of those errors complained of on appeal. The Troxells identified three issues in their statement, which the trial court addressed in its opinion. Contrary to the Troxells' assertions, Rule 1925(a) does not require the trial court to file an opinion prior to requesting the 1925(b) statement. While the Troxells maintain that there is no basis in the record to discern the reasons for the trial court's orders, the reasons are easily discernable from the record - the trial court entered default judgments because the Troxells failed to answer any of the complaints; the trial court denied the petitions for stay of execution of judgment because the Troxells failed to meet the requirements of Process Gas. What was unclear was the basis for the Troxells' appeal. We, therefore, conclude that the trial court properly requested a statement of matters complained of on appeal pursuant to Pa. R.A.P. 1925(b).

Accordingly, the order of the trial court is affirmed.

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JAMES R. KELLEY, Senior Judge

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O R D E R

AND NOW, this 5th day of January, 2011, the orders of the Court of Common Pleas of Carbon County are hereby AFFIRMED.

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JAMES R. KELLEY, Senior Judge