

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No. 135-11-15 Vtec

Couture Runoff Enforcement

ENTRY REGARDING MOTION

Title: Motion for Contempt and Sanctions (Motion 4)
Filer: Donald Couture
Attorney: Kevin A. Lumpkin
Filed Date: November 3, 2016

Response in Opposition filed on 11/22/2016 by Attorney Ryan P. Kane for Appellants Yves and Diane Beauregard

Response filed on 12/01/2016 by Attorney Nicole A. Killoran for the Town of Berkshire

Reply filed on 12/15/2016 by Attorney Kevin A. Lumpkin for Appellee Donald Couture

The motion is DENIED

Donald Couture asks the Court to find Yves and Diane Beauregard in contempt for allegedly violating the Conditional Stipulation and Order of Settlement (“the Agreement”) entered as an Order by this Court on August 22, 2016. Mr. Couture asks the Court to sanction the Beauregards by dismissing this appeal and ordering the Beauregards to reimburse Mr. Couture’s attorney’s fees.

The Agreement, to which Mr. Couture, the Beauregards, and the Town of Berkshire are parties, was designed to dispose of two Environmental Division appeals. The first, Docket No. 3-1-15 Vtec, was to be dismissed once the Beauregards relocated certain structures on their property and removed various items from the property. The second, Docket No. 135-11-15 Vtec and the matter now before us, involves allegations by the Beauregards that contours or ruts on a hill on Mr. Couture’s property cause water to run down a hillside and onto the Beauregards’ property. Under the Agreement, the Beauregards were to mow a field to reveal the hill’s contours. The parties would then terra-scape and reseed the hill to control the runoff, after which the matter would be dismissed.

In his motion for contempt and sanctions, Mr. Couture contends that the Beauregards violated the Agreement by failing to notify him when they would mow, and by mowing a larger area than was agreed upon. Mr. Couture offers email communications and an affidavit to support his argument. The Beauregards, in their response, deny violating the Agreement as written.

We look to the terms of the Agreement, and construe those terms “according to contract principles,” to determine whether there was a violation. Towslee v. Callanan, 2011 VT 106, ¶ 5, 190 Vt. 622 (mem.) (citing Sumner v. Sumner, 2004 VT 45, ¶ 9, 176 Vt. 452).

Under these contract principles, an agreement is limited to the express terms contained in that agreement, and extrinsic evidence may only be used to help interpret those terms if the express terms are ambiguous. Isbrandtsen v. N. Branch Corp., 150 Vt. 575, 577–78 (1988). We determine ambiguity by analyzing the plain meaning of the terms, and by “consider[ing] the circumstances surrounding the making of the agreement.” Id. at 578–79. A term or provision is ambiguous if “reasonable people could differ as to its interpretation.” Id. at 577.

We begin with the explicit terms of the Agreement, under which the parties agree to terra-scape “the field at the top of the ledge and hill separating the [Beauregards’] property from Mr. Couture’s property.” Agreement ¶ 8. The Agreement then states “the Beauregards will mow the area and pile or rake the hay so that the contours and/or ruts in the meadow above the Beauregard property are visible.” Id. ¶ 9 (emphasis added).

Reading these paragraphs together, “the area” referred to in paragraph 9 is clearly “the field at the top of the ledge and hill separating the [Beauregards’] property from Mr. Couture’s property” referred to in paragraph 8. We see no ambiguity in this aspect of the Agreement, particularly in light of our knowledge of the field in question, which is based on information presented at trial in Docket No. 3-1-15 Vtec. We conclude that reasonable people could not differ as to the interpretation of the area to be mowed based on these express terms. In particular, we find no reference in the Agreement that the area to be mowed was intended to be limited to only a portion of the field between the parties’ properties.

We next turn to circumstances surrounding the making of the Agreement. In doing so, we first look at emails between counsel dated July 19, 21, and 29, 2016. Mot. for Contempt, Ex. B. These emails pre-date the Agreement, which was signed by the Town on August 10, 2016, by Mr. Couture’s counsel on August 12, and the by Beauregards’ counsel on August 17, and then entered as a court order on August 22. These emails immediately predate the Agreement, reference a draft and adjustments to the Agreement, and therefore reflect “circumstances surrounding the agreement.” As such, we may consider these emails in our effort to determine whether the terms of the Agreement are ambiguous.

Counsel for the parties agree in the emails that the Beauregards would notify Mr. Couture, through counsel, when they would mow. Mot. for Contempt, Ex. B; see also Town of Berkshire’s Nov. 29, 2016 letter in response to motion for contempt. Mr. Couture would then observe the mowing from afar to “keep an eye on things” and would stop the mowing if anything went “wrong.” Mot. for Contempt, Ex. B. These discussions on notice and observation raise no questions regarding the area to be mowed. Rather, they indicate a general interest that nothing go “wrong.” The emails contain no specifics as to what is meant by this, apart from an aside referring to a comment allegedly made by Mr. Beauregard that he might set the cut hay on fire. We conclude that these emails, insofar as they might shed light on the circumstances surrounding the making of the agreement, offer no insight regarding what area the parties intended to mow, or even whether there was any dispute regarding what area was to be mowed. The emails

therefore give no insight into whether the express terms of the Agreement regarding the area to be mowed are ambiguous.

Mr. Couture offers additional emails dated August 29, 30, and 31, 2016 to support his argument that the Beauregards violated the Agreement. Mot. for Contempt Ex. C. These emails, particularly those sent August 31, include some discussion regarding what area should be mowed, with Mr. Couture's counsel suggesting a smaller area and the Beauregards' counsel suggesting a larger area. Because these emails were sent one week after the Agreement became a court order, and two weeks or more after the parties signed the Agreement, we conclude that these emails do not reflect "circumstances surrounding the making of the agreement." Isbrandtsen, 150 Vt. at 579. We therefore do not take these emails into account in determining whether the terms of the Agreement are ambiguous.

Based on this analysis, we conclude that the terms of the Agreement are not ambiguous regarding the area to be mowed. We therefore limit the interpretation of those terms to the explicit language of the Agreement.

Having delineated the scope of the terms in question, we now turn to whether those terms were violated.

A party that violates a court order may be found in contempt of court. 12 V.S.A. § 122. The party moving for a finding of contempt has the burden of proving contempt by clear and convincing evidence. Vermont Women's Health Ctr. v. Operation Rescue, 159 Vt. 141, 146 (1992).

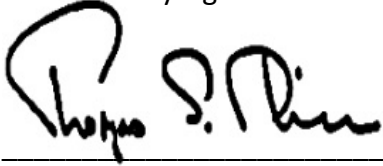
The pleadings and record now before us fail to carry that burden. As set out above, the Agreement—which is also a court order—calls for the Beauregards to mow the field at the top of the ledge and hill separating the Beauregards' property from Mr. Couture's property. The pleadings and record do not demonstrate that Mr. Beauregard mowed more than that area. Instead, the motion for contempt alleges that Mr. Beauregard mowed "almost all of Mr. Couture's property," and then states that the area mowed was approximately 5 acres. Mot. for Contempt at 3. Mr. Couture's affidavit alleges that Mr. Beauregard properly mowed 0.5 acres, and also mowed "approximately 4.5 acres of vegetation [which] has nothing to do with this dispute." Mot. for Contempt Ex. A ¶ 12. The motion and affidavit do not indicate whether Mr. Beauregard mowed more than the field at the top of the ledge and hill separating the Beauregards' property from Mr. Couture's property.

The fact that Mr. Beauregard initially gave notice to Mr. Couture that he intended to mow the field on August 31, 2016, but then chose not to cut because of inclement weather, and decided to cut on the next day, seems to be contrary to the representations in the late August e-mails; his actions certainly appear to be discourteous to a neighbor with whom he had attempted to reconcile. However, since the Agreement contains no specific pledge to provide pre-notification of the field cutting, we cannot conclude that Mr. Beauregard's failure to do so was in contempt of the Agreement and Order.

Because Mr. Couture has failed to show that the Beauregards violated the Agreement by mowing more than was directed under the Agreement, the motion for contempt must be **DENIED**.

So ordered.

Electronically signed on February 08, 2017 at Newfane, Vermont, pursuant to V.R.E.F. 7(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin". The signature is written in a cursive style with a large initial "T".

Thomas S. Durkin, Judge
Environmental Division

Notifications:

Nicole A. Killoran (ERN 5727), Attorney for Interested Person Town of Berkshire

Kevin A. Lumpkin (ERN 6480), Attorney for Appellee Donald Couture

Ryan P. Kane (ERN 6705), Attorney for Appellants Yves Beauregard and Diane Beauregard