COURT OF APPEALS
DECISION
DATED AND FILED

March 11, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP1201 **Cir. Ct. No. 2008CV528**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN RE THE FINDING OF CONTEMPT IN:

TOWN OF STETTIN,

PLAINTIFF-RESPONDENT,

V.

ROGER HOEPPNER AND MARJORIE HOEPPNER,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Marathon County: GREGORY E. GRAU, Judge. *Affirmed*.

¶1 HOOVER, P.J.[1] Roger and Marjorie Hoeppner appeal a judgment imposing remedial sanctions for failing to comply with the purge conditions of a

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

2010 contempt order. The Hoeppners argue the circuit court erred by failing to determine whether the Hoeppners would be able to satisfy the purge conditions and by failing to hold a hearing to determine whether the Hoeppners purged their contempt. They also argue the Town of Stettin did not follow the proper procedure to receive a remedial sanction and their due process right was violated. We affirm.

BACKGROUND

¶2 In 2008, the Town of Stettin brought an action against the Hoeppners, seeking judicial enforcement of certain town ordinances relating to farm equipment, rubbish, and other property located on the Hoeppners' premises. In June 2009, the court entered an order, based on the parties' settlement agreement, whereby the Hoeppners agreed to relocate and remove certain property from their premises by August 30, 2009.

¶3 Approximately one year later, in July 2010, the Town filed a motion for contempt and enforcement of the settlement agreement. At the contempt hearing on August 24, the parties entered into an agreement whereby the Hoeppners agreed to a finding of contempt and, as purge conditions, agreed to relocate and remove most of the property from their premises within thirty days.[2] The agreement was also memorialized in a September 24 court order, which provided, in relevant part: "The [Hoeppners] hereby stipulate to a finding of contempt, and this Court Order is hereby considered the purge attempt by the

[2] The agreement provided the Hoeppners had nine months to relocate the farm equipment.

[Hoeppners]. Any further hearings shall be limited solely to the punishment for the contempt."

¶4 In October 2010, the court conducted a review hearing to determine whether the Hoeppners had satisfied the purge conditions. The parties disputed whether the Hoeppners satisfied the conditions, so the circuit court visited the property with the parties. After the visit, but before the court could hold a follow-up hearing, the Hoeppners appealed the September 24 contempt order. The circuit court then stayed the matter pending the Hoeppners' appeal.

¶5 We dismissed the Hoeppners' appeal for lack of jurisdiction. We concluded the circuit court had not yet imposed a sanction for the Hoepnners' contempt and therefore the entire matter had not been resolved. *See* WIS. STAT. § 808.03(1). We also concluded the order finding the Hoeppners in contempt could not be appealed because it was entered on the parties' stipulation. *See* ***Racine Cnty. v. Smith***, 122 Wis. 2d 431, 437, 362 N.W.2d 439 (Ct. App. 1984).

¶6 Back in the circuit court, the court found the Hoeppners had still not complied with the purge conditions. The court then held various review hearings to determine whether the Hoeppners purged their contempt.

¶7 Finally, on May 24, 2011, the circuit court visited the property with the parties and determined the Hoeppners were not in compliance with its order and still had not purged their contempt. The court imposed a monetary penalty for all the days the Hoeppners had failed to purge their contempt and authorized additional forfeitures for each day the Hoeppners remained in noncompliance. The court also stated that if the Hoeppners did not remove the property by June 24, 2011, it "will be authorizing the [T]own to remove whatever property is not in compliance." The court directed the Town to draft a proposed order.

¶8 On June 14, 2011, the Town mailed a proposed order to the circuit court for its approval. In the letter, the Town also advised the court that "the Town has contacted Wilichowski Realty & Auctions[,] who will be present on the property on June 27, 2011, to comply with our proposed Order of May 24, 2011." After receiving no objection from the Hoeppners, the court signed the proposed order on June 23, 2011. The June 23 order provided, in relevant part:

> The Town … [is] authorized after June 24, 2011, to enter upon the Defendants' premises and remove or cause to be removed all farm equipment, pallets, and other material required by the Court's Order signed September 24, 2010 [the contempt order], to be removed and/or which in any respect is in violation of said Order and to dispose of the said property as set forth in paragraph 4 of [the Town's] Motion to the Court dated July 28, 2010.

¶9 The Town entered the Hoeppners' premises and removed property on June 27, July 1, and July 11, 2011. On July 15, the Hoeppners filed an "emergency motion to stay auction."

¶10 At the hearing, which occurred before the auction, the Hoeppners argued the Town acted improperly by relying on the June 23 order as a basis to enter the Hoeppners' premises and remove the Hoeppners' property. The Hoeppners argued an additional hearing after June 24 was required to determine whether the Hoeppners complied with the court's September 24, 2010 order and purged their contempt. They asserted the court erroneously abdicated its authority to the Town.

¶11 The circuit court disagreed. It first emphasized its June 23 order specifically authorized the Town to enter the Hoeppners' premises after June 24 and remove the property. The court found the Hoeppners had agreed to the order

by failing to object to the language before the court entered it. The court also found

> there was an order entered by the court that stated that [the Hoeppners] had a period of time within which to clean up the property. That it did not occur. That based on the order, the [T]own then had the authority to collect the property for the purpose of auction to clean it up.
>
> Based on the prior orders of the court, that that has not been accomplished; that it's apparent to the court that the property was not removed as promised, and therefore, that the auction should proceed as ordered as stated by the parties[.]

At the end of the hearing, the court authorized the auction sale of the items in the inventory list provided by the Town.

¶12 Following the auction, and throughout 2011 and 2012, the court addressed a variety of motions. Ultimately, the court entered its final judgment on April 5, 2013. As relevant to this appeal, the court determined the Hoeppners had come into compliance with its order on July 11, 2011, which was the last day the Town removed property from the Hoeppners' premises. The court also finalized the forfeiture amount for the Hoeppners' failure to purge their contempt. The Hoeppners now appeal.

DISCUSSION

¶13 On appeal, the Hoeppners first argue the circuit court erred by failing to determine whether the purge conditions were "in the power of the [Hoeppners]." When a circuit court finds an individual in contempt and orders purge conditions, the court must ensure the purge conditions are feasible and within the contemptor's power to satisfy. ***Larsen v. Larsen***, 165 Wis. 2d 679, 685, 478 N.W.2d 18 (1992).

¶14 We conclude the Hoeppners are precluded from arguing the court failed to ensure they would be able to meet the purge conditions. The Hoeppners stipulated to the court's finding of contempt and agreed to the purge conditions in the court's September 24, 2010 order. *See* ***Racine Cnty.***, 122 Wis. 2d at 437 (On appeal, "'[one] cannot be heard to complain of an act to which he [or she] deliberately consents.'" (citation omitted)). The Hoeppners cannot now argue they were unable to meet the conditions.

¶15 The Hoeppners next argue there needed to be an additional hearing after June 24, 2011 to determine whether they complied with the court's September 24, 2010 order and purged their contempt. The Hoeppners contend the court erroneously abdicated its power to the Town to determine whether the Hoeppners purged their contempt and whether the remedial sanction was appropriate.

¶16 We reject the Hoeppners' argument. First, after making this argument in the circuit court, the circuit court determined it did not err because the Hoeppners agreed to the order that automatically authorized the Town to enter the Hoeppners' premises after June 24 to remove the property. The Hoeppners do not address the court's finding or reasoning on appeal. *See* ***Schlieper v. DNR***, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (ignoring ground upon which circuit court ruled constitutes concession of the holding's validity). Second, and in any event, after the Hoeppners made this argument in the circuit court, the court also found the Hoeppners did not comply with its order and remove the property before June 24. The Hoeppners do not address the court's finding on appeal. *See* ***id.*** We will not consider their argument further.

¶17 The Hoeppners next argue the Town did not follow the proper procedure to obtain a remedial sanction. They contend the Town "failed to file a motion and request a hearing to impose a sanction" under WIS. STAT. § 785.03(1)(a). We disagree.

¶18 WISCONSIN STAT. § 785.03(1)(a) provides: "A person aggrieved by a contempt of court may seek imposition of a remedial sanction for the contempt by filing a motion for that purpose in the proceeding to which the contempt is related. The court, after notice and hearing, may impose a remedial sanction authorized by this chapter." In this case, in 2010, after the Hoeppners failed to comply with the court's 2009 order, the Town filed a motion for contempt, asking the court to force the Hoeppners to comply with its 2009 order. After notice, a hearing on the contempt motion was held, during which the Hoeppners stipulated to a finding of contempt. We conclude the Town followed the proper procedures when seeking a remedial sanction against the Hoeppners.

¶19 Finally, the Hoeppners argue the Town deprived them of their right to due process. In support, they renew their previous arguments—that the Town did not request a hearing to determine whether the Hoeppners would be able to complete the purge conditions, that the Town did not request a hearing after June 24, 2011, to determine whether the Hoeppners purged their contempt, and that the Town did not follow the proper procedure to receive a remedial sanction.

¶20 We have already rejected these arguments. Rehashing them in the context of a due process argument adds nothing to the mix. *See* ***Mentek v. State***, 71 Wis. 2d 799, 809, 238 N.W.2d 752 (1976) ("[z]ero plus zero equals zero"). Further, procedural due process requires notice and "the opportunity to be heard at a meaningful time and in a meaningful manner." ***Schopper v. Gehring***, 210

Wis. 2d 208, 213-14, 565 N.W.2d 187 (Ct. App. 1997). The Hoeppners develop no argument that they were denied a meaningful opportunity to be heard in the circuit court. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals need not consider undeveloped arguments).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.