IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

BARBARA J. BEEGHLEY,	)	
	)	
Plaintiff,	)	C.A. No. 99C-08-202 WCC
	)	
v.	)	
	)	
KENNETH HILK AND CAROL HILK,	)	
	)	
Defendants.	)	

Submitted: April 17, 2002
Decided: July 31, 2002

On Defendants' Motion to Dismiss. Granted.

MEMORANDUM OPINION

Barbara J. Beeghley, 6B Rector Court, Wilmington, Delaware, 19810. P*ro se* Plaintiff.

Gilbert Shelsby, Morgan, Shelsby and Leoni, 131 Continental Drive, Suite 206, Newark, Delaware 19713. Attorney for Defendants.

CARPENTER, J.

I. Facts

A. Prior to the Sale

Barbara Beeghley,[1] (hereinafter "Plaintiff") and John L. Beeghley were previously married and owned property located at 904 Burnt Mill Road, Centreville, Delaware (hereinafter "the house" or "the property"). In 1993, the couple went through an apparently hostile divorce. In an attempt to distribute the marital property, the Family Court ordered that the property be sold by Phillip Berger of Weichert Realtors.[2] Because of Plaintiff's repeated objections to the sale, the Court was forced to order Plaintiff to sign the listing agreement. The Family Court's June 16, 1995 order specifically stated that

> Wife is ordered to sign the listing agreement. In the event Wife refuses to sign the agreement, pursuant to 13 *Del. C.* § 1513(f), the Court directs the Clerk of the Court to sign the listing agreement on behalf of Wife. Wife will have 48 hours from the signing of the Order to either sign the sales agreement or decline.[3]

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[1] Plaintiff has been unemployed since March, 1996, and is currently receiving disability. Her only income has been $5200 in alimony arrears, which she uses to pay her rent, utilities, loans, bills, insurance and the like.

[2] The Court was forced to order the sale because John and Barbara Beeghley could not agree upon a listing price and they could not agree upon a realtor. Consequently, the Family Court appointed Philip Berger as the listing agent, who made the determination that the property should be sold for $550,000. Family Court's June 16, 1995 Order.

[3] *Beeghley v. Beeghley*, CN93-07390, Del. Fam. Ct., Kyle, J. (June 16, 1995)(ORDER).

After John Beeghley's divorce from Plaintiff became final, he remarried and thereafter, John and Laura Beeghley (hereinafter collectively "the Beeghleys") resided in the house. It appears that the Plaintiff has not resided in the house since 1994.

B. The Sale

In December of 1996, Kenneth and Carol Hilk (hereinafter "Defendants") discovered that the house was being sold through Weichert Realtors, and began to pursue the purchase. They were informed that the house was being sold as part of Plaintiff's divorce settlement, but that John Beeghley had sole responsibility to sell the house and sign any and all contracts, pursuant to the Family Court's June 16, 1995 order.[4] Defendants placed a deposit for the house in escrow and visited the home several times throughout December into January, 1997.[5] During their visits, the Beeghleys were still living in the house along with their children so they would on occasion be present during the visit. However, at no time during their review of the property was the Plaintiff present. Defendants believed, based upon these visits and the fact that John Beeghley had sole authority to convey the property, that all the

[4] Defendants' October 19, 1999 affidavit at ¶ 2.

[5] According to Defendants' affidavit, when Mr. Hilk visited the house, John Beeghley, Laura Beeghley, their baby son, Laura's daughter from a prior marriage and Rebecca Beeghley, John and Plaintiff's daughter, were the only people ever present. When Mrs. Hilk viewed the home, the Beeghleys were not present.

personal items situated in the house belonged to the Beeghleys and their children. In February, 1997, the Beeghleys moved out of the house after filing for bankruptcy in Pennsylvania.

On May 20, 1997 the United States Bankruptcy Court for the Eastern District of Pennsylvania granted the Beeghley's motion to approve the sale of the real property free and clear of any liens, and any of Plaintiff's ownership interest. The Bankruptcy Court Order further authorized John Beeghley, as the debtor, to sell and convey the property to Gary L. Wilson, or his nominee, for not less than $375,000 pursuant to the Agreement of Sale, which was attached to the Beeghleys' Motion to Sell Real Property.[6] The Bankruptcy Court Order clearly stated that

> The sale of the Real property shall be free and clear of all liens, claims and encumbrances, as well as the ownership interest of Barbara J. Beeghley.
>
> [a]ll claims, liens, encumbrances, interests and rights of others . . . shall attach to the proceeds of the sale in accordance with respective rights and priorities that attached to the Real Property under applicable law before the sale.
>
> The Debtor . . . [is] authorized to take all such actions, including the execution of all documents appropriate or necessary to carry out the sale authorized by this Order. The Debtor JOHN L. BEEGHLEY is

[6] The Bankruptcy Court obviously saw the sale agreement if it was attached to the motion, and at that point could've accounted for any interest Plaintiff may have had in any property located inside the house. The Court made no mention of any ownership interest Plaintiff had - this fact further supports the notion that Plaintiff has no ownership rights in the house, or the contents left therein.

> specifically authorized to execute any deed or other such documents necessary to complete the sale on behalf of and in lieu of the signature of Barbara J. Beeghley . . . and any party is entitled to rely upon this Order . . . as authority for such execution without necessity for further action or proof of same.
>
> The purchaser of the Real Property shall be entitled to the full protection of 11 U.S.C. § 363(m) with respect to the sale contemplated hereby.[7]

In June, 1997, John Koresko, Esquire, Mr. Wilson's agent, contacted Defendants to see if they were still interested in purchasing the property. After negotiations, they signed a contract to purchase the house. On August 22, 1997 the Beeghleys conveyed the property to Gary L. Wilson, who then conveyed the property to Defendants by a valid deed. The Agreement of Sale included such items as a freezer, microwave, security system, area rugs on the first floor and window treatments but provided that "personal property other than items mentioned above" were to be excluded.

Defendants moved into the house after settlement, but the house contained some personal items apparently abandoned by the Beeghleys. Defendants began cleaning out the house, to make room for their own items. The house contained abandoned old broken furniture, clothing, toys, household items, linens, and books; all items that were not disposed of by the Beeghleys, nor Mr. Wilson. Defendants advised the Court that

> broken items were put out for trash pickup, intact items went to

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[7] *In re John L. Beeghley*, E.D.Pa.Bank.Ct. No. 97-12297, Raslavich, J. (May 20, 1997)(ORDER).

> Goodwill, and books went to the Concord Library . . .[a] few pieces of furniture were retained by us [and a few] items abandoned in the garage and pool house have not yet been disposed of by us.[8]

Defendants also stated that at the time Mr. Wilson conveyed the property to them, they believed in good faith, that the items left in the house were the legal property of Gary L. Wilson, the person from whom they purchased the property.

Weeks after the settlement, Rebecca Beeghley ("Rebecca"), the daughter of Plaintiff and John Beeghley, returned to the house apparently unaware that it had been sold to Defendants.[9] After informing Rebecca that they, Defendants, were now the owners of the house, Mrs. Hilk accompanied Rebecca throughout the house to identify and gather any personal items. Furthermore, Mrs. Hilk offered to retain for Rebecca any personal mementos, such as photographs, that she might find in going through the house. Mrs. Hilk also agreed to contact Rebecca, or her father, so they could retrieve any item. In the spring of 1999, Mrs. Hilk delivered to Rebecca her yearbook and slides of photographs that she had found. On September 10, 1999, over two years after the Defendants had settled on the property, Plaintiff sent a letter to Defendants informing them that she wanted her personal items from the house

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[8] Defendants' affidavit at ¶ 5.

[9] It is unclear from the record why Rebecca Beeghley was unaware of the sale.

returned.[10] That letter was forwarded to Defendants' attorney, who asked Plaintiff to have her attorney contact him.[11]

II. The Parties Contentions

Plaintiff asserts that "[o]n or about August 22, 1997 Defendants, in a sales transaction to which Plaintiff was not privy, [] took possession of 904 Burnt Mill Road and kept Plaintiff's personal and other belongings to which Defendants had no legal title."[12] According to Plaintiff, she tried to retrieve this personal property before August 22, 1997, but her ex-husband evicted her from the house, which prevented Plaintiff from collecting these items. Plaintiff also has asserted throughout her various motions that the Defendants had a duty to contact Plaintiff about these abandoned items. Plaintiff now seeks the return of these various personal items, or in the event the property cannot be returned to her, she seeks the full amount of an

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[10] The Court notes that Plaintiff's memo requested the Defendants to contact her at her listed address. The memo did not list or mention anywhere a phone number or fax number. Since Plaintiff requested that the Defendants contact her at the listed address only, the Defendants and any of their respective attorneys cannot be held at fault for any missed notices or communications Plaintiff did not receive, as she has so claimed at varying intervals of her litigation. The Court also notes that during the litigation the Plaintiff also asserted she had not received certain documents. When questioned further by the Court she explained that she had stopped opening mail because of her concern about exposure to Anthrax.

[11] On September 10, 1997 both Mr. and Mrs. Hilk separately received faxed letters from Plaintiff at their employment offices for a return of the property. The Defendants' attorney responded by letter dated September 18, 1997 suggesting that Plaintiff have her attorney contact him. The next correspondence was Plaintiff's serving the Defendants with a Complaint.

[12] Plaintiff's Motion at 2.

insurance policy covering the contents be awarded to her, with interest.[13]

Defendants contend that when the property was conveyed by Mr. Wilson to them, they were given an ownership interest in the real property and that any abandoned personal property contained within that real property was conveyed free and clear of Plaintiffs ownership interest, if any. They contend that to the extent the Plaintiff had any interest in the property, it was extinguished by the Bankruptcy Court's June, 1997 order. Defendants also contend that they were unaware of Plaintiff's ownership interest in those items when they began disposing of them after the sale. Moreover, Defendants contend that Plaintiff has failed to set forth any evidence that contradicts Defendants' asserted facts.[14] They point to the fact that Plaintiff never attempted to depose Defendants, nor any other witness that could support her contentions and the Plaintiff never answered Defendants' interrogatories, or their Requests for Production of Documents. Finally, Defendants claim that Plaintiff failed to join an indispensable party to this litigation, namely Gary L. Wilson. The Defendants have filed a Motion to Dismiss as well as a Motion for Summary Judgment.

III. Procedural Posture

[13] *Id.*

[14] The Court notes Plaintiff has set forth many allegations and contentions, but mere allegations and assertions are not sufficient to withstand a motion for summary judgment.

Plaintiff filed her "Complaint for Return of Personal Property and for Money Damages" on August 23, 1999. Defendants filed a Motion to Dismiss the complaint on October 20, 1999, which was followed by an October 28, 1999 Answer to the complaint. An Arbitration was held, pursuant to Superior Court Civil Rule 16.1 on September 13, 2000, which was followed by the arbitrator's September 25, 2000 decision. The arbitrator found in favor of Defendants and awarded zero damages to Plaintiff. Plaintiff now appeals that decision to this Court. On January 18, 2001, Defendants sent Plaintiff a letter requesting that she contact them to schedule a convenient date and time for her deposition.[15] Plaintiff's first deposition, scheduled for March 5, 2001 never occurred, for she failed to appear, without any notice.[16] A letter was sent to Plaintiff informing her that she did not appear for her noticed deposition, and further re-noticed a second deposition for March 20, 2001. While being deposed on March 20, 2001, Plaintiff refused to answer simple background questions and refused to answer relatively all of Defendants' questions.[17] In the midst

[15] "A party desiring to take the deposition of a person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known. . . ." Superior Court Civil Rule 30(b)(1).

[16] Plaintiff did not contact the Defendants or their attorney to notify them she would not attend this deposition.

[17] Plaintiff refused to answer any of Defendants' questions such as: "What's your current address?" "Were you married previously?" "Have you ever brought a lawsuit against anybody for any reason other than this lawsuit?" "What's your daughter's name?" "Where does she

of that deposition Plaintiff abruptly cut off the questioning and left.

currently reside?"

On March 27, 2001, Defendants directed Interrogatories to Plaintiff and a Request for Production of Documents was mailed to Plaintiff. Plaintiff notified Defendant in June that she could not locate the interrogatories. Defendants again attempted to re-notice Plaintiff's deposition, by letter on June 19, 2001, but Plaintiff never responded. After sending another deposition notice, Defendants scheduled Plaintiff's deposition for September 27, 2001. Again, Plaintiff did not appear for her noticed deposition, nor did she inform Defendants that she would not attend. The discovery cut-off date, January 31, 2002, has now passed, and Plaintiff's deposition has yet to be taken. At the October 29, 2001 Motion to Dismiss, the Court instructed Plaintiff that one more deposition would be scheduled, and if Plaintiff did not attend or answer the proffered questions, Plaintiff's case would be dismissed.[18] The Plaintiff agreed to be deposed on December 5, 2001 and while she appeared for the deposition, again refused to answer many of the questions asked by counsel.

IV. Discussion

Defendants first assert that Plaintiff's claims should be dismissed pursuant to Superior Court Civil Rule 37(d). Rule 37(d), captioned *"Failure of party to attend*

[18] Defendants' October 29, 2001 oral argument on their Motion to Dismiss and Motion for Summary Judgment.

at own deposition or serve answers to interrogatories or responses to request for inspection" provides that:

> [i]f a party . . . fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of interrogatories . . . the Court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this Rule.[19]

Subdivision (b)(2) of Rule 37 states that "[i]f a party . . . fails to obey an order to provide or permit discovery . . . the Court may make such orders in regard to the failure as are just . . . ."[20] Moreover, Rule 37 places a burden upon Plaintiff, the disobedient party in this case, to demonstrate to the Court why her failure to comply with the Court orders was justified, or to show that certain circumstances exist making an award of expenses unjust.[21] In this instance, Plaintiff has done neither.

After the September 25, 2000 arbitration, Plaintiff demanded a trial de novo.[22] On January 18, 2001, Defendants sent Plaintiff a letter asking Plaintiff to contact

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[19] Super. Ct. Civ. R. 37(d).

[20] Super. Ct. Civ. R. 37(b)(2).

[21] *Wileman v. Signal Finance Corp.*, 385 A.2d 689, 691 (Del. 1978)(citing the 1970 Advisory Committee Note to the 1970 Amendments of Rule 37.).

[22] The arbitrator found in favor of Defendants and awarded Plaintiff zero damages.

Defendants to schedule a date and time for Defendants to take Plaintiff's deposition.[23] After no response, Defendants sent Plaintiff another letter, dated February 23, 2001, which letter informed Plaintiff that her deposition would be unilaterally scheduled, since she never contacted Defendants' attorney.[24] The proper notice of deposition was mailed to Plaintiff on February 26, 2001, with the deposition to follow on March 5, 2001. Plaintiff did not respond to either of those letters, nor did she attend the March 5, 2001 deposition. Thereafter, Defendants sent Plaintiff a letter that mentioned her non-appearance, and further informed her that her deposition would be re-noticed. In that letter, Defendants enclosed another Notice of Deposition and informed Plaintiff that if she failed to appear at this properly noticed deposition, Defendants would seek a dismissal of Plaintiff's case.[25] On March 7, 2001, a Re-notice of Deposition Duces Tecum of Plaintiff was mailed, which set the date of the second deposition for March 20, 2001. Plaintiff attended this deposition, but refused to answer basic, essential questions, and then abruptly left, in the middle of Defendants' questions.[26]

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[23] January 18, 2001 letter from Gilbert F. Shelsby, Jr. to Plaintiff.

[24] February 23, 2001 letter from Mr. Shelsby to Plaintiff, requesting Plaintiff to bring the documents requested in the Notice of Deposition.

[25] March 6, 2001 letter from Mr. Shelsby to Plaintiff.

[26] *See* Plaintiff's March 20, 2001 Dep. Tr. at 1-13.

On March 27, 2001 Defendants sent Plaintiff Interrogatories and a Request for Production of Documents, to which Plaintiff did not "respond" until June. In that "response" Plaintiff merely stated, without answering any interrogatory, and without producing any document, that she could not find Defendants' interrogatories. On June 19, 2001 Defendants again sent a letter to Plaintiff, requesting a date and time Plaintiff would be available for her deposition, which letter was never answered. On September 10, 2001, another Re-notice of Deposition Duces Tecum was sent to Plaintiff, which set Plaintiff's deposition for September 27, 2001. Plaintiff was also re-sent the Interrogatories, and the Request for Production of Documents. Plaintiff did not appear for the September 27, 2001 deposition, nor did she notify Defendants that she would not appear. At an October 29, 2001 hearing on Defendants' first Motion to Dismiss, the Court ordered Plaintiff to attend a deposition and answer Defendants' questions or face the sanction of having her case dismissed. The Plaintiff was also ordered that she was required to answer the questions proposed at the deposition. She was told that if she objected to any question she could note her reasons on the record but was still required to respond. At this hearing, Plaintiff and Defendants agreed upon the date of December 5, 2001 for Plaintiff's deposition. On that date, Plaintiff did appear, but refused to answer most of the Defendants'

questions.[27]

Based upon Plaintiff's repeated behavior and successful attempts to thwart Defendants' exhaustive endeavors to depose her, the Court finds this case warrants dismissal under Rule 37(d). Defendants have employed every available tool in their attempts to take Plaintiff's deposition. Additionally, they have exercised all alternative means available to discover information, such as answers to interrogatories and the production of documents, yet all of these attempts have failed. The Court cannot allow a plaintiff, even a *pro se* plaintiff, to disobey its orders and in essence pursue the litigation on her own terms following only her own rules.

The Court notes that the Plaintiff is not a novice to such antics and when her conduct in this litigation is considered together with her conduct before the Family Court and the U.S. Bankruptcy Court, it reflects a pattern of procedural abuse that must now be considered intentional and planned, not the innocent mistakes of an inexperienced litigator. This Court has provided the Plaintiff literally hours of its time attempting to explain the requirements of the litigation and her responsibilities to the parties and the Court. It has patiently listened for hours to Plaintiff's ramblings about alleged mistreatment and the wrongs caused by everyone except herself in the judicial system. In spite of these efforts, the Plaintiff wants the litigation to be run

[27] Plaintiff's December 5, 2001 Dep. at 15-16.

only on her terms and has without fear or hesitation disobeyed the orders of this Court as well as other judicial officers. There must and will be consequences to litigants that blatantly refuse to hear or follow the Court's direction and this Court believes the Plaintiff's actions clearly justify a dismissal of this matter. The Court told her this would be the sanction if she failed to follow its orders and she only has herself to blame for such action.

It is clear that the Plaintiff feels that the judicial system has unfairly treated her in the divorce from her husband and the disposal of her marital assets and it is likely that this premise influences her actions in subsequent litigation. While the Court has no basis to judge the reasonableness of these conclusions it can without reservation find that there is no basis to continue to draw Mr. and Mrs. Hilk through a litigation that is without merit and at best is merely a symptom of the Plaintiff's dissatisfaction with her prior husband and the Court order disposing of her property. She is free to be mad at them but her complaint with the Hilks must end. They are innocent purchasers that have been victimized by the vengefulness of a nasty divorce.

Thus, pursuant to Rule 37(d) and consistent with the Court's prior oral warning to Plaintiff in the October 29, 2001 hearing, Plaintiff's claims against Defendants are dismissed. As a result of this action, the Court finds the Defendants' request for summary judgment is moot and need not be considered.

Judge William C. Carpenter, Jr.