

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

LAWRENCE HAINGL,

Appellant,

v.

LA PUERTA DEL SOL CONDOMINIUM ASSOCIATION, INC., and
UNAUTHORIZED OCCUPANTS,

Appellees.

No. 2D21-3138

November 4, 2022

Appeal from the County Court for Pinellas County; John Carassas,
Judge.

Ama N. Appiah of Law Office of Ama N. Appiah, P.A., St. Petersburg,
for Appellant.

Adam C. Gurley of Rabin Parker Gurley, P.A., Clearwater, for
Appellee La Puerta Del Sol Condominium Association, Inc. No
appearance for remaining Appellees.

STARGEL, Judge.

Lawrence Haingl appeals the trial court's order granting a motion for final judgment providing injunctive relief to Puerta del Sol, a condominium community operating in accordance with chapter 718 of the Florida Statutes. Haingl challenges the order in three respects: (1) the trial court erred when it failed to make the necessary finding regarding his entitlement to an evidentiary hearing, (2) the findings made were not supported by the record and affidavit of noncompliance, and (3) the order improperly authorized a writ of bodily attachment to be subsequently executed against Haingl without first requiring a hearing. We affirm the trial court's order as to the first two issues without further comment. Because the portion of the order authorizing a writ of bodily attachment without first requiring further action by the trial court results in a denial of due process, we must reverse in part.

BACKGROUND

Haingl owns a condominium in the Puerta del Sol community. Following Haingl's alleged noncompliance with condominium governing documents, both parties executed a settlement agreement on March 17, 2021. The agreement stated that Puerta del Sol would not seek further action against Haingl in consideration of a

payment of \$2,750 coupled with Haingl's agreement to comply with the condominium's governing documents—specifically those portions relating to pets in the unit, authorized tenants, and nuisance prohibitions. Further, the settlement agreement provided if Haingl was found to be in breach of the agreement, Puerta del Sol would give him written notice of any violation and an opportunity to cure within three days. If Haingl failed to cure or if the same violation occurred again within a twelve-month period, Puerta del Sol could file an affidavit of noncompliance with the court which would entitle it to an entry of final judgment for injunctive relief requiring Haingl to comply and/or cure. The injunctive relief was to be granted without the need for a hearing unless, within ten days of service of the affidavit of noncompliance, Haingl demanded an evidentiary hearing.

According to Puerta del Sol, Haingl subsequently violated the settlement agreement by allowing an unauthorized tenant (later identified as Maria Perez) to live in his unit, and the tenant then committed various nuisances within the community. Puerta del Sol gave Haingl a three-day notice regarding the violations; however, he failed to cure them. In July 2021, Puerta del Sol filed a complaint

along with an affidavit of noncompliance against Haingl and the unauthorized occupant, Perez. Puerta del Sol raised three counts in its complaint: (1) breach of settlement agreement, (2) violation of the association's governing documents–nuisance, and (3) violation of the association's governing documents–unauthorized occupants. Haingl's answer was timely filed pursuant to the terms of the settlement agreement, but it did not expressly seek an evidentiary hearing. After complaining about the manner in which he was served, Haingl stated: "Consequently, I believe my best relief is to have a judge make a determination as to what is appropriate with this matter." Subsequently, Puerta del Sol filed a motion for final judgment seeking injunctive relief absent the need for a hearing. After being served with the motion for final judgment, Haingl filed a document disputing the information in the affidavit as follows:

I received your follow up letter asking the court for a summary judgement [sic] and I am requesting that a judge from the court hear this matter. There is no proof of the allegations aforementioned and I am attaching my original letter for the court to review. I know that I have the right for a pre-trial evidence hearing and also have the right to have my day in court given you bypassed my lawyer forcing me to respond to you directly as a lamen [sic]. The HOA has unlimited funds to pay your law firm along with the fact

that they (Anthony Falco) can make any accusations without any repercussions. I want a judge to hear this matter. I'm going to the court physically to speak with someone as to insure [sic] that this matter goes directly to a judge and will ask them to schedule a date.¹

An evidentiary hearing was not scheduled with the trial court; however, a hearing on the motion for final judgment was held on September 21, 2021. There is no transcript of that hearing. From the record before us, it is impossible to know if Haingl even discussed his request for an evidentiary hearing or what, if any, testimony was taken during the hearing. The trial court entered an order granting Puerta del Sol's motion for final judgment finding that Haingl violated the settlement agreement by allowing unauthorized occupants to reside on the property and to be a nuisance. The order directed Haingl and any guests or occupants to cease all nuisance conduct including threatening or harassing and required Haingl to permanently remove Perez, the unauthorized

¹ Although Haingl was represented by counsel while the settlement agreement was negotiated, counsel for Puerta del Sol did not initially include Haingl's counsel on the correspondence regarding the alleged violations. Puerta del Sol's counsel later communicated with said counsel via email, but no appearance was ever filed on Haingl's behalf.

occupant. Further, the order provided that if Perez was not removed by October 11, 2021, the trial court would execute a writ of bodily attachment requiring the Pinellas County Sheriff to take Haingl into custody and serve one day in the Pinellas County Jail. The order allowed for the writ to be entered "without the need for an additional hearing should the Plaintiff file either a verified motion or affidavit of non-compliance with the Court." Upon issuance of the writ, Puerta del Sol was directed to either post a copy of the writ on the door of the property or mail a copy via certified mail to Haingl before contacting the Sheriff to take him into custody.

ANALYSIS

A trial court's findings of fact are cloaked in a presumption of correctness and reviewed for whether they are supported by competent substantial evidence. *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 761 (Fla. 2010); *Liner v. Workers Temp. Staffing, Inc.*, 990 So. 2d 473, 476 (Fla. 2008). "[A] decision interpreting a contract presents an issue of law that is reviewable by the de novo standard of review." *U.S. Bank Nat'l Ass'n v. Rios*, 166 So. 3d 202, 208 (Fla. 2d DCA 2015) (alteration in original) (citation omitted). The imposition of sanctions by a trial

court involves the exercise of discretion, and to prevail on appeal, the appellant must show clear error by the trial court in its interpretation of the facts and the use of its judgment. *See Kaye v. State Farm Mut. Auto Ins. Co.*, 985 So. 2d 675, 677 (Fla. 4th DCA 2008) (citations omitted).

As a backdrop, we note that settlements are construed in accordance with the rules for interpretation of contracts. *Robbie v. City of Miami*, 469 So. 2d 1384, 1385 (Fla. 1985) (citing *Dorson v. Dorson*, 393 So. 2d 632 (Fla. 4th DCA 1981)). An agreement may be binding if parties agree on essential terms and seriously understand and intend to be bound by the terms. *Blackhawk Heating & Plumbing Co. v. Data Lease Fin. Corp.*, 302 So. 2d 404, 408 (Fla. 1974); *Treasure Coast, Inc. v. Ludlam Constr. Co.*, 760 So. 2d 232, 234 (Fla. 4th DCA 2000). The settlement in this case was mutually drafted and agreed upon by both parties. There is no evidence or assertions that either party did not understand the agreement or did not intend to be bound by its terms.

Haingl argues that the writ of bodily attachment in the trial court's order should be invalidated because, if it were executed, it would be based solely on Puerta del Sol's affidavit of noncompliance

rather than testimony and evidence that may be produced at a hearing. Haingl asserts that this part of the order amounts to a denial of due process insofar as it could potentially result in Haingl being placed into custody. We agree. In its order granting a final judgment in favor of Puerta del Sol, the trial court ordered Haingl to remove the unauthorized tenant, Perez, by October 11, 2021. Further, the court ordered that if Perez was not removed by October 11, 2021, a writ of bodily attachment would be issued directing the Sheriff to take Haingl into custody to serve one day in jail. In so ruling, the trial court specifically stated, "[T]he Writ may be entered without the need for any additional hearing should the Plaintiff file either a verified motion or affidavit of non-compliance with the Court." By entering an order for a writ of bodily attachment, the trial court essentially granted a remedy for the eventuality of civil contempt.

Section 38.23, Florida Statutes (2021), defines contempt as "[a] refusal to obey any legal order, mandate[,] or decree, made or given by any judge relative to any of the business of the court, after due notice thereof." Section 38.22 also states that "[e]very court may punish contempts against it whether such contempts be direct,

indirect, or constructive, and in any such proceeding the court shall proceed to hear and determine all questions of law and fact."

Civil contempt consists of failing to do something ordered to be done by a court or judge for the benefit of the opposing party. The rules of criminal procedure provide specific procedures for both direct and indirect criminal contempt. Fla. R. Crim. P. 3.830 and 3.840. However, there is no specific rule of procedure for civil contempt, although the rules provide that certain actions may be deemed to be contempt of court. *See e.g.* Fla. R. Civ. P. 1.380 (failure to answer a question after being directed to do so by the court); Fla. R. Civ. P. 1.410 (failure to obey a subpoena); Fla. R. Civ. P. 1.510 (filing a bad faith affidavit in connection with a motion for summary judgment). Notwithstanding the lack of a specific rule, basic due process requires notice and an opportunity to be heard before sanctions may be imposed. Incarceration in a civil contempt proceeding is used solely to obtain compliance with a court directive, and even then only when the contemnor has the ability to comply with the directive. The ability to comply is the civil contemnor's "key to his cell" entitling him to release upon compliance.

Parsons v. Wennet, 625 So. 2d 945, 947 (Fla. 4th DCA 1993)

(citations omitted).

As the Florida Supreme Court has explained,

[T]he [S]ixth [A]mendment guarantees provide the source of the constitutional protections accorded a defendant in a criminal contempt proceeding because of its punitive character; the defendant in a civil contempt proceeding, on the other hand, because he has the ability to control the act which causes release from jail, is guaranteed a

proceeding which is "fundamentally fair" under the due process clause of the [F]ourteenth [A]mendment.

Andrews v. Walton, 428 So. 2d 663, 666 (Fla. 1983). Although the settlement agreement does not preclude orders for writs for bodily attachment, we hold that an order for a writ of bodily attachment must fulfill the "fundamental fairness" requirement because it is a penalty for an action of civil contempt.

Because Haingl could face incarceration without further hearing after Puerta del Sol filed a verified motion or an affidavit of noncompliance prior to the issuance of the writ and because the trial court's order does not provide Haingl the opportunity to purge the contempt prior to the writ being executed or at any time during his contempt sentence, we conclude that basic due process standards were not met. Thus, we reverse those portions of the order providing for the writ of bodily attachment and remand to the trial court with instructions that prior to any such writ being executed, the trial court must hold a hearing that satisfies the requirements of due process and fundamental fairness for Haingl.

Affirmed in part; reversed in part; remanded with instructions.

CASANUEVA and KELLY, JJ., Concur.

Opinion subject to revision prior to official publication.