[Cite as *Machnics v. Sloe*, 2015-Ohio-2592.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

RIC MACHNICS, RUSSELL TOWNSHIP ZONING INSPECTOR,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2013-G-3138**
- vs -	:	
THOMAS W. SLOE,	:	
Defendant-Appellant.	:	

Civil Appeal from the Geauga County Court of Common Pleas, Case No. 02 M 000896.

Judgment: Affirmed.

James R. Flaiz, Geauga County Prosecutor, and *Sheila M. Salem*, Assistant Prosecutor, Courthouse Annex, 231 Main Street, Suite 3A, Chardon, OH 44024 (For Plaintiff-Appellee).

Charles V. Longo and *Matthew D. Greenwell*, Charles V. Longo Co., L.P.A., 25550 Chagrin Boulevard, Suite 320, Beachwood, OH 44122 (For Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Appellant Thomas W. Sloe timely appeals the trial court's decision sentencing him to 60 days in jail for violating the terms of an agreed judgment entry governing the settlement of his zoning violations with the Russell Township Zoning Inspector.

{¶2} Sloe claims the trial court misinterpreted the terms of the agreed judgment entry and that he is already in compliance. Alternatively, he claims there was insufficient evidence to find that he violated the terms of the agreed judgment entry. For the following reasons, we affirm.

{¶3} This is the parties' third appeal to this court, and the facts detailing their history are set forth in *Machnics v. Sloe*, 11th Dist. Geauga No. 2007-G-2784, 2008-Ohio-1133.

{¶4} The present dispute surrounds various zoning violations Sloe committed while operating his automotive repair business. After lengthy litigation, the parties entered an agreed judgment entry to settle the violations, in which appellant admits to zoning violations and agrees to be subject to fines and jail time for his continued noncompliance. The agreed entry likewise set forth opportunity for appellant to purge himself of the designated penalties. On appeal, the parties disagree as to the interpretation of these purge provisions. The January 20, 2010 agreed judgment entry provides in pertinent part:

{¶5} "3. There is therefore a finding by this Court of a second contempt of court by Defendant. The sentence for said finding is a fine of not more than five hundred dollars and a definite term of imprisonment of not more than sixty days. The parties agree that Defendant may purge himself of the imposition of this sentence by meeting the following conditions by January 31, 2010. Mr. Sloe shall:

{¶6} "a. Permanently cease the outdoor storage of and [sic] motor vehicles not both operable and inoperable fully screened from view;

{¶7} "b. Permanently cease permitting parking of motor vehicles less than 30 feet from any road right of way;

{¶8} "c. Move any and all car wash equipment indoors.

{¶9} "d. Permit Plaintiff, or his designee, upon the subject property, with 24-hours advance notice, to confirm Defendant's compliance with the terms delineated in 3(a)-3(c) above.

{¶10} "4. If Defendant fails to meet the foregoing conditions by January 31, 2010, or at any time thereafter, the sentence or a fine of not more than sixty days imprisonment and five-hundred dollars shall be imposed after a hearing is held.

{¶11} "5. The parties also agree that the Defendant may purge himself of this sentence by meeting the following condition by April 15, 2010. Mr. Sloe shall move any and all car wash equipment indoors and shall permanently cease the outdoor storage of any and all car wash equipment."

{¶12} In May of 2012, the zoning inspector moved for the imposition of a jail sentence because appellant had not complied with the purge conditions set forth in 3(a) through 3(d) of the agreed entry before the January 31, 2010 deadline. The trial court held a hearing and found that appellant failed to comply with the purge conditions attached to the January 31, 2010 deadline. Consequently, the trial court imposed a sixty-day sentence.

{¶13} Appellant's first assignment of error asserts:

{¶14} "The trial court erred in its interpretation of the January 20, 2010 Judgment Entry by finding the Appellant guilty of contempt and imposing a 60 day jail sentence."

{¶15} Sloe claims that the two deadlines in the agreed judgment entry offer him two avenues to purge the sentence. He claims that he complied with the sole condition connected to the April 15, 2010 deadline, and as such, his compliance should purge the imposition of any sentence. He argues that he did not have to abide by the other

conditions in the agreed entry, pertaining to the location of parked cars and the visibility of stored cars on his property, because he had already moved his car washing equipment. He claims that this act alone purged him of the imposition of any sentence. The trial court disagreed and held that the purge condition connected to the April 15, 2010 deadline was not an alternative for complying with the other conditions by January 31, 2010. Accordingly, the trial court sentenced appellant to sixty days in jail and imposed costs based on his failure to comply with sections 3.a and 3.b. of the agreed entry by the January 31, 2010 deadline.

{¶16} When parties to a case agree to resolve a disagreement, a trial court can adopt the terms of their agreement in an agreed or stipulated entry and may enforce the agreement. The result is a binding agreement. *Copley Twp. Bd. of Trustees v. Demrovsky*, 9th Dist. Summit No. 27329, 2015-Ohio-1120, ¶11. A trial court's subsequent legal interpretation of an agreed entry is a matter of contract law that is reviewed de novo. *Id*. quoting *St. Croix, Ltd. v. Damitz*, 9th Dist. Summit Nos. 26565 & 26566, 2014-Ohio-1926, ¶9.

{¶17} However, when a disagreement arises concerning the meaning of an agreement or an agreed judgment entry, a trial court has broad discretion to interpret ambiguous or vague provisions contained in the agreement and may employ parol evidence to ascertain the parties' intent. *Demrovsky* at ¶12*; Perko v. Perko*, 11th Dist. Geauga No. 2004-G-2561, 2005-Ohio-3777, ¶19. "An interpretative decision by the trial court cannot be disturbed upon appeal absent a showing of an abuse of discretion." *Pilch v. Pilch*, 11th Dist. Trumbull No. 2005-T-0135, 2006-Ohio-5829, ¶24 (citation omitted). The term "abuse of discretion" is one of art, "connoting judgment

exercised by a court, which does not comport with reason or the record." *State v. Underwood*, 11th Dist. Lake No. 2008-L-113, 2009-Ohio-2089, ¶30.

{¶18} In *Demrovsky, supra,* Copley Township filed a show cause motion against the Demrovskys in an effort to secure their compliance with the stipulated agreement arising from their zoning violations. The parties had agreed that the Demrovskys could use their property for a landscaping business, which was an agricultural use. The Demrovskys, however, were operating a construction business on their property that was not an agricultural use. *Id*. at ¶7. On appeal, the Ninth District affirmed the imposition of a $1,000 fine after its review of the parol evidence surrounding the formulation of the stipulated agreement. It relied on the minutes from a meeting, which evidenced the parties' desire to permit a landscape business only because it comported with the agricultural use restriction. The court of appeals further explained that had the "stipulated judgment entry [been] unambiguous, extrinsic evidence would have had no place" in the parties' arguments and in the court's decision. *Id*.

{¶19} In the instant case, we agree with appellant that the agreed judgment entry governing the imposition of jail time and fine is ambiguous. Arguably, January 31, 2010 was the deadline for his compliance with the purge conditions set forth in paragraphs 3.a. through 3.c. of the agreed entry, but if he did not satisfy these requirements, he still had the option to move his car wash equipment by April 15, 2010. However, appellant's interpretation of the entry ends in an absurd result, i.e., it provides no incentive for appellant to comply with any of the requirements before the January 31, 2010 when he could simply comply with one of them by April 15, 2010.

{¶20} The trial court conducted a hearing on the motion to impose a jail sentence on November 20, 2012. Russell Township Zoning Inspector, Richard J.

Machnics, testified that he was the zoning inspector during the negotiation of the parties' agreed entry. Machnics confirmed that appellant had not satisfied any of the agreed-upon conditions before the January 31, 2010 deadline and that he had not, as of the date of this hearing, satisfied 3.a. or 3.b. Machnics explained that the separate and later April 15, 2010 deadline was agreed to as an accommodation in response to appellant's request for additional time to move his car wash equipment. Appellant also testified at the hearing, but he was not asked about this second, April 15, 2010 deadline to move his car wash equipment.

{¶21} The trial court found the zoning inspector's testimony to be credible, clear, and convincing and found appellant's testimony "less than persuasive". The trial court explained that it read the agreed entry as a whole, and that appellant was in violation of the first set of conditions, set forth in paragraph three, because appellant continued to store unscreened cars within thirty feet of the road right-of-way. The trial court also explained that it would wait 45 days to hold appellant's sentencing hearing, which would allow the parties to resolve the pending issues.

{¶22} The sentencing hearing was conducted March 8, 2013, more than 100 days later, and appellant had still not complied with the requisite conditions in 3.a. and 3.b. of the agreed entry. Appellant advised the court at sentencing that he planned to construct a fence to preclude any further zoning violations. The trial court responded,

{¶23} "[I]n October 2008, a motion was filed on behalf of Mr. Sloe by his counsel asking for relief from his jail sentence because he had purged by not parking cars outside and related.

{¶24} "So that was four and a half years ago.

{¶25} "* * *

{¶26} "So due consideration, and I regret that you have been unable to manage to accomplish this in the last four years plus, you have been to jail for it once before. You have had many opportunities, and you have had since our last hearing of November 20th, and now you want to get a zoning certificate. It is too late.

{¶27} "So I am imposing the sentence of 60 days, and costs[.]"

{¶28} Like the court in *Demrovsky*, supra, the trial court in this case relied on Machnics' testimony as the necessary, extrinsic evidence to ascertain the parties' intent behind the inclusion of two deadlines for appellant's compliance. The agreed entry was ambiguous, and thus Machnics' testimony on the issue was warranted. We find that the trial court's interpretation, i.e., that the agreed entry provided a built-in extension until April 15, 2010 for appellant to move his car wash equipment, is reasonable and based on the sole evidence on the issue.

{¶29} We also hold that the imposition of jail time and costs was not an abuse of discretion. It is generally an error to hold one in contempt in the absence of clear language detailing the purge conditions and an opportunity to purge the contempt. *Ruben v. Ruben*, 10th Dist. Franklin No. 12AP-717, 2013-Ohio-3924, ¶39; *Rich v. Rich*, 11th Dist. Trumbull No. 2012-T-0089, 2013-Ohio-2840, ¶18. However, the trial court provided appellant more than 100 days after its order clarifying the otherwise ambiguous purge provisions to comply before it held the sentencing hearing. In spite of the court's clarification and decision fully advising appellant about his necessary actions required to purge the contempt and avoid jail, he still failed to comply before the sentencing hearing. Accordingly, appellant's first assignment of error lacks merit.

{¶30} Appellant's second assigned error asserts:

{¶31} "Appellee failed to present clear and convincing evidence for which the trial court could find contemptuous conduct."

{¶32} The trial court's initial decision to hold appellant in contempt and to sentence him to 60 days in jail was civil in nature because it was designed to motivate appellant's compliance with the zoning regulations and the conditions in the agreed entry. *Brown v. Executive 200, Inc*., 64 Ohio St.2d 250, 254, 416 N.E.2d 610 (1980). The trial court even indicated at the hearing that it would give appellant another 45 days or until the sentencing hearing for the parties to resolve the issue. However, once the trial court imposed jail time on appellant as punishment for his continued noncompliance, the contempt in this case became criminal in nature. Criminal contempt requires a showing of proof of a purposeful, willing, or intentional violation of a trial court's order. *Carroll v. Detty*, 113 Ohio App.3d 708, 711, 681 N.E.2d 1383 (1996).

{¶33} Appellant claims that the trial court erred in finding him in contempt because the testimony of Richard Machnics fails to document his violations of the agreed entry. Appellant alleges that Machnics' testimony was not credible based on his inability to recall who typed the dates on the photographs depicting cars on appellant's property. Appellant asserts that the trial court should have disregarded the photos as well as Machnics' testimony as unreliable. We disagree.

{¶34} Machnics testified at the November 20, 2012 hearing that appellant was not in compliance with the agreed entry conditions set forth in 3.a. and 3.b., pertaining to the location of cars and the visibility of stored cars, by the January 2010 deadline. Machnics also confirmed that appellant was still not in compliance with these requirements as of the date of this November 2012 hearing. Although Machnics was

unable to recall who physically labeled and dated the photographs used as exhibits at trial, this detail does not warrant reversal. Machnics took the images on his personal cell phone depicting appellant's continued violations in August, October, and November of 2012. The trial court specifically held that Machnics was truthful, competent, and credible. Appellant also admitted to storing at least one vehicle on his property for more than a year in violation of the January 2010 deadline. Finally, appellant indicated at the March 2013 sentencing hearing—more than 100 days later—that he was going to construct a fence as a permanent solution to preclude further zoning violations.

{¶35} Based on the foregoing, appellee established that appellant purposefully and continually failed to comply with the purge conditions set forth in the agreed entry. Appellant's second assignment of error lacks merit.

{¶36} Accordingly, we affirm the trial court's decision.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.