

[Cite as *Swaters v. Lawson*, 2015-Ohio-858.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

FLORENCE SWATERS,	:	APPEAL NOS. C-140270
		C-140334
Plaintiff-Appellee,	:	C-140361
		TRIAL NO. A-1001370
vs.	:	
		<i>OPINION.</i>
KRISTINE KLEVE LAWSON,	:	
and	:	
JOSEPH L. FORD, III,	:	
Defendants-Appellants,	:	
and	:	
CHRISTOPHER GARDNER,	:	
Intervenor-Appellee.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: March 11, 2015

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Graydon, Head & Ritchey LLP, Scott K. Jones and Stacy A. Cole, for Plaintiff-Appellee Florence Swaters,

Timothy A. Smith, for Defendant-Appellant Kristine Kleve Lawson,

Droder & Miller Co., L.P.A., Richard J. Rinear and Edward J. Collins, for Defendant-Appellant Joseph L. Ford III,

Gottesman & Associates and Zachary Gottesman, for Intervenor-Appellee Christopher Gardner.

Please note: this case has been removed from the accelerated calendar.

SYLVIA S. HENDON, Presiding Judge.

{¶1} Defendants-appellants Kristine Kleve Lawson and Joseph Ford, III, have appealed from the trial court's entries finding them in contempt of court and entering final judgment in the underlying action.

{¶2} In two assignments of error, Lawson and Ford contend that the trial court erred by failing to vacate the contempt order and by dismissing the underlying action in contravention of this court's order in a prior appeal. Because we find that the trial court erred in dismissing the underlying action, we reverse the court's judgment and remand this cause with instructions for the trial court to reinstate, but stay, the underlying claims. And because Lawson and Ford are no longer in contempt of a valid court order, we order the trial court to vacate its entry finding them in contempt.

Facts and Procedure

{¶3} The facts underlying this action are fully set forth in this court's opinion in *Swaters v. Lawson*, 1st Dist. Hamilton Nos. C-130604 and C-130627, 2014-Ohio-2252.

{¶4} By way of brief summary, plaintiff-appellee Florence Swaters, a Belgium resident, filed a complaint in 2010 in the Hamilton County Common Pleas Court alleging that her father had purchased in good faith the chassis of a vintage Ferrari that had been reported stolen in Ohio from Karl Kleve, Lawson's father. Swaters' complaint alleged that her father, Jacques Swaters, and Kleve had settled all ownership issues concerning the Ferrari, and sought possession of all parts to the Ferrari. Lawson, as a beneficiary of her father's estate, filed a counterclaim against

Swaters. Lawson challenged the settlement that had been reached between her father and Jacques Swaters, and she requested that the court declare her the rightful owner of the Ferrari. The litigation over the Ferrari continued for several years, with both Ford and intervenor-appellee Christopher Gardner joining the action.

{¶5} The parties executed a document titled “Heads of Agreement” in March of 2013. As we recognized in our earlier decision, the purpose of the document was to “extinguish all claims and counterclaims” concerning the Ferrari. The agreement provided that all parts of the automobile would be delivered to an auction house in London where the car would be sold, and provided for distribution of the proceeds following sale of the Ferrari.

{¶6} On July 23, 2013, Swaters filed a motion asking the trial court to enforce the Heads of Agreement and to dismiss the action. The trial court granted Swaters’ motion on August 19, 2013. In its entry, the trial court determined that the Heads of Agreement was binding, and it issued various orders to the parties to effect compliance with the agreement. Included in the trial court’s entry was an order directing all parties to execute a power of attorney in favor of an auction house in London, authorizing the auction house to perform all necessary tasks to sell the Ferrari. The trial court’s entry concluded with a dismissal of the entire action and all claims asserted therein.

{¶7} Lawson and Ford appealed the trial court’s August 19, 2013 entry to this court. While that appeal was pending, in an entry issued May 13, 2014, the trial court found Lawson and Ford in contempt for failing to comply with its August 19, 2013 entry because they had revoked the powers of attorney that had been issued to

the auction house in London. On May 16, 2014, Lawson appealed the trial court's entry finding her in contempt.

{¶8} On May 28, 2014, this court issued an opinion in Lawson's and Ford's appeals taken from the trial court's August 19, 2013 entry. We held that the trial court had erred in enforcing the terms of the Heads of Agreement because the agreement contained a forum-selection clause that divested the trial court of any authority to implement the agreement. The forum-selection clause provided that any dispute arising under the agreement was to be resolved in the High Court of Justice in London. We further held that "because the trial court's dismissal of all claims was based on the erroneous premise that the court had the authority to enforce the agreement, the granting of the motion to dismiss was also improper." *Id.* at ¶ 13. We ordered the trial court to reinstate the pending claims that it had previously dismissed.

{¶9} Following the release of our opinion, Ford and Lawson filed a motion to vacate the trial court's order finding them in contempt. They argued that because this court had reversed the trial court's August 19, 2013 entry, they could no longer be found in contempt for violating that entry. The trial court did not issue a ruling on the motion to vacate. But on June 9, 2014, it issued an order entering final judgment in the action, stating that it was doing so pursuant to this court's May 28, 2014 opinion. Subsequent to the trial court's entry of final judgment, Ford appealed the trial court's entry finding him in contempt. And on June 20, 2014, both Ford and Lawson appealed the court's June 9, 2014 order entering final judgment.

Contempt Finding

{¶10} Lawson and Ford argue in their first assignment of error that the trial court erred in failing to vacate its order finding them in contempt. But because Lawson had appealed that order, the court was without jurisdiction to rule on the motion to vacate. “[O]nce an appeal is perfected, the court is divested of jurisdiction over matters that are inconsistent with the reviewing court’s jurisdiction to reverse, modify, or affirm the judgment.” *In re C.H., M.H., A.H., T.H., N.H., J.H., and M.H.*, 1st Dist. Hamilton Nos. C-140415 and C-140416, 2014-Ohio-4821, ¶ 11, quoting *Rock v. School Emps. Retirement Bd.*, 96 Ohio St.3d 206, 2002-Ohio-3957, 772 N.E.2d 1197, ¶ 8. Because the trial court had been divested of jurisdiction, it could not rule on Ford’s and Lawson’s motion to vacate the contempt order. The first assignment of error is overruled.

{¶11} Despite our conclusion that the trial court did not have jurisdiction to vacate the contempt order, the record indicates that it would be appropriate for the order of contempt to be vacated. The purpose behind a finding of civil contempt is “to coerce the contemnor to obtain compliance with the orders of the court, usually for the benefit of the person for whom the order was issued.” *In re Ayer*, 119 Ohio App.3d 571, 575, 695 N.E.2d 1180 (1st Dist.1997). In this court’s earlier opinion, we held that the trial court did not have the authority to enforce the Heads of Agreement, and we reversed the order that Lawson and Ford had been found in contempt for violating. Once that order was reversed, there was no longer a valid court order with which Ford and Lawson could be forced to comply.

{¶12} We instruct the trial court, upon remand, to vacate its order finding Lawson and Ford in contempt.

Improper Dismissal of Underlying Action

{¶13} In their second assignment of error, Ford and Lawson argue that the trial court erred in dismissing the underlying action in disregard of this court's decision in the prior appeal.

{¶14} We agree. Given the clear language in our earlier opinion ordering the trial court to reinstate all pending claims, we plainly did not intend for the trial court to enter final judgment in this matter. Such action nullified our order to reinstate.

{¶15} We are faced with an unusual procedural posture in this case. By entering into the Heads of Agreement, which purported to extinguish all claims and counterclaims in this action, the parties have essentially prevented the trial court from taking any further action. The Heads of Agreement provided that the High Court of Justice in London would govern any disputes arising under the agreement. Ford and Lawson are currently contesting the validity of the Heads of Agreement. If that agreement is found by the London court to be valid and enforceable, its terms require eventual dismissal of the underlying action in this case. But if the London court determines that the agreement is not enforceable, then the parties are free to proceed in Hamilton County on the underlying claims. For these reasons, the trial court's entry of final judgment was in error.

{¶16} We sustain Ford's and Lawson's second assignment of error, and order the trial court to reinstate all pending claims. But because the parties have, for all practical purposes, prevented the trial court from taking any further action in this matter until the validity of the Heads of Agreement is resolved by the London court, we order the trial court to stay all proceedings once reinstated. With the exception of vacating its contempt order and staying the proceedings, the trial court is to take no

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further action in this matter. The litigation is to remain stayed until such time as the London court determines that the Heads of Agreement is not a valid and enforceable document, or until such time as the London court enforces the Heads of Agreement and directs the parties to dismiss by agreement the action in Hamilton County. A certified entry from the London court is necessary to trigger further action in the Hamilton County Court of Common Pleas.

{¶17} The trial court's order entering final judgment is reversed, and this cause is remanded for proceedings consistent with this opinion.

Judgment reversed and cause remanded.

CUNNINGHAM and DEWINE, JJ., concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.