

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Economy Zoning Board :  
 : No. 1319 C.D. 2010  
 v. :  
 : Submitted: April 1, 2011  
 Louis A. Chiodo, :  
 Appellant :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

**OPINION NOT REPORTED**

MEMORANDUM OPINION  
BY JUDGE McCULLOUGH

FILED: September 30, 2011

Louis A. Chiodo appeals pro se from the June 4, 2010, order of the Court of Common Pleas of Beaver County (trial court) finding Chiodo in contempt of court for failing to comply with an order of the trial court dated October 19, 2009, which in turn directed Chiodo to comply with the terms of an earlier consent decree wherein he agreed to clean up his property and construct a privacy fence. We affirm.

Chiodo is the owner of property located at 210 Tevebaugh Road, Freedom, Beaver County, Pennsylvania. Chiodo stored a variety of items on his property, including vehicles, tires, trailers, and construction materials. On June 10, 2002, the local zoning officer issued Chiodo a cease and desist order alleging that he was in violation of the Zoning Ordinance of the Borough of Economy (Zoning Ordinance) and directing him not to receive or store any further vehicles or construction materials. On July 18, 2002, Chiodo appealed to the Zoning Hearing

Board of the Borough of Economy (Board), alleging that the property had been used for auto repair and auto salvage prior to the enactment of the Zoning Ordinance. Following a public hearing, the Board found that the only pre-existing, permissible use of the property was for auto repair. Chiodo filed an appeal with the trial court. (R.R. at 3a-4a, 22a.)

While this appeal was pending, the parties reached a settlement agreement which was memorialized by a consent decree entered by the trial court on June 30, 2005. In this consent decree, the Borough of Economy (Borough) acknowledged that Chiodo had a right to run an auto repair business on the property, including auto restoration and towing. Additionally, the Borough allowed Chiodo to park vehicles from his excavation business on the property. In return, Chiodo agreed to perform the following actions within 60 days of the date of the consent decree: remove all non-usable tires and non-usable pallets from the property; store all 55-gallon drums out of plain sight and disclose their contents to the Borough; remove all vehicles not titled to him, except for customer cars; relocate a trailer near the property line; and construct a privacy fence where the property meets Conway Walrose Road. Chiodo also agreed to either remove or store all PVC pipe, shingles, tar paper, and other construction materials in an enclosed area within 120 days of the date of the consent decree. (R.R. at 24a-26a.)

Thereafter, the Borough filed four petitions for contempt alleging that Chiodo failed to comply with the consent decree.<sup>1</sup> Following a hearing on the first petition, the trial court found Chiodo in contempt, ordered him to pay \$650.00 in attorney fees, and ordered him to comply with the consent decree within 120 days.

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<sup>1</sup> These petitions were filed on May 22, 2006; May 3, 2007; August 18, 2009; and March 26, 2010, respectively.

(December 18, 2006, order.) Following a hearing on the second petition, the trial court again found Chiodo in contempt and ordered him to comply with the consent decree within 120 days. (October 29, 2007, order.) Following a hearing on the third petition,<sup>2</sup> the trial court found Chiodo in contempt and directed him to purge this contempt within 30 days. (October 19, 2009, order.) The trial court cautioned Chiodo that failure to comply could result in a fine and/or incarceration. Following a hearing on the fourth petition, the trial court once again found Chiodo in contempt and imposed a fine of \$20.00 per day for each day of noncompliance after June 14, 2010.<sup>3</sup> (June 4, 2010, order) (R.R. at 4a-5a.)

Chiodo filed a notice of appeal with the trial court. In a concise statement of matters complained of on appeal, Chiodo raised the following six allegations of error:

(1) the trial court committed an error of law in failing to dismiss the case where the Board and the Borough failed to join John M. Klimkowski as an indispensable party thereby depriving the trial court of jurisdiction;

(2) the trial court committed an error of law in conducting a hearing and issuing the June 4, 2010, order under a new caption thereby depriving him of his right to due process;

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<sup>2</sup> As this third contempt petition was pending, the Board filed a motion to amend the caption to add John M. Klimkowski as an additional defendant, noting that Klimkowski became a co-owner of the property by deed dated February 25, 2004. However, by order dated September 3, 2009, the trial court denied the Board's motion.

<sup>3</sup> In its order dated June 4, 2010, the trial court indicated that the fines were to be paid monthly, failure to pay the fines will result in the issuance of a bench warrant, and failure to comply after 120 days will result in stronger sanctions, including increased fines and/or imprisonment. The trial court also advised Chiodo that should he comply within 60 days, the fines would be rescinded and all money paid will be refunded.

(3) the Board lacked standing to file a motion for contempt under the new caption;

(4) the June 4, 2010, order fails to state how he failed to specifically comply with the trial court's prior orders and the evidence did not support this order;

(5) the provisions of the consent decree are unenforceable because it directly affects the rights and real and tangible property of the co-owner and indispensable party, John M. Klimkowski, and further constitutes selective enforcement; and

(6) the trial court abused its discretion in sustaining the objections of counsel for the Board to a question he posed to an assistant code enforcement officer as to whether John M. Klimkowski put the roof on the home of Raymond Tomaszewski, the Borough's assistant code enforcement officer.

(R.R. at 6a-12a.) The trial court addressed these allegations in an opinion dated October 4, 2010.

Regarding the first allegation, the trial court found that it had jurisdiction over the proceedings because, at the time the action was initiated, Chiodo was the only individual with a recognizable ownership interest in the property, i.e., he was the sole owner of the property by deed. The trial court noted that Klimkowski did not have an ownership interest until February 2004. Additionally, the trial court, citing Commonwealth ex. rel. Cook v. Cook, 449 A.2d 577 (Pa. Super. 1982), held that res judicata bars any argument from Chiodo regarding jurisdiction.<sup>4</sup> The trial court noted

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<sup>4</sup> In Cook, Rhoda and Albert Cook reached a marital settlement agreement regarding child and spousal support. The parties each later filed petitions to modify the terms of the agreement. The parties reached a new settlement which was presented to the common pleas court. The common pleas court entered an order incorporating the terms of this new agreement. However, Albert Cook failed to comply with the terms of the agreement and Rhoda Cook filed a petition for contempt. The trial court found in favor of Rhoda Cook and Albert Cook filed an appeal with our Superior Court alleging that the common pleas court lacked subject matter jurisdiction to enter an **(Footnote continued on next page...)**

that Chiodo was a party to the consent decree presented to the trial court in 2005, thereby tacitly conceding to the trial court's jurisdiction. The trial court described Chiodo's argument as attempting to enforce the property rights of another individual in an effort to invalidate a court order to which he consented.<sup>5</sup>

Regarding the second allegation, the trial court acknowledged that the caption in this matter had been changed from "In re: Appeal from the Decision of the Zoning Hearing Board of Economy Borough, Beaver County" to "Economy Zoning Board v. Louis A. Chiodo" and that both captions had been used in motions and court orders. Nevertheless, the trial court noted that the docket number of this matter remained the same since the matter was initiated in 2002. The trial court concluded that the change in caption had no effect on the proceedings and did not violate Chiodo's right to due process. The trial court explained that the essential requisites of due process are notice and an opportunity to be heard and Chiodo received both in this case.<sup>6</sup>

Regarding the fourth allegation, the trial court indicated that its October 19, 2009, order set forth four elements of the consent decree with which Chiodo

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**(continued...)**

order regarding spousal support. The Superior Court agreed with Albert Cook that Rhoda Cook's right to support was contractual and could only be enforced by an action in assumpsit or equity. Nevertheless, because Albert Cook did not appeal the common pleas court's order incorporating the terms of the new settlement agreement and only appealed the order enforcing those terms, the Superior Court held that the issue of subject matter jurisdiction had been previously determined and, even if erroneous, any subsequent challenge to jurisdiction was barred by the doctrine of res judicata.

<sup>5</sup> The trial court held that the above discussion also addressed Chiodo's fifth allegation.

<sup>6</sup> The trial court held that the above discussion also addressed Chiodo's third allegation.

failed to comply: removal of non-usable tires and pallets, removal of all vehicles not titled in Chiodo's name, removal or storage in enclosed area all PVC pipe, shingles, tar paper, and other construction materials, and construction of a privacy fence. The trial court noted that, at a hearing on April 19, 2010, Joseph Luff, the Borough's code enforcement officer, and Tomaszewski, the Borough's assistant code enforcement officer, both credibly testified as to Chiodo's noncompliance with the above elements.

Finally, regarding the sixth allegation, the trial court noted that, at the April 19, 2010, hearing, Tomaszewski testified as to the present condition of Chiodo's property and whether or not Chiodo was in compliance with the trial court's October 19, 2009, order. The trial court indicated that any business dealings between Tomaszewski and Klimkowski were irrelevant to the facts to be determined at said hearing.

On appeal to this Court,<sup>7</sup> Chiodo reiterates the arguments he made before the trial court. However, because this Court agrees with the trial court's opinion and further concludes that Judge Richard Mancini's opinion thoroughly discusses and properly disposes of the arguments raised on appeal to this Court, we adopt the analysis in Judge Mancini's opinion for purposes of appellate review.

Accordingly, we affirm the trial court's order based on the opinion in Economy Zoning Board v. Chiodo, (No. 11941 of 2002, filed October 4, 2010).

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PATRICIA A. McCULLOUGH, Judge

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<sup>7</sup> Our scope of review of a contempt order is limited to determining whether the trial court committed an error of law or abused its discretion. Jackson v. Hendrick, 764 A.2d 1139 (Pa. Cmwlth. 2000), appeal denied, 566 Pa. 671, 782 A.2d 550 (2001).

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**ORDER**

AND NOW, this 30<sup>th</sup> day of September, 2011, the order of the Court of Common Pleas of Beaver County, dated June 4, 2010, is hereby affirmed. This Court hereby adopts the analysis in Judge Richard Mancini's opinion for the purposes of appellate review and affirms the trial court's order on the basis of the opinion issued in Economy Zoning Board v. Chiodo, (No. 11941 of 2002, filed October 4, 2010).

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PATRICIA A. McCULLOUGH, Judge