

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cecil Township :
 :
 v. : No. 577 C.D. 2008
 : Submitted: September 26, 2008
 Joseph Klements and Janice :
 Klements, his wife , :
 Appellants :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
 HONORABLE MARY HANNAH LEAVITT, Judge
 HONORABLE JOSEPH F. McCLOSKEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: October 22, 2008

Joseph and Janet Klements (collectively, Klements) appeal the order of the Court of Common Pleas of Washington County (trial court) finding them, for the fourth time, in contempt of a consent order that they entered into with Cecil Township (Township) to abate a condition caused by their operating an unlawful junkyard by parking cars outside of a fenced area.

On September 24, 1997, the Klements and the Township agreed to have the trial court enter a consent order of court (Consent Order) to resolve the Township's equity action to enjoin an unlawful junkyard that the Klements were purportedly operating. Paragraph two of the Consent Order stated that all vehicles without a current inspection and registration would be removed by the Township

with the costs to be borne by the Klements unless covered by the exceptions listed in paragraph five. Paragraph five stated that no vehicles would be permitted on the property that did not have a valid work order, and that work orders and vehicles would be subject to reasonable inspection during daylight hours by the Township. Additionally, all vehicles were required to have a current registration and proof of insurance. (Reproduced Record at 43a.) The Consent Order also required that any vehicles without a current inspection and registration were to be placed behind a wooden fence that was to be constructed by the Klements. (Reproduced Record at 43a.) The Consent Order was clarified in March 2002 to state that before towing any vehicle, the Klements would be served with written notice of the violation, and if the violation was not corrected, the offending vehicles would be towed and all costs and fees would be assessed following a contempt hearing.¹

In January 1998, the Township filed the first of several contempt petitions against the Klements, and the trial court granted an extension for them to comply with the Consent Order. In May 1998, another contempt petition was filed which resulted in the Klements being held in contempt. A third petition was filed in March 2002. The trial court found the Klements in contempt and ordered that the previously posted \$3,500 be forfeited. The Klements appealed that decision to

¹ The notice language added to the consent decree states:

Thereafter and prior to towing and removal of any vehicle, Klements will be served with a written notice of the violation. If the violation is not corrected forthwith, the Township may tow the offending vehicle and initiate the contempt process. Fines, as well as costs and fees will be assessed following a hearing on the contempt issue.

this Court, which affirmed the finding of contempt and the clarifications, but reversed as to certain conditions attached by the trial court because those conditions were not in accord with the consent decree.²

The present appeal is from the fourth contempt petition, which was filed in April 2007. On January 31, 2006, the Township sent the Klements a letter stating that “all vehicles outside of the fenced-in area of your property, including but not limited to those vehicles situated in the road rights of way or otherwise on other property must be removed.” (Reproduced Record at 131a.) The letter also stated that the police department would conduct an “inspection of all vehicles outside the wooded fence area. If the vehicles are not removed within seven (7) days of the date of this letter, the Township will commence removing the vehicles at your cost and expense.” (Reproduced Record at 131a.) The Klements took no remedial action, and at the behest of the Township Board of Supervisors (Board), Chief of Police J.T. Pushak (Chief Pushak) arranged for a towing company to remove from the property 45 cars parked outside the fence.

The Township filed a rule to show cause with the trial court seeking a finding of contempt and reimbursement for the towing expenses and storage charges, plus attorneys’ fees and other costs. The Klements filed a response contending that the Township had failed to provide specific prior notice, and without such notice, the Township could not remove the cars. Additionally, the Klements argued that they were not willfully breaching the Consent Order and,

² See *Cecil Township v. Klements*, 821 A.2d 670 (Pa. Cmwlth. 2003).

therefore, no finding of contempt could be made, and it was a breach of the Township's fiduciary duty to authorize an unjustified expense.

Before the trial court, the Township's four witnesses (Chief Pushak, Township Manager Donald Genuso and Township Supervisors Zaccarino and Casciola) testified that the 45 vehicles which had been towed on February 10, 2006, were all outside the fenced area and had been there for several months. Further, the majority of the vehicles did not have valid inspections and were not operational or drivable. After the vehicles had been towed, letters were sent by certified and regular mail to the owners to retrieve their vehicles. According to the Township's witnesses, the Klements owned 10 of the 45 vehicles. According to Chief Pushak, he engaged Weavertown Towing to perform the services because they were the only company available that could perform the towing and the storage. The cost to tow the vehicles was \$1,800 and the storage cost \$44,960. The Klements did not present any opposing witnesses or exhibits.

The trial court found the Klements in contempt and ordered them to pay the Township \$26,030 for towing costs and storage fees. The Klements then appealed to this Court.³

On appeal, the Klements maintain:

³ Our scope of review when considering an appeal from a contempt order is limited to a review of whether the trial court abused its discretion or committed an error of law. *Richland Township v. Prodex, Inc.*, 646 A.2d 652 (Pa. Cmwlth. 1994). The trial court judge is granted great discretion and an action will only be reversed when a plain abuse of discretion is shown. *Bata v. Central Penn National Bank of Philadelphia*, 433 Pa. 284, 249 A.2d 767 (1969).

- that the Township failed to meet its burden of proof that they willfully violated the Consent Order because they did not provide specific notice of the violation as required by the Consent Order.
- that towing and storage charges were not a proper basis upon which to assess damages because the Township failed to mitigate damages by assessing damages against the vehicle owners, or should have considered bids to find the cheapest towing and storage price.
- because the Township did not bid for the towing of the vehicles, it violated Section 3102(a) of the Second Class Township Code, 53 P.S. §68102(a),⁴ which provides that purchases over \$10,000 must be submitted by bids and, therefore, the Township was precluded from assessing any towing costs against the Klements.

Because the Honorable Katherine B. Emery of the Court of Common Pleas of Washington County addressed each of those issues in a well-reasoned and trenchant opinion, we adopt that reasoning and affirm the order of the trial court.

DAN PELLEGRINI, JUDGE

⁴ Act of May 1, 1933, P.L. 103, added by Act of November 9, 1995, P.L. 350, *as amended*.

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ORDER

AND NOW, this 22nd day of October, 2008, the February 27, 2008
Order of the Court of Common Pleas of Washington County is affirmed.

DAN PELLEGRINI, JUDGE