

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

ANGELA Y. HAUGHTON,

Appellee

v.

MICHAEL E. HENNIE,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 47 EDA 2012

Appeal from the Order Entered December 2, 2011
In the Court of Common Pleas of Philadelphia County
Domestic Relations at No(s): 1103 V 7022

BEFORE: STEVENS, P.J., BOWES, and PLATT,* JJ.

MEMORANDUM BY BOWES, J.:

Filed: March 18, 2013

Michael E. Hennie (“Husband”) appeals from the December 2, 2011 order finding him in civil contempt for violating a Protection From Abuse (“PFA”) order that was entered in favor of his wife, Angela Y. Haughton (“Wife”).¹ The contempt order directed Appellant to pay Wife up to \$700 per month for suitable housing. We affirm.

Husband and Wife initiated a romantic relationship in 2003, and they married during 2006. N.T., 12/2/11, at 12. Wife has three children; one is Husband’s progeny. *Id.* at 6, 30. Since 2003, Wife and the children lived at Husband’s residence located on 1264 North Newkirk Street, in Philadelphia.

* Retired Senior Judge assigned to the Superior Court.

¹ The Pennsylvania Coalition Against Domestic Violence filed an *amicus* brief with this Court in support of Wife’s position.

Id. at 13. In June 2009, Husband was eventually removed from the home pursuant to a PFA order, and he never resumed residency. *Id.*

Husband inherited the home from his mother. *Id.* at 7. He owned the home outright and was not responsible for a mortgage or other encumbrances except for property taxes and water service. *Id.* at 7, 21-23. Wife paid for all of the repairs that the home required, she furnished the home, and owned all of the appliances. *Id.* at 13. Wife updated the electrical system, and with financial assistance from Philadelphia, she abated lead paint and replaced the heating system. *Id.* at 13-14. In addition, when the incidents underlying the present PFA order occurred, Wife was in the process of requesting assistance from the city for replacing windows that Husband had damaged while breaking into the home on a prior occasion. *Id.* at 14.

On March 7, 2011, Wife filed a PFA petition against Husband.² A temporary PFA order was eventually entered on May 2, 2011. On September 1, 2011, the trial court entered a final PFA order by agreement and without admission by Husband to committing acts that constituted abuse. The final order provided, *inter alia*, that Husband was "completely evicted and excluded from the residence at 1264 North Newkirk Street,

² As the operative PFA petition is not included in the certified record, the underlying allegations of abuse are unknown.

Philadelphia, Pennsylvania 19121 [And] [e]xclusive possession of the residence [was] granted to [Wife]." PFA Order, 9/1/11, at 2.

Unbeknownst to Wife, on the same date that Husband consented to the PFA order, he executed a deed transferring ownership of 1264 North Newkirk Street to Leret, Incorporated ("Leret"). N.T., 12/2/11, at 7-8. Approximately one week later, Wife received a letter from Frank Witherspoon, a Leret representative, advising her that Leret was the new owner and directing that she contact him to arrange to either pay \$600 to \$700 monthly rent or move. *Id.* at 8-10. Wife contacted Mr. Witherspoon, informed him of her circumstances, and attempted to work out an agreement. However, he advised her that Leret did not have a rental license for the property and its intention was to resell the home. *Id.* at 9-10.

Thereafter, on November 5, 2011, Mr. Witherspoon informed Wife by letter that Leret anticipated selling the property and that the company wanted Wife to vacate the premises within two weeks. *Id.* at 9-19. On November 7, 2011, Wife filed a petition for contempt alleging that Husband violated the final PFA order by selling his residence at 1264 North Newkirk Street. Specifically, Wife asserted that the property transfer violated the provision of the PFA that granted Wife exclusive possession of the residence. Two days later, Wife leveled identical assertions in a petition for special relief. The trial court consolidated both petitions for hearing and disposition on December 2, 2011. Thereafter, the trial court entered a single order

granting both of Wife's petitions, found Husband in civil contempt, and directed Husband to pay Wife an amount not to exceed \$700 per month for Wife's housing beginning January 3, 2012.³

This timely appeal followed on January 3, 2012.⁴ On the same date, prior to learning of Husband's appeal, the trial court held a status hearing to determine Husband's compliance with the contempt order. Wife testified that Husband failed to satisfy his monthly rental obligation. N.T., 1/3/12, at 10. At that juncture, Wife was still in possession of the residence because she was having difficulties obtaining a new residence. *Id.* at 4-6. Nevertheless, Mr. Witherspoon continued to demand that she vacate the residence immediately so that Leret could sell the property. *Id.* at 10-11. The status of Wife's residence is unclear as of the date of this decision.

Husband presents the following questions for our review:

A. Did the trial court [err] or abuse its discretion in finding that [Husband] was in civil contempt on 12/2/2011 for violating the term of a Protection from Abuse order?

B. Did the trial court [err] or abuse its discretion in ordering the [Husband] to pay \$700.00 to [Wife] for suitable housing?

³ The order finding Husband in civil contempt does not refer to either of Wife's petitions specifically. However, the trial court explained in its Rule 1925(a) opinion that it granted both of Wife's petitions. *See* Trial Court Opinion, 4/3/12, at 3.

⁴ In order to comply with the Pa.R.A.P. 903(a) time requirements, Husband had to file a notice of appeal in this case on or before Tuesday, January 3, 2012, the date that courts re-opened following the legal holiday recognizing New Year's Day.

C. Did the trial court commit an error of law in failing to adequately apply the law as laid out in 23 Pa.C.S. § 6114?

Husband's brief at 5.

We recently reiterated the applicable standard of review in *Orfield v. Weindel*, 52 A.3d 275, 278 (Pa.Super. 2012) as follows:

In reviewing the challenge of a trial court's finding of civil contempt, this Court set forth the applicable law in *Hyle v. Hyle*, 868 A.2d 601 (Pa.Super. 2005):

Our . . . review when considering an appeal from an order holding a party in contempt of court is narrow: We will reverse only upon a showing of an abuse of discretion. *See Diamond v. Diamond*, 792 A.2d 597, 600 (Pa.Super. 2002). The court abuses its discretion if it misapplies the law or exercises its discretion in a manner lacking reason. *See Lachat v. Hinchcliffe*, 769 A.2d 481, 487 (Pa.Super. 2001).

Moreover, as it relates to Wife's burden of establishing Husband's contempt, this Court outlined the following precepts in *Stahl v. Redcay*, 897 A.2d 478, 489 (Pa.Super. 2006):

To be punished for contempt, a party must not only have violated a court order, but that order must have been "**definite, clear, and specific**—leaving no doubt or uncertainty in the mind of the contemnor of the prohibited conduct." Because the order forming the basis for civil contempt must be strictly construed, any ambiguities or omissions in the order must be construed in favor of the defendant. In such cases, a contradictory order or an order whose specific terms have not been violated will not serve as the basis for a finding of contempt. To sustain a finding of civil contempt, the complainant must prove certain distinct elements: (1) that the contemnor had notice of the specific order or decree which he is alleged to have disobeyed; (2) that the act constituting the contemnor's violation was volitional; and (3) that the contemnor acted with

wrongful intent. A person may not be held in contempt of court for failing to obey an order that is too vague or that cannot be enforced.

In re Contempt of Cullen, 849 A.2d 1207, 1210–1211 (Pa.Super. 2004), *appeal denied*, 582 Pa. 676, 868 A.2d 1201 (2005) (quoting *Lachat, supra* at 488–89) (emphasis added).

Thus, in order to sustain the finding of civil contempt herein, Wife was required to establish that Husband had notice of the PFA order, that his contumacious conduct was volitional, and that he acted with wrongful intent.

Stahl, supra.

Husband levels three challenges against the contempt order.⁵ He does not contest that he had notice of the PFA order or that his actions were volitional. His assertions relate only to whether his actions violated the order, whether he had wrongful intent, and whether the PFA order was sufficiently specific. First, keying on the “exclusive possession” language in the PFA order, Husband argues that notwithstanding the transfer of

⁵ Husband’s brief does not comply with Pa.R.A.P. 2116 and 2119 in so far as the issues raised in the statement of questions involved do not correspond with the argument section. Nevertheless, as the three arguments that Husband actually leveled in his brief can fairly be deemed to have been subsumed by his general assertion that the trial court erred and abused its discretion in finding him in contempt of the PFA order, we will address the merits of these arguments. However, Husband abandoned the remaining issues relating to the imposition of a monetary sanction and the trial court’s application of 23 Pa.C.S. § 6114 because he failed to fashion any argument addressing those claims. Moreover, to the extent that the final issue listed in the statement of questions involved was not included in Husband’s Pa.R.A.P. 1925(b) statement of errors complained of on appeal, it is waived. **See** Pa.R.A.P. 1925(b)(4)(vii).

ownership to Leret and Leret's demand that she vacate the premises, Wife cannot assert a violation of the final PFA order while she retains physical possession of the property. **See** Husband's brief at 9-10. In a related argument, Husband contends that Wife cannot establish the wrongful intent prong of the test for contempt. Husband posits that he proffered a reasonable good-faith justification for selling the property, *i.e.*, to discharge the burden of overdue property taxes associated with the residence. **Id.** at 10.

Second, Husband complains that the pertinent directive in the PFA order was so ambiguous and unclear that it was too vague to enforce. **Id.** at 10-11. Husband argues, "The language and tone of the order conveys to its reader that the order deals only with physical possession of the property. No where [sic] does the order state that Husband could not sell his legal possession of the property, a property which he owned by himself and not with Wife." **Id.** at 11. Husband opines that a fair reading of the order only prohibited his physical presence at the residence or his attempt to evict Wife and not the transfer of ownership. Therefore, he posits that the law will not sustain the trial court's broad construction of the provision.

Husband's final argument utilizes the same perspective as the foregoing assertions, *i.e.*, that his sale of the property did not violate the PFA order's "exclusive possession" directive. Relying upon our holding in ***Lachat v. Hinchcliffe***, 769 A.2d 481 (Pa.Super. 2001), that a mere threat

to block a roadway did not violate an order prohibiting interference with the petitioner's use of the roadway, Husband asserts that his conduct in selling the property without ever physically entering it was insufficient to sustain a violation. He continues that to the extent that his actions constituted a threat to have Wife removed from the property, "the threat was never realized and Wife continues to reside in the [p]roperty." Husband's brief at 12.

Wife counters that the PFA order clearly and unambiguously granted her exclusive possession of the residence and prohibited Husband from interfering with her right of possession. She continues that Husband violated this directive by selling the property to a third party and failing to condition the sale on her retained possession of the home for the duration of the PFA order. She also notes that Husband could not have had any reasonable doubt that his unconditional sale and transfer of the property to the third party would interfere with Wife's possession. Moreover, Wife argues that the fact that she has been able to retain possession of the premises thus far did not preclude the court from finding Husband in contempt of the PFA order for selling the property to a third party, who immediately requested Wife's removal from the premises. Wife asserts that Husband's actions jeopardized her continued possession of the residence and placed her and the children at risk of homelessness.

As it relates to Husband's wrongful intent, Wife accurately points out that Husband not only scheduled his meeting with Mr. Witherspoon regarding the sale of the residence on the same date that he stipulated to the final PFA order, but he also failed to disclose his intention to Wife during the PFA hearing and ultimately transferred the property on the same date without advising Wife or her counsel of the transaction. Wife discovered that Husband sold their home only after Mr. Witherspoon contacted her and advised her that she would have to vacate the property or arrange to pay \$600 to \$700 monthly rent. Accordingly, Wife posits that the record sustains the trial court's finding of wrongful intent. For the following reasons, we agree with Wife's legal arguments and reject Husband's contrary positions.

Herein, the trial court concluded that Husband stipulated to the final PFA order giving Wife exclusive possession of the Newkirk Street residence for a three-year period knowing that he intended to sell the property later that very day. In addition, the trial court made a credibility determination in favor of Wife's contentions that she was not aware that Husband was attempting to sell the property and that she believed that liens associated with accrued taxes and water bills precluded him from transferring title. As Husband conceded that he transferred ownership of the property on the same day that he consented to the final PFA order, the court concluded that Husband was in civil contempt of the order. We agree.

Initially, we confront Husband's argument that the directive in the PFA order was too vague to enforce, and we conclude that the term "exclusive possession" is neither ambiguous nor confusing. Husband consented to Wife's exclusive possession of the property for a three-year period. While the final PFA order did not specifically prohibit Husband from selling the Newkirk Street property, his attempt to craft an ambiguity based upon the distinctions between physical and legal possession is unavailing. Simply stated, although ownership and physical possession are separate legal principles, Husband's ownership of the property was an obvious prerequisite to his promise to ensure Wife's exclusive possession of the residence for the three-year period. Thus, notwithstanding his feigned confusion, under any reasonable interpretation, the PFA order necessarily precluded Husband from surreptitiously transferring his interest in the property without making any accommodations for Wife's interim possessory rights. As the PFA order is clear and unambiguous, we reject Husband's assertion that it is unenforceable.

For similar reasons, Husband's allegation of error stemming from Wife's continued possession of the property also fails. Relying upon the legal precept that "Future plans to disobey a court order will not sustain a present finding of contempt[.]" Husband asserts that since he never sought to evict or forcibly remove Wife from the residence or even caused her to lose physical possession of the property, he did not violate the PFA order.

Husband's brief at 10 (quoting *Lachat v. Hinchcliffe*, 769 A.2d 481, 490 (Pa.Super. 2001)).⁶ The implication of this argument is that Husband cannot be deemed to have violated the PFA order so long as Wife retained physical possession of the property. He posits, "Wife still lives in the property . . . therefore making it impossible that Husband has in anyway violated the order." Husband's brief at 10. Again, we disagree.

Husband's reliance on the principle stated in *Lachat, supra*, is misplaced because, unlike the respondent in *Lachat*, Husband did not merely threaten to disobey the PFA order at a future date—he actually violated it. Herein, Husband specifically assumed an obligation to not interfere with Wife's possession of the residence and then contemporaneously circumvented that express commitment by selling the property without accounting for Wife's possessory rights. Thus, notwithstanding Husband's protestations to the contrary, the record unmistakably supports the trial court's finding that Husband violated the PFA order by selling the property to a third party and placing Wife's possessory interest at risk. The fact that Wife has been able to retain physical possession of the residence, at least until the date of the present appeal, does not negate his contemptuous behavior in secretly selling the residence.

⁶ Husband's brief inaccurately cites *Marian Shop, Inc. v. Baird*, 670 A.2d 671, 673 (Pa.Super. 1996) as the genesis of the quotation.

Moreover, the record belies Husband's suggestion that his actions were not prejudicial. Indeed, within one week of acquiring the property, Mr. Witherspoon contacted Wife and directed her to arrange to move. N.T., 12/2/11, at 8-9. Although Mr. Witherspoon discussed allowing Wife and the children to remain in the residence if she paid \$600 to \$700 monthly rent, his company lacked the required rental license that would actually permit her to stay as tenant. *Id.* at 10. In addition, Wife testified that Mr. Witherspoon repeatedly advised her that she would have to vacate the residence. On one occasion, Mr. Witherspoon informed Wife that a sale was pending, and he gave her approximately two weeks notice of her obligatory removal. N.T., 12/2/11, at 9. On a subsequent occasion, Mr. Witherspoon simply reiterated his desire that Wife vacate possession straightaway so that he could sell it. N.T., 1/2/12, at 10-11. While we find that Mr. Witherspoon's threats and demands are sufficient to constitute interference with Wife's possessory interest, even if Wife is ultimately permitted to retain possession of the residence for the remainder of three-year period, she may entail additional court costs defending against her eviction, and she undoubtedly will be liable for rent owed to Leret as a consequence of Husband's actions. Thus, for the foregoing reasons, we conclude that Husband's claim that the underlying contempt proceeding was premature is meritless.

Finally, we address Husband's assertion that the trial court erred in finding that he acted with a wrongful intent. As noted, Husband relies upon the financial burden of the property to establish a supposedly benign motive for selling the house to Leret. Additionally, Husband argues that even though he did not inform Wife of his pending negotiations with Mr. Witherspoon on the day that he and Wife consented to the final PFA order, he previously indicated his intention to sell the residence in prior text messages to Wife and in one face-to-face discussion. Upon review of the certified record, we find that Husband's claim fails.

The certified record sustains the trial court's finding that Husband's conduct was willful and performed with wrongful intent. We acknowledge Husband's testimony during the contempt hearing that his reasons for selling the property were entirely financial and that he had contemplated selling the home for several years. However, the trial court made a specific credibility determination against Husband based upon Wife's contrary testimony disputing that she had any knowledge of Husband's desire to sell the residence, particularly in light of the outstanding taxes and water bill that encumbered the property and prevented an earlier attempt to transfer ownership. **See** Trial Court Opinion, 4/3/12, at 5. As the record supports the trial court's credibility determination in favor of Wife, we will not disturb it. **See *In re Merlo***, 58 A.3d 1, 16 (Pa. 2012) ("Credibility determinations are for the trier of fact. As long as sufficient evidence exists in the record to

support the credibility findings, this Court may not overturn those findings.”).

As the certified record sustains the trial court’s determination that Husband knowingly sold Wife’s residence without making any accommodations for her interim possessory rights pursuant to the stipulated PFA order, we affirm the December 2, 2011 order finding Husband in contempt of the PFA order and directing him to pay up to \$700 per month to satisfy her housing needs.

Order affirmed.