

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

HENRY HEINTZ,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
TOLL PA XIII, L.P.	:	
d/b/a TOLL BROTHERS, INC.,	:	
	:	
Appellant	:	No. 761 EDA 2013

Appeal from the Order Entered February 12, 2013,
In the Court of Common Pleas of Delaware County,
Civil Division, at No. 08-3433.

BEFORE: GANTMAN, SHOGAN and PLATT*, JJ.

MEMORANDUM BY SHOGAN, J.: **FILED DECEMBER 04, 2013**

Toll PA XIII, L.P., d/b/a Toll Brothers, Inc. ("Toll"), appeals from the order denying its petition for contempt, in which Toll averred that Henry Heintz ("Heintz") violated the trial court's May 15, 2012 order to remove his garden from Toll's property. We affirm.

Toll owned approximately fifty acres of land adjacent to Heintz's property, which it planned to develop as a housing subdivision. Heintz claimed ownership of approximately 9/10 of an acre of Toll's land ("the parcel") through adverse possession, *to wit*, his garden had been situated on the parcel for more than twenty-one years. Heintz filed a quiet title action, seeking to establish ownership of the parcel. Because both parties claimed to be in possession of the parcel, each filed an ejectment action against the

*Retired Senior Judge assigned to the Superior Court.

other. After a full trial on both actions, the trial court found in favor of Toll in each action on May 15, 2012, rejecting Heintz's adverse possession claim and ordering him to vacate Toll's land as described in Toll's deed. Heintz filed post-trial motions, which the trial court denied. Judgment was entered in favor of Toll on June 5, 2012.

By July 2012, Heintz had relocated his garden. According to Toll's deed, however, the garden still encroached on Toll's property by nine feet. Moreover, Toll discovered a spigot, an electrical outlet, and a heater on the parcel. Toll prepared a survey showing the encroachments and requested that Heintz remove them. When Heintz refused, Toll filed a petition for contempt on August 2, 2012, to which Heintz responded. Relying on his own deed and surveys prepared by Catania Engineering Associates, Heintz claimed that the garden and accessories were on his land.

The trial court denied Toll's petition for contempt with prejudice on August 27, 2012. Toll filed a motion for reconsideration, which the trial court granted on September 25, 2012, vacating the August 27, 2012 order, and entering a rule to show cause against Heintz. Heintz filed a response with new matter on October 15, 2012, and Toll filed a reply. Following a hearing on February 1, 2013, the trial court denied Toll's petition for contempt, finding that Heintz did not act willfully to disobey the trial court's May 15, 2012 order. Order, 2/12/13.

This appeal followed, in which Toll presents a single question for our consideration:

Whether Henry Heintz should have been adjudicated in civil contempt for failing to comply with the trial court's May 15, 2012 Order/Verdict directing Heintz to vacate all lands owned by Appellant Toll PA XIII, L.P. as described in its deed.

Toll's Brief at 4.

We recognize that "[e]ach court is the exclusive judge of contempts against its process." ***Fatemi v. Fatemi***, 537 A.2d 840, 846 (Pa. Super. 1988) (citing ***Neshaminy Water Resources Authority v. Del-Aware Unlimited, Inc.***, 481 A.2d 879 (Pa. Super. 1984)). The contempt power is "essential to the preservation of the court's authority and prevents the administration of justice from falling into disrepute." ***Marian Shop, Inc. v. Baird***, 670 A.2d 671, 673 (Pa. Super. 1996) (citing ***Fisher v. Pace***, 336 U.S. 155 (1949)). When reviewing an appeal from a contempt order, the appellate court must place great reliance upon the discretion of the trial judge. ***Marian Shop***, 670 A.2d at 673 (citations omitted). "We are limited to determining whether the trial court committed a clear abuse of discretion." ***Id.*** (citations omitted).

In civil contempt proceedings, the complaining party has the burden of proving noncompliance of a court order by a preponderance of the evidence. ***Wood v. Geisenhemer-Shaulis***, 827 A.2d 1204, 1207 (Pa. Super. 2003) (citation omitted). Specifically, the complainant must prove:

- (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.

Lachat v. Hinchliffe, 769 A.2d 481, 489 (Pa. Super. 2001). "The purpose of a civil contempt order is to coerce the contemnor to comply with a court order." **Orfield v. Weindel**, 52 A.3d 275, 278-279 (Pa. Super. 2012).

Here, Toll proved that the trial court entered a final order on May 15, 2012, directing Heintz to remove his garden from Toll's property as described in Toll's deed. Order, 5/15/12; N.T., 2/1/13, at 92 and Exhibit 1. Toll further proved that, although Heintz relocated his garden, he did not do so based on the description in Toll's deed. Rather, Heintz relied on his own deed and plot surveys prepared by Catania Engineering Associates. N.T., 2/1/13, at 25-27, 92-99.

Notwithstanding Toll's evidence that Heintz violated the May 15, 2012 order, the trial court concluded that Heintz did not act with wrongful intent:

Heintz did what a reasonable man would do under the circumstances by having his property surveyed and moving his garden and chicken coup off of the Toll property. If somehow Catania erred in the staking of Heintz's property and Heintz is still in violation of the court's order of ejectment, his violation is not volitional and with wrongful intent.

What this court believes should have next occurred is a hearing to determine if there is an error on either the Heintz deed or Toll deed or if either property was incorrectly staked.

Trial Court Opinion, 4/19/13, at unnumbered 2.

Our review of the record reveals that the trial court based its reluctance to find wrongful intent on the realities of the case. Before taking testimony at the contempt hearing, the trial court made the following observations to Toll's counsel:

[A]s we discussed in chambers at the conference at which Counsel beside you was present, you know, we talked about this being a real world practical problem and the Court's order ejecting Mr. Heintz from Toll Brothers deed property -- as described in Toll Brothers deed was clearly in expectation and in contemplation that this kind of a problem -- today's problem didn't exist; that they were deeds that were consistent with each other and that it was somewhat as easy as having a surveyor go out and stake -- or line the properties, both deeds, that both deeds would result in a line. And then it was merely a question of who was on what side of the line and should they be on what side of the line. And now we're met with a different set of facts which is there is no line.

* * *

[T]he question now is because you're asking for equitable relief from the Court to find Mr. Heintz in contempt, you know, that brings up, I mean, is he doing something that's inconsistent with clear reality.

N.T., 2/1/13, at 15-16.

After hearing testimony and argument, the trial court added the following observations:

Just so the parties are aware, I'm being asked to rule on what I consider to be a very, very narrow issue of whether or not Mr. Heintz is in contempt. I'm not at this stage being asked which of these deeds is right. That's part of is he in contempt, I understand that. But I'm not being asked to be Solomon here and decide which of what are agreed inconsistent deed

descriptions, that is, they're inconsistent they don't fit together. It's not like both sides have a description of each property. . . . [T]here's one description here for one property, another description here for another property and those descriptions don't marry up, that reality is admitted. I'm not here to solve that problem. I don't have a motion to reform deeds or whatever else that motion might be titled in real estate practice. I have before me a motion for contempt. That's what I'm dealing with. So, I'm not being asked to resolve a global issue that appears to be to be agreed to, that is it's agreed there's a problem. I understand I'm being asked to decide whether or not Mr. Heintz is in contempt. And I will decide that. But that's all I'm going to decide.

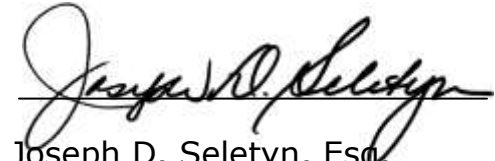
N.T., 2/1/13, at 121-122.

Applying our deferential standard of review to the narrow question presented, we discern no abuse of the trial court's discretion. The trial court entered the May 15, 2012 order believing that the Toll and Heintz deeds were consistent; thus, it expected that compliance with its ejectment order would be "as easy as having a surveyor go out and stake -- or line the properties, . . . that both deeds would result in a line." N.T., 2/1/13, at 15. When the trial court learned that the deeds were not consistent, which undermined its expectations, the trial court concluded that Heintz did not violate its order with wrongful intent; rather, "Heintz did what a reasonable man would do under the circumstances." Trial Court Opinion, 4/19/13, at 2. Based on the foregoing, we conclude that, as the exclusive judge of contempts against its process, the trial court acted within its discretion in denying Toll's petition for contempt.

Order affirmed.

J-A29030-13

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/4/2013