

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

HUGHESVILLE BOROUGH AUTHORITY, : NO. 03-01,479
Plaintiff :
 :
 :
vs. :
 : CIVIL ACTION - LAW
PETER G. CRAWFORD, :
Defendant :

OPINION IN SUPPORT OF ORDER OF NOVEMBER 4, 2005,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant has appealed this Court's Order of November 4, 2005,¹ which found him in contempt of an Order dated May 5, 2003,² which Order had directed him to cease placing fill of any nature in the mill race behind his house. From the post-appeal statement filed by Defendant on December 12, 2005, it is not possible to discern any particular allegation of error against this Court. The Court will use the instant opinion, however, to provide an explanation of the procedural history of this case, and to outline the reasons for the Court's finding of contempt.

On September 10, 2003, the Hughesville Borough Authority filed a Complaint in Ejectment and Trespass, contending that the parties share a common boundary line³ and that Defendant had been exercising control over a portion of Plaintiff's property by, inter alia, placing construction debris, fill and solid waste in a mill race which separates the two

¹ Two orders were entered November 4, 2005: the Order finding Defendant in contempt, and an Order finalizing an injunction which had been temporarily entered on July 26, 2005. Although Defendant does not specify in his Notice of Appeal that he is appealing the contempt order, his post-appeal filing, docketed as a Statement of Matters Complained of on Appeal by the Prothonotary, refers to the contempt proceedings and makes no mention of the injunction. The Court therefore assumes Defendant has appealed only the contempt order and will limit its discussion to that issue.

² The May 5, 2003, Order was entered to No. 03-00,687, and is attached to the Borough's Contempt Petition, filed July 18, 2005, as Exhibit "C". Although a petition for consolidation of that matter with the instant matter was filed September 15, 2003, it appears no order of consolidation was ever entered.

³ The Authority's property is known as well-site #2 and includes a well and pump station used for the Hughesville Borough's water system.

properties, the boundary line running along the center of such race and the debris et cetera extending past that center line. The Complaint seeks a judgment of possession and an order directing the removal of the fill. In Counts II and III the Authority seeks damages for the trespass and attorneys fees. On September 18, 2003, the Authority filed a motion for a preliminary injunction, indicating that the Complaint was served on Defendant on September 17, 2003, and that on that day, Defendant entered upon the Authority's property driving a skid-steer, snapped an underground telemetry telephone line and cut off communications from the well site to the Borough Office, resulting in the suspension of the well's operation, and an unacceptable drop in the level of the water in the water tower which serves the Borough's water supply system. The motion seeks an injunction directing Defendant to cease entering upon the property. By Order dated September 23, 2003, the motion and Count I of the Complaint were both resolved by the entry of a judgment in ejectment against Defendant; the remaining counts were deferred pending an attempt at settlement. Those counts were eventually resolved by stipulation and Order dated June 24, 2004.

On July 18, 2005, the Authority filed a Motion for Preliminary Injunction and Petition to Cite Defendant in Contempt, indicating that the mill race is used by the Borough of Hughesville to transmit storm water as part of its storm water system, that Defendant had been enjoined by Order dated May 5, 2003, entered to No. 03-00,687, from placing fill of any nature in the mill race, but that Defendant had continued to place fill in the race. The Authority alleges that such fill will block the flow of storm water and cause irreparable harm to the surrounding area, and seeks an injunction and a finding of contempt. By Order entered July 26, 2005, and in consideration of the stipulation of the parties, a preliminary injunction was entered whereby Defendant was once again directed to not trespass upon the Authority's property and to not place fill of any nature in the mill race. The issue of contempt was scheduled for hearing.

On November 4, 2005, this Court held a hearing at which the Authority presented evidence, from which the Court concluded beyond a reasonable doubt that Defendant had in fact been placing fill in the mill race in violation of the May 5, 2003, Order. Defendant was found in contempt and sentenced to a period of four months incarceration, although Defendant

was given the opportunity to purge the contempt by removing the fill and paying the Authority's attorneys fees. Also on that date the Court entered a final injunction directing Defendant to not enter upon the Authority's property, to not place fill of any nature in the mill race and to not interfere with or remove the permanent survey boundary line markers which were being placed in the center of the race by the Authority.

In his post-appeal statement, Defendant indicates he has "been filling in my property to protect my home and family from flood waters and to make my property useful". Defendant does not suggest that the evidence of his contempt was insufficient to support the Court's finding, or that any procedural irregularity renders it invalid. The Court is thus at a loss to explain Defendant's flagrant disregard of the Orders entered in this matter, but believes the process to have been free from error and the Court's directives to have been sufficiently clear. Accordingly, it is respectfully suggested that the Order entered in this matter on November 4, 2005, be affirmed.

RESPECTFULLY SUBMITTED,

DATED: January 6, 2006

Dudley N. Anderson, Judge

cc: J. Howard Langdon, Esq.
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Hon. Dudley N. Anderson