

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**NAC-F,** :  
 **Plaintiff** :  
 :  
 **vs.** : **No. 08-21,591**  
 :  
 **JF,** :  
 **Defendant** :

**OPINION AND ORDER**

Before the Court is Defendant Jeremy F's Petition for Contempt. Mr. F alleges that his estranged wife, Plaintiff Nicole A. C-F willfully violated the July 13, 2010 Court Order of the Honorable Joy Reynolds McCoy directing that the parties sign the documentation necessary to provide Disney Vacation Development, Inc. with the Deed in Lieu of Foreclosure, no later than July 15, 2010. As a result of Ms. C-F's alleged contempt, Mr. F contends he has suffered monetary damages in the amount of \$764.00.

A hearing was held in this matter on November 16, 2010. The parties during their marriage, acquired a timeshare through Disney Vacation Development, Inc. ("Disney") The parties subsequently became estranged and a divorce action was initiated by Ms. C-F. On July 13, 2010 a hearing was held before Judge McCoy on husband's Petition for Special Relief. Ms. C-F participated in the hearing via telephone.

Following the hearing, among other things, the Court ordered that the timeshare should be sold through a Deed in lieu of foreclosure back to Disney so as to avoid foreclosure, and that the parties sign the documentation necessary to provide Disney with the Deed in Lieu of Foreclosure no later than July 15, 2010.

At the hearing, both of the parties testified in person and a representative of Disney. testified via the telephone. Prior to the July 13, 2010 hearing, Disney filed a

foreclosure action against the parties. The July 13, 2010 hearing addressed the foreclosure action. At the hearing, Mr. F advised the Court that he had the ability to bring the outstanding balance current and make the monthly payments. He was not willing to do so, however, unless the Court awarded him sole ownership of the timeshare with any value to be dealt with at the equitable distribution hearing in the future. Ms. C-F did not then have the ability to bring the outstanding balance owed on the timeshare current nor did she have the ability to continue to make the monthly payments.

The Court determined that it was inequitable to place the ownership of the timeshare in one party's sole name pending a full hearing on equitable distribution and directed that the timeshare be sold through a Deed in Lieu of Foreclosure and that both parties sign the necessary documentation no later than July 15, 2010.

Judge McCoy orally dictated her Order to the parties during the July 13, 2010 hearing. Ms. C-F testified in connection with the contempt matter that while she heard Judge McCoy dictate the Order, she "heard her say other things as well." Specifically, Ms. C-F indicated that it was her understanding that Judge McCoy indicated that only if the parties could not bring current the balance due after receipt of the exact figure from Disney would the Deed in Lieu of Foreclosure need to be submitted.

On July 15, 2010, Ms. C-F spoke with a representative of Disney. The Disney representative testified that the conversation with Ms. C-F involved a brief discussion regarding the pending foreclosure, the status of the due and owing amount and the Deed in Lieu of Foreclosure procedure. Ms. C-F claims that the discussion also concerned her not having to make any further payments until she received a final notice, after which she could

then decide whether she would pay the amount or submit the signed Deed in Lieu of Foreclosure. The representative from Disney denied that Ms. C-F's version was correct.

The original Deed in Lieu of Foreclosure documents were received by Mr. F prior to the July 13, 2010 hearing. By letter dated July 16, 2010 to Disney, Mr. F submitted his signed Deed in Lieu of Foreclosure and the required Affidavit. Ms. C-F's address was provided with the understanding that Disney would obtain her signature.

On July 23, 2010, Disney forwarded the Deed in Lieu of Foreclosure documents to Ms. C-F at a Lake Harmony, PA address. This address, however, was not utilized by Ms. C-F at that time nor was it the address provided to Disney by Mr. F in the July 16, 2010 letter. Accordingly, the enclosure letter and documents were returned.

On August 5, 2010, Disney forwarded the Deed in Lieu of Foreclosure documents by regular mail to Ms. C-F's East Stroudsburg, PA address. They were not returned but because they were sent by regular mail, Disney could not confirm that the documents were received by Ms. C-F.

On or about October 25, 2010, Mr. F was served with a Foreclosure Complaint with respect to the timeshare. By letter dated October 25, 2010 to Ms. C-F's East Stroudsburg address, Mr. F notified her of the Foreclosure Complaint as well as Mr. F's intent to immediately file a contempt action due to Ms. C-F's failure to comply with the Court Order.

While Ms. C-F admitted that she received Defendant's October 25, 2010 letter as well as the notice of the contempt hearing, which were mailed to her East Stroudsburg address, she denies that she ever received a copy of Judge McCoy's July 13, 2010 Order or the

Deed in Lieu of Foreclosure documents that were mailed to her by Disney, both of which were also sent to her East Stroudsburg address.

In her testimony, Ms. C-F indicates that she never signed the Deed in Lieu of Foreclosure documents for different reasons. First, she indicated that there was no proof that Mr. F signed the documents. Moreover, it was her understanding that pursuant to the Order a decision had to be made by her prior to her being required to sign the documents. More specifically, until she received a final notice with respect to the amounts due and owing at which time she could make a decision as to whether to pay the amount, she did not need to sign any of the referenced documents.

Between the time of the July 13, 2010 hearing and the hearing on this matter, the parties never discussed between themselves the Deed in Lieu of Foreclosure issues. While the parties share custody of a minor child and talk three to four times a week, they failed to discuss this issue. Mr. F indicated that until he received the Foreclosure Complaint in October, he was under the understanding that Ms. C-F complied with the Order. Ms. C-F indicated that she was simply waiting for the final notice to then make a decision.

Both prior to and during recesses in the contempt hearing, the Court was in contact with Disney's attorney. The Deed in Lieu of Foreclosure paperwork which included the Warranty Deed in Lieu of Foreclosure and Affidavit were prepared and forwarded to the Court. The parties signed the documents, they were witnessed and notarized and Mr. F's attorney has agreed to forward the documents to Disney.

A Court's contempt powers are available when a party disobeys a Court Order. 42 Pa. C.S.A. § 4132. The power to punish for contempt is a right inherent in the Court. Siniako v. Siniako, 664 A.2d 1005, 1009 (Pa. Super. 1995).

In this particular case, because the act of contempt complained of is the refusal to do an act that was ordered by the Court for the benefit of a private party, proceedings to enforce compliance with said Order are civil in nature. Lachat v. Hinchliffe, 769 A.2d 481, 488 (Pa. Super. 2001). The judicial sanctions to be employed in such circumstances are designed to compensate the injured party for the losses sustained. Diamond v. Diamond, 792 A.2d 597, 600 (Pa. Super. 2002).

In civil contempt proceedings, the complaining party has the burden of proving by a preponderance of evidence the following: (1) that the contemnor had notice of the specific order or decree which she is alleged to have disobeyed; (2) that the acts constituting the contemnor's violation were volitional; and (3) the contemnor acted with wrongful intent. Lachat, supra. at 489.

The Court finds that Mr. F has proven these elements clearly and convincingly. Moreover, the Court finds that Ms. C-F's testimony is not credible.

The hearing on July 13, 2010 was held in the presence of the parties albeit with Ms. C-F participating by telephone. During the hearing, Judge McCoy specifically dictated her July 18, 2010 Order. It is clear that the Order requires the parties to sign the documentation necessary to provide the Disney Vacation Development, Inc. with the Deed in Lieu of Foreclosure no later than July 15, 2010.

Ms. C-F's claim that Judge McCoy noted something different during the hearing is simply not credible. Moreover, her claim that she understood she had the opportunity to wait to decide whether she could pay the outstanding balance is contrary to the testimony that she provided during the hearing. As Judge McCoy noted in her July 13, 2010 Order, Ms. C-F did not have the ability to bring the outstanding balance owed on the timeshare current nor did she have the ability to continue to make the monthly payments.

Ms. C-F's claim that she did not receive the written Order also is not credible. It was forwarded to her East Stroudsburg address where she received other mail similarly addressed. Remarkably, she claims that she received some letters regarding these matters but failed to receive either the written Court Order or the documents from Disney, which would coincidentally relieve her of responsibility.

Clearly, Ms. C-F knew of her obligation pursuant to Judge McCoy's Order to complete the necessary documentation and to provide it to Disney with the Deed in Lieu of Foreclosure no later than July 15, 2010. Despite this notice, she willfully failed to comply with the Order. She clearly acted with wrongful intent in refusing to comply with the Order. Her explanations are nothing more than poor attempts to explain away her willful misconduct.

Sanctions for civil contempt compensate the injured party for those injuries resulting from the contemnor's non-compliance with the court order. Mrozek v. James, 780 A.2d 670, 674 (Pa. Super. 2001). Generally, compensatory damages include attorney's fees, investigation costs, and subpoena and witness fees incurred as a result of the contempt. Mrozek, supra.

Exhibit "D" of Mr. F's sets forth a balance due of \$764.00 with respect to his counsel fees and costs incurred in litigating this matter. The Court notes, however, that the anticipated time for the hearing is only set for one-half hour. The Court notes that the hearing lasted approximately 1.5 hours and accordingly will award to Mr. F the total amount of \$914.00. While the Court may also impose an unconditional fine for the benefit of Mr. F to encourage future compliance, the Court declines to do so under the circumstances.

**ORDER**

**AND NOW**, this \_\_\_\_ day of November 2010 following a hearing and argument, the Court finds the Plaintiff Nicole A. C-F in civil contempt. The sanction of the Court is that the Plaintiff Nicole A. C-F pay \$914.00 to Defendant Jeremy F within sixty (60) days of the date of this Order.

BY THE COURT,

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Marc F. Lovecchio, Judge

cc: Melody L. Protasio, Esquire  
Nicole C-F  
128 C Woodbine Ct.  
3430 Penn Estates  
East Stroudsburg, PA 18301  
Gary Weber, Esquire (Lycoming Reporter)  
Work File