

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

LEWIS TOWNSHIP,	:	
Plaintiff	:	
	:	
vs.	:	NO. CV-20-0681
	:	
ROBERT K. GLECKNER and EMILY E. GLECKNER,	:	CIVIL ACTION –
Defendants	:	LAW
	:	
vs.	:	
	:	
BOBBIE A. WHELCHER aka BOBBIE WHELCHER aka	:	
BOBBIE A. GLECKNER,	:	
Additional Defendant	:	

OPINION

This matter is before the Court on a Motion for Contempt filed by Plaintiff on July 7, 2021. Plaintiff claims that Additional Defendant (“Whelchel”) has violated this Court’s Order of September 9, 2020.¹

I. Factual and Procedural History

The following is a summary of the facts of this case:

a. Initial Filings and Court Findings

This matter was initiated by the filing of a Complaint for Injunctive Relief on July 8, 2020 and a Petition for Preliminary Injunction was filed simultaneously. The only Defendants named in the Complaint were Robert and Emily Gleckner (“Gleckners”), who are the recorded property owners of 175 Truman Street, Trout Run, Pennsylvania (“Property”). The basis of the request for an injunction was that, after serving several Notices of Violation pertaining to violations of Lewis

¹ The Order is dated September 1, 2020 but was not docketed until September 9, 2020.

Township Ordinance 10-1,² the condition of the Property reached a point where it became “detrimental to the health and safety of the neighborhood.” See *Complaint at Paragraph 8*. Specifically, it was alleged that the odor from large piles of garbage bags on the Property was “foul” and that large rats were observed on the garbage and on other residents’ property.³ See *Complaint at Paragraph 9*.

Upon learning that the Gleckners were deceased, Plaintiff withdrew the Petition for Preliminary Injunction, filed an Amended Complaint adding Whelchel, the Gleckners’ daughter, as an Additional Defendant, and filed an Amended Petition for Preliminary Injunction. Whelchel resides at the Property along with two individuals later identified as her son and his wife. A hearing on the Petition was held on September 1, 2020 at which time Whelchel appeared by telephone along with her son.

Following the hearing, the Court found that Whelchel “violated the Plaintiff’s Nuisance Ordinance by accumulating garbage and rubbish on the property” and ordered Whelchel to “maintain the property in accordance with the [Plaintiff’s] Nuisance Ordinance” meaning that she cannot “accumulate garbage or rubbish on the property if it is not properly stored in containers as required by

² The Ordinance provides, in relevant part, the following:
“Nuisance” is defined as “the unreasonable, unwarrantable, or unlawful use of . . . private property which causes . . . inconvenience, annoyance or discomfort to any person or resident in the legitimate enjoyment of his reasonable rights of a person or property.” *Section 1, Paragraph 6*. Storing or accumulating garbage, refuse, or rubbish is declared to be illegal. “Garbage” is defined as “wastes resulting from the handling, preparation, cooking and consumption of food; wastes from the handling, storage and sale of produce.” *Section 2, Paragraph A(1)(a)*. “Refuse/rubbish” is defined as “combustible trash, including paper, cartons, boxes, barrels, wood, excelsior . . . ; noncombustible trash including metals, **tin cans**, metal furniture” *Section 2, Paragraph A(1)(b) (emphasis added)*.

³ The Court notes that one of the photographs presented at the hearing on the Petition for Preliminary Injunction displayed a dead rat killed by a neighbor to the Property. The rat is very large, approximately the length of a man’s thigh, not including the tail.

the [Plaintiff's] ordinance." *See September 9, 2020 Order.* The Court specifically indicated that failure to comply with the Order may result in a petition for contempt. *See September 9, 2020 Order.*

b. Instant Motion for Contempt

On July 7, 2021, Plaintiff filed its Motion for Contempt of the Court's September 9, 2020 Order. In its Motion, Plaintiff alleges that Whelchel has allowed the garbage and rubbish on the Property to continue to accumulate "to the point where the Township receives repeated complaints regarding odor and rat infestation emanating from the property" and has "failed to take the reasonable step of either storing or requiring the storage of garbage and rubbish at the Property to be stored in containers" *See Motion for Contempt at Paragraphs 10 and 11.* Additionally, Plaintiff claims that neighbors have witnessed Whelchel feeding the rats. *See Motion for Contempt at Paragraphs 13 and 14.* A hearing was held September 22, 2021 at which time Whelchel appeared and was unrepresented.

At the time of the hearing, it was first established that Whelchel continues to reside at the Property along with her son and daughter-in-law. Additionally, Whelchel indicated that her parents, the Gleckners are deceased but are still the owners of record. Whelchel believes, however, that her son and daughter-in-law are the ones responsible for these issues. At the hearing, the following people testified: Steven Sechrist, Plaintiff's elected supervisor; Michael Youmans, Whelchel's neighbor; and Whelchel. Their testimony, along with photos and videos, established the following:

Following the hearing on the Petition for Preliminary Injunction, Whelchel and the other Property residents obtained a dumpster and cleaned up at least some of the garbage and rubbish on the Property. However, since then Plaintiff has received several reports from neighbors regarding rats running on and near the Property and several being hit on the roadway. Whelchel continues to accumulate trash bags on the Property that are not properly contained and the conditions on the Property have not improved since the last hearing.

Mr. Youmans, Whelchel's neighbor, testified that he has seen dozens of rats all over both his property and Whelchel's Property, including in the piles of garbage bags, and believes that the rats live in a dirt mound on the far side of the Property. He testified that the odor emanating from the garbage piles, which he describes as a combination of old garbage, urine, and wet dog, prevents him and his family from enjoying their property. He recalled that he has killed hundreds of rats and, at one point, killed thirty-six (36) in a twenty-four (24) hour period. Mr. Youmans has taken videos of Whelchel and the Property. In one video, Whelchel is seen throwing something from a bucket in the direction from where the rats are believed to be coming. Mr. Youmans believes that Whelchel is throwing dog food to feed the rats. Mr. Youmans testified that Whelchel does this every day. Additionally, the video depicts a large pile of full trash bags covered with a tarp, but not contained.

Whelchel testified that the only things in the garbage bags was aluminum cans, a lot of which she had taken to a recycling center in July and August 2021. Whelchel acknowledged that the rats were living in the dirt mound but that they are not there anymore. She also testified that she is not throwing dog food but

rather rat poison. Welchel also acknowledged on cross-examination that she has two minor grandchildren and two dogs living at the Property.

II. Discussion

Following the death of both of her parents who died intestate, the Property would have passed to Welchel and any surviving siblings.⁴ 20 Pa.C.S.A. § 2103(1). It is well settled that a dead person cannot be a party to an action commenced after his or her death. *Glover v. State Farm Mut. Auto. Ins. Co.*, 950 A.2d 335, 339 (Pa. Super. 2008). When Plaintiff first served the Notice of Violation, they thought that they were serving it on Emily Gleckner, but actually served it on Welchel. Upon learning this information, Plaintiff amended its Complaint and Petition for Preliminary Injunction to add Welchel as a defendant.

“The person who created the nuisance . . . is the one responsible for the abatement of a nuisance.” *The Woods at Wayne Homeowners Ass’n v. Gambone Bros. Const. Co., Inc.*, 893 A.2d 196, 205 (Pa.Cmwlt. 2006). Additionally, as the Superior Court points out, “if persons are not parties to the injunction order, but its terms are known to them and they are within the class intended to be restrained, they may not violate the injunction’s restriction.” *Neshaminy Water Resources Authority v. Del-Aware Unlimited, Inc.*, 481 A.2d 879, 883 (Pa. Super. 1984) (internal citations omitted).

The simple fact is that Welchel lives on the Property and therefore, it is clear that she is responsible for, or at the very least contributes to, the garbage accumulation and rat infestation. Additionally, as the child of the deceased owners of the Property, she owns at least a portion of the Property and is

therefore responsible for it. For these reasons, the Court finds that Whelchel is the proper party in this action.

To the extent that Whelchel's son also contributes to the accumulation of garbage, the Court would note that he is aware of the terms of the Order of the Court, as he was present and participated in the September 1, 2020 hearing. Therefore, as he also resides at the Property, which is the subject of this dispute, he may not violate the Court's Order.

Whelchel's second argument is that the trash bags seen on her property are full on tin and aluminum cans, which she does not consider garbage. Additionally, she asserts that she is not feeding dog food to the rats, but rather is spreading poison. Plaintiff's Nuisance Ordinance 10-4 specifically defines tin cans and metals as refuse and rubbish. When the metals or tin cans are accumulated or stored in any way other than in a covered container, it is an illegal nuisance. In reviewing the photos and video presented at the hearing, it is obvious that there is a very large pile of trash bags on the Property. While it does appear that the bags are piled onto a table raised off the ground, the pile is still about five (5) feet tall, as testified to by Mr. Youmans and Mr. Sechrist.

Additionally, regardless of what Whelchel is throwing, either dog food or rat poison, it is undisputed that there is a rat infestation on the Property. If Whelchel did not think there was a rat issue, she would not be throwing poison for them to eat. The Court notes, however, that the size of the rats killed by Mr. Youmans are abnormally large, as if they were being fed. It is also conceivable

⁴ Whelchel testified that she has two living sisters but that they are have no involvement with the Property.

that the rats are present on the Property due to the large amounts of garbage. No other reasonable explanation was given and the Court can find none.

III. Conclusion

For the reasons set forth above, the Court finds Whelchel in contempt of the September 9, 2020 Order. Whelchel shall be sanctioned \$400 payable directly to Plaintiff within thirty (30) days of the date of this Order. Additionally, Whelchel shall take all necessary steps to ensure that all garbage located on the Property is removed within thirty (30) days of the date of this Order.

Failure to remove the garbage from the Property within the thirty (30) days will result in additional contempt violations. Additionally, it shall be considered a violation of the September 9, 2020 Order as well as this Order to allow additional garbage to accumulate on the Property. This means that all garbage must be either removed from the Property or stored in a tightly covered container.

The Court notes for Whelchel's purposes that, pursuant to the Nuisance Ordinance 10-1, a person who violates the ordinance may be criminally penalized \$1,000 per violation as well as by imprisonment of up to ten (10) days. See Section 4, Paragraph 1. Additional contempt violations will likely result in increased monetary fines as well as Whelchel's incarceration.

ORDER

AND NOW, this 15th day of **October, 2021**, for the reasons set forth above, Plaintiff's Motion for Contempt is **GRANTED** and the Court finds Defendant, Bobbie Whelchel, in contempt of the September 9, 2020 Order. Whelchel shall be sanctioned \$400 payable directly to Plaintiff within thirty (30) days of the date of this Order. Additionally, Whelchel shall take all steps necessary to ensure that all garbage located on the Property is removed within thirty (30) days of the date of this Order.

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BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

CC: J. Michael Wiley, Esq.

Bobbie Welchel – 175 Truman Street, Trout Run, PA 17771

Gary Weber, Esq.

Alexandra Sholley – Judge Tira's Office