

B. Weber

BOARD OF COMMISSIONERS OF
LYCOMING COUNTY,
Plaintiffs

Vs.

KRISTA B. ROGERS,
Defendant

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA
:
:
: No. 0365 of 2021
:
: CIVIL DIVISION

FILED
LYCOMING COUNTY
2021 AUG 20 AM 8:59
THOMAS J. HEAL
PROthonARY

DISCUSSION AND ORDER ON THE MOVING PLAINTIFF’S MOTION FOR CONTEMPT

DISCUSSION

The Lycoming County Board of Commissioners has filed a Motion for Contempt against Defendant alleging, inter alia, the County Controller’s failure to comply with the Court’s Order on an ex parte injunction. It is unclear what type of contempt is being sought. The County asks not only for a finding of contempt but also “.... an appropriate fine and sentence.” The body of the Motion, however, speaks of noncompliance.

Indirect criminal contempt, that is contempt committed outside the presence of the court, and involves punitive remedies. Com. v. Ashton, 824 A.3d 1198, 1203 (Pa. Super. 2008).

The determination of whether a particular order contemplates civil or criminal contempt is crucial as each classification confers different and distinct procedural rights on the defendant. There is nothing inherent to a contemptuous act or refusal to act which classifies the act itself as criminal or civil. The distinction between criminal and civil contempt is rather a distinction between two permissible judicial responses to contemptuous behavior. These judicial responses are classified according to the dominant purpose of the court. If the dominant purpose is to vindicate the dignity and authority of the court and protect the interests of the general public, it is a proceeding for criminal contempt. Cipolla v. Cipolla, 398 A.2d 1053 (Pa. Super. 1979); In re Martarano, 346 A.2d 22 (Pa. 1975).

But where the act of contempt complained of is the refusal to do or refrain from doing some act ordered or prohibited primarily for the benefit of a private party, proceedings to enforce contempt with the decree of the court are civil in nature. The purpose of a civil contempt proceeding is remedial. Judicial sanctions are employed to coerce the defendant into compliance with the court's order, and in some cases, to compensate the complainant for losses suffered.

Lachat v. Hinchcliffe, 769 A.2d 481,487-88 (Pa. Super. 2001) (internal citations omitted). While the Commissioners may be speaking for a public body, as opposed to private citizens, they seek relief as would a private party.

Civil contempt requires a purge condition by which the contemnor can obtain release or relief. Com. ex rel Beghian v. Beghian, 184 A.2d 270 (Pa. 1962). That has not been requested here. Rather the Commissioners have taken a hybrid approach confusing both civil and indirect criminal contempt.

In order to prove indirect criminal contempt of an order, the following elements must be met:

(1) the order must be definite, clear, specific and leave no doubt or uncertainty in the mind of the person to whom it was addressed of the conduct prohibited; (2) the contemnor must have had notice of the specific order or decree; (3) the act constituting the violation must have been volitional; and (4) the contemnor must have acted with wrongful intent.

Com. v. Baker, 766 A.2d 328, 331 (Pa. 2001); quoting Commonwealth v. Baker, 722 A.2d 718, 721 (Pa.Super.1998) (citing Diamond v. Diamond, 715 A.2d 1190, 1196 (Pa.Super.1998)).

If the court construes the instant matter to be civil contempt, it appears that the Controller substantially complied in short order. At this time, one must query what more could she do to comply. The underlying matter has been dismissed, with the ex parte injunction now having no effect.

In any event, and under either scenario, the Commissioners petition must fail. There is nothing on the record concerning the intent of Defendant Rogers as would be required for finding any type of contempt violation. The Controller alleges that the Order in question was vague, and for that reason, she wished to speak with her attorney. A Commissioner witness, the Chief Clerk, felt her response to the Court's Order was reasonable under the circumstances. Without intent, there can be no contempt. Lachat, 769 A.2d at 489.

On the issue of vagueness, the Commissioners distributed a lengthy memorandum apparently trying to clarify and implement the Court's Order. This was done shortly after the entry of the original April 20 Order. It appears the Commissioners felt that additional language and explanation was necessary for everyone to fully understand the Court's Order. That reinforces the vagueness argument. To succeed with their Petition, the Commissioners would have to show more than noncompliance, and that has not been done. Marian Shop Inc. v. Baird, 670 A.2d 671 (Pa. Super. 1996).

By separate Order, the Court has sustained preliminary objections to the original complaint, and has dismissed that complaint. While the Court theoretically could find a brief period of contempt relative to an order which was later nullified, the Court declines to do so in this case in view of the reasoning previously set forth. Nothing is to be gained by litigating the potential violation of an order that is no longer in effect. The Motion for Contempt will be dismissed.

An appropriate Order will follow.

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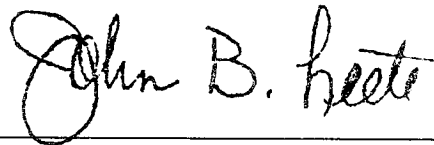
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LYCOMING COUNTY

ORDER

AND NOW, on this 16th day of August, 2021, the Motion for Contempt filed by the
Commissioners of Lycoming County is dismissed.

BY THE COURT:



JOHN LEETE, SENIOR JUDGE

cc: J. David Smith, Esquire
Michael B. Smith, Esquire
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