

G. Weber

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

**ROBERT S. PURSELL, and
CAROL H. PURSELL**

vs.

KATHY L. DURRWACHTER

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:
: **CV-09-1596**
:
: Contempt

FILED
LYCOMING COUNTY
2022 AUG 25 PM 2:42
THOMAS G. REAP
PROTHONOTARY

OPINION AND ORDER

This matter came before the Court for hearing on August 19, 2022 (the “Hearing”) on Plaintiffs' Second Petition for Finding of Contempt (the “Petition”). The Court notes that this litigation commenced with a Complaint filed on July 7, 2009, and has persisted since that date. The Court file includes an Order of Court filed May 27, 2010 (the “2010 Order”), and a second Order of Court filed December 23, 2021 (the “2021 Order”). Defendant maintains that she has fully complied with the requirements of those Orders. The Plaintiffs contends that she has not, and that this Court should hold her in contempt.

In order to sustain a finding of civil contempt, the complainant must establish that: (1) the contemnor had notice of the specific terms of the Order, (2) that that conduct was deliberate, and (3) the contemnor acted with wrongful intent. A person may not be held in contempt for failing to obey an Order that is too vague or that cannot be enforced. A mere showing of non-compliance is insufficient to support a finding of contempt. The evidence must establish not only that the order was violated, but that the terms of the order were definite, clear, and specific, leaving no doubt or uncertainty in the mind of the contemnor.

Lachat v. Hinchcliffe, 769 A.2d 481, 488 (Pa.Super. 2001).

Although the Court finds that the Defendant has not fully complied with the terms of the 2010 and 2021 Orders, the testimony introduced at the Hearing was insufficient to establish by a preponderance of the evidence that the Defendant violated those Orders with wrongful intent. Further, this Court concludes that, to some extent, the Order are in conflict.

The question of a potential contempt citation aside, "it is axiomatic that courts have always possessed the inherent power to enforce their orders and decrees by imposing sanctions for failure to comply with said orders." Rouse Philadelphia Incorporated vs. Ad Hoc'78, 274 Pa.Super. 54, 417 A.2d 1248, 1257 (1979). Because the Court finds that Defendant did not fully comply with the Orders, the Court will enter an Order compelling more complete compliance. Further, in an effort to give the parties some guidance for the future, this Court will attempt to harmonize the language of the Orders.

The 2010 Order contains a provision regarding bird feeders. That Order was incorporated by reference into the 2021 Order. Because bird feeders were not the subject of testimony at the Hearing, the Court will not address that provision, which remains in effect.

Section 2 of the 2010 Order requires the Defendant to "continue to maintain her shrubbery, plants, trees, etc. so that they do not come within six (6) inches of the Plaintiffs' property line." Section 3 of the 2021 Order requires that the Defendant perform that trimming "on or before April 30, 2022." The Court finds from the testimony at the Hearing that the Defendant complied with Section 3 of the 2021 Order. The Court also finds that, as of the date of the Hearing, the Defendant was no longer in compliance with the final sentence of Section 2 of the 2010 Order, due to growth during the 2022 season.

The Court concludes that a reasonable interpretation of the last sentence of Section 2 of the 2010 Order is that the Defendant is required to maintain her shrubbery, plants, and

trees on at least an annual basis, in order to ensure that they do not come within six (6) inches of the Plaintiffs' property line. In fact, it is the law of this Commonwealth that tree branches which overhang a property line constitute a trespass. Jones v. Wagner, 425 Pa.Super. 102, 109, 624 A.2d 166 (1993). The undisputed testimony at the Hearing was that the Defendant arranged for trimming prior to the 2022 growing season. As a result, natural growth of the vegetation led to a violation of the 2010 Order. In order to avoid a repeating violation, the Court will order the Defendant to trim her shrubbery, plants, and trees on at least an annual basis, after the growing season.

Testimony at the Hearing established that the parties have constructed fences along their common property line, in close proximity to each other, in an area with significant vegetation. This condition invites the accumulation of vegetative debris. Section 3 of the 2010 Order addresses the issue of that debris. It provides that, after an initial cleanup, "each party shall be responsible for maintaining their portion of the property up to the property line." Plaintiff Robert S. Pursell testified that he constructed his fence back from the property line. There was no testimony regarding the precise location of the Defendant's fence, as compared to the property line. A reasonable inference from the testimony is that the property line is somewhere between the fences, with the result that Section 3 of the 2010 Order requires that both parties maintain some portion the area between the fences. In contrast, Section 4 of the Order filed December 23, 2021 requires the Defendant to clear that area on a semiannual basis, on or before April 30th and October 31st. Counsel for the Plaintiffs submits that the 2021 Order was intended to "supersede" the 2010 Order. Because Section 1 of the 2021 Order provides that the 2010 Order "remains in full force and effect", this Court concludes that both Orders remain in effect, and should be read in harmony.

The testimony introduced at the Hearing established that the Defendant performed some cleaning of the area between the fences in March of 2022. Nevertheless, photos of that area taken over the summer reveal the presence of some plant debris. The evidence introduced at the Hearing was insufficient for the Court to determine by a preponderance of the evidence whether the debris between the fences in the summer of 2022 was the result of an inadequate cleaning in March, or debris which collected between the fences after that cleaning. For that reason, the Court will Order the Defendant is to conduct a thorough cleaning of the area between the fences on or before October 31, 2022, as required by the 2021 Order.

While not required by either of the Orders, the Defendant is strongly encouraged to obtain photographs of the trees and shrubs after her periodic trimming, and photographs of the area between the fences after her semiannual cleaning, in order to confirm her compliance with the two Orders.

BY THE COURT


William P. Carlucci, Judge

cc: B. Southard, Esq.
G. Weber, Esq.

(WPC:pjs)

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PROthonotary
2022/08/25 PM 2:43
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ORDER

This matter came before the Court for hearing on August 19, for the reasons more fully set forth in the opinion attached hereto, it is hereby ordered as follows:

1. This Court's prior orders of May 26, 2010 and December 23, 2021 remain in full force and effect except to the extent expressly modified herein.
2. During August 2022, and during the month of August of each year hereafter, the defendant is directed to conduct an inspection of her residential real estate to confirm that it is in compliance with Section 2 of the order of May 26, 2010. If not, she is directed to arrange to trim her shrubbery, plants, and trees no later than November 30th of each year, in order to bring her residential real estate into compliance.
3. The defendant is directed to conduct a thorough cleaning of the area between her fence and Plaintiffs' fence no later than October 31, 2022, in order to remove debris between the two (2) fences to the greatest extent practicable.
4. In all other respects, the orders of May 26, 2010 and December 23, 2021 remain in full force and effect.

BY THE COURT

William P. Carlucci, Judge

cc: B. Southard, Esq.
G. Weber, Esq.

(WPC:pjs)