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SC Court of Appeals

ELECTRONICALLY FILED - 2024 Mar 01 12:23 PM - PICKENS - COMMON PLEAS - CASE#2020CP3900266

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF PICKENS )  
 )  
 Click Properties, LLC and )  
 Hyper Formance, LLC, )  
 )  
 Plaintiffs )  
 v. )  
 )  
 Thomas SC Properties, LLC and )  
 and Auto Repair, LLC, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 FOR THE THIRTEENTH JUDICIAL  
 CIRCUIT

C.A. No. 2020-CP-39-00266

**ORDER**

This matter came before the Court on Plaintiffs’ Motion for Emergency Rule to Show Cause, Amended Motion for Emergency Rule to Show Cause, Second Amended Motion for Emergency Rule to Show Cause, and Third Amended Motion for Emergency Rule to Show Cause. Plaintiffs allege Defendants violated the Court’s Order to both abate the nuisance and refrain from harassing the Plaintiffs. Plaintiffs also seek a preliminary injunction.

**Factual Background**

This case arises out of the excavation of land by Defendants causing damage to Plaintiffs’ property. This excavation was alleged to have resulted in erosion and other damage to the Plaintiffs’ Property. Throughout the course of litigation there have been multiple orders put in place by the Court. Initially, on May 8, 2020 the Honorable Perry H. Gravely signed an order granting the Plaintiffs’ Motion for Temporary Injunction. This order set forth three provisions, namely that Defendants were not to obstruct Plaintiffs’ use of the gravel drive or turn-around area, Defendants were not to take any action on its property that would damage Plaintiffs’ property, building, or gravel drive, and all parties were not to harass the others.

On April 6, 2022 the Honorable Alex Kinlaw Jr. issued an order denying Defendants' Motion to Remove Temporary Injunction and Defendants' Motion to Amend Answer.

The case was tried by jury before Judge Gravely in May, 2022, resulting in a jury verdict in favor of the Plaintiff on various causes of actions. The jury awarded \$168,000 on the negligence cause of action, \$28,000 on the nuisance per se cause of action, and in favor of the Plaintiffs on the acquiescence and prescriptive easement causes of action. On September 21, 2022, Judge Gravely issued an Order keeping in place the Temporary Injunction until all post-trial motions and any appeals are final, ordering Defendants not to obstruct or restrict Plaintiffs' use of the gravel drive or turn-around area, abate the nuisance and not take any action on its property which would damage Plaintiffs' property, and ordering all parties not to harass each other. On December 9, 2022, Defendants filed a Motion to Stay Pending Appeal or For Writ of Supersedeas. That motion was denied by Judge Gravely. Plaintiffs subsequently filed a Motion for Rule to Show Cause based on the September 21, 2022 Order by Judge Gravely. Additional Rule to Show Cause motions were filed with the Court.

### Legal Analysis

The Court recognizes that “[C]ontempt is an extreme measure; this power vested in the court is not lightly asserted.” *Taylor v. Taylor*, 434 S.C. 307, 317, 863 S.E.2d 335, 340 (Ct. App. 2021). When determining whether to hold the Defendant in contempt, the Court must find that Defendant had a “willful disobedience of a court order.” *Ex Parte Kent*, 379 S.C. 633, 637, 666 S.E.2d 921, 923 (Ct. App. 2008). Furthermore, the “record must be clear and specific as to acts or conduct upon which the contempt is based.” *Id.* A willful act is an act that is done “voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done.” *Id.* In the case of civil contempt the burden of

proof is clear and convincing evidence. *Poston v. Poston*, 331 S.C. 106, 113, 502 S.E.2d 86, 89 (1998).

Civil contempt is designed to “coerce the defendant to do the thing required by the order for the benefit of the complainant.” *Poston*, 331 S.C. 106, 111, 502 S.E.2d 86, 88 (1998). The court may impose judicial sanctions in civil contempt proceedings for either two purposes: “to coerce the defendant into compliance with the court’s order, and to compensate the complainant for losses sustained.” *Floyd v. Floyd*, 365 S.C. 56, 80, 615 S.E.2d 465, 479 (Ct. App. 2005). Various civil contempt sanctions are available to the court if they find the Defendant in contempt. *Poston*, at 114-15, 502 S.E.2d at 90. The court may order the contemnor to pay a fine to the court; however, they may purge themselves of the fine by complying with the prior court order. *Id.* The court may give a jail sentence to the contemnor that will be served until they agree to comply with the prior court order. *Id.* The court may order the contemnor to pay a fine and/or damages to the complainant and they may also be ordered to pay a fine to the court. *Id.* In this scenario the contemnor may rid themselves of the fine payable to the court by complying with the previous order. Similarly, the court may order the contemnor to pay a fine and/or damages to the complainant and they may also be given a jail sentence. *Id.* In this scenario the contemnor may rid themselves of the fine payable to the court by complying with the previous order. *Id.* The court also has the power to require reimbursement of attorney’s fees to the complainant. *Id.* When assigning the fine, the court should limit it to the complainant’s actual loss and it must be based in evidence. *Floyd*, at 80, 615 S.E.2d at 478.

In a civil contempt proceeding, the court may also require the contemnor to reimburse a complainant for the costs they have incurred in enforcing the court’s prior order. *Poston*, 331 S.C. 106, 114, 502 S.E.2d 86, 90 (1998). This award can include reasonable attorney’s fees. *Id.* This is

not to be a punishment for the contemnor, but rather an “indemnification to the party who instituted the contempt proceeding.” *Id.*

### **Harassment**

As noted above, Judge Gravely’s Order required all parties to refrain from harassing the other. The Plaintiffs allege that there has been continued harassment and the Defendants have vandalized the property of the Plaintiffs.

The Plaintiff presented testimony of vandalism to Plaintiffs’ property. The Plaintiff testified there was damage to his red truck, including water being poured in the gas tank and the transmission line being cut. The Plaintiff testified that he witnessed a man dressed in camouflage near the truck before the Plaintiff left the area. No evidence was presented as to the identity that individual. The Plaintiff subsequently observed liquid leaking from the truck due to a cut transmission line. The testimony shows that the red truck was damaged. However, the evidentiary standard is clear and convincing evidence that it was the Defendants who vandalized the red truck. There is certainly evidence the truck was vandalized, but the Court does not find clear and convincing evidence it was the actions of Defendants.

The Plaintiff testified about damage to his maroon truck, including a screw being inserted into the front right tire, a broken AC line, damage to the electrical components, an unplugged alternator, slashed belts, a removed skid plate, and removed steering column cotter pins, among others. The Plaintiff testified that the Defendants made gestures that it was hot out right before Plaintiff realized his AC was broken. Although, this may be some circumstantial evidence that the Defendants were involved, it does not meet the burden of clear and convincing evidence that the Defendants or their representatives were the ones who tampered with the maroon truck.

The Plaintiff also testified that Defendants vandalized his trailer. There was testimony that the trailer lights were unplugged and there were cuts on the tire. The cuts on the tire resulted in the tire blowing out on the trailer. However, there was no evidence as to identity of the individual who may have vandalized the trailer. The Plaintiff again did not meet the burden of clear and convincing evidence that the Defendants or their representatives were the one who tampered with the Plaintiffs' trailer.

The Plaintiffs further testified as to vandalism to several other pieces of property. The Plaintiff provided testimony that his Prius, compactor, tank, blue truck, and Bobcat have suffered damage. However, the Plaintiffs have not been able to prove, by clear and convincing evidence, that the Defendants or their representative were responsible for the vandalism.

Aside from the vandalism, the Plaintiffs allege other forms of harassment. The Plaintiff provided testimony that Defendant fired a gun into the side of the Plaintiffs' hill. The Court finds this conduct egregious and that the Plaintiff presented sufficient clear and convincing evidence. The Plaintiff also provided testimony that employees of the Defendant, would habitually enter the area of Plaintiffs' property triggering an alarm to harass the Plaintiffs and they were seen doing this on camera and recognized by Plaintiffs. There was also harassment in the form of the Defendant employees giving the middle finger to the Plaintiff's wife. The Court finds that the Plaintiffs' have met their burden of clear and convincing evidence as to these forms of harassment.

Despite the Court not finding clear and convincing evidence as to some of the acts complained of above, it does acknowledge these acts of vandalism have occurred. While the Court does not find complicity by clear and convincing evidence on the part of Defendants for those specific acts, it is only because the standard of proof is high for contempt.

### Abatement of the Nuisance

According to Judge Gravley's Order, "Defendants are enjoined to abate the nuisance and that take such action to avoid any further damage to the Plaintiffs' property." The nuisance referenced is the continuing nuisance *per se*, which is the erosion. The Plaintiff testified and put forth evidence that the Defendant willfully disobeyed the Court's order. It was revealed in the testimony that in May 2023, the Defendant stated that he would not construct the wall. Additionally, in December of the same year, the Defendant reiterated that he had no intention of building a retaining wall. The Plaintiff testified to the Defendant referencing the amount of time he had to wait before he didn't have to pay based on the limitation of collecting judgment. All of this evidence amounts to clear and convincing evidence the Defendants willfully disobeyed the Court order. The Court recognizes Defendants just recently began work to start building the required wall, but this was some 16 months after Judge Gravley's Order and consequently cannot relieve them of their willful disobedience.

As a result of Defendants' willful failure to comply with the Court's order, the Plaintiffs have suffered damages. The Plaintiffs allege damage to their property resulting from water run off and limitations in their ability to perform certain services. Plaintiff testified that water run off has created a ditch on his property, cracks in his foundation, flooding in his workshop, and damage to his plumbing. The Court finds the newly formed ditch and flooding in the workshop is the result of the untimely failure to abate the erosion by Defendants. However, the Court does not find any expert testimony to support the damages related to cracks in the foundation and the plumbing system.

Defendants argue that the recent effort to start building a wall in the location where they have commenced work complies with the Order. As noted above, the time delay has been willful

and caused resulting damages. Judge Gravely ordered that Plaintiff's "are entitled to the full extent of the gravel drive" and Defendants to abate the nuisance. Based on a reading of the order it is established that the nuisance is the erosion. Both orders must be satisfied.

Based on the testimony of the Plaintiff's expert David Hall, if the retaining wall were to be built based on the current placement of the footings, the Plaintiff would not be able to drive heavy machinery on the gravel road. The Order requires that Plaintiffs are entitled to the full extent of the gravel drive and this evidence proves that Plaintiffs would not be able to use the full extent of their drive. Hall testified that the design of the wall requires no upslope and the ground to be flat at the top of the load. Hall testified that the wall would not be adequate due to the surcharge of material and live load. Live load refers to the heavy machinery that Plaintiff would drive on the gravel drive. If Plaintiff were not able to drive heavy machinery on the gravel drive, they would not be entitled to the full extent of the gravel drive as required by Judge Gravely' Order and the Court so finds.

#### **Award for Contempt**

Based on Defendants willful contempt of the Court's Order, Defendants are hereby fined as a sanction the sum of \$15,000, payable to Plaintiffs. Additionally, Defendants are ordered to pay Plaintiffs' attorney's fees in the amount of \$22,905 for reimbursement of their costs in enforcing the Court's Order as a compensatory contempt award. *Poston v. Poston*, 331 S.C., 502 S.E.2d 86 (1998). These fees are supported by the affidavit by submitted counsel for Plaintiffs. Although, these fees are awarded as indemnification and not attorney's fees per se, the Court did analyze the affidavit and finds them reasonable. *Taylor v Medenica*, 331 S.C. 575, 503 S.E. 2d 458 (1998).

### **Injunctive Relief**

Plaintiffs seek a preliminary injunction to prevent Defendants from continuing on with the building of the wall based on the current placement of the footings. The granting of an injunction is a drastic remedy and must only be issued in order to prevent irreparable harm. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.* 361 S.C. 117, 603 S.E. 2d 905 (2004). In order to prevail, Plaintiffs must prove (1) irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) an inadequate remedy at law. *Peek v. Spartanburg Regional Healthcare System*, 367 S.C. 450, 626 S.E. 2d 34 (Ct. App. 2004). The Court finds Plaintiffs have met their burden of proof as to all three elements. Plaintiffs will suffer irreparable harm to both their property and their business if this wall is built based on the current footings. The expert testimony of David Hall and Defendants' own engineer supports the element of likelihood of success on the merits. And finally, by eliminating access to the upper building, Plaintiffs will not be able to take heavy equipment up their driveway which will prevent them from doing business. Consequently, there is no adequate remedy at law.

### **Conclusion**

For the forgoing reasons, the Plaintiffs' Motion for a Rule to Show Cause is GRANTED and Plaintiffs are awarded \$37,905 as damages for contempt. Additionally, Plaintiffs' motion for a Preliminary Injunction is GRANTED.

IT IS SO ORDERED.





Pickens Common Pleas

**Case Caption:** Click Properties, Llc , plaintiff, et al VS Thomas Sc Properties Llc ,  
defendant, et al  
**Case Number:** 2020CP3900266  
**Type:** Order/Other

So Ordered

G.D. Morgan Jr.