

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

The Village of Ottawa Hills

Court of Appeals No. L-12-1093

Appellee

Trial Court No. CVF-02-20855

v.

Nasrin Afjeh

DECISION AND JUDGMENT

Appellant

Decided: April 12, 2013

* * * * *

Sarah A. McHugh, for appellee.

D. Joe Griffith, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a March 13, 2012 judgment of the Toledo Municipal Court that found appellant Nasrin Afjeh in contempt of the court's September 29, 2005 judgment entry ordering her to abate the nuisance maintained at her property in the village of Ottawa Hills, Toledo, Ohio. Because we find that the trial court did not abuse its discretion, we affirm.

{¶ 2} The relevant facts of this case are as follows. On May 26, 2006, this court affirmed a judgment of the Toledo Municipal Court finding that appellant and her husband, Abdollah Afjeh, maintained a nuisance on their property. *Ottawa Hills v. Afjeh*, 6th Dist. No. L-04-1297, 2006-Ohio-2618. The lower court had ordered the parties to maintain their home in a “nuisance-free condition” or risk a contempt of court finding. *Id.* at ¶ 3. Sometime after this court’s judgment, title of the property was transferred solely to appellant.

{¶ 3} On August 26, 2010, appellee, village of Ottawa Hills, filed a motion to show cause why appellant should be held in contempt of court. In its motion, appellee cited the relevant Ottawa Hills property maintenance ordinance requiring property owners to keep their yards “free from unsightly materials not appropriate to the area and debris * * *.” Appellee attached photographs which it stated evidenced appellant’s contempt. A hearing was held on the motion on September 15, 2010. On October 7, 2010, the trial court held that appellant was in contempt of the court’s order to maintain her property in a nuisance-free condition. The court ordered appellant to pay a fine of \$2,500, to be held in abeyance for one year conditioned on no further violations. Another appeal followed and the 2005 order was again affirmed in this court’s decision dated January 13, 2012. *Ottawa Hills v. Afjeh*, 6th Dist. No. L-10-1353, 2012-Ohio-125.

{¶ 4} In May 2011, appellee became aware of conditions on appellant’s property that it believed violated village ordinances regarding maintenance of property. On May 23, 2011, the village therefore sought to enforce the 2005 order by filing a motion to

show cause why appellant should not be held in contempt. Appellee attached photographs which it stated evidenced appellant's contempt.

{¶ 5} A hearing was held on the motion on January 4, 2012. Ottawa Hills Village Manager Marc Thompson identified photographs he took of appellant's property on May 14, 2011, which he stated depicted tall grass and weeds in excess of eight inches in violation of the Ottawa Hills property maintenance code. Thompson testified that he did not measure the height of the grass when he took the photographs. Thompson also identified photographs of two vehicles in appellant's driveway which appeared to be inoperable due to flat tires. He further testified that the village code prohibits inoperable vehicles from being parked on residential property.

{¶ 6} Appellant's husband Abdollah Afjeh testified regarding the condition of the property in May 2011. Afjeh stated that he maintains the outside of the home and cuts the grass approximately once each week. He also drives the vehicles on a regular basis and testified that they were operable in May 2011, other than having flat tires.

{¶ 7} Following the hearing and the submission of memoranda by the parties, the trial court held that appellant was in contempt of the court's order to maintain her property in a nuisance-free condition. The court ordered appellant to abate the nuisance on her property immediately upon receipt of the court's entry. The court further ordered that if said nuisance was not abated within ten days, a fine of \$250 per day would be assessed until the nuisance is abated. Appellant was also ordered to pay court costs and attorney fees.

{¶ 8} Appellant now sets forth the following assignments of error:

Assignment of Error No. 1: The trial court erred in finding appellant Nasrin Afjeh to be in contempt of a prior court order of 2005 which related to a nuisance situation that had long since been abated and the facts of the instant case bear no relationship to the prior court order.

Assignment of Error No. 2: The trial court erred in finding appellant to be in contempt of the prior court order when no evidence of a nuisance as defined by the Village of Ottawa Hills Code existed in this case.

Assignment of Error No. 3: The trial court erred in finding appellee [sic] to be in contempt of a prior court order, as there was no evidence of contempt of any prior court order presented in this case.

Assignment of Error No. 4: The trial court erred in finding appellant in contempt, as the Village of Ottawa Hills failed to give Mrs. Afjeh notice of any nuisance condition as required by the Village of Ottawa Hills Code, denying Mrs. Afjeh the rights bestowed to her under the Code to abate any nuisance condition before the filing of an action in the Municipal Court.

Assignment of Error No. 5: The trial court erred in finding appellant in contempt as appellee failed to establish that the height of appellant's grass violated any section of any Village of Ottawa Hills Code.

Assignment of Error No. 6: The trial court erred in finding appellant in contempt concerning her motor vehicles as the Village of Ottawa Hills failed to prove that appellant's vehicles were inoperable or otherwise constituted a nuisance pursuant to the Village Code.

{¶ 9} In support of her first assignment of error, appellant argues that the trial court erred by finding her in contempt because the nuisances addressed in the 2005 trial court order had long since been abated. Appellant asserts that appellee, in this case, did not produce any evidence that any issue related to the original court order had been violated and, since the facts that gave rise to the 2005 order had been abated, simply “bootstrapped” a new set of facts unrelated to the prior order. Appellant further asserts that appellee cannot characterize current or future actions that have no relationship to the 2005 order as being a violation of that prior order because “a court order relating to contempt that is abated cannot be enforced in perpetuity.”

{¶ 10} The 2005 order did not find appellant in contempt; it found her in violation of an Ottawa Hills ordinance regarding property maintenance. Appellant incorrectly interprets the September 29, 2005 order and fails to address the following language in the order: “The Defendants are further ordered to *maintain* their property in a nuisance free condition and, upon failure to do so, the Defendants will be found to be in Contempt of Court.” (Emphasis added.) The 2005 order not only required appellant to abate certain nuisance conditions that existed on her property at that time, it ordered her to maintain the property in compliance with the codified ordinances of the village of Ottawa Hills.

Further, this court has affirmed the September 29, 2005 ruling in *Ottawa Hills v. Afjeh*, 6th Dist. No. L-04-1297, 2006-Ohio-2618, and recently affirmed a later decision of the trial court finding appellant in contempt of that order. *See Ottawa Hills v. Afjeh*, 6th Dist. No. L-10-1353, 2012-Ohio-125. Based on the foregoing, appellant's first assignment of error is not well-taken.

{¶ 11} Next we will address appellant's fourth assignment of error. In support of this claimed error, appellant asserts that she should not have been found in contempt because the village of Ottawa Hills failed to give her notice of any nuisance conditions as required by the village code. Appellant approaches this argument as if the instant matter arose from an original nuisance charge. However, this is a contempt action, as described above. Appellant cites a village ordinance which requires the village to place a resident on notice, providing an opportunity to remedy or abate a condition before an enforcement action commences. Village of Ottawa Hills Ordinance No. 2006-01, Section 1, 660.14. However, the village is not required to provide appellant with notice of violation of a prior order as if proceeding with an enforcement action under the statutory mechanism. Appellant has been aware of the court's order since September 29, 2005, and has appealed the order several times. The village filed its motion to show cause on May 23, 2011. The record reflects that appellant retained counsel and filed a memorandum in opposition on June 7, 2011. After appellant requested and was granted two continuances, the matter was heard on January 4, 2012. Based on the foregoing, appellant's fourth assignment of error is not well-taken.

{¶ 12} We will consider appellant's second, third, fifth and sixth assignments together as they arise from her argument that the trial court erred by finding her in contempt of the prior order because there was no evidence of a nuisance on her property or of contempt of a prior court order. Appellant asserts that the village did not prove either that the grass in her yard exceeded the eight-inch height permitted by the village ordinance or that the two cars in her driveway were inoperable.

{¶ 13} A trial court's contempt finding is reviewed pursuant to an abuse of discretion standard. *State v. Kilbane*, 61 Ohio St.2d 201, 400 N.E.2d 386 (1980), paragraph one of the syllabus. An abuse of discretion requires that the court's conduct be arbitrary, unreasonable or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 14} As summarized above, the village produced photographs depicting the grass and weeds in appellant's yard. Village manager Marc Thompson testified that he has been inspecting properties for many years and is able to identify when grass and weeds exceed the allowable eight inches in height. Thompson also testified that he observed two cars in appellant's driveway with flat tires, which clearly rendered the vehicles inoperable. Photos of the cars were admitted into evidence. The trial court, in its discretion, determined that the evidence produced by the village established that appellant maintained her property with nuisance conditions on or about May 14, 2011, and thereby was in contempt of the prior court order. Based on the foregoing, we find that the trial court did not abuse its discretion when it held that appellant was in contempt

of court. Appellant's second, third, fifth and sixth assignments of error are not well-taken.

{¶ 15} On consideration whereof, this court finds that substantial justice was done the party complaining and the judgment of the Toledo Municipal Court is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.