

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

M & M WINFIELD, LLC, ET AL.

Plaintiff-Appellant

-VS-

HUNTINGTON MORTGAGE CO.,
ET AL.

Defendant-Appellee

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Craig R. Baldwin, J.

Case No. 2014 AP 07 0027

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common
Pleas, Case No. 2011 CV 07 0800

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

February 18, 2015

APPEARANCES:

For Plaintiff-Appellant

MICHAEL C. JOHNSON

117 South Broadway

P.O. Box 1007

New Philadelphia, OH 44663

For Defendant-Appellee

Huntington National Bank

TODD S. BUNDY

220 Market Avenue South

Suite 1000

Canton, OH 44702

Farmer, J.

{¶1} Appellant, M & M Winfield, LLC, sold one lot out of a group of lots to Paul Richmond. Mr. Richmond built a home on the lot. In order to build the home, Mr. Richmond obtained a mortgage from National City Bank, serviced by Huntington Mortgage Company. Due to a mix-up in recording the deeds, Mr. Richmond actually had taken title to an adjacent lot owned by appellant. Appellee, Huntington National Bank, held a mortgage on this adjacent lot. Appellant and Mr. Richmond executed quit claim deeds to each other to fix the mix-up, but the deeds could not be recorded because Huntington Mortgage Company refused to transfer Mr. Richmond's mortgage to the correct lot.

{¶2} On July 26, 2011, appellant filed a complaint against Huntington Mortgage Company and Mr. Richmond, asking the trial court to require the parties to exchange deeds due to the mix-up and require Huntington Mortgage Company to move its mortgage to the correct property, and for damages caused by Huntington Mortgage Company's failure to transfer the mortgage as requested.

{¶3} On November 29, 2011, appellant filed a motion for judgment on the pleadings and default judgment. A hearing was held on January 12, 2012. By judgment entry filed June 6, 2012, the trial court ordered the Tuscarawas County Recorder to record the quit claim deeds and transfer the mortgage to the correct lot.

{¶4} On July 12, 2012, the trial court held a hearing on damages. By judgment entry filed July 13, 2012, the trial court found in favor of appellant as against Huntington Mortgage Company in the amount of \$429,549.50 plus interest and costs for damages incurred by Huntington Mortgage Company's failure to transfer the mortgage as

requested. A writ of execution was filed on September 14, 2012. On September 21, 2012, appellee filed a response to the writ of execution, stating it was served with the execution order, but it was not in possession of assets owned by Huntington Mortgage Company as that company ceased to exist as of December 31, 2002.

{¶5} On January 24, 2013, appellee filed a motion to intervene to assert its mortgage interest in the adjacent lot. A hearing was held on February 19, 2013. By judgment entry filed March 27, 2013, the trial court denied the motion. An appeal to this court affirmed the trial court's decision. *M & M Winfield, LLC v. Huntington National Bank*, 5th Dist. Tuscarawas No. 2013 AP 04 0019, 2014-Ohio-196.

{¶6} On June 26, 2013, appellant filed a motion to compel, claiming appellee failed to properly act on the writ of execution. By judgment entry filed March 21, 2014, the trial court granted the motion and ordered a show cause hearing. A hearing was held on April 7, 2014. By judgment entry filed April 8, 2014, the trial court determined the motion to compel should be construed as a motion for indirect civil contempt sanctions, and deferred judgment pending post-hearing memoranda. By judgment entry filed June 3, 2014, the trial court determined it was without authority to sanction appellee as appellee was a non-party to the action, and determined appellee's response to the writ of execution was truthful and accurate and was not an attempt to frustrate the execution orders of the trial court.

{¶7} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶8} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN CONCLUDING THAT IT IS WITHOUT AUTHORITY TO SANCTION THE APPELLEE FOR INDIRECT CIVIL CONTEMPT."

II

{¶9} "THE TRIAL COURT ABUSED ITS DISCRETION IN CONCLUDING THAT THE APPELLEE'S RESPONSE TO WRIT OF EXECUTION WAS TRUTHFUL AND ACCURATE AND SHOULD HAVE SANCTIONED THE APPELLEE FOR INDIRECT CIVIL CONTEMPT."

I, II

{¶10} Appellant claims the trial court erred in denying its motion by concluding it was without authority to sanction appellee as a non-party and in finding appellee's response to the writ of execution was truthful and accurate and was not an attempt to frustrate the execution orders of the trial court.

{¶11} "Civil contempt is defined as that which exists in failing to do something ordered by the court in a civil action for the benefit of the opposing party therein." *Beach v. Beach*, 99 Ohio App. 428, 431 (2nd Dist.1955). See also, R.C. 2705.02. Contempt may be classified as direct or indirect. *In re: Purolo*, 73 Ohio App.3d 306, 310 (3rd Dist.1991). Direct contempt occurs in the presence of the court, while indirect contempt occurs outside its immediate presence. *Id.* "An indirect contempt is one committed outside the presence of the court but which also tends to obstruct the due and orderly administration of justice." *In re Lands*, 146 Ohio St. 589, 595 (1946).

{¶12} In its judgment entry filed June 3, 2014, the trial court found the following:

The Court

FINDS that after considering the evidence presented at the 4/7/2014 **Oral/Evidentiary** Hearing and the **Post-Hearing Legal Memoranda** filed by Plaintiff and Non-Party Huntington National Bank, the undersigned concludes that this Court is without authority to **Sanction** Non-Party Huntington National Bank for alleged **Indirect Civil Contempt** as advance by the Plaintiff in its 6/26/2013 **Motion to Compel** which the Court has construed to be a **Motion for Indirect Civil Contempt Sanctions** against Non-Party Huntington National Bank. This is so based on the arguments offered by Non-Party Huntington National Bank in its 5/19/2014 **Post-Legal Memorandum**, which the Court concludes correctly states the law controlling the decision of the undersigned.

FINDS that had the Court the Authority to **Sanction** Non-Party Huntington National Bank for **Indirect Civil Contempt** as alleged by Plaintiff, the undersigned concludes that the allegation of Plaintiff that Non-Party Huntington National Bank acted in **Indirect Civil Contempt** of this Court's previously issued Orders (**Writ of Execution** filed on 9/13/2012) is without merit and the Court concludes that Non-Party Huntington National Bank's **Response** to the **Writ** was truthful and accurate and, therefore, not in any way or manner to be construed as an attempt to frustrate the execution of the Orders issued by the Court in this case.

{¶13} Appellee's September 21, 2012 response to the September 14, 2012 writ of execution included the following:

Huntington Bank states that it is not in possession of assets owned by Huntington Mortgage Co. Further in response to the Writs of Execution, Huntington Bank states that the Huntington Mortgage Company ceased to exist as of December 31, 2002. Attached hereto as Exhibit "B" is a copy of the Certificate evidencing the termination of The Huntington Mortgage Company issued by the Ohio Secretary of State dated December 31, 2002.

{¶14} During the hearing on April 7, 2014, Jody Oster, Vice President and Senior Counsel for appellee, testified that Huntington Mortgage Company "merged out of existence in 2002. It was defunct at that time. The mortgage company, the Huntington Mortgage Company, does not exist and hasn't since that time and it has no assets." T. at 7. The mortgages held by Huntington Mortgage Company were not assigned to appellee, but appellee collected the payments on the loans. *Id.* The loans are the property of appellee and not Huntington Mortgage Company by virtue of the merger in 2002. T. at 8, 24. Huntington Mortgage Company is not an affiliate of appellee. T. at 23. All loans paid to appellee are loans held by appellee, not Huntington Mortgage Group which is currently a division of appellee. T. at 17-18, 23-24.

{¶15} Appellee's counsel argued appellant and Mr. Richmond never had a mortgage with Huntington Mortgage Company in 2002 when Huntington Mortgage

Company merged with appellee. T. at 26. The July 26, 2011 complaint at ¶ 3 averred the deed for the lot in issue was executed in 2005.

{¶16} From the testimony and the admissions within the complaint, we find the trial court was correct in finding appellee's response to the writ of execution was truthful and accurate and was not an attempt to frustrate the execution orders of the trial court. Huntington Mortgage Company was not in existence at the time of the aggrieved errors. Therefore, we deny appellant's Assignment of Error II.

{¶17} However, we disagree with the trial court's conclusion that it was without authority to sanction appellee as a non-party.

{¶18} The September 14, 2012 writ of execution issued by the trial court was in the form of an executive order. As it was an order from the trial court, it was within the trial court's discretion to address the issue of "indirect contempt" for failure to obey its own order.

{¶19} We conclude the trial court erred in determining it could not sanction appellee based upon the belief that a non-party could not be in contempt. Therefore, we grant appellant's Assignment of Error I.

{¶20} By virtue of the two-issue rule, a decision which is supported by one or more alternate grounds properly submitted is invulnerable to attack on one issue only:

This rule as generally applied is that, where there are two causes of action, or two defenses, thereby raising separate and distinct issues, and a general verdict has been returned, and the mental processes of the jury have not been tested by special interrogatories to indicate which of the

issues was resolved in favor of the successful party, it will be presumed that all issues were so determined; and that, where a single determinative issue has been tried free from error, error in presenting another issue will be disregarded.

H.E. Culbertson Co. v. Warden, 123 Ohio St. 297, 303 (1931).

{¶21} Given our decisions of each assignment of error, we find, under the two-issue rule, the appeal as a whole is not well taken and the trial court's decision is affirmed.

{¶22} The judgment of the Court of Common Pleas of Tuscarawas County, Ohio is hereby affirmed.

By Farmer, J.

Hoffman, P.J. and

Baldwin, J. concur.

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