

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

Village of Ottawa Hills

Court of Appeals No. L-10-1353

Appellee

Trial Court No. CVF-02-20855

v.

Nasrin Afjeh

DECISION AND JUDGMENT

Appellant

Decided: January 13, 2012

* * * * *

Sarah A. McHugh, for appellee.

D. Joe Griffith, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Nasrin Afjeh, appeals the October 7, 2010 judgment of the Toledo Municipal Court finding her 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 the 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 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 also attached photographs which it stated evidenced appellant’s contempt.

{¶ 4} A hearing on the motion was held on September 15, 2010. Ottawa Hills Village Manager Marc Thompson testified that in June 2010, he inspected appellant’s property and prepared a letter, dated June 16, which outlined the ordinance violations he observed. Such violations included grass and weeds in excess of eight inches, trash and debris, an inoperable vehicle in the driveway, an unpainted panel on the garage door, lumber and cement blocks strewn about the yard, blue tarps in the yard, and unrestored

excavations in the rear yard. The letter informed appellant that she had two weeks to remedy the nuisance conditions on her property.

{¶ 5} Thompson testified that he returned to the property on June 23, 2010. In a follow-up letter dated June 29, Thompson informed appellant that progress had been made on the property but that several nuisance conditions remained. Thompson then identified several photographs depicting the alleged nuisance conditions.

{¶ 6} During cross-examination, Thompson was questioned about the ordinance allowing construction materials to exist on the property. Thompson acknowledged that where excavation was required to place something in the ground, piles of dirt would be reasonable. Thompson testified that in the June 29 letter, appellant was given until July 7 to comply with the maintenance code. Thompson admitted that he was unaware that appellant broke her ankle on July 3.

{¶ 7} Thompson was questioned regarding the projects that appellant had undertaken at her home. He stated that he became aware of the sunken garden project at the August 4, 2010 hearing before the property maintenance commission. Thompson was also aware that a geothermal heating system had been installed; he believed that the project had been completed in either February or March 2010. Thompson testified that he felt that the condition of appellant's property was in violation of the village ordinance for the entirety of 2010.

{¶ 8} Appellant's husband testified regarding the projects undertaken at the property. As to the geothermal heating system, Abdollah Afjeh stated that five 175-foot

deep wells had to be dug in the backyard. Trenches also were dug with lines leading from the house to the wells. A photograph was presented depicting the excavation on the property. Afjeh stated that the photograph was taken in November or December 2009, and that the project was completed in February or March 2010. Appellee objected to the testimony arguing that the project was completed prior to the relevant time-frame. The objection was sustained.

{¶ 9} Afjeh then testified regarding a photograph taken the day of the hearing which depicted the backyard in good condition. Afjeh testified that the backyard restoration followed the construction of a 27 by 20-foot sunken garden. The project began in late June 2010. According to Afjeh, his wife was unable to complete the project because she broke her ankle in early July. Afjeh testified that they hired some people to help dig out the garden and that he took some vacation from work to help with the project.

{¶ 10} Afjeh testified that after receiving a letter from Mr. Thompson he telephoned him and asked for more time to complete the project but that the request was denied. Afjeh stated that they did hire someone to complete the work and that, at the time of the hearing, he was approximately one-half day away from finishing the project.

{¶ 11} Afjeh testified that during the garden project they encountered a lot of buried debris including bicycles, broken glass, spark plugs which impeded the excavation. They had to rent a backhoe.

{¶ 12} Afjeh was also questioned about the mismatched panel on the garage door. He stated that had difficulty finding a company that could replace just the missing panel. Afjeh stated that it had been repaired.

{¶ 13} Regarding the piles of wood in the yard, Afjeh stated that they had several trees removed; the large branches were taken from the property but that he had been working on cutting them into smaller pieces to ultimately make mulch. Afjeh stated that he rented a chipper on July 17, 2010, but that the belt broke and he had to return the equipment. He was able to re-rent the repaired chipper on August 5, and the project was completed.

{¶ 14} Afjeh was cross-examined regarding the timing of and the efforts made to complete the sunken garden project. Afjeh admitted that he was not living in the home but that he would visit “virtually every day.” Afjeh was presented with several photographs of the property taken on June 9, 2010. Appellant’s counsel objected to the photographs arguing that they were not attached to the contempt motion. The photographs were allowed and Afjeh admitted that he saw the property on June 6 or 7, 2010, and that the photographs accurately depicted its condition. Afjeh was also questioned about photographs taken on June 24, and August 4, 2010, which were attached to the motion to show cause. The photographs depicted debris, piles of dirt, tarps, yard equipment and tools. He agreed that they depicted the condition of the property.

{¶ 15} Appellant next called Dennis Noel, an individual hired to help with unfinished projects. Noel testified that he was first contacted in July. Noel stated that he fixed the garage door panel. Regarding the sunken garden project, Noel testified that he started working on it just over a week prior to the hearing and had been working ten-hour days. He stated that the project would be completed in two days. This testimony was ordered stricken because it fell outside the relevant time period. Noel admitted having no knowledge of the condition of the backyard prior to August 31, 2010.

{¶ 16} 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 pay a fine of \$2,500, to be held in abeyance for one year conditioned on no further violations. Appellant was also ordered to pay court costs and attorney fees. This appeal followed.

{¶ 17} Appellant now raises the following five assignments of error for our review:

{¶ 18} Assignment of Error No. 1: The trial court denied Mrs. Afjeh due process by failing to give her adequate notice and time to prepare for the contempt hearing.

{¶ 19} Assignment of Error No. 2: The trial court denied Mrs. Afjeh due process by prejudging her guilty of contempt prior to the actual contempt hearing.

{¶ 20} Assignment of Error No. 3: The trial court erred in finding defendant/appellant in contempt as the construction of a geothermal heating system and a sunken garden do not constitute a nuisance as a matter of law.

{¶ 21} Assignment of Error No. 4: The trial court erred in the instant case as there was no evidence of contempt on the part of defendant/appellant.

{¶ 22} Assignment of Error No. 5: The trial court abused its discretion in allowing the admission of plaintiff's exhibit No. 5 to the prejudice of defendant/appellant.

{¶ 23} In appellant's first assignment of error, she argues that she was denied due process of law by inadequate notice of the contempt hearing. Appellant contends that this assignment of error should be reviewed de novo. We disagree. The grant or denial of a continuance is reviewed on an abuse of discretion standard. *State v. Unger*, 67 Ohio St.2d 65, 67, 423 N.E.2d 1078 (1981). In making that determination, the Ohio Supreme Court in *Unger* recognized: "There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied." *Id.*, quoting *Unger v. Sarafite*, 376 U.S. 575, 589, 84 S.Ct. 841, 11 L.Ed.2d 921 (1964).

{¶ 24} In support of her argument that she did not have a reasonable opportunity to defend against the charges, appellant relies on *Poptic v. Poptic*, 12th Dist. No. CA2005-06-145, 2006-Ohio-2713. In *Poptic*, a post-divorce case, the appellant was

charged with contempt. The appellant, who received notice of the motion on April 19, 2005, flew from California to attend the April 25, 2005 hearing. At the hearing, appellant appeared, pro se, and requested a continuance so he could retain an attorney. *Id.* at ¶ 4. The court denied the request and the appellant proceeded, pro se. *Id.* During lunch the appellant retained an attorney who then requested a continuance to familiarize himself with the case; the request was denied and counsel withdrew. Appellant proceeded pro se, was found in contempt and was ordered to serve a 30-day jail sentence and pay a fine. *Id.* at ¶ 4-5.

{¶ 25} In the present case, appellant was notified of the September 9, 2010 contempt hearing on September 8. Unlike *Poptic*, appellant appeared with counsel and requested a continuance. The court continued the matter until September 15, 2010, and no objection was raised. Based on the foregoing, we find that the trial court did not deny appellant due process of law by failing to give her adequate notice of the contempt hearing. Appellant's first assignment of error is not well-taken.

{¶ 26} In appellant's second assignment of error, she argues that the trial court denied her due process of law by "prejudging" her guilty prior to the contempt hearing. Appellant bases her argument on some statements made by the court at the September 9, 2010 hearing. The court indicated that at the contempt hearing what would be at issue is "the fact that she's violated the Order and what sanctions the Court could impose because of that violation." However, the trial court judge further stated that he had reviewed the

contempt motion, including the attached photographs, and that “although we have not had an actual hearing, if there is any accuracy to that, this is absolute and total defiance.”

{¶ 27} At the September 15, 2010 contempt hearing, appellant presented witnesses and submitted evidence. At the conclusion of the hearing, the court requested further written arguments of the parties supporting “whether or not the defendant is in violation or not in violation.” Thereafter, on October 7, 2010, in a four-page written decision, the court found appellant in contempt. Accordingly, we find that the court did not “prejudge” appellant and appellant’s second assignment of error is not well-taken.

{¶ 28} In her third assignment of error, appellant asserts that the trial court erred in finding appellant guilty of contempt where the construction of a sunken garden and geothermal heating system do not, as a matter of law, constitute a nuisance. Similarly, in her fourth assignment of error appellant argues that there was no evidence that she was in contempt of court. We note that 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 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).

{¶ 29} Reviewing the trial court’s October 7, 2010 judgment entry, we note that the court did not find that the projects themselves constituted a nuisance but that they were not completed in a timely fashion and, further, that the sunken garden project was not conceived or undertaken until after appellee had made efforts to obtain compliance of

the court's prior order. Based on the court's judgment entry, and after review of the hearing testimony and exhibits, we conclude that the trial court did not abuse its discretion when it held that appellant was in contempt of court. Appellant's third and fourth assignments of error are not well-taken.

{¶ 30} In appellant's fifth assignment of error, she contends that the trial court abused its discretion when it allowed the admission of appellee's exhibit No. 5, which was a composite of photographs taken on June 9, 2010. Appellant contends that because the photographs were not attached to the motion to show cause, and that she had no time to review them or prepare a defense, she was prejudiced by their admission.

{¶ 31} We note that a trial court has broad discretion in the admission or exclusion of evidence. *Krischbaum v. Dillon*, 58 Ohio St.3d 58, 66, 567 N.E.2d 1291 (1991). Even assuming that the photographs should not have been admitted, ample evidence exists in the record to support the trial court's finding. The testimony of Village Manager Marc Thompson and the photographs attached to the motion to show cause were sufficient to establish that appellant was in contempt of court. Appellant's fifth assignment of error is not well-taken.

{¶ 32} On consideration whereof, we find 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.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE