

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

COPLEY TOWNSHIP BOARD OF
TRUSTEES

C.A. No. 27329

Appellee

v.

THOMAS DEMROVSKY, et al.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV-2008-08-5777

Appellants

DECISION AND JOURNAL ENTRY

Dated: March 25, 2015

WHITMORE, Judge.

{¶1} Defendant-Appellants, Thomas and Laura Demrovsky (“the Demrovskys”), appeal from the judgment of the Summit County Court of Common Pleas in favor of Plaintiff-Appellee, Copley Township Board of Trustees (“Copley Township”). This Court affirms.

I

{¶2} The Demrovskys own certain real property located at 2475 Copley Road. The property is zoned for residential use, and in 1990, Mr. Demrovsky notified Copley Township by way of affidavit that he also proposed to use his property for agricultural use, as defined by R.C. 519.21. Subsequently, Copley Township issued the Demrovskys a notice of zoning violation, and Mr. Demrovsky came before the Board of Zoning Appeals (“the Board”) for a public hearing. The public hearing took place on September 30, 1992. At the hearing, Mr. Demrovsky agreed to abide by certain terms and conditions with respect to the maintenance and use of his property. As a result, the Board voided the notice of zoning violation.

{¶3} In 2008, Copley Township brought suit against the Demrovskys for declaratory and injunctive relief. Copley Township sought a declaration that the Demrovskys were not maintaining and using their property in accordance with the terms and conditions set forth by the Board in 1992 and the Copley Township Zoning Resolution. It also sought a permanent injunction that would bar the Demrovskys from further violating the Board's conditions and the Zoning Resolution. Lastly, it asked the court to declare the Demrovskys' property a public nuisance and to order Copley Township to enter the property and abate the nuisance at the Demrovskys' expense.

{¶4} The 2008 litigation resulted in the parties reaching an agreement. On July 16, 2009, the court issued a stipulated judgment entry, embodying the parties' agreement. Per the stipulated judgment entry, the Demrovskys were "permitted to conduct a landscape business * * * on the property known as 2475 Copley Road." In return, the Demrovskys agreed to abide by certain terms and conditions regarding the maintenance and use of their property. The entry also provided that the court would "maintain continuing jurisdiction over [the] matter to enforce the terms and conditions set forth herein."

{¶5} In 2009, Copley Township filed a motion to show cause, asking the court to hold the Demrovskys in contempt for failing to abide by the terms of the stipulated judgment entry. The show cause was resolved after the Demrovskys agreed to pay a \$500 fine to Copley Township. In 2013, however, Copley Township filed another motion to show cause, claiming that the Demrovskys were once again in contempt of court. The court set the matter for a hearing.

{¶6} On the day of the hearing, the parties notified the court that the Demrovskys had taken measures to rectify several of the outstanding problems on their property, but that a few

problems remained. Accordingly, the parties asked the court to continue the hearing for three weeks to allow time for the Demorovskys to finish their clean up and for Copley Township to conduct another inspection. The court agreed and continued the hearing. The hearing was ultimately continued several more times due to scheduling conflicts.

{¶7} Four months prior to the rescheduled hearing date, Copley Township filed a memorandum in support of its show cause motion. In its memorandum, the township argued that the Demrovskys were in violation of the 2009 stipulated judgment entry because the so-called “landscape business” they were operating on their property had “no agricultural use whatsoever” and, in reality, constituted a commercial construction business. The township further argued that the Demrovskys had displayed a pattern of similar behavior since the early 1990s, causing the township to repeatedly expend resources monitoring their activity on the property. Consequently, Copley Township asked the court to sanction the Demrovskys and order them to “cease and desist all activities on the Property that do not relate to a ‘landscape business’ and which do not constitute an agricultural use of the property.” The Demrovskys did not file any response to Copley Township’s memorandum.

{¶8} The show cause hearing took place on March 3, 2014. Both parties appeared at the hearing and presented evidence and arguments in support of their respective positions. On March 24, 2014, the court issued its written decision in the matter. In its decision, the court found that the Demrovskys had violated the 2009 stipulated judgment entry on two separate occasions. Consequently, the court imposed a \$1,000 sanction upon the Demrovskys. It also determined, however, that it was necessary to clarify the stipulated judgment entry insofar as it permitted the Demrovskys to conduct a landscape business on their property. Relying on the minutes of Mr. Demrovskys’ 1992 public hearing before the Board, the court concluded that

Copley Township had only agreed to allow the Demrovskys to use their property for agricultural use. As such, the court found that “the use of the property at 2475 Copley Road * * * is limited to and restricted by the terms set forth by the Board of Zoning Appeals on September 30, 1992, i.e. agricultural use.”

{¶9} The Demrovskys now appeal from the trial court’s judgment and raise one assignment of error for our review.

II

Assignment of Error

THE TRIAL COURT ERRED BY FINDING THAT THE USE OF THE PROPERTY AT 2475 COPLEY RD. IS LIMITED TO AND RESTRICTED BY THE TERMS SET FORTH BY THE COPLEY TOWNSHIP BOARD OF ZONING APPEALS ON SEPTEMBER 30, 1992, WITHOUT ACKNOWLEDGING THE LATER MODIFICATION AND CLARIFICATION AGREED TO BY COPLEY TOWNSHIP IN THE 2009 STIPULATED JUDGMENT ENTRY.

{¶10} In their sole assignment of error, the Demrovskys argue that the trial court erred when it concluded that they were bound by the agricultural use restriction set forth by the Board in 1992. Specifically, they argue that the court improperly modified the 2009 stipulated judgment entry and ignored its clear directive that they could operate a landscape business on their property.

{¶11} When parties resolve to settle their disagreement, “a trial court may sign a journal entry reflecting the terms and may enforce the agreement.” *Santmyer Oil Co., Inc. v. One Stop Gas, Inc.*, 9th Dist. Wayne No. 08CA0053, 2009-Ohio-3142, ¶ 8, quoting *Duncan v. Hopkins*, 9th Dist. Summit No. 24065, 2008-Ohio-3772, ¶ 15. The result is “a binding contract between [the] parties.” *Technical Constr. Specialties, Inc. v. New Era Builders, Inc.*, 9th Dist. Summit No. 25776, 2012-Ohio-1328, ¶ 21. *Accord Santmyer Oil Co.* at ¶ 8 (stipulated judgment entry

analyzed as settlement agreement). “A trial court’s legal interpretation of a settlement agreement is a matter of contract law that this Court reviews de novo.” *St. Croix, Ltd. v. Damitz*, 9th Dist. Summit Nos. 26565 & 26566, 2014-Ohio-1926, ¶ 9.

{¶12} “The parties’ intent is presumed to be manifested in the language of [their] contract.” *Id.* “The law prohibits courts from rewriting contracts when the words of a contract are unambiguous.” *Technical Constr. Specialties, Inc.* at ¶ 22, quoting *Kaple v. Benchmark Materials*, 3d Dist. Seneca No. 13-03-60, 2004-Ohio-2620, ¶ 24. “If, however, a contract is ambiguous, parol evidence may be employed to resolve the ambiguity and ascertain the intention of the parties. Terms in a contract are ambiguous if their meanings cannot be determined from reading the entire contract, or if they are reasonably susceptible to multiple interpretations.” (Internal quotations and citations omitted.) *Consolo v. Menter*, 9th Dist. Summit No. 25394, 2011-Ohio-6241, ¶ 19.

{¶13} In addition to pursuing a contempt ruling against the Demrovskys for certain, specific acts, Copley Township asked the court to “define what * * * [Mr. Demrovsky] is allowed to do” on his property. The township acknowledged that it had agreed to allow the Demrovskys to conduct a “landscape business” on their property, but argued that the Demrovskys continually engaged in activities beyond the scope of such a business. The township argued that the parties intended a far narrower reading of the phrase “landscape business” when they entered into the 2009 stipulated judgment entry. According to Copley Township, the phrase “landscape business” was not meant to encompass a construction business, salvage business, or dump site. It was the township’s position that the Demrovskys were permitted to conduct a “landscape business” only to the extent that it comported with the agricultural use restriction imposed by the Board in 1992.

{¶14} The trial court determined that the landscaping profession has evolved over the years, but that “what has *not* evolved since 1992 is the limited purpose for which Mr. Demrovsky was granted a zoning permit for the property at issue in this case.” (Emphasis sic.) The court found that the minutes from Mr. Demrovskys’ 1992 public hearing before the Board were “a clear record of the publicly expressed intention of both parties at the time.” It further found that the minutes evidenced that the Board had agreed to let Mr. Demrovsky conduct a business on his property, but only to the extent that his activities were consistent with agricultural use. The court determined that the 2009 stipulated judgment entry did not “modif[y] or supersede[] the original terms upon which [the Demrovskys] were granted the zoning permit.” Consequently, the court held that, in using their property, the Demrovskys were “limited to and restricted by the terms set forth by the Board * * * on September 30, 1992, i.e. agricultural use.”

{¶15} The Demrovskys argue that the court erred by imposing an agricultural use restriction on them because the 2009 stipulated judgment entry imposed no such restriction. According to the Demrovskys, the sole purpose of the stipulated judgment entry was to remedy the dispute that arose over the parties’ competing interpretations of the matters discussed at the 1992 public hearing. They argue that the 2009 stipulated judgment entry is unambiguous and unequivocally allows them to operate a landscape business without imposing an agricultural use restriction. As such, they argue that the court lacked authority to essentially rewrite the terms of their agreement with Copley Township. Having reviewed the record, we must conclude that the Demrovskys have forfeited the argument they now seek to raise on appeal.

{¶16} Four months before the show cause hearing took place Copley Township filed a memorandum in support of its motion for contempt. In its memorandum, Copley Township specifically asked the court to order the Demrovskys to cease any activities on their property

“which [did] not constitute an agricultural use of the property.” At that point, the Demrovskys had the opportunity to file a response and argue that Copley Township had requested relief to which it was not entitled under the 2009 stipulated judgment entry. Yet, they failed to file any response. Moreover, they failed to object to Copley Township’s request for relief at the show cause hearing.

{¶17} At the show cause hearing, both parties relied upon the 1992 minutes of Mr. Demrovsky’s public hearing before the Board. Mr. Demrovsky specifically used the minutes to bolster his position that the Board was aware of the ways in which he used his property. Further, the Demrovskys did not object when Copley Township repeatedly asked the court to define exactly what the Demrovskys were permitted to do on their property. Instead, they argued that they were permitted to engage in a far wider range of activities than the township was suggesting. They also remained silent when the trial court noted that both parties had relied upon the 1992 minutes, and that, “in order to find everyone’s understanding and what someone should readily know, the Court may have to go back to that * * *.”

{¶18} Although the Demrovskys now argue that the 2009 stipulated judgment entry is unambiguous and “needs no interpretation,” their presentation in the court below speaks to the contrary. There, they specifically criticized the township for writing the 2009 stipulated judgment entry “in a way that was very ambiguous.” They also set forth extrinsic evidence for the purpose of defining the types of activities included within the meaning of the phrase “landscape business.” In particular, they asked the court to look to Copley Township’s zoning code and various definitions of the terms “landscaping,” “landscape contracting,” and “landscape architect.” Were the 2009 stipulated judgment entry unambiguous, extrinsic evidence would have had no place in the Demrovskys’ argument. *See St. Croix, Ltd.*, 2014-Ohio-1926, at ¶ 9,

quoting *Shifrin v. Forest City Enterprises, Inc.*, 64 Ohio St.3d 635 (1992), syllabus (court only may consider extrinsic evidence in the interpretation of a contract if the contract's language is "unclear or ambiguous, or when the circumstances surrounding the agreement invest the language of the contract with a special meaning * * *").

{¶19} The Demrovskys cannot now argue that the trial court erred by relying on the 1992 minutes and by clarifying the 2009 stipulated judgment entry. *See, e.g., Culgan v. Miller*, 9th Dist. Medina No. 10CA0036-M, 2011-Ohio-4298, ¶ 13 (declining to address arguments that the appellants failed to make in the trial court). The Demrovskys forfeited their argument by repeatedly failing to object and by relying on extrinsic evidence, including the 1992 minutes. Thus, we overrule their sole assignment of error on that basis.

III

{¶20} The Demrovskys' assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.

BETH WHITMORE
FOR THE COURT

HENSAL, P. J.
CARR, J.
CONCUR.

APPEARANCES:

JEFFREY T. WITSCHHEY, Attorney at Law, for Appellants.

IRVING B. SUGERMAN, Attorney at Law, for Appellee.