

No. 1-10-0245

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FELIPE LOPEZ and JESUS LOPEZ,)	
)	
Plaintiffs-Appellees,)	
)	
v.)	Appeal from the
)	Circuit Court of
SCHILLER DEVELOPMENT, INC., and Illinois)	Cook County
corporation, and 1830-32 WEST ERIE, INC., an)	
Illinois Corporation,)	08 CH 44974
)	
Defendants-Appellants,)	The Honorable
)	Dorothy Kirie Kinnaird,
and)	Judge Presiding.
)	
JAROSLAW PIETRZYK,)	
)	
Appellant.)	

JUSTICE PUCINSKI delivered the judgment of the court.

Presiding Justice Gallagher and Justice Lavin concurred in the judgment.

ORDER

HELD: The appeal is dismissed as moot because: (1) defendants purged the contempt order by complying with 2 of the requirements of the original contempt order (original contempt order) and the modified contempt order (modified contempt order); and (2) all relief that defendants request in the instant appeal has already been considered and granted and there is no further effectual relief we can grant.

Defendants appeal (2nd appeal) a contempt order entered on January 13, 2010 (original contempt order).

Plaintiffs sought a mandatory injunction requiring removal of defendants' fence, sidewalk and part of a garage, which encroached on their property. The court entered an order June 4, 2009, in favor of the plaintiffs, finding encroachment and ordering removal of the encroaching fence, sidewalk and part of the garage. Defendants appealed (1st appeal). While that appeal was pending, defendants refused to comply with the court order resulting in a rule to show cause and a contempt order entered on January 13, 2010.

That contempt order (original contempt order) was subsequently modified (modified contempt order) regarding the encroachment and removal of the garage. The modification permitted defendants to post bond in the amount of \$50,000 in *lieu* of removing the encroaching part of the garage pending the appeal (1st appeal) of the underlying order. Defendants removed the encroaching fence and sidewalk and posted the \$50,000 bond, thus complying with all requirements and purging the original contempt order and the modified contempt order.

We affirmed the circuit court's order and found encroachment and did not disturb the mandatory injunction order in a decision October 14, 2010 (1st appeal).

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We hold this appeal (2nd appeal) to be moot because: (1) the fence and sidewalk have been removed; (2) the \$50,000 bond in the 2nd contempt order was paid pending the 1st appeal of the underlying order; (3) the injunction issues were decided in our order of October 14, 2010; and (4) defendants have no further relief to pursue in this court.

BACKGROUND

Defendant 1830-32 West Erie, Inc.(1830-32 West Erie), is the owner and developer of the property at 1832 W. Erie in Chicago, Illinois. Defendant Schiller Development, Inc. (Schiller Development), was the general contractor for the single family residence which was constructed at 1832 W. Erie. Defendant Jaroslaw Petrzyk is the president and sole shareholder of both defendants, 1830-32 West Erie and Schiller Development. Plaintiffs, Felipe Lopez and Jesus Lopez, are the owners of the adjacent property located at 1834 W. Erie. Plaintiffs filed a complaint alleging that defendants were encroaching on their property. In February 2009, plaintiffs moved for a temporary restraining order (TRO). On February 25, 2009, the TRO motion was granted. In March 2009, plaintiffs moved for a preliminary injunction, which was not granted. Plaintiffs filed a verified complaint seeking a mandatory injunction. On May 26, 2009, the circuit court ruled in favor of plaintiffs and found that defendants were encroaching on their property. On June 4, 2009, the court issued a written order granting judgment to plaintiffs and ordering plaintiffs to do the following:

- a. Uninstall and remove the fence and concrete sidewalk .81 feet east from their present location at the southeast corner of the lot;
- b. Uninstall and remove the entire fence and concrete sidewalk, which runs north

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and south along the lot and encroaches onto plaintiffs' lot;

- c. Remove the fence and sidewalk so as to provide and maintain at all future times the minimum required clearance between the southeast corner of plaintiffs' building and the easterly lot line of defendants' property;
- d. Remove the fence and sidewalk so as to provide and maintain at all future times the minimum required clearance between the northeast corner of plaintiffs' building and the easterly lot line of defendants and the minimum required clearance from the southeast corner of plaintiffs' garage to the easterly lot line of defendants' property;
- e. Demolish and remove all encroaching portions of the western side of defendants' garage from the southwest corner to the northwest corner;
- f. Ensure that after demolition of the garage portions, the remainder of the garage is left in a safe and compliant condition.

The order further required that defendants remove the remainder of plaintiff's original sidewalk located on the east side of Plaintiffs' building and pour plaintiffs a new concrete sidewalk; install a fence one inch east of the west lot line of defendants' property; repair plaintiffs' existing wrought iron gate on the southeast corner of plaintiffs' property; remove the existing post at the northeast corner of plaintiffs' lot and install a new steel post or repair the existing one; repair the existing post at the northeast corner of the garage on plaintiffs' lot and reinstall the existing wrought iron gate; observe the lot lines for the two properties as delineated in the Survey and ensure that by performing the work any encroachments onto plaintiffs' lot are

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avoided; and obtain and tender to plaintiffs an insurance policy prior to commencing the work.

All stated work was ordered to be completed on or before July 9, 2009.

On August 3, 2009, plaintiffs filed a postjudgment motion, arguing their encroachment was not intentional. On August 4, 2009, plaintiffs filed a motion to stay the judgment pursuant to Illinois Supreme Court Rule 305(b) (Ill. S. Ct. R. 305(b) (eff. July 1, 2004)). On August 17, 2009, defendants filed an appeal, appealing the judgment of June 4, 2009. On August 19, 2009, the court entered an order denying defendants' motion for a stay under Supreme Court Rule 305(b).

Defendants still did not comply with the terms of the judgment of June 4, 2009, and on September 14, 2009, plaintiffs filed a petition for rule to show cause against them for their failure to comply with the judgment order of June 4, 2009. On October 9, 2009, plaintiffs further filed a verified petition for rule to show cause against defendants. On December 3, 2009, the court entered an order issuing a rule to show cause against defendants and their sole shareholder and president, Pietrzyk, as to why they should not be held in contempt of court for their failure to comply with the judgment order of June 4, 2009. On December 9, 2009, defendants filed a motion to stay the judgment with this court, which we denied. On December 23, 2009, defendants filed a response to the rule to show cause in the circuit court, arguing that the enforcement of the judgment should be stayed by virtue of their appeal. A hearing on the rule to show cause was commenced on January 4, 2010.

On January 13, 2010, the court entered an order finding defendants and Pietrzyk in indirect civil contempt. The order provided that Jaroslaw Petryzk could purge the contempt by

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completing the following acts, which were outlined in the June 4, 2009, order:

- a. Uninstall and remove the fence and concrete sidewalk .81 feet east from their present location at the southeast corner of the lot;
- b. Uninstall and remove the entire fence and concrete sidewalk, which runs north and south along the lot and encroaches onto plaintiffs' lot;
- c. Remove the fence and sidewalk so as to provide and maintain at all future times the minimum required clearance between the southeast corner of plaintiffs' building and the easterly lot line of defendants' property;
- d. Remove the fence and sidewalk so as to provide and maintain at all future times the minimum required clearance between the northeast corner of plaintiffs' building and the easterly lot line of defendants and the minimum required clearance from the southeast corner of plaintiffs' garage to the easterly lot line of defendants' property;
- e. Demolish and remove all encroaching portions of the western side of defendants' garage from the southwest corner to the northwest corner;
- f. Ensure that after demolition of the garage portions, the remainder of the garage is left in a safe and compliant condition;
- g. Remove the remainder of plaintiff's original sidewalk located on the east side of Plaintiffs' building and pour plaintiffs a new concrete sidewalk;
- h. Install a fence one inch east of the west lot line of defendants' property;
- i. Repair plaintiffs' existing wrought iron gate on the southeast corner of plaintiffs'

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property;

- j. Remove the existing post at the northeast corner of plaintiffs' lot and install a new steel post or repair the existing one;
- k. Repair the existing post at the northeast corner of the garage on plaintiffs' lot and reinstall the existing wrought iron gate;
- l. Observe the lot lines for the two properties as delineated in the Survey and ensure that by performing the work any encroachments onto plaintiffs' lot are avoided;
and
- m. Obtain and tender to plaintiffs an insurance policy prior to commencing the work.

The court ordered Pietrzyk committed to Cook County Jail until the court enters an order finding that Pietrzyk purged himself of the contempt. However, the order provided that the adjudication of indirect civil contempt was stayed until February 18, 2010, and set the matter for a status hearing on that same date.

On January 27, 2010, plaintiffs filed the instant appeal, appealing the contempt order. On February 3, 2010, defendants filed an amended notice of appeal, still appealing only the contempt order of January 13, 2010.

On February 4, 2010, in the circuit court defendants filed an Emergency Motion to Stay Enforcement of Judgment Order Dated January 13, 2010 And To Set Bond For Non-Monetary Judgment Pursuant to Illinois Supreme Court Rule 305(b). On February 11, 2010, the court entered an order granting defendants' motion in part, deleting subparagraphs 6(e) and (f) of the contempt order requiring removal of portions of the garage and allowing defendant to post bond

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in *lieu* of demolishing the garage. The court set a deadline of February 18, 2010, for Pietrzyk to post bond. By February 18, 2010, Pietrzyk still had not posted bond and still had not removed the sidewalk and the fence, and so the court ordered him into custody.

Pietrzyk posted bond, but not through an approved surety company. On February 19, 2010, the court entered an order releasing Pietrzyk from custody but ordering him to complete the removal of the sidewalk and fence pursuant to the June 4, 2009, judgment order. The court reinstated the stay of the contempt order through February 24, 2010, and ordered defendant to appear in court on February 24, 2010, for the court to determine if he posted an appropriate bond and purged himself of the contempt. Defendants removed and reinstalled the sidewalk and fence on the subject property as required in the June 4, 2009, judgment order. On February 24, 2010, the court entered an order further extending the stay of the contempt order through March 10, 2010, and granting defendants an additional 14 days to post an appeal bond with a listed and approved surety company. On April 6, 2010, the court entered an award of attorney's fees.

Defendants eventually posted bond, and on April 27, 2010, the court entered the defendants' appeal bond in the amount of \$50,000 issued through an approved surety company. The garage was allowed to remain standing. The court also granted the defendant's motion to stay enforcement of the order awarding attorney's fees until resolution of both the first appeal and the instant appeal.

On October 14, 2010, this court filed its Rule 23 Order affirming the circuit court's judgment of June 4, 2009, finding that the encroachments were intentional and holding that the court's finding was not against the manifest weight of the evidence. *Lopez v. Schiller*

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Development, Inc., No. 1-09-2166 (2010) (unpublished order under Supreme Court Rule 23).

The only issue before us is the contempt order of January 13, 2010.

ANALYSIS

Defendants argue that the trial court abused its discretion in entering the contempt order because the appeal of the June 4, 2009, judgment order (first appeal) operated as a *supersedeas* automatically staying the judgment. Defendants maintain that by entry of the contempt order, the trial court effectively deprived defendants of their constitutional right to an appeal by forcing the removal and relocation of the garage, fence, and sidewalk. Lastly, defendants argue that the court erred in finding that defendants acted with willful and contemptuous disregard of the trial court's order of June 4, 2009.

However, all issues regarding the contempt order are moot because: (1) defendants purged the contempt by removing the fence and sidewalk and therefore complying with the orders in the original June 4, 2009, judgment; (2) defendants purged the contempt by posting bond and thus complying with the order of February 11, 2010, modifying the contempt to allow posting bond in *lieu* of demolishing the garage; (3) defendants already pursued their first appeal and we addressed all issues relating to the injunction; and (4) all the relief defendants request in this appeal has already been granted.

I. THE CONTEMPT HAS BEEN PURGED.

First, this appeal is moot because defendants have purged themselves of the contempt. Although defendants attack the validity of issuing a contempt order while the underlying judgment order is being appealed, it is well established that a defendant is required to obey an

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injunction order under pain of contempt and could be found in civil contempt for violation of the order, even if the injunction order is subsequently reversed. *Southern Illinois Medical Business Associates v. Camillo*, 208 Ill. App. 3d 354, 365, 567 N.E.2d 74, 82 (1991). The order or judgment of a court having jurisdiction is to be obeyed no matter how clearly it may be erroneous, and the question of whether the court rightfully or erroneously granted the injunction is not open to litigation on a citation for contempt. *Camillo*, 208 Ill. App. 3d at 365, 567 N.E.2d at 82. This is even true in the case of injunctions which might deprive persons of constitutional rights. *Board of Trustees v. Cook County College Teachers Union*, 42 Ill. App. 3d 1056, 1063, 356 N.E.2d 1089, 1094 (1976). “To hold otherwise would encourage those who have been enjoined to disregard a circuit court's order if they believe, rightly or wrongly, that the underlying order would be overturned on appeal. Such an interpretation would severely impede our circuit court’s power and effectiveness.” *Camillo*, 208 Ill. App. 3d at 367, 567 N.E.2d at 83.

The penalties in a civil contempt case serve only to coerce the contemnor to comply with a court order, and they cease when the contemnor complies. *People v. Covington*, 395 Ill. App. 3d 996, 1006, 917 N.E.2d 618, 627 (2009). *Pancotto v. Mayes*, 304 Ill. App. 3d 108, 111, 709 N.E.2d 287, 289 (1999) (civil contempt relies on coercion of the contemnor; he is being coerced to do something and thus can be relieved from the coercion by compliance) (citing *In re Marriage of Morse*, 240 Ill. App. 3d 296, 302, 607 N.E.2d 632, 637 (1993)). One of the requirements of civil contempt is that the contemnor must “hold the key to the cell,” i.e., he can purge himself by complying with the court’s order. *Pancotto*, 304 Ill. App. 3d at 111, 709 N.E.2d at 290 (citing *In re Marriage of Betts*, 200 Ill. App. 3d 26, 44, 558 N.E.2d 404, 416

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(1990)). Thus, a civil contempt order is purged by compliance with the court's order. *People v. Boclair*, 119 Ill. 2d 368, 373, 519 N.E.2d 437, 439 (1987). See *People v. Penson*, 197 Ill. App. 3d 941, 946, 557 N.E.2d 230, 233 (1990) (defendant purged his civil contempt for failing to abide by the court's order requiring restitution by complying and paying the restitution in full).

A contempt order which is purged by complying with the court's order renders an appeal of such contempt moot. See *J.S.A. v. M.H.*, 384 Ill. App. 3d 998, 692, 893 N.E.2d 682, 1009 (2008) (an appeal regarding whether the contempt finding against respondents for their failure to submit to DNA was against the manifest weight of the evidence was moot, as M.H. submitted to DNA testing and purged the finding of contempt); *In re Keon C.*, 344 Ill. App. 3d 1137, 1148, 800 N.E.2d 1257, 1266 (2003) (paying the entire arrearage and providing a copy of the insurance card, as required in the contempt order, purged these issues and rendered the contempt moot).¹

Here, defendants purged the contempt by ultimately complying and fulfilling the conditions of the original underlying June 4, 2009, judgment order, as well as the February 11, 2010, order modifying the original contempt order. The contempt order required defendants to: remove and reinstall the encroaching sidewalk; remove and reinstall the encroaching fence; and

¹ *Cf. People v. Buckley*, 164 Ill. App. 3d 407, 411, 517 N.E.2d 1114, 1116 (1987) (the attorneys did not comply with the order of the court and purge the contempt finding; therefore the issue on appeal was not dismissed as moot); *Boclair*, 119 Ill. 2d at 373, 519 N.E.2d at 439 (defendant's attorney's production of investigator's notes during the trial was not in compliance with the trial court's order to produce the notes prior to trial; thus counsel did not purge himself of contempt and the issue of the contempt order was not moot).

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demolish the encroaching westerly side of defendants' garage. Defendants removed and reinstalled the sidewalk and fence as required in the June 4, 2009, judgment order. Thus, defendants and Pietrzyk purged the contempt as to the sidewalk and fence requirements.

As to the remaining requirement to demolish portions of the garage, the court's order of February 11, 2010, modified that portion of the contempt order to allow defendant to post bond in *lieu* of demolishing the garage. The modified order stayed the contempt of January 13, 2010. On February 19, 2010, the court further stayed the contempt order through February 24, 2010, and on that date again extended the stay through March 10, 2010, allowing Pietrzyk even more time to post an appropriate appeal bond. Pietrzyk then finally posted the bond, which was entered by the court on April 27, 2010. Thus, with the fulfillment of the final condition of the modified contempt order, Pietrzyk entirely purged himself and defendants of the contempt, and any issues concerning the contempt are now moot.

II. ALL REQUESTED RELIEF HAS ALREADY BEEN GRANTED

Second, the issues raised regarding the contempt order are moot because all the relief defendants request in this appeal has already been granted and there is no further relief this court can grant them. Defendants request that we vacate and reverse the trial court's order of contempt to pursue their appeal of the June 4, 2009, judgment, contending that by the contempt order they are forced to choose between either pursuing their appeal or demolishing their garage.

Although much of plaintiffs' brief is devoted to the alleged unfairness of the original mandatory injunction judgment, arguing that they were forced to choose between demolishing the garage or pursuing their right to appeal, the plaintiffs have in fact already received the relief

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they are seeking. Defendants did, in fact, pursue an appeal of the June 4, 2009, judgment order. That appeal has already been resolved. We affirmed the judgment order of June 4, 2009. *Lopez v. Schiller Development, Inc.*, No. 1-09-6122 (2010) (unpublished order under Supreme Court Rule 23).

Further, by the circuit court's modified order of February 11, 2010, defendants were allowed to post bond so that they would not have to demolish the garage during their pursuit of that appeal and the instant appeal. They were not forced to demolish the garage. By posting bond, they obtained a stay of the order requiring demolition of the garage until the resolution of both the 2009 appeal. Further, though defendants seek a vacatur and reversal of the contempt order, as discussed above, they have already purged the contempt. Defendants have thus already been afforded all the relief they are requesting, and there is no further relief we can afford them. Therefore, their appeal is moot.

An appeal becomes moot when a court can no longer effect the relief originally sought by an appellant or when the substantial question involved in the trial court no longer exists. *In re Petersen*, 319 Ill. App. 3d 325, 335, 744 N.E.2d 877, 885 (2001) (citing *Health Chicago, Inc. v. Touche, Ross & Co.*, 252 Ill. App. 3d 608, 625 N.E.2d 706 (1993)). When a case is moot, a court's decision on the merits cannot afford either party relief and any decision is merely an advisory opinion. *In re Petersen*, 319 Ill. App. 3d at 335, 744 N.E.2d at 885 (citing *In re Marriage of Landfield*, 118 Ill. 2d 229, 514 N.E.2d 1005 (1987)). A reviewing court should not decide a case where the occurrence of events after an appeal has been filed make it impossible for the court to render effectual relief and the judgment would have only an advisory effect.

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Mohanty v. St. John Heart Clinic, S.C., 225 Ill. 2d 52, 63, 866 N.E.2d 85, 91 (2006). “ ‘The fact that a case is pending on appeal when the events which render an issue moot occur does not alter this conclusion.’ ” *Felzak v. Hruby*, 226 Ill. 2d 382, 392, 876 N.E.2d 650, 657 (2007) (quoting *Dixon v. Chicago & North Western Transportation Co.*, 151 Ill. 2d 108, 116-17, 601 N.E.2d 704, 708 (1992), citing *Bluthardt v. Breslin*, 74 Ill. 2d 246, 250, 384 N.E.2d 1309, 1311 (1979)).

Here, the relief sought has already been given, and any discussion of the issues raised by defendants would merely constitute an advisory opinion.

CONCLUSION

As defendants have purged the contempt and have already received all the relief they are requesting, any issues relating to the contempt order are moot. Therefore, we dismiss the instant appeal.

Appeal dismissed.