2020 IL App (5th) 190271-U

NO. 5-19-0271

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE COUNTY OF SHELBY, STATE OF ILLINOIS, and SHELBYVILLE TOWNSHIP ROAD DISTRICT,	)	Appeal from the Circuit Court of Shelby County.
Plaintiffs-Appellees,	)	
v.	)	No. 05-CH-43
DAVID GALVIN and BARBARA GALVIN,	)	
Defendants-Appellants	)	
(Mark Goodwin, Karla Goodwin, and William Curl, Intervening Plaintiffs-Appellees).	)	Honorable Kimberly G. Koester, Judge, presiding.

PRESIDING JUSTICE WELCH delivered the judgment of the court.
Justices Overstreet and Boie concurred in the judgment.

ORDER

¶ 1 *Held*: The contempt order of the circuit court of Shelby County is affirmed where the underlying order entered on August 21, 2017, is valid, and the appellants failed to comply with that order.

¶ 2 The defendants-appellants, David Galvin and Barbara Galvin (Galvins), owners of the Lithia Estates Subdivision (Lithia Estates), appeal a Shelby County circuit court order finding them in indirect civil contempt for failure to comply with its previous order directing them to construct said subdivision.

¶ 3 I. BACKGROUND

¶ 4 Having set forth the relevant background of this case in two previous appeals, we will not do so again here. See *County of Shelby v. Galvin*, 2018 IL App (5th) 170360-U; *County of Shelby ex rel. County Board & Zoning Administrator v. Galvin*, 2015 IL App (5th) 140554-U. Rather, we will discuss any additional facts necessary to our resolution of the issues before us as we encounter them. For the reasons that follow, we affirm.

¶ 5 For ease of reading it is important to identify the parties. "The appellants" as used in this order refers to not only the Galvins but also the County of Shelby (the county) as it has abandoned its original position and adopted the position of the Galvins on appeal. "The intervening plaintiffs" refers to Mark and Karla Goodwin (Goodwins) and William Curl. In this appeal, the Galvins argue that the contempt order should be vacated as the underlying order is invalid. The county no longer wishes to pursue any action against the Galvins and does not want to incur the costs of constructing the subdivision should the Galvins refuse to do so; therefore, it too argues that we should find the underlying order to be invalid. The intervening plaintiffs argue that the underlying order is valid and that the contempt order should be affirmed.

¶ 6 On August 21, 2017, the trial court entered an order by docket entry modifying a previous order entered in 2008 directing the Galvins to construct Lithia Estates. In a detailed order, the court noted that both plats—2008 and 2017—were in compliance with the current Shelby County Zoning Ordinance (the Zoning Ordinance), but the Galvins' amended plat failed to adopt the spirit of the court's original order while the intervening

plaintiffs' proposal "is more closely in compliance with the court's original order." The court approved the intervening plaintiffs' proposed plat in part, subject to the following provisions: (1) that the Galvins begin subdivision construction within 60 days of the order and comply with the easement and road dedication requirements of the proposed plat; (2) that the township remove barricades at the end of the township road and install an "end of road" sign; (3) that Curl is granted a sewer easement extending five feet into the proposed newly constructed road; (4) that the Galvins remove any dirt pile elevations that affect drainage to existing and future lots and refrain from creating more; (5) that construction of lots 6 through 10 begin within six months of the sale of either lot 1, 2, or 3, and lots 4 and 5 construction begins within six months of lots 6 through 10 completion; (6) lots 1, 2, and 3 are listed for sale with a licensed realtor within 60 days of the order, and the Galvins may not interfere with the realtor's property access; (7) all parties share the cost of completing the proposed plat; and (8) all parties pay their own attorney fees. The court reserved ruling on the county's responsibilities for compliance with the order pending the Galvins' compliance.

¶ 7 On June 4, 2019, following a hearing, the trial court found the Galvins in indirect civil contempt for failing to comply with the court's August 2017 order directing them to construct Lithia Estates. The court (1) imposed a $25,000 fine; (2) ordered the Galvins to pay the attorney fees that the intervening plaintiffs incurred from March 19, 2019, through the date of the order; (3) purged the previous order of: comply with construction of the subdivision pursuant to the court's 2008 order as modified beginning on July 8,

2019, and/or be fined $100 per day until construction begins; and (4) reserved ruling on contempt of the county until compliance by the Galvins.

¶ 8 II. ANALYSIS

¶ 9 An order finding a person or entity in contempt of court which imposes a monetary penalty is appealable under Illinois Supreme Court Rule 304(b)(5) (eff. Mar. 8, 2016). Generally, a party is in civil contempt when he or she fails to comply with a court order, resulting in some loss to the opposing party. *Cetera v. DiFilippo*, 404 Ill. App. 3d 20, 41 (2010). A finding of indirect civil contempt requires proof of a valid court order and a willful violation of that order. *Id.* The burden initially falls on the opposing party to show a violation of a court order by a preponderance of the evidence. *Id.* The burden then shifts to the alleged contemnor to show that the violation was not willful or contumacious and that he had a valid reason for noncompliance. *Id.* Whether a party is guilty of indirect civil contempt becomes a question of fact for the trial court, and a reviewing court will not disturb that finding unless it is against the manifest weight of the evidence, or the record reflects an abuse of discretion. *In re Marriage of Logston*, 103 Ill. 2d 266, 286-87 (1984). Additionally, review of a contempt order necessarily requires review of the underlying order. *Waste Management, Inc. v. International Surplus Lines Insurance Co.*, 144 Ill. 2d 178, 189 (1991). Therefore, our ruling on this appeal requires a review of the August 21, 2017, underlying order.

¶ 10 The Galvins raise six issues on appeal regarding the August 21, 2017, order: (1) whether the intervening plaintiffs satisfied the filing requirements prescribed in section 2-408 of the Code of Civil Procedure (Code) (735 ILCS 5/2-408 (West 2016));

(2) whether the order is contrary to the Plat Act (Act) (765 ILCS 205/0.01 *et seq*. (West 2016)) and the Zoning Ordinances; (3) whether the order constitutes a taking; (4) whether the trial court abused its discretion in denying Shelby County's motion to voluntarily dismiss; (5) whether the court's orders entered on October 31, 2014, or August 21, 2017, vacated its June 11, 2008, order; and (6) whether the contempt order should be vacated where the August 21, 2017, order is presumably vacated.

¶ 11 A. The Intervening Plaintiffs Satisfied the Statutory Requirements of the Code

¶ 12 The first issue raised by the appellants is whether there was a justiciable issue in front of the trial court when it entered the August 21, 2017, order. Specifically, they argue that the intervening plaintiffs did not satisfy the statutory filing requirements prescribed in the Code, were not proper parties to the suit, and therefore all parties to the suit, *i.e.*, the Galvins and the county, were in agreement. This argument is based on an apparent misreading of the Code. As we find that the intervening plaintiffs were proper parties to the suit and satisfied the Code's requirements, we too find that there was a proper dispute before the court.

¶ 13 "The purpose of section 2-408 'is to liberalize the practice of intervention so as to avoid, upon timely application, the relitigation of issues in a second suit which were being litigated in a pending action.' " *In re Estate of Barth*, 339 Ill. App. 3d 651, 661 (2003) (quoting *People ex rel. Birkett v. City of Chicago*, 202 Ill. 2d 36, 57 (2002)). The trial court's ruling allowing intervention will not be overturned absent an abuse of discretion. *Id.*

¶ 14 Section 2-408 of the Code (735 ILCS 5/2-408 (West 2016)) states that, upon timely application, the trial court has discretion to permit anyone to intervene in an action when the applicant's claim and the main action have a question of law or fact in common. A person wanting to intervene "shall present a petition setting forth the grounds for intervention, accompanied by the initial pleading or motion which he or she proposes to file." *Id.* § 2-408(e).

¶ 15 On May 12, 2014, the Goodwins and Curl filed a petition for motion to intervene with the trial court. The petition argued that they had a statutory right to intervene pursuant to section 6 of the Act (765 ILCS 205/6 (West 2014)) as owners of lots in the plat because the Act establishes that once lots in the plat have been sold, the plat may then only be vacated by "all the owners of lots in the plat joining in the execution of the writing." On June 27, 2014, the court heard argument, after which it granted the motion to intervene. After the motion had been granted, but while the parties were still on the record, the Galvins' counsel noted that there had not been any other filing by the now intervening plaintiffs other than the petition and that a filing would be necessary in understanding the position they would adopt. Counsel for the intervening plaintiffs informed the court that he would file a response to the complaint within 14 days. On July 7, 2014, 10 days after the hearing, the intervening plaintiffs adopted the Shelbyville Township's motion to dismiss and filed it with the court stating that "as and for their pleadings in this cause adopts and affirms as their own Motion to Dismiss [p]ursuant to [s]ection 2-619 of the [Code] ***. Wherefore, [the intervening plaintiffs] pray that [the] Court enter its [o]rder dismissing with prejudice the 'Joint Motion to Vacate and Amend

Order of June 11, 2008' ***." Because the intervening plaintiffs filed a petition and subsequent motion to dismiss within the time established by the court, there was no procedural error. Therefore, based on our review of the record, the court did not abuse its discretion in permitting the intervening plaintiffs to join the suit.

¶ 16 B. The Trial Court's Order Was Not Contrary to the Plat Act or the Zoning Ordinances

¶ 17 The Act establishes that once a plat is either acknowledged and recorded, or acknowledged and filed, the platted premises can be used for all purposes therein named or intended, and for no other use or purpose. 765 ILCS 205/3 (West 2016). A plat can be vacated through written instrument at any time by the owner of the plat, so long as none of the lots have been sold. *Id*. § 6. However, if lots within the plat have been sold, vacation of such plat requires all owners to execute a writing. *Id*. The Act prescribes the same manner for vacating a portion of a plat as well. *Id*. § 7. It is well-settled law that when a landowner lays out their property in lots and makes and exhibits a plat:

> "[a] purchaser acquires as appurtenant to the lots every easement, privilege[,] and advantage which the plan represents as belonging to them as part of the platted territory. This privilege is not limited to the purchaser, but is a right vesting in the purchaser that all persons *** may use the streets, alleys[,] and other public places according to their appropriate purposes. The sale and conveyance of lots according to a published plat implies a grant or covenant to the purchaser that streets, alleys[,] and other public places indicated as such upon the plat shall be forever open to the use of the public, free from all claim of interference of the proprietor inconsistent with such use." *Wattles v. Village of McHenry*, 305 Ill. 189, 192 (1922).

¶ 18 The appellants argue that the trial court's order was contrary to the Act where the court entered an order implementing the scheme of the intervening plaintiffs without their consent. However, a purchaser who buys in reference to a plat acquires a private right in

the plat's representations that cannot be abridged or destroyed. *Ruble v. Sturhahn*, 348 Ill. App. 3d 667, 675 (2004).

¶ 19 Here, the record shows that the trial court was not imposing its own plat upon the appellants' land but rather was exercising its equity jurisdiction in amending the plat that was already in effect and was maintaining the original "spirit" of Lithia Estates in doing so. See *In re Application of County Collector*, 169 Ill. App. 3d 180, 186 (1988). Because the intervening plaintiffs purchased their property after the 1974 plat was acknowledged, they acquired a property right which the court in its equity jurisdiction was enforcing and modernizing with its 2017 order. Therefore, the court's order was not contrary to the Act.

¶ 20 The appellants also argue that the trial court's order was contrary to local zoning ordinances because the order directed the appellants to begin construction of Lithia Estates, and the Shelby County zoning ordinance does not have any such directive contained therein. The appellants cite no case law to support this contention, nor do they cite any provision of the zoning ordinance that the court's order would violate. Therefore, the court's order was not in violation of the zoning ordinance.

¶ 21 C. The Trial Court's Order Did Not Constitute a Taking

¶ 22 Next, the appellants argue that the trial court's 2017 order constitutes a taking in violation of the fifth amendment of the United States Constitution. U.S. Const., amend. V. Whether an actionable taking has occurred is a question of law that this court reviews *de novo*. *Hampton v. Metropolitan Water Reclamation District of Greater Chicago*, 2016 IL 119861, ¶ 23. A taking is defined as "a physical invasion of private property or the

radical interference with a private property owner's use and enjoyment of the property." *Id.*

¶ 23 Here, there is no taking as the appellants, as owners of the plat—other than the two lots owned by the intervening plaintiffs—purchased the land after the 1974 plat had been filed, and after the intervening plaintiffs had acquired their land in reliance on that plat. The court did not revoke the original plat but instead amended it. Therefore, the court's order does not constitute a taking.

¶ 24 D. The Trial Court Did Not Abuse Its Discretion in Denying the County's Motion to Voluntarily Dismiss

¶ 25 The Code allows a plaintiff to dismiss her case, upon notice to each party, before trial or hearings have begun. 735 ILCS 5/2-1009 (West 2016). However, a motion filed "after trial has begun is addressed to the discretion of the court and is reversible only for abuse of that discretion." *Newlin v. Foresman*, 103 Ill. App. 3d 1038, 1045 (1982).

¶ 26 The original complaint in this case was filed by the county against the Galvins. The intervening plaintiffs then filed a motion to intervene, which was granted because, as discussed above, they are proper parties to the suit. Based on our review of the record, it was not an abuse of discretion for the trial court to deny the motion for voluntary dismissal filed by the county because the intervening plaintiffs had an interest in the outcome of the case where the appellants were trying to destroy their property rights by vacating the plat without their consent.

¶ 27 E. The Orders of October 31, 2014, and August 21, 2017, Did Not Vacate the June 11, 2008, Order

¶ 28 The appellants' next argument is that the trial court's order on either October 31, 2014, or August 21, 2017, vacated its June 11, 2008, order. The appellants argue that the 2014 order granted the motion to vacate filed by the appellants, or that the 2017 order supersedes and replaces the 2008 order. Based on the court's phrasing and language in both orders, we cannot agree with the appellants' reading of the orders. On October 31, 2014, the court ordered the following:

> "Order entered. [Attorneys] notified. Matter set for [January 30, 2015, at 1 p.m.] This [Court] had previously taken [2] Motions under advisement, Motion to dismiss filed [April 16, 2014,] by the Shelbyville Township Road District and an Amended Joint Motion to vacate and Amend Order of [June 11, 2008,] filed [May 16, 2014,] by the [Plaintiffs] County of Shelby and [Defendants] David and Barbara Galvin. The Intervenors, William Curl, Carla Goodwin and Mark Goodwin, adopted the arguments in the Motion to Dismiss. Now, being more fully advised in the premises, the Court finds as follows: 1. This [Court] entered its Order on [June 11, 2008,] which granted the relief requested by the [Plaintiffs] County of Shelby and Shelbyville Township Road District; 2. This Order was appealed and affirmed by the Appellate [Court] on or [at November 3, 2010]. Subsequent to that the [Defendants] paid the assessment per the Order along with interest but to date, has not complied with any other terms of the Court's Order[;] 3. Nearly 2½ years later, the [Defendants] and [Plaintiff] County of Shelby file a 'Joint Motion to Vacate and amend Order of June 11, 2008' citing as the reason that the parties couldn't comply with the Court's Order [was] because the Zoning Ordinance of Shelby County had changed on August 11, 2005; 4. The [Plaintiff], County of Shelby asserted the Zoning Ordinance at trial in this matter and specifically requested the relief that was ultimately granted by this Court; 5. No parties attempted compliance with the Court's Order until the Motion to Vacate was filed; 6. This [Court] is unable to grasp the rationale for the complete change of position for the [Plaintiff] County of Shelby and the [Defendants]; 7. The intent of the [Court's] Order was for the development of a subdivision which would be beneficial to all involved. WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS: A) [Plaintiff] County of Shelby and [Defendants'] Motion to Amend is GRANTED in part and DENIED in part; B) [Plaintiff] Shelbyville Township Road District['s] [Motion to Dismiss] is DENIED; C) The [Defendants] are to prepare and submit a new subdivision plat proposal w/in 45

> days of the entry of this Order, said proposal is to be consistent with Shelby County's Zoning Ordinance currently in effect; If [Defendants] fail to do so, [Plaintiff] County of Shelby is to submit such plan within 30 days after [Defendants'] plan is due; This matter will be set for further hearing at which time, if there are any objections to the newly proposed plats, the Court will consider any proposals that may be offered by the Intervenors or the [Plaintiff] Shelbyville Township. The Court will then Order which plat will be implemented and when, in compliance with the spirit of its original order; D) The [Defendants] shall bear the cost of the new plat proposal; E) Said matter is set for hearing on [January 30, 2015, at] 1:00 PM for a hearing to determine which plat will be implemented. Clerk is to notify all parties of said Order."

The court's wording indicates that it was denying the motions to dismiss and the portion of the motion to vacate and amend which moved to vacate the June 11, 2008, order. Additionally, the preceding indicates that the court granted the portion of the motion moving to amend the order and laid out the timing and manner in which the proposed amended plats would be submitted to the court.

¶ 29 On August 21, 2017, the trial court entered the following order by docket entry:

> "THIS COURT HAD PREVIOUSLY TAKEN THIS MATTER UNDER ADVISEMENT AND NOW BEING MORE FULLY ADVISED IN THIS MATTER, FINDS AS FOLLOWS: 1.) THIS COURT ENTERED AN [O]RDER ON [OCTOBER 31, 2014,] WHICH DIRECTED THE PARTIES TO COMPLY WITH ITS ORDER OF [JUNE 11, 2008,] WHICH WAS ULTIMATELY UPHELD BY THE APPELLATE COURT. TO DATE, THE DEFENDANTS, DAVID AND BARBARA GALVIN AND THE COUNTY OF [SHELBY] HAVE FAILED TO COMPLY WITH SAID ORDER; 2.) SUBSEQUENT TO THE COURT'S ORDER OF [OCTOBER 31, 2014], THE DEFENDANTS AND THE COUNTY OF [SHELBY] HAVE FILED OBJECTIONS CLAIMING THIS COURT HAS NO AUTHORITY TO ENFORCE ITS OWN RULINGS. THEY HAVE ALSO FILED AND REQUESTED APPROVAL FOR NEW PLATS OF THE SUBDIVISION; 3.) THE INTERVENING PLAINTIFFS HAVE ALSO FILED AND REQUESTED APPROVAL OF AMENDED PLATS FOR THE SUBDIVISION. THE PLAT PROPOSED BY THE INTERVENING PLAINTIFFS ALLOWS FOR THE DEVELOPMENT OF 13 LOTS IN THE SUBDIVISION; [4].) THE AMENDED PLAT AS PROPOSED BY THE DEFENDANTS ONLY ALLOWS FOR THE DEVELOPMENT OF 4 LOTS IN ADDITION TO THE 2 PREVIOUSLY DEVELOPED LOTS; 5.) THE PLAT

> PROPOSED BY THE DEFENDANTS FAILS TO ADOPT THE SPIRIT OF THE COURT'S ORIGINAL ORDER WHILE THE PLAT PROPOSED BY THE INTERVENING PLAINTIFFS IS MORE CLOSELY IN COMPLIANCE WITH THE COURT'S ORIGINAL ORDER; 6.) BOTH AMENDED PLATS ARE IN COMPLIANCE WITH THE CURRENT ZONING ORDINANCE FOR SHELBY COUNTY; WHEREFORE, IT IS HEREBY ORDERED AS FOLLOWS: A.) COURT APPROVES THE PLAT, IN PART, AS PROPOSED BY THE INTERVENING PLAINTIFFS SUBJECT TO THE FOLLOWING PARAGRAPHS; B.) DEFENDANTS ARE TO BEGIN CONSTRUCTION OF THE SUBDIVSION PURSUANT TO INTERVENING PLAINTIFF'S PLAT OF [MAY 5, 2017,] WITHIN 60 DAYS OF THIS ORDER. DEFENDANTS DAVID AND BARBARA GALVIN ARE TO COMPLY WITH PLAT REQUIREMENTS OF EASEMENTS AND ROAD DEDICATION; C.) THE TOWNSHIP IS TO REMOVE BARRICADES AT END OF TOWNSHIP ROAD WHICH RUNS IN FRONT OF THE EXISTING LOTS 11 & 12 AND TO INSTALL AN 'END OF ROAD' SIGN IN COMPLIANCE WITH PLAT OF [MAY 5, 2017]; D.) INTERVENING PLAINTIFF CURL IS GRANTED A SEWER EASEMENT OF 5 FEET WHICH EXTENDS INTO THE PROPOSED NEWLY CONSTRUCTED ROAD AS OUTLINED ON PLAT (LOT 11); E.) THE DEFENDANT SHALL REMOVE ANY DIRT PILE ELEVATIONS THAT CURRENTLY AFFECT THE DRAINAGE TO EXISTING LOTS AND FUTURE LOTS. DEFENDANTS SHALL FURTHER REFRAIN FROM CREATING NEW DIRT PILE ELEVATIONS WHICH MAY AFFECT DRAINAGE TO CURRENT LOTS OR FUTURE LOTS; F.) CONSTRUCTION OF LOTS 6-10 SHALL BEGIN WITHIN 6 MONTHS OF SALE OF EITHER LOT 1, 2 OR 3. CONSTRUCTION OF LOTS 4 & 5 SHALL BEGIN 6 MONTHS OF COMPLETION OF LOTS 6-10. NOTHING IN THIS ORDER IS MEANT TO PREVENT THE DEFENDANTS FROM DEVELOPING THE SUBDIVISION SOONER THAN THE ORDERED SCHEDULE; G.) LOTS 1, 2 & 3 ARE TO BE LISTED FOR SALE WITH A LICENSED REALTOR WITHIN 60 DAYS OF THIS ORDER. THE DEFENDANTS SHALL NOT INTERFERE WITH A REALTOR'S ACCESS TO THE PROPERTY FOR PURPOSE OF SELLING SAID LOTS; H.) ALL PARTIES SHALL SHARE THE COST OF COMPLETING THE INTERVENING PLAINTIFF'S PLAT; I.) ALL PARTIES SHALL PAY THEIR OWN ATTORNEY FEES; J.) THIS COURT RESERVES RULING ON COUNTY'S RESPONSIBILITIES FOR COMPLIANCE WITH THIS ORDER PENDING DEFENDANT'S COMPLIANCE; K.) MATTER IS SET FOR STATUS OF COMPLIANCE ON [OCTOBER 27, 2017, AT] 9:00 A.M. CLERK TO NOTIFY ALL PARTIES OF SAID ENTRY."

The language of the court indicates that it entered this order to inform the parties as to which amended plat had been chosen and how the parties should move forward in

constructing Lithia Estates. There is no indication from the language of either order that the June 11, 2008, order was vacated.

¶ 30 F. The Underlying Order Upon Which the Contempt Order Was Predicated Is Valid, and So Too Is the Contempt Order

¶ 31 Finally, the appellants argue that the contempt order should be vacated if the underlying August 21, 2017, order is vacated. The purpose of civil contempt orders is to coerce the parties to comply with the order. *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 971 (2004). The record indicates that this was the precise reason the trial court imposed the order here as the court has been trying to enforce its own order since 2008. Therefore, because we find the court's underlying August 21, 2017, order to be valid, the court's order finding the appellants in indirect civil contempt is valid and affirmed.

¶ 32 III. CONCLUSION

¶ 33 For the foregoing reasons, the contempt order of the circuit court of Shelby County is hereby affirmed.

¶ 34 Affirmed.