

No. 1-10-0971

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

METROPOLITAN WATER RECLAMATION,)	Appeal from the Circuit Court
DISTRICT OF GREATER CHICAGO, a municipal)	of Cook County, Illinois.
corporation,)	
)	
Plaintiff,)	
)	
v.)	No. 06 CH 13187
)	
TERRA FOUNDATION FOR AMERICAN ART,)	
an Illinois not-for-profit corporation, and 664 N.)	Honorable Kathleen M. Pantle,
MICHIGAN LLC, a Delaware Limited Liability)	Judge Presiding.
Company,)	
)	
Defendants,)	
)	
664 N. MICHIGAN LLC, a Delaware Limited)	
Liability Company, and NM PROJECT)	
COMPANY, LLC, successor-in-interest to Terra)	
Foundation for American Art,)	
)	
Defendants/Counter-Plaintiffs/Appellees,)	
)	
v.)	
)	
METROPOLITAN WATER RECLAMATION)	
DISTRICT OF GREATER CHICAGO, a municipal)	
corporation,)	
)	
Plaintiff/Counter-Defendant/Appellant,)	

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Justice Murphy delivered the judgment of the court.

Presiding Justice Quinn and Justice Neville concurred in the judgment.

ORDER

HELD: Where permanent injunction order permitted defendant free access at all times to a private alley owned by plaintiff pursuant to easements held by defendant, the trial court erred in finding plaintiff in indirect civil contempt for its police officer's request for identification of an unknown employee of defendant who was in the alley.

On July 12, 2006, plaintiff, Metropolitan Water Reclamation District of Greater Chicago, filed a complaint for declaratory judgment, seeking a declaration of rights between itself and the owners of three parcels of land adjacent to a private alley owned by plaintiff. Plaintiff owns the property located at 100 East Erie Street. The adjacent three properties, 664, 666, and 670 North Michigan Avenue (664, 666, and 670 parcels), are owned by defendant NM Project Company, LLC. On August 14, 2008, the trial court entered an order granting defendant a preliminary injunction against plaintiff, enjoining plaintiff from interfering with defendant's use and enjoyment of its easements to the alleyway. On April 22, 2009, this court affirmed that ruling. *Metropolitan Reclamation District of Greater Chicago v. Terra Foundation for American Art*, No. 1-08-2223 (April 22, 2009) (unpublished order under Supreme Court Rule 23). On May 19, 2009, the trial court entered an order permanently enjoining plaintiff from interfering with defendant's easement rights.

Following an October 13, 2009, incident between one of plaintiff's police officers and a representative of defendant, defendant filed an emergency petition seeking an adjudication of indirect civil contempt against plaintiff. After nine-days of hearings, the trial court entered a 15-page order on March 5, 2010, holding plaintiff in indirect civil contempt and imposing sanctions.

Plaintiff was ordered to supply its police staff with copies of all orders of the trial court and train the staff on the pertinent issues of easement rights and *Terry* stops. Plaintiff also was ordered to cease stopping, detaining, or ordering individuals to leave the alleyway without assistance from the Chicago Police Department unless reasonable suspicion under *Terry* existed or if they had probable cause for an arrest. Attorney fees and costs associated with the emergency petition were also awarded to defendant.

Plaintiff appeals that order. Plaintiff argues that the trial court's findings are against the manifest weight of the evidence and it did not violate the provisions of the prior orders of the trial court. Plaintiff also asserts that the trial court abused its discretion in imposing punitive remedies beyond its authority. For the following reasons, we reverse the trial court's order of indirect civil contempt.

I. BACKGROUND

On April 30, 2008, defendant became beneficial owner of the 664, 666 and 670 parcels and the vacant buildings on those parcels. Plaintiff owns the adjacent property at 100 East Erie Street, Chicago, Illinois, improved with a five-story building that serves as plaintiff's headquarters and administration building. Plaintiff also owns the private alley that borders the east side of its building. The alley is abutted to the north and east by defendant's property and East Erie Street to the south. Three separate and distinct easements exist granting certain specified rights to the use of plaintiff's alley to the owners of the 666 and 670 parcels.

Plaintiff sought declaration of rights concerning the alley and the easements in the Circuit Court of Cook County. On August 14, 2008, the trial court entered a detailed 15-page order granting a preliminary injunction, enjoining plaintiff from interfering with the use and enjoyment of defendant's easement rights. The trial court barred plaintiff's use of a gate to block the alley

and interfering with defendant's construction activities by various means. This court affirmed that order. *Metropolitan Reclamation District of Greater Chicago v. Terra Foundation for American Art*, No. 1-08-2223 at 17-22.

On May 19, 2009, following a bench trial, the trial court entered a 27-page order permanently enjoining plaintiff from interfering with the easement rights of defendant. The following relevant permanent injunctions and orders were entered:

- “(2) [Plaintiff] is enjoined from parking cars in the alley (other than the temporary parking of delivery trucks which do not block the entire width of the alley) thereby impairing the ingress and egress rights of [defendant], its permittees, and licensees;
- (3) [Plaintiff] is enjoined from placing its garbage dumpsters in the alley where the placement impairs the ingress and egress rights of [defendant], its permittees and licensees;
- (4) [Plaintiff] is enjoined from interfering with construction activities which benefit solely the 666 and 670 parcels;
- (5) [Plaintiff] is enjoined from interfering with the use of the alley for ingress and egress between Erie and that portion of the new building which is in the 666 and 670 parcels including, but not limited to, the parking facility which will be located in the footprint of the 666 and 670 parcels by [defendant], its permittees and licensees;

* * *

- (7) [Plaintiff] is enjoined from interfering with the use of the alley by [defendant] as a private alley at all times, for any lawful purpose as set [forth] in the

easements which benefit the 666 and 670 parcels.

* * *

- (2) [Plaintiff] has no right to allow persons to park vehicles in the alley (other than the temporary parking of delivery trucks which do not block the entire width of the alley) thereby impairing the ingress and egress rights of [defendant], its permittees and licensees;
- (3) [Plaintiff] has no right to maintain obstructions (other than the emergency generator) that obstruct or otherwise impair [defendant's] use of the alley;
- (4) That the alley easements permit [defendant] free and unimpaired access to the alley to engage in construction activities associated with the 666 and 670 parcels;
- (5) [Defendant] is permitted to use the alley in connection with the development of the 666 and 670 parcels, including the parking facility;
- (6) [Defendant] is permitted free access to the alley consistent with the terms of the easements."

On October 13, 2009, there was an incident between Bruce Schultz, a principal of defendant, and Officer LaNeisha Phillips, a police officer with plaintiff's police department. In response, defendant filed its emergency petition seeking adjudication of indirect civil contempt against plaintiff. The parties briefed that matter and presented evidence, including testimony by Schultz and Phillips, before the trial court.

Video of the incident captured by plaintiff's security cameras was presented to the trial court and both witnesses testified to the video captured. The video contains footage from two security cameras, one located at the entrance of the alley near East Erie Street and the other closer

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to the end of the alleyway. Schultz, wearing a dark business suit and open-collared white oxford shirt can be seen walking around the corner from East Erie Street onto the alley. In the video captured from the end of the alley, Schultz can be seen walking down the alley with his hands in his pockets and then out of the purview of the video camera. Phillips may then be seen at the entrance of the alleyway where she stops, raises her left arm and appears to yell down the alley. Schultz reenters the video, walking toward Phillips at a normal pace with his hands in his pockets. Approximately half-way to meeting Phillips, Schultz points toward the construction property with his left arm. The two have a brief conversation and then walk toward the alley entrance, where it appears that Phillips blocks Schultz's exit and then additional parties appear and they have a conversation.

The video captured by the camera near the entrance of the alley shows the conversation between Schultz and Phillips in greater detail. Phillips can initially be seen yelling and pointing down the alley and then taking a couple steps down the alley and again yelling or talking down the alley. Schultz then appears and walks up to Phillips and talks with his left arm out and pointer finger extended. Phillips pushes down Schultz's finger with an open right palm and holds her hand up, palm open while taking a step back on her right side where her firearm is holstered. Schultz returns his hands to his pockets and after a brief conversation the two walk toward the entrance of the alley where they stop and again have a conversation. Schultz appears to try and exit the alley and Phillips heads him off to the side of the alley, eventually putting her arm up to stop him from exiting, and then grabs his arm and physically stops him from leaving.

Schultz testified that he was 63-years-old on the date in question and responsible for defendant's daily activities. He testified that, due to his position, he had testified numerous times

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during the course of the ongoing litigation over the easement rights to the alley. On the date of the incident, Schultz was in the alley to watch activity on the site. Schultz testified that he heard a voice loudly shout at him to “get out of the alley immediately” and he turned to see Officer Phillips at the entrance to the alley.

Schultz approached Phillips with his hands in his pockets at a normal pace. He testified that he informed Phillips that he was one of the owners of the parcels to the east and pointed to the parcels. Phillips responded that he had no right to be in the alley and demanded he identify himself. Schultz gave Phillips his name and stated that he had a right to unobstructed access pursuant to court orders. Schultz testified that Phillips then demanded to see his driver’s license and Schultz suggested that Phillips call Carlton Lowe of plaintiff’s legal department who could identify Schultz and confirm his right to access. Schultz then asked for Phillips’ name and badge number.

Schultz testified that at this time he was pointing toward Phillips and she slapped his hand down to his side and he returned his hand to his pocket. Schultz then began walking out of the alley when Phillips obstructed his way and grabbed his right arm, putting him in an arm lock with his right arm above his back. Schultz asked to be let go and asked if he was being arrested. Schultz noted how agitated Phillips was and tried to defuse the situation by asking if she would let him go if he produced his driver’s license.

Schultz produced his driver’s license and noted that Phillips did not conduct a background check or write anything down. Two additional officers arrived at the alley at this time, including Phillips’ uncle, Officer Eric Wright. Schultz testified that he repeated his name and position to Wright and stated that he had a right for free and unobstructed ingress and egress

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to the alley. Phillips gave Wright Schultz's driver's license and informed him that Schultz was president of Prism, the development company. She also informed Wright that Schultz had refused to identify himself when she asked.

In response, Wright told Schultz that it was a requirement to wear a hard hat in the alley and to show identification when requested. Schultz responded that was not the case. Schultz informed Wright that he wanted to call the Chicago police department to resolve the situation or prepare an incident report with plaintiff but Wright responded that he owed Phillips an apology and despite his reluctance, he apologized and received his driver's license back. After the incident, Schultz noticed that his hand was bleeding from a laceration in the palm of his right hand.

Phillips testified that she had been a District police officer since May 2006. During her time as a District officer, Phillips had made several arrests and issued citations. She testified that on the date in question she was responsible for security of the property and monitored the front desk and 12 camera monitors located at the front desk. Phillips understood that anyone associated with defendant's project was allowed free and clear access to the alley, but there had been several instances where individuals not authorized to be in the alley had been asked to leave. On the day in question she saw Schultz in the alley and did not recognize him and he was not in construction gear so he looked like he did not belong there and she went to investigate.

Phillips saw Tracy Smith, a flagger for defendant at the construction site, at the entrance to the alley and asked if she knew who the man in the alley was. Phillips testified that if Smith had known the man, there would be no concern. However, Smith said that she did not know who he was and Phillips became concerned because her view was obstructed by dumpsters. Phillips

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called out “Hey, what are you doing in the alley” toward Schultz. Phillips testified that Schultz came out from around the dumpsters aggressively toward her with his hands shoved in his pockets and yelled angrily at Phillips that she had no right to ask him why he was there. Phillips was concerned with Schultz’s manner and walked toward him as he was speaking unintelligibly and pointing his finger in her face. Schultz stated that he had every right to be in the alley as an owner.

Phillips testified that her senses were heightened and that, as trained, she backed away and protected her weapons side when Schultz approached. She told Schultz to lower his voice and remove his hand from her face and asked for identification. Phillips testified that he did not produce his identification but asked Phillips her name and began to walk away. Phillips testified that in her experience and training, individuals who freely provide identification are typically not a concern while those who refuse are more likely to be a security risk.

When Schultz refused to cooperate after further requests, Phillips walked with him and felt pressure from him pushing the side of his body into her as he walked away. Phillips advised him that he was not free to leave and he needed to show identification, putting her arm in front of him as he tried to exit. She testified that when they reached the construction gate, Schultz pushed through her arm and he shoved her to the side and off balance. When she regained balance, Phillips put Schultz in a one-arm bar consistent with her training because he had pushed her. Phillips testified consistently with Schultz that the incident was defused when he offered his identification and then Officer White arrived.

Smith testified that she had met Phillips the day before the incident and was near the alley entrance at the time of the incident. She told Phillips that she did not know who Schultz was and

he did not acknowledge her when he entered the alley. Smith testified that she heard Phillips yell “Hey, what are you doing down there” but did not hear her say anything else because they were too far away from her at that time.

The trial court entered a 15-page order on March 5, 2010, finding plaintiff in indirect civil contempt related to the October 13, 2009, incident. The court determined that plaintiff violated the prior injunction orders. It cited to prior comments made concerning plaintiff’s prior misuse of its police officers and indicated that this was not an isolated incident as maintained by plaintiff. Therefore, the trial court concluded that Phillips’ actions constituted interference of defendant’s easement rights in direct contravention of the clear commands of the prior orders.

The court highlighted that this matter is a civil property dispute and noted the balance of power between the parties is uneven due to plaintiff’s armed police force. The court added that the evidence showed that plaintiff had not taken diligent efforts to inform and train its employees about the court orders. Because of these factors, the trial court opined that its disregard for the orders and defense evidenced a mindset similar to that of totalitarian regimes.

II. ANALYSIS

Plaintiff asserts three grounds for reversal on appeal. It maintains that the trial court’s findings of fact and conclusion that Phillips and plaintiff misused their police power were against the manifest weight of the evidence and an abuse of discretion. Second, plaintiff argues that the trial court’s permanent injunction order is ambiguous and therefore could not be a proper basis to conclude that there was a clear violation to support a contempt finding. Finally, it asserts that the trial court’s remedies are punitive and beyond its authority. We may dispose of this appeal by considering plaintiff’s second argument and need not reach the manifest weight of the evidence

or the remedies entered.

Indirect civil contempt is committed outside the presence of the court and is a coercive proceeding, not punitive. *J.S.A. v. M.H.*, 384 Ill. App. 3d 998, 1009 (2008). Civil contempt arises from a party's failure to do something ordered by the court for the benefit or advantage of another party and the need to vindicate the authority of the court thereby advancing the relief granted. *People v. Redlich*, 402 Ill. 270, 277 (1949). Whether a party is guilty of indirect civil contempt is a question of fact that may be reversed only if the trial court's finding is against the manifest weight of the evidence or the record reflects an abuse of discretion. *In re the Marriage of Logston*, 103 Ill. 2d 266, 286-87 (1984).

Plaintiff argues that the trial court's preliminary and permanent injunction orders are ambiguous and cannot support a finding of indirect civil contempt for Phillips' request for Schultz's identification. Plaintiff notes that because civil contempt proceedings are coercive, not punitive, in nature the order upon which the contempt finding is made must be unambiguous. *O'Grady v. Cook County Sheriff's Merit Board*, 204 Ill. App. 3d 258, 262 (1990). It asserts that neither injunctive order prohibits plaintiff from policing its alley or requesting unidentified individuals in the alley produce identification. Further, it adds that neither order requires plaintiff to provide a copy of the orders to its officers.

Simply, plaintiff argues that the trial court's finding that the injunction orders cannot be sustained based on Phillips' actions of: investigating who Schultz was; asking what he was doing in the alley; and requesting his identification. It asserts that these actions did not violate defendant's easement rights or the court's prior orders. Plaintiff maintains that the injunction did not specifically prohibit such inquiries, and a clear command is required to support a contempt

finding. *Bloomington Urological Associates v. Scaglia*, 292 Ill. App. 3d 793, 798 (1997).

Defendant asserts that this argument is specious as the evidence at the hearing showed that the employees responsible for complying with the court's orders never saw the orders. Defendant argues that no reasonable interpretation of the injunction would allow Phillips to act in the manner she did toward Schultz. Defendant asserts that if plaintiff was confused or concerned about the actions its officers could take under the order, it should have sought clarification from the court, or act at its own peril. *Mears Slayton Lumber Co. v. District Council of Chicago of the United Brotherhood of Carpenters*, 156 Ill. App. 327 (1910); *People v. Fansler*, 103 Ill. App. 3d 149, 153 (1982).

Defendant argues that plaintiff's cited authorities are inapplicable here because they involved either specific subject matter or because the order involved was susceptible to the defendant's proffered interpretation. Defendant flatly states that no interpretation of the injunction is consistent with plaintiff's conduct in this case. It maintains that a court does not need to anticipate every action that might be taken and when an order affects a broad course of conduct, some uncertainties are expected and the parties must "read the injunction intelligently and in context in such cases." Dan B. Dobbs, *Law of Remedies* § 2.8 (2d ed. 1993). Defendant concludes that an "intelligent" reading of the injunction in "context" can leave no doubt that plaintiff was forbidden from using its police "to interrogate, detain, and batter a principal of the Project Company for the 'crime' of entering the shared alley."

Defendant's argument fails at this point. Reading the injunction order intelligently and in context does result in the conclusion that barring defendant ingress and egress to the alley would be a violation of the court's order. However, it does not mandate a finding that plaintiff is not

allowed to police its alley and inquire when unknown persons are on its property. In fact, defendant admits that it is reasonable for plaintiff's police force to inquire whether a person in the alley is associated with the construction project. Reading the injunction broadly and accepting Schultz's testimony as true does not lead to the drastic result reached by defendant and the trial court.

Schultz was not in construction gear and had no identifying clothing, badge, identification or anything to alert Phillips to his relationship with defendant. Phillips testified that she did not recognize Schultz, and Smith did not know who he was either. Therefore she went to the alley and asked what he was doing and then asked him for identification. Schultz reacted with irritation and refused to produce identification. Schultz testified himself that he finally produced his driver's license after Phillips had put him in the arm bar because he knew it would defuse the situation.

While the trial court stated that this is exactly the type of behavior it sought to stop with the injunction order, no reading of that order leads to the conclusion that plaintiff was barred from policing its property. Schultz may have been "acting in a manner consistent with that of an innocent person" as the trial court states, it also is true, as the trial court continues, "there are many explanations for his presence in the alley." The trial court cites several possible explanations, each of which does not involve Schultz being an employee of defendant. We believe that each of these examples would allow plaintiff the opportunity to question and remove such persons from its private alley.

This is not to absolve plaintiff, Phillips or anyone involved from escalating the altercation. We simply conclude that there was no defined violation of the injunction order as

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required by law to support the drastic remedy of finding plaintiff in indirect civil contempt. It is clear that both parties are guilty in letting what should have been a simple exchange escalate into something bigger. Phillips' investigation into who Schultz was and request for identification was reasonable and therefore did not violate the injunction order. The trial court's order finding plaintiff in indirect civil contempt is reversed.

III. CONCLUSION

Accordingly, for the aforementioned reasons, the decision of the trial court is reversed.

Reversed.