

[Cite as *Meyer v. Chieffo*, 2009-Ohio-2758.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Philip Meyer,	:	
	:	Nos. 08AP-867
Plaintiff-Appellee,	:	and
v.	:	08AP-877
	:	(C.P.C. No. 05CVC12-14434)
Dominic Chieffo,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

O P I N I O N

Rendered on June 11, 2009

Lane, Alton & Horst, Gregory D. Rankin, Amy J. Ervin; William D. Fergus, Jr.; Brenner Law Offices and Todd A. Brenner, for appellee.

Tyack, Blackmore & Liston Co., L.P.A., and Thomas M. Tyack, for appellant.

APPEALS from the Franklin County Court of Common Pleas.

KLATT, J.

{¶1} Defendant-appellant, Dominic Chieffo, appeals from a judgment of the Franklin County Court of Common Pleas ordering him to pay money into an escrow fund and from a second judgment finding him in contempt for failing to make the payment as ordered. For the following reasons, we reverse.

{¶2} On August 15, 2005, plaintiff-appellee, Philip Meyer, filed a lawsuit in the Franklin County Municipal Court against Chieffo. In his complaint, Meyer alleged that he owned property at 15 Grandview Drive in Dublin, Ohio, and that he and Chieffo entered into a land installment contract whereby Chieffo agreed to purchase the Grandview Drive

property. Meyer further claimed that Chieffo had ceased making monthly payments under the land installment contract, thus breaching that contract. Based upon these allegations, Meyer sought termination of the land installment contract, eviction of Chieffo and restitution of the premises, and damages for the difference between the amounts Chieffo paid on the contract and the fair rental value of the property, as well as for any deterioration or destruction of the property.

{¶3} In response, Chieffo filed an answer and counterclaim, and then an amended counterclaim. Chieffo alleged that the attic of the house located on the Grandview Drive property contained mold that created a hazard and caused him personal injury. Chieffo asserted multiple causes of action, including a breach of contract claim, and sought damages in excess of \$25,000.

{¶4} Because Chieffo claimed damages in an amount that exceeded the Franklin County Municipal Court's monetary jurisdiction, the court transferred the entire action to the Franklin County Court of Common Pleas ("trial court"). After the transfer, Meyer moved for an expedited hearing on his complaint. Chieffo opposed an expedited hearing, arguing that his counterclaim was inextricably intertwined with Meyer's claims, and that he deserved discovery and, if necessary, a trial to litigate the counterclaim fully. In reply, Meyer pointed out that Chieffo's refusal to make any payments after July 2004 meant that he had resided at the Grandview Drive property free of charge for almost 20 months and owed Meyer \$33,007.37. If the trial court allowed Chieffo to avoid making payments through the scheduled trial date, then Meyer estimated that Chieffo would owe approximately \$50,000. Therefore, Meyer suggested an alternative to an expedited hearing: the trial court ordered Chieffo to make payments under the land installment contract into a court-administered escrow fund pursuant to R.C. 1923.061(B).

{¶5} On May 2, 2006, the trial court issued a decision and entry denying Meyer an expedited hearing, but ordering Chieffo to deposit with the Franklin County Clerk of Courts ("clerk") any funds that his attorney held as past-due payments. After Chieffo proved intransigent to the May 2, 2006 order, the trial court issued another order, dated June 27, 2006, in which it required Chieffo to deposit with the clerk \$20,000 for past-due payments and to make monthly payments of \$1,725¹ to the clerk commencing July 15, 2006. Chieffo complied.

{¶6} After completing discovery, the parties tried their case to a jury. With regard to Meyer's claim for forcible entry and detainer, the jury found that Meyer "failed to prove by a preponderance of the evidence that [Chieffo] defaulted under the land-installment contract by failing to make monthly payments on that contract, without legal justification." (R. 191.) With regard to Chieffo's counterclaim for breach of contract, the jury found that Chieffo "prove[d] by a preponderance of the evidence that Plaintiff, Philip Meyer, breached the land-installment contract regarding the treatment of mold in the attic * * *." (R. 192.) Although the jury found in Chieffo's favor on his breach of contract claim, it awarded him no damages.

{¶7} As demonstrated by the parties' post-trial briefing, the jury verdict only made the parties' dispute more complicated. Based on the verdict in his favor on his breach of contract claim, Chieffo filed a motion requesting that the trial court assess damages against Meyer. Pointing to the jury's award of zero damages, Meyer called Chieffo's bid for damages unconscionable. Meanwhile, Meyer filed a motion for contempt against Chieffo because he had stopped making monthly payments into the court-administered escrow fund after the jury returned its verdict. Chieffo protested that the jury's finding that

¹ The trial court later increased the amount of the monthly payment to \$1,753.77. (R. 108.)

he had legal justification to withhold payments allowed him to discontinue depositing payments with the clerk.

{¶8} On September 27, 2007, the trial court issued a "Decision, Entry, and Order on Disposition of Funds Placed in Escrow." In that ruling, the trial court denied both Chieffo's motion for damages and Meyer's motion for contempt. The trial court then turned to what it considered to be the two remaining issues: (1) how to accomplish remediation of the mold, and (2) how to divide the money contained in the escrow fund. The trial court reasoned that the jury verdict assigned to Meyer the responsibility to remediate the mold problem. Moreover, the trial court concluded that the jury only found Chieffo did not default under the land installment contract; it did not find that Chieffo could live on the property free of charge. Therefore, the trial court concluded that the money held in the escrow fund would be used to treat the mold problem, and it mandated that the clerk only release the funds for that purpose. If any funds remained after the remediation, then the trial court directed the clerk to release those funds to Meyer. The trial court also found that Chieffo had a continuing obligation to make monthly payments under the land installment contract, and it ordered Chieffo to remit those payments either to the clerk or directly to Meyer. If Chieffo made any payments to Meyer, the trial court required Meyer to expend those funds to treat the mold problem.

{¶9} The next day, the trial court entered judgment on the jury's verdict. Both parties timely appealed from the September 28, 2007 judgment entry. *Meyer v. Chieffo*, 10th Dist. No. 07AP-890, 2008-Ohio-6603.

{¶10} While the appeal was pending, Meyer filed another motion for contempt with the trial court. In that motion, Meyer alleged that Chieffo was refusing to make

payments under the land installment contract in defiance of the trial court's September 27, 2007 order.

{¶11} At the May 8, 2008 show cause hearing, Chieffo admitted that he had not made any payments since the jury rendered its verdict on April 27, 2007. In part, Chieffo's counsel argued that his client had no obligation to make payments because the trial court had lacked jurisdiction to issue the September 27, 2007 order. At the conclusion of the hearing, the trial court reserved judgment on the motion for contempt.

{¶12} When no judgment was forthcoming, Meyer sought a status conference. On August 21, 2008, the parties again came before the trial court and Meyer's counsel informed the court—without contradiction—that Chieffo had continued his pattern of nonpayment. Chieffo's counsel repeated the argument that the trial court did not have any authority to enter the September 27, 2007 order. Addressing Chieffo, the trial court stated:

I'm going to make this perfectly clear: You start making the escrow payments. If you don't start making the escrow payments then you're in contempt of court.

(Aug. 21, 2008 Tr. 10-11.)

{¶13} The trial court followed its oral pronouncement with a September 9, 2008 judgment entry that ordered Chieffo to resume making payments into the escrow fund. Specifically, the trial court required Chieffo to remit the September 2008 payment within seven days of the date of the judgment entry. The trial court also ordered Chieffo to pay an additional \$2,000 per month into the escrow fund until he satisfied the amount due and owing on the land installment contract.

{¶14} When Chieffo failed to make the payment as instructed in the September 9, 2008 order, Meyer filed his third motion for contempt. At the October 1, 2008 show cause

hearing, Chieffo's counsel acknowledged Chieffo's noncompliance with the September 9, 2008 order, but he asked the trial court to defer its ruling on the motion for contempt until this court rendered a decision on the pending appeal. Additionally, Chieffo's counsel argued that the trial court did not have jurisdiction to order Chieffo to pay into the escrow fund.

{¶15} Out of patience with Chieffo, the trial court found him in contempt for his failure to pay in accordance with the September 9, 2008 order. In its October 1, 2008 judgment entry, the trial court imposed a sanction of ten days in jail, suspending seven of those days if Chieffo paid a \$1,000 fine within seven days of the date of the judgment entry. The trial court allowed Chieffo to purge himself of the contempt by paying the full amount then due on the land installment contract, calculated at \$32,337, within 14 days of the date of the judgment entry.

{¶16} After receiving the contempt judgment, Chieffo filed two notices of appeal—one from the September 9, 2008 order and one from the October 1, 2008 contempt judgment. This court sua sponte consolidated the two appeals.

{¶17} On appeal, Chieffo assigns the following errors:

[1.] THE TRIAL COURT ERRED, AS TO THE PROCEEDING ON OCTOBER 1, 2008, WHERE DEFENDANT WAS NOT SERVED WITH PROCESS, NO EVIDENCE WAS PRESENTED IN SUPPORT OF THE CONTEMPT CITATION FILED SEPTEMBER 19, 2008, BUT DEFENDANT WAS FOUND GUILTY OF CONTEMPT AND ORDERED INCARCERATED DEPRIVED DEFENDANT OF DUE PROCESS OF LAW UNDER THE UNITED STATES CONSTITUTION, THE CONSTITUTION OF THE STATE OF OHIO, AND THE STATUTES OF THE STATE OF OHIO.

[2.] THE TRIAL COURT ERRED AS THE TRIAL COURT'S JUDGMENT ENTRY FINDING THE DEFENDANT GUILTY OF CONTEMPT AND IMPOSING SANCTION, INCLUDING INCARCERATION, IS CONTRARY TO LAW AND DEPRIVES THE DEFENDANT OF DUE PROCESS OF

LAW GUARANTEED BY THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF THE STATE OF OHIO.

[3.] THE TRIAL COURT ERRED AS THE PURGE ORDER IMPOSED BY THE TRIAL COURT IS CONTRARY TO LAW AND IN DIRECT CONTRADICTION TO PRIOR ORDERS ISSUED BY THE TRIAL COURT.

[4.] THE TRIAL COURT ERRED AS THE JUDGMENT ENTRY FILED SEPTEMBER 9, 2008, IS NOT SUPPORTED BY EVIDENCE AND IS CONTRARY TO LAW AS THE ORIGINAL JUDGMENT ENTRY FILED SEPTEMBER 28, 2007, ORDERING THAT THE DEFENDANT, EVEN THOUGH HE WAS THE PREVAILING PARTY AT TRIAL, CONTINUE TO PAY FUNDS INTO ESCROW WAS CONTRARY TO LAW.

{¶18} We will begin our analysis with Chieffo's second assignment of error, wherein he argues that the trial court erred in finding him in contempt of an order that the court lacked the authority to render. We agree.

{¶19} Generally, contempt is defined as disobedience of a court order. *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 554, 2001-Ohio-15; R.C. 2705.02(A) (stating that "[d]isobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or officer" constitutes contempt). However, if an order is void, then the violation of that order is not contempt. *In re Jadwisiak* (1992), 64 Ohio St.3d 176, 184. In general, a void order "is one that has been imposed by a court that lacks subject-matter jurisdiction over the case or the authority to act." *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, ¶12.

{¶20} In the case at bar, we do not question the trial court's subject matter jurisdiction, but instead focus upon whether the trial court had the authority to issue the September 9, 2008 order. Meyer points to two sources that he asserts provided the trial court with the authority to order Chieffo to escrow his payments after final judgment on

the case. First, Meyer directs this court to R.C. 1923.061(B), which states in relevant part:

In an action for possession of residential premises based upon nonpayment of the rent * * *, the tenant or resident may counterclaim for any amount he may recover under the rental agreement or under Chapter 3733. or 5321. of the Revised Code. In that event, the court from time to time may order the tenant or resident to pay into court all or part of the past due rent and rent becoming due during the pendency of the action. After trial and judgment, the party to whom a net judgment is owed shall be paid first from the money paid into court, and any balance shall be satisfied as any other judgment. * * * If the tenant or resident has paid into court an amount greater than that necessary to satisfy a judgment obtained by the landlord, the balance shall be returned by the court to the tenant or resident.

This statutory section serves to establish "a means of payment into the court of all rent, past due and accruing during the pendency of the action, from which any eventual net judgment may be satisfied." *Jemo Assoc., Inc. v. Garman* (1982), 70 Ohio St.2d 267, 270.

{¶21} Although R.C. 1923.061(B) provides trial courts with the authority to order payments into a court-administered escrow fund "during the pendency of the action," that statutory section contemplates the dispersal of all money in the escrow fund "[a]fter trial and judgment." Thus, the authority R.C. 1923.061(B) grants to a trial court ends immediately after judgment with the mandated distribution of the money held in the escrow fund. Here, the trial court originally established the escrow fund pursuant to R.C. 1923.061(B) and ordered Chieffo to remit to the fund \$20,000 in past-due payments and all monthly payments that became due while the action remained pending. However, in its September 27, 2007 and September 9, 2008 orders, the trial court perpetuated the escrow fund and its order requiring payment into the fund well beyond the final judgment. Because R.C. 1923.061(B) permits a court to only order the escrow of those payments

that accrue prior to or during the action and requires complete distribution of the fund after the adjudication of a landlord/tenant action, any authority the trial court derived from R.C. 1923.061(B) to order Chieffo to pay into the escrow fund ended with the September 28, 2007 final judgment. We therefore conclude that R.C. 1923.061(B) did not provide the trial court with the authority to enter the September 9, 2008 order.

{¶22} Meyer next argues that the trial court possessed the inherent power to prolong the escrow fund and to order Chieffo to continue to pay into that fund even after the final judgment. Courts' inherent powers include "those powers that 'are necessary to the orderly and efficient exercise of jurisdiction' and without which 'no other [power] could be exercised.'" *City of Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, ¶1117, quoting *Hale v. State* (1896), 55 Ohio St. 210, 213. Thus, in order to protect and preserve the subject matter of the litigation before it, a court has inherent power to order the escrow of funds likely to be the subject of the final judgment. *Zebrowski v. Hanna* (C.A.1, 1992), 973 F.2d 1001, 1004.

{¶23} At the beginning of the case at bar, both Meyer and Chieffo sought damages arising from Chieffo's occupancy of the Grandview Drive property. Although Chieffo disputed his legal obligation to pay under the land installment contract, with that dispute not yet adjudicated, he remained bound to his agreement to make monthly payments. Thus, to protect the funds from which a judgment could be satisfied, the trial court had the inherent power to order Chieffo to escrow his monthly payments while the action was pending.

{¶24} However, the situation changed when the jury rendered its verdict and the trial court entered judgment on that verdict. With the final judgment, the trial court administered the justice the parties sought, thus ending the trial court's need to keep the

situation static and to secure a fund for the payment of damages. In continuing the escrow fund and ordering payments after the final judgment, the trial court was not using its power to ensure that it could exercise its jurisdiction over the case or to enforce its judgment. Rather, the trial court was attempting to resolve an issue not raised by the action; namely, whether Chieffo had a contractual obligation to make payments under the land installment contract after the final judgment.

{¶25} In his complaint, Meyer sought termination of the land installment contract and damages in the amount of the fair rental value of the property for that period during which Chieffo failed to make any payments. Meyer did not seek a declaratory judgment as to the validity and extent of Chieffo's ongoing contractual obligations, nor did he seek specific performance of the payment term in the land installment contract. Thus, Meyer sought a backward-looking, not forward-looking, remedy and the jury's verdict effectively denied that remedy. As Meyer did not seek a forward-looking remedy, neither the jury verdict nor the final judgment addressed Chieffo's ongoing contractual obligation to make monthly payments. Nevertheless, the trial court sua sponte decreed that Chieffo had ongoing contractual obligations and imposed a forward-looking remedy when it required Chieffo to make monthly payments until the end of the land installment contract and entitled Meyer to all previous and future payments, albeit with a deduction for any amount needed to remediate the mold problem. Therefore, in its quest to effectively and efficiently resolve the parties' dispute, the trial court ruled on an issue not before it and fashioned a remedy not included in the jury verdict and final judgment. While we do not doubt that the trial court acted with the best of intentions, in ordering Chieffo to pay into the escrow fund after the final judgment, the trial court exceeded the scope of its inherent power.

{¶26} Because the trial court lacked authority to order Chieffo to escrow payments under the land installment contract after the final judgment, we conclude that the September 9, 2008 judgment was void. As we stated above, a violation of a void order is not contempt. Therefore, we conclude that the trial court erred when it found Chieffo in contempt of a void order, and we sustain Chieffo's second assignment of error to the extent that it asserts that the October 1, 2008 judgment was contrary to law. Because our ruling on Chieffo's second assignment of error resolves this appeal, we conclude that the remaining assignments of error are moot.

{¶27} For the foregoing reasons, we sustain Chieffo's second assignment of error in part, and we find the remainder of Chieffo's second assignment of error and the first, third, and fourth assignments of error moot. Based upon the above opinion, we reverse the September 9, 2008 and October 1, 2008 judgments of the Franklin County Court of Common Pleas.

Judgments reversed.

FRENCH, P.J., & BRYANT, J., concur.
