

RENDERED: April 15, 2005; 10:00 a.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2004-CA-000289-MR

LAWRENCE NELSON MOEHRING  
AND MARSHA LEE MOEHRING

APPELLANTS

v. APPEALS FROM BOONE CIRCUIT COURT  
HONORABLE JOSEPH F. BAMBERGER, JUDGE  
ACTION NO. 93-CI-01081

ROBERT ADAMS  
AND JAMES COLLINS, III

APPELLEES

OPINION  
VACATING

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BEFORE: KNOPF, TAYLOR, AND VANMETER, JUDGES.

KNOPF, JUDGE: Lawrence and Marsha Moehring appeal from an order of the Boone Circuit Court finding Lawrence Moehring in contempt for his interference with an easement previously granted to Robert Adams. We agree with Moehring that his actions do not constitute civil contempt. Hence, we vacate the trial court's contempt order.

In 1976, Lawrence and Marsha Moehring entered into a trust agreement with Robert A. Adams and James M. Collins, III. The trust beneficiaries were the Moehrings, Collins, and Adams, with Lawrence Moehring serving as trustee. The trust agreement reflected the parties' agreement to purchase for \$150,000.00 a 289-acre tract of land in Petersburg, Kentucky. After closing, the property was to be partitioned into two parcels: a 60-acre tract for the Moehrings and the balance for Collins and Adams.

In 1996, a dispute arose between the parties concerning the mortgage payment and the partition of the land. The Moehrings brought this action, and the matter was referred to the master commissioner. Following an evidentiary hearing, the commissioner recommended that the property be partitioned into two parcels. The commissioner further recommended that Adams and Collins be awarded an access easement across the Moehrings' property. In an order entered on January 6, 1997, the circuit court overruled the Moehrings' objections and adopted the commissioner's report.

On appeal, this Court affirmed the trial court.<sup>1</sup> Following the appeal, the parties hired a surveyor to identify the access easement previously awarded to Adams and Collins. In

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<sup>1</sup> Lawrence N. Moehring, et al. v. Robert A. Adams, et al., No. 1997-CA-000351-MR (Not-to-be-Published opinion rendered June 4, 1999).

a supplemental report entered on August 14, 2001, the commissioner recommended that "the survey be approved and that he be authorized to submit the plats to the Boone County Planning and Zoning Commission for approval and thereafter issuance of Master Commissioner Deeds to the respective parties." The trial court confirmed the commissioner's report. Subsequently, Collins conveyed his interest to Adams.

On October 2, 2003, Adams filed a motion to enforce the judgment and to hold the Moehrings in contempt for their interference with the easement. The motion was scheduled for a hearing on October 9. Counsel's certificate of service indicates that a copy of the motion was sent to the Moehrings and to their counsel of record. On October 8, Thomas P. Vergamini provided the court with notice that he was no longer representing the Moehrings.

The following day, October 9, the Moehrings appeared at the hearing with new counsel. The Moehrings' counsel advised the court that he had only been hired the day before and he wanted additional time to prepare for the hearing. Counsel also questioned whether the contempt motion was the proper procedure to enforce the judgment. The trial court denied the motion for a continuance.

At the hearing, Adams testified that Lawrence Moehring had repeatedly harassed his guests using the easement. Adams

testified that Moehring confronted several guests on his property, demanding that the guests leave and threatening to block their departure if they did not do so immediately. In addition, Moehring stated that he would put a gate across the easement if he were ever "inconvenienced" by Adams's visitors. Several other witnesses confirmed Adams's testimony. Moehring admitted that he had confronted several of Adams's guests in the manner described. However, he defended his actions by stating that Adams failed to maintain the easement and occasionally ventured off of the easement into his hay field. Moehring's counsel also noted that the incidents were isolated and that Moehring had not interfered with most of Adams's guests.

Following the hearing, the trial court found Moehring in contempt for his interference with the easement. The court did not impose any sanctions, but merely directed that Moehring "shall not interfere with the use and enjoyment of the aforesaid easement. . . ." The trial court's order also provided that any future violations of its order would be treated as contempt of court. This appeal followed.

Moehring argues that the trial court denied his due process rights by holding the contempt hearing without sufficient notice and without allowing his new counsel sufficient time to prepare the case. Moehring also argues that the contempt proceedings were not the proper means to enforce

the judgment. Because we agree with Moehring on this latter issue, we must vacate the trial court's contempt order.

Civil contempt is the disobedience of a court order directing an act for the benefit or advantage of the opposing party to the litigation.<sup>2</sup> The purpose of civil contempt is to force compliance with the order, and the parties at fault are generally permitted to "purge" themselves of any contempt by compliance.<sup>3</sup> The enforcement of orders and judgments in equitable justifiable controversies falls within the civil contempt category.<sup>4</sup> It is well established that a court has the authority "to enforce its own judgments and to remove any obstructions to such enforcement."<sup>5</sup> That authority also includes the right to invoke the contempt power in enforcing a judgment.<sup>6</sup>

Adams asserts that the trial court was within its authority to hold Moehring in contempt for his willful interference with a right granted by the prior judgment. However, the earlier judgment merely directed the commissioner to issue deeds providing Adams with a designated access easement

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<sup>2</sup> Commonwealth, ex rel. Morris v. Morris, 984 S.W.2d 840, 845 (Ky. 1998).

<sup>3</sup> Smith v. City of Loyall, 702 S.W.2d 838, 839 (Ky.App. 1986).

<sup>4</sup> Levisa Stone Corp. v. Hays, 429 S.W.2d 413, 416 (Ky. 1968).

<sup>5</sup> Akers v. Stephenson, Ky., 469 S.W.2d 704, 706 (1970).

<sup>6</sup> Id. at 706.

across the Moehring's property. Once those deeds were issued, the court's judgment was fully executed. Adams's right to use the easement no longer arises from the judgment, but from his deed. And of course, the easement itself runs with the land.<sup>7</sup>

There is no question that Moehring has interfered with Adams's right to use the easement. Nonetheless, Moehring's actions do not constitute civil contempt. Rather, the proper remedy is for Adams to bring an action to enjoin Moehring from interfering with his use of the easement and to seek monetary damages.<sup>8</sup> Consequently, the trial court erred in finding Moehring in contempt in this case.

Accordingly, the order of the Boone Circuit Court finding Lawrence Moehring in contempt is vacated and set aside.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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BRIEF FOR APPELLEE:

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<sup>7</sup> See e.g. Tennessee Gas Transmission Co. v. Million, 314 Ky. 137, 234 S.W.2d 152, 156 (1950).

<sup>8</sup> See Helton v. Jones, 402 S.W.2d 694 (Ky. 1966); Hester v. Johnson, 335 S.W.2d 574 (Ky. 1960); Kelly v. Cook, 899 S.W.2d 517 (Ky.App. 1995).

