

# Adams County Legal Journal


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HAMILTON TOWNSHIP V. DAVID LEASE



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IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA  
NO. 2010-SU-2641

## CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on the 7th day of July 2016, The Petition on behalf of Ryder Allen-Cool Hernandez, a Minor-Child, son of the late Taylor Cathlene-Cool Hernandez and Brice Allen Leonard, was filed in The Court of Common Pleas of Adams County, Pennsylvania, praying for a decree to change the name of The Minor Child to Ryder Allen-Cool Hernandez.

The Honorable Court has affixed the 8th day of September, 2016, at 8:30 a.m., in Courtroom No. 4, Third Floor, Adams County Courthouse as the time and place of The Hearing of said Petition, where and when all persons interested may appear and show cause, if any they have, why the prayer of said Petition should not be granted.

7/15

IN THE COURT OF  
COMMON PLEAS OF  
YORK COUNTY, PENNSYLVANIA  
NO. 2016-SU-660

## CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on the 24th day of June, 2016 the Petition of Heather Kathleen Keller was filed in the above-named Court, requesting a Decree to change her name to Heather Kathleen Seton. The Court has fixed the 8th day of September, 2016, at 8:30 A.M. in Courtroom No. 4, Third Floor, Adams County Courthouse as the time and place for the Hearing of the Petition, when and where all persons interested may appear and show cause, if any they have, why the request of said Petitioner should be granted.

7/15

## NOTICE

NOTICE IS HEREBY GIVEN that KELLEY L. NELSON, ESQUIRE, and COURTNEY E. HAIR, ESQUIRE intend to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 8th day of September, 2016, and that they intend to practice law as Assistant District Attorneys in the Office of the District Attorney, County of Adams, Adams County Courthouse, 111 Baltimore Street, Room #6, Gettysburg, Pennsylvania.

7/15, 22 & 29

## HAMILTON TOWNSHIP V. DAVID LEASE

1. Courts possess an inherent power to enforce compliance, and to punish non-compliance, with their orders by way of the power of contempt.
2. The purpose of civil contempt is to compel performance of lawful orders, and in some instances, to compensate the complainant for the loss sustained.
3. When contempt is civil, the court must impose conditions on the sentence so as to permit the contemnor to purge himself [of contempt]. Nevertheless, it is clear that a court may impose an unconditional compensatory fine payable to the county or the individual who was injured for present or past acts of misbehavior amounting to civil contempt.
4. The court may, in a proceeding for civil contempt, also impose the remedial punishment of compensation for special damages sustained by another as a result of the contemptuous behavior of the offender.
5. General challenges to findings of fact without specifically identifying the findings challenged precludes this Court from meaningful discussion of the issues and results in waiver of the issue.
6. In order for a person to be found in civil contempt, the order allegedly violated must be strictly construed and its directives must be definite, clear, and specific so there is no doubt or uncertainty in the mind of the contemnor of the required conduct.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA, CIVIL 07-S-597, HAMILTON TOWNSHIP V.  
DAVID LEASE.

Ronald T. Tomasko, Esq., Attorney for Plaintiff  
Cayla B. Jakubowitz, Esq., Attorney for Plaintiff  
Randall G. Hurst, Esq., Attorney for Plaintiff  
David Lease, pro se Defendant

George, J., June 14, 2016

## OPINION PURSUANT TO PA. R.A.P. 1925(A)

This appeal involves property located at 160 Gun Club Road, New Oxford, Hamilton Township, Adams County (“property”), which is owned by the Appellant, David Lease (“Lease”). It is but one of numerous actions flowing from the tortuous history of Lease’s use of the property.<sup>1</sup> The instant action involves a Complaint in Equity filed by Appellee, Hamilton Township (“Township”), on May 16, 2007, which sought to enjoin Lease’s alleged violations of the Pennsylvania Sewage Facilities Act (“Act”), 35 P.S. § 750.1, et seq. The eight-plus years of this contentious litigation cumulated in a finding of contempt against Lease and the Order dated April 1, 2016, sanctioning Lease to pay the Township’s fees in the amount of \$47,798.32 and to pay a civil fine in the amount of \$10,000 plus costs. This pro se appeal challenges the Order claiming it is excessive and that the Court erred in finding Lease in contempt. Lease further raises a boilerplate claim that the Court committed error in rejecting his proposed findings of fact. Finally, Lease raises procedural questions concerning the Township’s action in pursuing contempt and error on the Court in taking jurisdiction over the case where the matter was on appeal as a mandamus action. Before addressing the merits, or lack thereof, of issues raised by Lease, a procedural review of the history of this litigation is necessary.

As mentioned, this litigation was commenced by Complaint filed on May 16, 2007, by Township against Lease seeking injunction for Lease’s violation of the Act. On September 11, 2007, following the filing of a counseled Answer,<sup>2</sup> the Township filed motion with the Court seeking to allow entry onto the property for purposes of inspection. Lease objected to the Motion for Inspection seeking an indemnification agreement from the Township before entry was permitted. At a subsequent hearing on the motion, the parties reached an agreement which was memorialized by Court Order dated October 24, 2007. Thereafter, the docket was dormant until April 28, 2008, when the Township filed a Motion for Summary Judgment. By Order dated July 29, 2008, judgment was granted in favor of the Township. Lease was directed to bring the sewage system serving the

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<sup>1</sup> Since 2006, there have been more than 10 civil actions commenced concerning the subject property with over half of the suits being between the Township and Lease.

<sup>2</sup> At the initiation of this litigation, Lease was represented by the law firm Attorney Larry Wolf.

property into compliance with the Act and to obtain all required permits from municipal and state authorities necessary to repair or replace the sewage system servicing the property. The Order further granted Township officials the ability to access the property for inspection and compliance with the Act. Lease was enjoined from utilizing the subject property for purposes of occupancy in the event he failed to bring the property into compliance within the 90 days. However, the Court noted that good faith efforts on the part of Lease to comply with the terms of the Order would be a basis to obtain further extension, if necessary, to effectuate compliance. Finally, Lease was specifically advised that a violation of the Order may result in a finding of contempt. No direct appeal was entered from the Order.

On June 23, 2009, the Township filed a Petition for Contempt alleging Lease's violation of the July 29, 2008 Order. The petition claimed Lease willfully failed to follow the Order and was continuing to occupy the property in flagrant violation of the Act. Hearing on the petition was promptly scheduled, however, prior to hearing, the Township subsequently requested a 30-day continuance in order to allow Lease to bring the property into compliance. On July 31, 2009, the Township subsequently filed a Praeceptum to Withdraw the Petition for Contempt and the petition was dismissed without prejudice by Order dated August 5, 2009.<sup>3</sup>

Although litigation between the Township and Lease continued at a frenzied pace in other cases, this particular litigation remained quiet until April 2, 2015, when the Township filed the current Petition for Contempt. By Order dated April 20, 2015, a rule was issued on Lease to show cause, if any, why he should not be cited for contempt. Hearing on the rule was scheduled for May 1, 2015. Following a brief continuance, hearing was held on June 16, 2015. Following testimony, the Court issued a citation for contempt against Lease and scheduled a full contempt hearing for July 22, 2015. On July 22, 2015, the Court found that Lease willfully violated the July 29, 2008 Order.

As a result of the finding of contempt, Lease was directed to vacate the property by August 26, 2015, or, in the alternative, provide documented proof from the Township that the property was in

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<sup>3</sup> At this time in the litigation, Lease was represented by the law firm Attorney Sheri Coover.

compliance with sewage regulations for the number of occupants in the property. The Court further directed that a view of the property would be conducted on August 26, 2015, in order to determine Lease's compliance with the Order. Lease was advised that if he did not purge himself of contempt by compliance with the conditions imposed by the Court, he would be subject to a fine in the amount of \$250 per day while in violation of the Order. He was further advised that if he still remained in violation of the Order in excess of 90 days of the date of the Order, he faced potential incarceration. The Court reserved decision on the Township's request for fees until hearing scheduled at the conclusion of the inspection on August 26, 2015.<sup>4</sup> Due to scheduling difficulties, view of the property and hearing on fees did not occur until January 6, 2016. Following hearing, the Order which Lease currently appeals was entered.

Lease initially challenges the Court's Order imposing fees in the amount of \$47,798.32, fines in the amount of \$10,000, and court costs against him as being excessive. In addressing this issue, it is important to distinguish between attorney fees and other costs for which the Township was reimbursed. More specifically, the legal fees which Lease was directed to reimburse totaled only approximately \$23,000. The remaining \$24,000-plus costs were related to fees incurred for engineering, surveying, and other specialized services expended by the Township in attempting to enforce the Act.

Courts possess an inherent power to enforce compliance, and to punish non-compliance, with their orders by way of the power of contempt. *Commonwealth v. Bowden*, 838 A.2d 740, 760 (Pa. 2003). Contempt can be criminal or civil and depends on the trial court's "dominant purpose" in imposing a finding of contempt. *Gunther v. Bolus*, 853 A.2d 1014, 1018 (Pa. Super. 2004). "The purpose of civil contempt is to compel performance of lawful orders, and in some instances, to compensate the complainant for the loss sustained." *Gunther v. Bolus*, 853 A.2d 1014, 1018 (Pa. Super. 2004), quoting *Cecil Township v. Klements*, 821 A.2d 670, 675 (Pa. Cmwlth. 2003). The *Gunther* Court further explained that "[w]hen contempt is civil, 'the court must impose conditions on the sentence so as to permit the contemnor to purge himself [of contempt].'" *Id.*

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<sup>4</sup> Throughout the current contempt proceeding, Lease was represented by the law firm of Farley Holt.

Nevertheless, it is clear that a court may impose an unconditional compensatory fine payable to the county or the individual who was injured for present or past acts of misbehavior amounting to civil contempt. *Stahl v. Red Clay*, 897 A.2d 478, 486-7 (Pa. Super. 2006). The court may, in a proceeding for civil contempt, also impose the remedial punishment of compensation for special damages sustained by another as a result of the contemptuous behavior of the offender. *Id.*, A.2d at 487. Moreover, courts are authorized to award sanctions for violation of their orders even though financial harm has not resulted from the violation. *Korean American Ass'n. of Phila. v. Chung*, 871 A.2d 870, 874 (Pa. Cmwlth. 2005).

Undoubtedly, the primary purpose of this Court's finding of contempt was to compel Lease to comply with a prior Order of Court which was clear and definite in its requirements: compliance with the Act. At the time of this Court's initial Order entered on July 29, 2008, Lease was advised that a violation of the Order may result in a finding of contempt. Following hearing on whether citation for contempt should be issued, Lease was placed on notice that he would have the opportunity to purge himself of contempt or bring himself into compliance prior to a full contempt hearing. Transcript of hearing June 16, 2015, pg. 75. He was further advised that he faced potential incarceration and/or fine should he fail to bring himself into compliance with the Order. Tr. June 16, 2015, pg. 68-69. Following issuance of the citation, Lease was granted over a month to avoid sanctions by bringing himself into compliance. When it became apparent at the time of final contempt hearing on July 22, 2015, that he still was flagrantly disobeying this Court's Order, the Court exercised restraint in imposing the least possible power suitable to encourage the end goal of compliance. See *Com., Dep. v. Cromwell Tp., Huntington Cty.*, 32 A.3d 639, 653 (Pa. 2011) (recognizing that the judicial power of contempt is a potent weapon, courts are cautioned to exercise the least possible power suitable to achieve the end proposed). Lease was granted an additional 35 days to bring his property into compliance before a fine would commence. He could entirely avoid any sanction by compliance as the provisions for fine did not immediately commence and the Court purposely did not act on the Township's request for fees until Lease's level of cooperation was determined. Thereafter, the August 26, 2015 deadline was

extended to January 6, 2016. At that time, the Court conducted a view of the property and concluded that Lease defiantly failed to bring the property into compliance with the Court Order. In one final opportunity to encourage compliance, the Court granted Lease an additional 48 hours to bring the property into compliance. He was specifically advised at that time that he would be sentenced to incarceration in the event he failed to do so.

On the morning of January 8, 2016, the Court was advised that Lease had brought himself into compliance. Subsequently, the Court ordered Lease to reimburse the Township for out-of-pocket expenses necessitated by his repeated failure to abide by the Court's prior Order. Additionally, the Order imposed the financial sanction Lease faced following his initial finding of contempt. Nevertheless, even though Lease was advised he would be sanctioned in the amount of \$250 per day for noncompliance effective August 26, 2015, the Court's final Order actually imposed a lesser sanction.<sup>5</sup> In setting the amount of the fine, the Court took into account Lease's financial resources and the consequences of the financial burden imposed.<sup>6</sup> Incidentally, by way of comparison, had the Township pursued this matter as a summary criminal offense, a civil penalty as much as \$2,500 per week could be statutorily imposed for each week the violation continues unabated, 35 P.S. § 750.13. Under these circumstances, there is no abuse of discretion justifying the relief sought by Lease. *Mrozek v. James*, 780 A.2d 670 (Pa. Super. 2001) (each court is the exclusive judge of contempts against its process and the court's action will be reversed only when a plain abuse of discretion occurs).

Lease's next two claims are nonspecific allegations of error generally challenging this Court's finding of contempt and rejection of unidentified proposed findings of fact. General challenges to findings of fact without specifically identifying the findings

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<sup>5</sup> \$250 per day x 136 days (August 26, 2015 through January 8, 2016) = \$34,000. The Township requested the Court to impose the maximum fine.

<sup>6</sup> Testimony at the contempt hearing established at least six separate tenants to the property paying monthly rent as low as \$400 per month and as high as \$1,050 per month. In addition, Lease occupied the property. Thus, Lease's monthly income from the illegal occupancy of the apartments conservatively yielded over \$4,000 per month. The fine imposed by the Court is less than \$2,000 per month since the finding of contempt on July 22, 2015. Lease's revenue from the illegal occupancy of the property arguably exceeds \$350,000 (\$4,000 per month x approximately 89 months from July 29, 2008 which is the date of the original Order).



challenged precludes this Court from meaningful discussion of the issues and results in waiver of the issue. *Majorsky v. Douglas*, 58 A.3d 1250, 1258 (Pa. Super. 2012). Additionally, a general claim concerning sufficiency of the evidence results in waiver. *Com. v. Lemon*, 804 A.2d 34 (Pa. Super. 2002). Nevertheless, I will attempt to generally address these claims.

In order for a person to be found in civil contempt, the order allegedly violated must be strictly construed and its directives must be definite, clear, and specific so there is no doubt or uncertainty in the mind of the contemnor of the required conduct. *In re Contempt of Cullen*, 849 A.2d 1207, 1210 (Pa. Super. 2004). Instantly, the Order was clear that Lease must bring the subject property into compliance with the Act and obtain all municipal and state permits necessary to repair and/or replace the sewage system within 90 days of the date of the Order. There is no doubt that Lease had notice of the Order prior to the current finding of contempt as it was the subject of a prior contempt petition filed in 2009. That petition was withdrawn based upon agreement entered between the parties which focused on the July 29, 2008 Order. Finally, the evidence is overwhelming as to Lease's flagrant defiance of the Order at issue. Since 2009, he surreptitiously made alterations to a system disguising his noncompliance; changed the room numbers on several of the apartments to confuse the Township's efforts at ascertaining the true number of occupants on the property; shuffled occupants among several buildings and trailer on the property in order to avoid their detection; placed false eviction notices on the property on apartments of some of the occupants; and claimed a wing of rooms in the complex to be an office when he actually occupied the same as a residence. It is this Court's opinion that at best, Lease lacks any measure of credibility; at worst, he perjured himself on the witness stand. As the finder of fact has the right to believe all, some, or none of the testimony of any witness, *Appeal of Avco Corp.*, 515 A.2d 335 (Pa. Cmwlth. 1986), Lease's claim of insufficiency of evidence is meritless as the record amply supports the Court's finding of contempt.

Lease next claims the finding of contempt is inappropriate as the exclusive procedure for Township action is set forth in the Municipalities Planning Code (M.P.C.). Once again, Lease does not

identify the specific provisions he speaks of but rather makes a general reference to the M.P.C. Although waiver is again appropriate, the complete lack of merit of this issue allows it to be addressed summarily.

Initially, I note that the M.P.C. has no application to the current dispute. The purpose of the M.P.C. is to coordinate development and to guide uses of land development through appropriate planning, land use, and zoning. See 53 P.S. § 10105. The statutory scheme currently at play is the Pennsylvania Sewage Facilities Act which has as its purpose the protection of public health, safety, and welfare through the development and implementation of plans for the sanitary disposal of sewage waste. 35 P.S. § 750.3. The Act provides civil remedies to prevent violations of the Act, 35 P.S. § 750.12, and summary offense penalty sanctions for violations, 35 P.S. § 750.13. Nowhere does the Act limit remedies available to municipal authorities. In fact, it permits the Township to seek injunction as it has done in the current litigation. Clearly, where a court has jurisdiction to enter injunctive orders, such as authorized by the Act, it possesses the inherent authority to enforce those orders through contempt proceedings. *Com., Dep. v. Cromwell Tp., Huntington Cty.*, 32 A.3d 639, 653 (Pa. 2011) (courts possess an inherent power to enforce their orders by power of contempt). Thus, the Township acted properly in asking the Court to enforce compliance with the injunctive order.

Finally, Lease claims the trial court erred in taking jurisdiction of the case where the matter was on appeal as a mandamus action. This claim is frivolous as it has no factual basis. This particular litigation has never been part of a mandamus action nor does the record reflect any appeal ever having been filed. One can only speculate that perhaps Lease has confused this litigation with one of the many identified in an earlier footnote which have resulted from his inability or unwillingness to comply with reasonable governmental regulations.

For the foregoing reasons, it is respectfully requested that the appeal in this matter be dismissed.

**ESTATE NOTICES**

**NOTICE IS HEREBY GIVEN** that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

**FIRST PUBLICATION****ESTATE OF RICHARD L. ODGEN, DEC'D**

Late of Butler Township, Adams County, Pennsylvania

Executor: Michael L. Ogden, 840 Heidlersburg Road, Biglerville, PA 17307

Attorney: Todd A. King, Esq., Campbell & White, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325-2311

**ESTATE OF RONALD STOUGH, DEC'D**

Late of Reading Township, Adams County, Pennsylvania

Executrix: Norma Marie Wagner, P.O. Box 757, Hanover, Pennsylvania 17331

Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, PA 17331

**ESTATE OF MYRON E. THOMPSON III, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Administrator: Gretchen M. Scroggin, 1906 N. East Oaks Drive, Fayetteville, AR 72703

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

**SECOND PUBLICATION****ESTATE OF WILLIAM M. ALLEMAN, DEC'D**

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Personal Representative: M. Jane Alleman, 32 W. Hanover St., Gettysburg, PA 17325

Attorney: G. Steven McKonly, Esq., 119 Baltimore Street, Hanover, PA 17331

**ESTATE OF LESTER W. EMORY, DEC'D**

Late of Liberty Township, Adams County, Pennsylvania

Personal Representative: Rose Ann Rupert, c/o Stephen D. Kulla, Esq., Kulla, Barkdoll & Stewart, P.C., 9 E. Main St., Waynesboro, PA 17268

Attorney: Stephen D. Kulla, Esq., Kulla, Barkdoll & Stewart, P.C., 9 E. Main St., Waynesboro, PA 17268

**ESTATE OF SHIRLEY FRANCES GRANDIA a/k/a SHIRLEY F. GRANDIA, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: William M. Grandia, II, c/o John D. Miller, Jr., Esq., MPL Law Firm, LLP, 137 East Philadelphia Street, York, PA 17401-2424

Attorney: John D. Miller, Jr., Esq., MPL Law Firm, LLP, 137 East Philadelphia Street, York, PA 17401-2424

**ESTATE OF ROBERT N. HELM, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Administrator: Brian D. Brooks, c/o Nancy Mayer Hughes, Esq., Barley Snyder LLP, 126 East King Street, Lancaster, PA 17602

Attorney: Nancy Mayer Hughes, Esq., Barley Snyder LLP, 126 East King Street, Lancaster, PA 17602

**ESTATE OF JOHN M. JACOBS, DEC'D**

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Creta M. Jacobs, PO Box 596, Arendtsville, PA 17303

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF CHARLES C. KINGSTON, DEC'D**

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executors: Gregory C. Kingston, P.O. Box 426, Biglerville, PA 17307; Jeanne L. Bell, P.O. Box 30, Snowshoe, WV 26209

Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

**THIRD PUBLICATION****ESTATE OF LLOYD ANDREW HERSHEY, DEC'D**

Late of Berwick Township, Adams County, Pennsylvania

Executrix: Hester A. Hershey, 989 Abbottstown Pike, Hanover, PA 17331

Attorney: Clayton A. Lingg, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

**ESTATE OF KEVIN W. LANE, DEC'D**

Late of Butler Township, Adams County, Pennsylvania

Dorothy A. Lane: c/o Barbara Jo Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

Attorney: Barbara Jo Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

