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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
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NO. 325679

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

DONALD K. BINGHAM and JANET L. BINGHAM, husband and wife,

Appellants,

v.

GARY A. HEADRICK and MARY JANE HEADRICK, husband and wife,

Respondents.

BRIEF OF APPELLANTS

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I. INTRODUCTION

Appellants seek reversal of the lower court's decisions in late 2013 and early 2014 which imposed a sanction of \$26,601.00 against Appellants for contempt of a court order issued by a previous judge in March, 2000. The claimed contempt was based on the Appellants' movement of a shed/barn to a position which allegedly encroached upon a turnaround easement in favor of the Respondent neighbors. Whether the shed/barn encroached upon the dimensions of that turnaround area as described in the March 23, 2000 order was the disputed issue. The March, 2000 order is not specific with regard to the dimensions of an expansion of the turnaround area. Appellants contend that they never understood the March, 2000 court order to mean what the lower court determined it to mean for purposes of finding them in contempt of it. They were not aware that a court would interpret the order in the manner the trial judge did until they received the memorandum decision from the court simultaneously rendering that interpretation and declaring them in contempt of that thirteen year old order. Until that very moment Appellants believed that their placement of their shed/barn on their own property did not infringe

upon the easement established by the prior court order. Appellants therefore contend that (1) the 2000 order is not sufficiently clear as to its meaning regarding the area's dimensions so as to serve as the basis for a contempt order against the Appellants, (2) that the interpretation of that order, regarding changed dimensions of the area, which was urged by the Respondents, and which the lower court adopted, is not even plausible because it relies on dimensions stated in a survey created later by the Respondents, which were not considered by the judge who issued the 2000 order, and were never agreed upon or adopted by the parties.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in paragraph 3 of its order dated December 17, 2013 in which the court found that “[T]he area, dimensions, and location of the Turnaround Easement are as depicted and described on Exhibit 5 (9/7/00 Munson Engineers Inc Record of Survey prepared for Headrick”).” CP 606-610. That finding is not supported by substantial evidence in the record. The issues presented by this assignment of error are (a) whether or not the dimensions of the referenced survey were ever considered by, adopted by, or even known by the trial judge who entered the March 23, 2000 order; (b) what the judge who entered that March 23, 2000 intended as the new dimensions of the Turnaround Area after compliance with his order and (c) whether the dimensions of the later

survey created by the Respondents were ever agreed upon or adopted by the parties as the dimensions of the Turnaround Area to be thereafter enforced as a court order.

2. The trial court erred by not sufficiently supporting its finding in paragraph 3 of its December 13, 2013 order that the dimensions of the Turnaround Area established by the March 23, 2000 order were “as depicted and described on Exhibit 5 (9/7/00 Munson Engineers Inc Record of Survey prepared for Headrick”).” CP 606-610. The issues presented by this assignment of error are (a) how the lower court determined that the Munson Record of Survey, which was not created until September, 2000, was in fact a description of the area referenced by the court in its order dated March 23, 2000, over five months before the Respondent commissioned that survey, and (b) what findings of the lower court inform the appellate court of the basis for the trial court’s conclusion that the later survey “depicted and described” the Turnaround Area as intended by the March 23 order.

3. The lower court erred in paragraph 5 of its order dated December 17, 2013 in which the court “found” that the Appellants “knowingly and intentionally violated this Court’s March 23, 2000 rulings relative to the Turnaround Easement by moving their barn into the Court-ordered Turnaround Area very near the parties common boundary line,

thus knowingly and intentionally preventing the Defendants from their rightful use and enjoyment of the Turnaround Easement.” CP 608. That finding or conclusion is not legally correct nor is it supported by substantial evidence in the record. The issues presented by this assignment of error are (a) whether trial court impermissibly expanded the March 23, 2000 order by implication beyond the obvious meaning of its terms without sufficient proof to show a plain violation of the order; (b) whether the court was justified in finding that the Appellants understood that the area of their property of which they continued to make use after the March 23, 2000 court order was within the court-ordered turnaround area contemplated by the maker of the March 23, 2000 order, and (c) whether the Appellants use of their own property outside of what they considered to be the expanded Turnaround Area could be legally considered a knowing and intentional violation of the prior judge’s March 23, 2000 order. See CP 763-772.

III. STATEMENT OF THE CASE

1. On December 16, 1994 a Stipulated Settlement Agreement was signed by Judge John Bridges and filed with the lower court. Paragraph 7 of that stipulated agreement acknowledged that a portion of the Appellants’ property had historically been used by the Respondents’ predecessors in interest and ordered that “[I]n the future the Headricks’s

use will be limited to a turnaround easement 10 feet along the parties' property boundary extending 8 feet perpendicular in the Bingham's property. The Bingham's will let the Headricks determine the location of the 10 foot width after the Bingham's either build or depict the location of a retaining wall to be built in the area. The Headricks will be limited to the area between the retaining wall and the present location of the Northeast corner of the existing red barn." The rest of that paragraph dealt with the manner in which the exact location of the 8x10 Turnaround Area would be determined. CP 751-761.

2. Six years later, a trial occurred between the parties in Chelan County Superior Court presided over by Judge Bridges. That trial resulted in the entry of a Judgment on March 23, 2000 in which Judge Bridges resolved numerous disputes between the parties, including a continued dispute regarding the 8x10 Turnaround Area. That Judgment included, as findings and conclusions, a letter decision written by Judge Bridges on January 19, 2000. CP 766-772. Finding of Fact No. 42 of that decision references an agreement between the parties that the Appellants (Bingham's) would reposition their red barn "to the 'limit' of the maple tree." CP 771. Conclusion of Law No. 14 of that same decision ordered the Appellants (Bingham's) to "do so not later than June 1, 2000, in conformance with the agreement reached by the parties." CP

772. Paragraph 3 of the Judgment itself added, “The Headricks’ turnaround area shall be expanded by the area created by moving the red barn and the total turnaround area shall run with the land.” CP 763-764.

Neither the findings, conclusions, or judgment specifically defined the new dimensions of the turnaround area, other than that it was to be “expanded by the area created by moving the red barn.” CP 763-764.

3. The Respondents later commissioned the creation of a Record of Survey done by Munson Engineers, Inc, dba Wienert Surveying dated September 7, 2000 and recorded on March 7, 2002, which depicts the location of the “red barn” after its movement “to the limits of the maple tree” in compliance with the March 23, 2000 order of Judge Bridges. That survey shows the new location of the Northeast corner of the existing red barn following the movement of the barn in compliance with the March 23, 2000 order. CP 527, Trial Exhibit No. 5. See, also, CP 782.

4. After the creation of the Munson Record of Survey the parties, through their respective counsel, made attempts to reach a global resolution of several ongoing disputes between the parties, including a resolution of the issue regarding the exact dimensions of the expanded turnaround area following the March 23, 2000 order. That negotiation included a potential expansion of the turnaround area in favor of the

Respondents to the area shown on the Munson Record of Survey, contingent upon the receipt by the Appellants (Binghams) of certain concessions from the Respondents (Headricks). However, that negotiation failed. CP 776-777. As a result there never was any agreement reached between the parties regarding the expansion of the turnaround area to the dimensions indicated on the Munson Survey of Record. CP 776-777. RP 8.

5. Between the time that Judge Bridges ordered the red barn moved back to the limit of the maple tree and the entry of the court's order of contempt against the Appellants, the red barn was moved five times to different locations on the Appellants' property. The first move occurred in the summer of 2000 in response to Judge Bridges order. In that move the barn was moved back against the trunk of the maple tree after cutting into the roots of that tree. That resulted in the movement of the Northeast corner of the barn to the west by a few feet. CP 779-780, paragraph 3, Exhibit 5 (CP 782). The second move occurred in August, 2001 when the Appellants rotated the barn clockwise to protect the Appellants' property to the west of the turnaround area and to create more open space for the Appellants' use. CP 780, paragraph 4, Exhibit 2. (CP 783). The third move didn't occur until August 21, 2010, when the Appellants excavated some bank to the south, away from the boundary line, and

moved the barn in that direction as a gesture of goodwill toward the Respondents. CP 780, paragraph 5, Exhibit 3 (CP 784). The fourth move took place in the fall of 2011 when the Appellants moved the barn nearer to the property line between the parties but well west of what they considered the expanded turnaround created by the Bridges March, 2000 order. They did this due to the fact that they observed that the Respondents had begun to use the area west of the prior established turnaround area for parking, not for turning around. This move was an attempt to prevent the Respondents from adversely possessing that area west of the turnaround as a parking area. CP 780, paragraph 6, Exhibit 4 (CP 785). The last move of the barn occurred on December 2, 2013 in response to the memorandum decision of Judge Allan dated November 25, 2013. This move was done in an abundance of caution when the Appellants learned that the trial judge had interpreted the March 23, 2000 order to have expanded the turnaround areas all the way west to the western limits of the Munson Survey of Record. At that time the barn was moved completely out of that area of the Appellants' property. CP 780, paragraph 7, Exhibit 5 (CP 786).

IV. ARGUMENT

A. Judge Bridges' March 2000 Decision Regarding the Expansion of the Turnaround Easement Should have been Interpreted in

Light of the Specific Language of Paragraph 7 of the 1994

Stipulated Agreement/Order.

In Defendants' (Respondents') Motion to Enforce Order And/Or For Contempt, the focus was on the meaning of paragraph 3 of the Judgment entered by Judge Bridges on March 23, 2000, which ordered the Bingham's to move the red barn to the limit of the maple tree. CP 448-449. More specifically the issue was the meaning of that portion of the paragraph which stated, "The Headricks' turnaround area shall be expanded by the area created by moving the red barn....." Respondents' counsel argued that the intent of that language was to create a much larger turnaround area, the area the Respondents' later had surveyed. Appellants' counsel argued that the intent of the order was not to significantly alter the 8ft x 10 ft turnaround area, but to simply eliminate an encroachment by the barn which existed in 1999 and early 2000. RP 63-65. Ultimately, the court accepted Headricks' argument that the intent of that language was to expand the turnaround area all the way west to the bank on the Bingham's property as shown by the Munson Record of Survey. RP 66-67, CP 606-610. That survey did not exist at the time of Judge Bridges' ruling and Judge Bridges' ruling makes no reference to the dimensions of the expanded turnaround other than the phrase "the area created by moving the red barn." CP 766-772. Headricks' counsel relied on that later

performed survey to argue that the judge's intent was to expand the turnaround and that the parties later agreed that such expansion should be from 8x10 to 8x22, more than double the turnaround area, even though the barn was moved less than 3 feet to the west. Bingham's counsel argued that Headricks' evidence was inadmissible under ER 408 and that, in any case, no agreement was ever reached. RP 5-16, RP 44-50. Appellants' counsel presented the court with the declaration of counsel at the time of the negotiation to show that a final agreement was never reached. CP 776-777. That issue, whether there was some subsequent agreement, was never resolved by the court. However, the court did opine that she thought the March, 2000 order was consistent with Respondents' argument, though she did not say why. RP 66-67.

In fact, the language of paragraph 7 of the 1994 agreed order is critical to an understanding of the meaning of Judge Bridges' reference to an expansion of the turnaround area, and reference to that language is the only way that Judge Bridges' order can be interpreted in a way to provide more clear guidance on the intended new dimensions of the expanded turnaround. See CP 751-761. The key language of that 1994 order, which Judge Bridges must be assumed to have known, is found at the third to last sentence of paragraph 7 of that document. It reads, "The Headricks will be limited to the area between the retaining wall and the present

location of the Northeast corner of the existing red barn. (emphasis added). CP 754. The record dimensions of the existing turnaround in 1999 prior to the time of the trial before Judge Bridges were established by (1) the retaining wall on the east, (2) a line parallel to and 8 feet from the Bingham's north property on the south, (3) the property boundary on the north and, (4) (practically speaking) the line established by the east wall of the red barn and its projection (from its northeast corner) to the property line on the west. Accordingly, moving the red barn back southwest against the maple tree would naturally have moved the west boundary of the turnaround by the distance the northeast corner of the barn was moved west, thereby creating a new point for measurement of that west boundary of the turnaround easement. That would have been a line perpendicular to the property line through the new point of the northeast corner of the barn. That movement of the barn to the southwest had the expected and actual effect of moving the Northeast corner of the barn to the west and creating more area equal to the ground vacated by the movement of the east wall of the barn to the southwest. It is not at all surprising, therefore, that Judge Bridges stated in his letter opinion (attached as his findings and conclusions) that "the turnaround area shall be expanded by the area created by moving the red barn....." CP 763-764 (paragraph 3 of the Order). That, rather than the idea that he intended to more than double

the size of the turnaround, is the most reasonable interpretation of his order. However, the court apparently never considered that interpretation in rendering its order in this case, despite the fact that it was clearly put to her by Appellants' present counsel in briefing before she entered her sanction against the Appellants. CP 741-789.

B. No Evidence Established That Judge Bridges Had Ever Contemplated the Turnaround Dimensions Set Forth in the Munson Record of Survey, and the Evidence Conclusively Proved That the Parties Had Never Adopted Its Dimensions As the Area of the Turnaround.

It is undeniable that Judge Bridges never had the Munson Record of Survey to consider in rendering his March 23, 2000 decision and judgment. Although there is evidence that the parties were aware of the Respondent/Headricks' action in commissioning and filing that Record of Survey, both the letters between counsel introduced in evidence and the Declaration of Donald L. Dimmit proved that the Bingham and the Headricks never reached an agreement to adopt the Munson Inc. Survey of Record (Weinert Survey) as the turnaround area. CP 527, Trial Exhibits 6 and 7, CP 777-777. Even if they had, the trial court never found the existence of such an agreement, nor was such ever incorporated in the March 23, 2000 order. The Appellants were held in contempt of the

order, not of some subsequent agreement between the parties.

C. The Facts Before the Lower Court Were Insufficient to Support a Finding of Contempt.

As established by the Declaration of Donald K. Bingham Re: 8x10 Turnaround Easement and Movement of the Shed/Barn (CP 776-781), the Bingham's were careful in moving the barn in 2011 to skirt and not encroach upon the area they understood to be the expanded turnaround area. Exhibit 4 to that declaration clearly shows that the barn was placed in a position well outside of the area to which the turnaround easement was expanded if the court adopts the interpretation of Judge Bridges' ruling for which Appellants are advocating, and that it was done to prevent what they reasonably thought was encroachment by the Headricks, who had begun parking (not just turning around) to the west of the legitimate turnaround area.

Under the above-described circumstances, the Bingham's' action in moving the barn to the left of what they understood to be the granted easement area did not constitute contempt of the court's March, 2000 order. It follows that the Bingham's' action in moving the barn to the left of what they reasonably understood to be the very small expansion of the 8x10 turnaround easement area could not legally constitute contempt of the court's order. In contempt proceedings an order will not be expanded

by implication beyond the obvious meaning of its terms when read in light of the purposes of the underlying action. The facts found to constitute potential abuse by a party accused of contempt must constitute a plain violation of the order. *State v. International Typographical Union*, 57 Wn.2d 151, 158 (1960). Since the results of a finding of contempt are severe, strict construction is required. *Johnston v. Beneficial Management Corp. of America*, 96 Wn.2d. 708 (1982). Here, Judge Bridges failed to make express findings regarding the dimensions of area of the expanded turnaround easement, and his order can be interpreted more than one reasonable way regarding the size of that area. If under any reasonable interpretation by the Bingham's their action in moving their barn west and north to protect against encroachment on what they thought was still unencumbered property was reasonable, they cannot be said to have knowingly and intentionally violated the March 2000 order.

D. The Court's Findings and Conclusions In Its Order Declaring Sanctions Fail to Explain How and Why the Court Adopted the Munson Record of Survey as the Dimensions of the Turnaround Area Established by Judge Bridges in his March 23, 2000 Judgment.

A court order issuing punitive sanctions which is not sufficiently supported by findings will be held invalid or impermissibly penal in nature

due to an appellate court's inability to conduct adequate review of the basis for the sanction. The required findings must be specific and adequately explain on what the judgment rests. *State ex rel Dunn v. Plese*, 134 Wash.443, 447 (1925); *Hildebrand v. Hildebrand*, 32 Wn.2d 311(1949); *Britannia Holdings Limited v. Greer*, 127 Wn.App. 926 (Div. I, 2005). Here, the court did enter a finding that the Bingham's "knowingly and intentionally violated this court's March 23, 2000 rulings relative to the turnaround area by moving their barn into the Court-Ordered Turnaround Area very near the common boundary line.." The court also entered finding number 3 which states, "The area, dimensions, and location of the Turnaround Easement are as depicted and described on Exhibit 5 (9/7/00 Munson Engineers Inc Record of Survey prepared for Headrick)..." CP 607. While the Appellants do not dispute that they moved the barn into a portion of the area included within the Munson Record of Survey, they presented evidence that (1) the property they occupied with the barn at all times was their own and (2) that property lay completely south or west of the area which they interpreted as being the area of the expanded turnaround. They understood that the turnaround had been expanded at the most a few feet to the west based on the movement of the northeast corner of the barn, not doubled in size based on a survey commissioned six months later, on September 7, 2000. The court

obviously reached the opposite conclusion. However, the court has not entered any specific findings addressing how the court determined that the Munson Record of Survey was in fact a record of the area Judge Bridges intended to represent the expansion of the former 8'x10' turnaround area. The only other findings of the court are the court's letter opinion dated November 25, 2013. CP 610. That letter does not specifically address how the court concluded that Judge Bridges, who never saw that Munson Survey of Record, determined or ordered that the expansion of the turnaround would coincide with the dimensions of the Munson Survey of Record. All it does is make the conclusory statement that, "[P]laintiffs (for reasons not explained to the court)¹ moved the barn back closer to the property line, thereby reducing the turnaround area." (emphasis added). An appellate court will not be able to discern from these findings on what valid reasoning the lower court employed to adopt the Munson survey as the bounds of the March, 2000 expansion of the turnaround area.

V. CONCLUSION

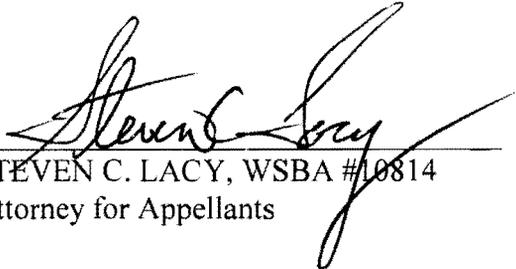
A more reasonable interpretation of Judge Bridges' March 23, 2000 order is that, consistent with the 1994 Stipulated Agreement/Order, he intended to expand the turnaround area no further than the distance

¹ The reasons were explained to the court. See CP 779-781.

created by establishing a new western boundary of the turnaround with reference to the distance that the northeastern corner of the barn would move when the barn was moved south and west to the limit of the maple tree. Therefore, the court worked an injustice when it based a contempt citation and sanction on another, less supportable, interpretation of that March 2000 order. The lower court's interpretation of that order is not supported by the record. This court should reverse the finding of contempt and remand the case for further proceedings to redefine the exact dimensions of the turnaround area.

Respectfully Submitted this 6th day of October, 2014.

LACY KANE, P.S.

By 
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