

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D21628
X/kmg

_____AD3d_____

Argued - November 18, 2008

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
EDWARD D. CARNI
JOHN M. LEVENTHAL, JJ.

2007-06041

DECISION & ORDER

Stanley Moore, et al., respondents, v
Michael Peter Davidson, et al., appellants.

(Index No. 11456/02)

David B. Calender, Bayside, N.Y., for appellants.

The Law Offices of Chandra M. Ortiz, P.C., Baldwin Harbor, N.Y., for respondents.

In an action, inter alia, to recover damages for trespass, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Nassau County (Galasso, J.), entered May 2, 2007, as granted that branch of the plaintiffs' motion which was to hold them in civil contempt and directed them to pay costs and disbursements, all reasonable attorneys' fees flowing from their contemptuous conduct, and a fine in the sum of \$250.

ORDERED that order is reversed insofar as appealed from, on the law, without costs or disbursements, and that branch of the plaintiffs' motion which was to hold the defendants in civil contempt is denied.

"In order to prevail on a motion to punish a party for civil contempt, the movant must demonstrate that the party charged violated a clear and unequivocal court order, thereby prejudicing a right of another party to the litigation" (*Goldsmith v Goldsmith*, 261 AD2d 576, 577; see Judiciary Law § 753[A][3]; *McCain v Dinkins*, 84 NY2d 216, 226). In this case, the finding of civil contempt was not based upon a clear and unequivocal order since the underlying judgment failed to establish the boundary line of the plaintiffs' property and thus the permissible location of the defendants' gate which encroached upon the plaintiffs' land (see *Gerelli Ins. Agency, Inc. v Gerelli*, 23 AD3d 341,

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342; *Town of Virgil v Ford*, 184 AD2d 901, 902; *Matter of Spinnenweber v New York State Dept. of Env'tl. Conservation*, 160 AD2d 1138). Additionally, absent certain exceptions, not applicable here, civil contempt is not appropriate for the enforcement of monetary judgments which can be secured under the provisions of article 52 of the CPLR (*see* CPLR 5104; Judiciary Law § 753[A][3]). Since the finding of civil contempt was not appropriate, the plaintiffs were not entitled to all reasonable attorney's fees flowing from the defendants' contemptuous conduct (*see Matter of Romanello v Davis*, 49 AD3d 652; *Kiperman v Steinberg*, 234 AD2d 518).

The defendants' remaining contentions are either without merit or not properly before this Court.

SPOLZINO, J.P., FLORIO, CARNI and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court