

State of New York v Stevens
2018 NY Slip Op 33621(U)
June 13, 2018
Supreme Court, Cortland County
Docket Number: EF14-553
Judge: Jeffrey A. Tait
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At a Term of the Supreme Court of the State of New York, held in and for the Sixth Judicial District, at the Broome County Courthouse, in the City of Binghamton, New York on the 25th day of April 2018.

PRESENT: HONORABLE JEFFREY A. TAIT
JUSTICE PRESIDING

STATE OF NEW YORK
SUPREME COURT : COUNTY OF CORTLAND

STATE OF NEW YORK and the NEW YORK
STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,

Plaintiffs,


DECISION AND ORDER

-against-

**Index No. EF14-553
RJI No. 2014-0356-M**

JAMES C. STEVENS and LAWRENCE G.
HILL,

Defendants.

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APPEARANCES:

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HON. JEFFREY A. TAIT, J.S.C.

This matter is before the Court on the motion of the defendant James C. Stevens, III seeking an order vacating the April 25, 2016 Decision and Order on the issue of civil and criminal contempt and further vacating the Court's December 15, 2015 Decision and Order granting plaintiffs partial summary judgment and dismissing certain affirmative defenses. The plaintiffs oppose the motion. The motion was heard at the Cortland County Courthouse on April 25, 2018.

While this motion was pending, Mr. Stevens' counsel moved to withdraw as counsel for Mr. Stevens in this matter. That motion was also heard on April 25, 2018.

Background

This matter has a long history. There have been numerous instances where it appeared the parties might be able to resolve the pending disputes. To date, those instances have not resulted in a resolution. Instead, it appears the disputes have expanded, the parties' positions have become more fixed and less flexible, and the stakes have grown even higher.

The threat of contempt did not result in a negotiated resolution of this dispute. In fact, Mr. Stevens was found in contempt and remained incarcerated for approximately eight months. Even this did not generate a resolution or compliance with existing Court orders.

Now before the Court is Mr. Stevens' motion to vacate prior Court orders imposing obligations on him and finding him in contempt.

When the first motion was made on December 8, 2016, Mr. Stevens was facing incarceration on a finding of contempt. The customary warnings and opportunities to resolve the impending contempt were given. Despite numerous opportunities to move toward compliance with the existing Court orders, Mr. Stevens remained adamant that he would not comply with what he thought were improper or unreasonable directives from the Court. When noncompliance continued and repeated efforts to gain his cooperation failed, Mr. Stevens was found in contempt and imprisoned. That imprisonment began on February 7, 2017 and continued until October 6, 2017.

Mr. Stevens appeared in Court on October 6, 2017. At that time, it appeared to this Court that further confinement was not likely to result in Mr. Stevens' compliance with the existing Court orders and directives. As a result, he was released from imprisonment on that date.

This did not stop the plaintiffs' attempts to move this case forward to a conclusion. Hoping the imprisonment and release from imprisonment might lead to a new opportunity to arrive at a mutually acceptable resolution of the dispute, the parties engaged in discussions and proceedings to bring this matter to a conclusion. Those efforts proved fruitless.

Motion to withdraw as counsel

Now before the Court is Mr. Stevens' counsel's motion to withdraw as his counsel in this matter.

The standard for deciding motions such as this was aptly stated in *Lake v. M.P.C. Trucking* (279 AD2d 813, 814 [3d Dept 2001]).

“It is the general rule that an attorney may terminate the attorney-client relationship at any time for a good and sufficient cause and upon reasonable

notice. Good and sufficient cause has been found to exist when there are irreconcilable differences between the attorney and the client with respect to the proper course to be pursued in the litigation and when the client flatly challenged [counsel's] loyalty and professional integrity... [or where] the record . . . demonstrates that the relationship between plaintiff[s] and [their] attorney ha[s] deteriorated to the point where further representation [is] inappropriate" (*id.* [internal quotation marks and citations omitted]).

The record is clear the relationship between Mr. Stevens (the client) and Mr. Benjamin (the attorney) has deteriorated to a point where Mr. Benjamin feels he can no longer appropriately represent Mr. Stevens. Mr. Stevens does not disagree or object to Mr. Benjamin withdrawing as his counsel, which he confirmed at the return date of this and the other motion currently before the Court.

For those reasons, the Court granted Mr. Benjamin's motion to withdraw as counsel for Mr. Stevens in this action at the April 25, 2018 return date.

Motion to vacate

CPLR 5015 sets forth the following grounds for relief from a judgment or order: excusable default; newly discovered evidence; fraud, misrepresentation or other misconduct of an adverse party; or reversal, modification, or vacatur of a prior judgment or order upon which it is based. In *Matter of McLaughlin* (111 AD3d 1185, 1186 [3d Dept 2013]), the Third Department sets forth the standard for considering a motion to vacate a prior decision and order pursuant to CPLR 5015, noting that such motion must be made within "a reasonable time" and be "addressed to the trial court's sound discretion, subject to reversal only where there has been a clear abuse of that discretion" (*id.* [citations omitted]).

A similar standard applies to any attempt to vacate a stipulation of settlement (*see Robison v. Borelli*, 239 AD2d 656, 657 [3d Dept 1997]). In *Robison*, the Court explained

that:

“Stipulations of settlement are favored by the courts and not lightly cast aside. Strict enforcement not only serves the interest of efficient dispute resolution but also is essential to the management of court calendars and the integrity of the litigation process. Consequently, only where there is cause sufficient to invalidate a contract, such as fraud, collusion, mistake or accident, will a party be relieved from the consequences of a stipulation made during litigation” (*id.* [internal quotation marks and citations omitted]).

In support of the motion, Mr. Stevens submits his affidavit with exhibits, including a transcript of the April 12, 2016 Court proceedings.

Mr. Stevens has made it abundantly clear that he does not agree with the State’s assertions in this matter. He raises numerous issues and events – some dating back decades – which he feels bear on the disposition of this matter. His claim in part seems to be that he was ill-served by his counsel at the time he entered into the stipulation he now challenges.

Examination of the stipulation reveals it was clear and understandable, with ample time and guidance provided to consider and evaluate it. As it was reached during an evidentiary hearing, the parties were aware of the issues and were presenting evidence in support of their respective positions. The stipulation provided for purging the civil contempt finding against Mr. Stevens. Mr. Stevens was sworn in as a witness and asked questions by the Court. He stated he was involved in the discussions concerning the terms of the stipulation. The questions or concerns Mr. Stevens raises in this motion were either addressed or known and could have been addressed at the time. Consequently, they amount to no more than an attempt to keep alive a dispute that was resolved long ago at a time when all involved parties had the information they needed to make an informed decision.

Simply put, none of the factors listed above to vacate a prior Decision and Order or

stipulation is present here.

Mr. Stevens has made it clear that he views this litigation as a battle to which he attributes far more significance and ramifications than reality presents. To him, it may be a battle over freedom and property rights. It is, in reality, a dispute over storm water runoff. This was created when he opted to change the topography of his land, thereby artificially causing water runoff from his property that eroded soil in a neighboring cemetery and resulted in disinterment of graves.

Mr. Stevens seems to feel he is defending his family's rights in this battle. However, his actions which have had the effect of disrupting the repose of the dead would, no doubt, not be viewed by his ancestors as anything to be condoned or proud of. Mr. Stevens would be well advised to resolve this matter.

Other matters

The matter of the criminal contempt remains pending. Mr. Stevens was found in criminal contempt and a period of incarceration was imposed. The State has asserted that this period of incarceration was not served concurrently with his civil contempt incarceration. Consequently, they seek to impose that sentence.

The State has submitted its Affirmation in Support of Commitment dated April 11, 2018. Since that time, Mr. Stevens' counsel has moved for and been granted permission to withdraw as counsel in this matter. Accordingly, Mr. Stevens shall have until July 16, 2018 to provide opposition to the Affirmation or request appointment of counsel to represent him in this matter if he is unable to afford such counsel. Should he request appointment of counsel, he must provide financial information establishing he is unable to afford counsel to represent

him. A form for that purpose will be sent to Mr. Stevens separately from this Decision and Order.

When issues regarding Mr. Stevens' representation and opposition to the State's Affirmation in Support of Commitment are resolved, an opportunity to present oral argument in support of the parties' respective positions will be scheduled.

Conclusion

In light of the foregoing, the motion is denied.

This Decision shall also constitute the Order of the Court pursuant to rule 202.8(g) of the Uniform Rules for the New York State Trial Courts and it is deemed entered as of the date below. To commence the statutory time period for appeals as of right (CPLR 5513[a]), a copy of this Decision and Order, together with notice of entry, must be served upon all parties.

Dated: June 13, 2018
Binghamton, New York



HON. JEFFREY A. TAIT
Supreme Court Justice

Most or all of the documents upon which this Decision and Order is based were received by Chambers in a scanned electronic format from the Cortland County Clerk's Office and the originals remain filed with the Cortland County Clerk. Therefore, except as noted below, now documents have been forwarded to the Cortland County Clerk with this Decision and Order.

Documents forwarded to the Cortland County Clerk with this Decision and Order:

None