

FILED
558
SEP 20 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

PAUL K. WILLIS and PHYLLIS R. WILLIS,)

Plaintiffs,)

Filed September 20, 1979

vs.)

THE HONORABLE B. C. SULLIVAN,)
JUDGE of the SECOND JUDICIAL)
DISTRICT of IOWA,)

96
2-62261

Defendant.)

Certiorari to Cerro Gordo District Court - B. C. Sullivan, Judge.

Plaintiffs challenge by certiorari order overruling motion to set aside contempt citation, contending trial court exceeded its jurisdiction by permanently enjoining Board of Adjustment and that variance permit issued by Board purged plaintiff of contempt. Writ annulled.

Edward R. Boyle, of Boyle, Schuler & Stanton, Clear Lake, for plaintiffs.

B. Michael Dunn, Mason City, for defendant.

Heard by Oxberger, C. J., Donielson, Snell, Carter and Johnson, JJ.

DONIELSON, J.

Plaintiffs challenge by certiorari defendant's order overruling motion to set aside the citation of plaintiff Paul Willis for contempt for failure to comply with an order directing him to remove a house from his property. Plaintiffs assert that the trial court exceeded its jurisdiction by enjoining the Cerro Gordo County Board of Adjustment from holding a hearing on their application for a variance permitting their house to remain on the property or granting such a variance, and that the contempt was purged when the Board granted the variance permit. We hold the trial court's order to be proper and the contempt citation to be within its jurisdiction; the writ of certiorari is annulled.

I. Appellate review of a judgment of the trial court in a certiorari proceeding is governed by rules applicable to appeals in ordinary actions. Iowa R. Civ. P. 318. The trial court's findings of fact have the force and effect of a special jury verdict. Weldon v. Zoning Bd. of City of Des Moines, 250 N.W.2d 396, 401 (Iowa 1977); Trailer City, Inc. v. Bd. of Adjustment of City of Council Bluffs, 218 N.W.2d 645, 648 (Iowa 1974). Such findings, supported by substantial evidence and arrived at by application of proper legal standards, are binding on this court. Vogelaar v. Polk County Zoning Bd. of Adjustment, 188 N.W.2d 860, 863 (Iowa 1971); Iowa. R. App. P. 14(f)(1).

II. Plaintiffs' predecessor in interest in the lot involved here was denied permission by the zoning administrator to move a house onto the lot because the size of the house would violate the minimum yard requirements established by a county zoning ordinance. The Cerro Gordo County Board of Adjustment, however, granted a variance and the house was moved onto the lot. Pursuant to a pre-existing agreement plaintiffs then took title to the land. A neighbor, objecting to the granting of the variance, filed a petition for writ of certiorari with the Cerro Gordo District Court to appeal the Board's action. The trial court, Judge Sullivan presiding, set aside on February 10, 1977, the variance on a motion for summary judgment, finding that plaintiffs' evidence of hardship was insufficient to warrant the Board's action. Plaintiffs then re-applied to the zoning administrator for a variance and after an adverse decision appealed again to the Board. On request of the neighbor, Judge Sullivan entered an order on March 31, 1977, directing Paul Willis to remove the house from the lot and enjoining the Board

from holding a hearing on the new request for a variance or from granting it. The Board challenged this order by petition for writ of certiorari; however, the action was ultimately dismissed pursuant to rule 19, Rules of Appellate Procedure, on December 22, 1977.

On May 26, 1978, Paul Willis was found to be in contempt of court as he had not removed the house from his lot as ordered and was sentenced to six months in jail, but the order granted him additional time to purge himself of contempt by complying with the order. On July 5, 1978, the Board again granted a variance permitting the house to remain on the property. Alleging that this action of the Board purged Paul Willis of contempt, plaintiffs filed a motion to set aside the contempt order. The motion was overruled and the Iowa Supreme Court granted certiorari upon petition by the plaintiffs challenging this ruling.

III. Plaintiffs' initial argument is that the trial court erred in enjoining the Board from holding a hearing on plaintiffs' second request for a variance or from granting such a variance. Defendant concedes this as he makes no issue of whether or not the trial court could permanently enjoin a legislative body from performing its statutory duties. However, the issue of whether or not the trial court's injunction exceeded its jurisdiction is not the issue facing us on appeal. We must decide whether the trial court properly overruled the plaintiffs' motion to set aside the contempt order. The burden falls on the alleged contemnor to purge the contempt. Harkins v. Harkins, 256 Iowa 207, 211, 127 N.W.2d 87, 90 (1964).

The enjoinder of the Board was a separate and severable part of the order issued March 31, 1977, which also ordered Paul Willis to remove the house from the property. The mere fact that an order whose violation is the basis for a contempt proceeding is void in some respects does not preclude punishment for contempt based on violation of valid parts of the order. See Hodous v. Hodous, 76 N.D. 392, 401, 36 N.W.2d 554, 559-60 (1949); Liquor Control Comm'n v. McGillis, 91 Utah 586, 595-96, 65 P.2d 1136, 1140 (1937); Local 333B, United Marine Div. of Int'l Longshoremen's Ass'n v. Commonwealth, 193 Va. 773, 783, 71 S.E.2d 159, 166, cert. denied, 344 U.S. 893, 73 S. Ct. 212, 97 L. Ed. 690 (1952). But see Bowman Dairy Co. v. United States, 341 U.S. 214, 221, 71 S. Ct. 675, 679, 95 L. Ed. 879, 885 (1951) (partially invalid subpoena may be ignored completely). The

validity of the order, issued by defendant on May 26, 1978, citing Paul Willis for contempt does not depend on a determination of the power and jurisdiction of the trial court to enjoin the Board. We therefore do not decide whether the trial court exceeded its jurisdiction or power in permanently enjoining the Board from holding a hearing concerning plaintiffs' application for a variance or granting of a variance as such a decision is unnecessary for our disposition of this case.

Instead, our analysis must focus on whether Paul Willis was properly found in contempt of the order issued March 31, 1977, requiring him to remove his house from the property. Plaintiffs contend the variance obtained from the Board on July 5, 1978, permitting them to leave the house on the lot, purged Paul Willis from the contempt cited in defendant's order of May 26, 1978. The flaw in plaintiffs' argument is their attempt to purge Paul Willis of contempt by a collateral attack on the order of March 31, 1977, rather than appealing it or undoing and reversing the action that constituted the contempt: leaving the house on the lot. It is well established that an order of a court with proper jurisdiction of parties and legal authority must be obeyed however erroneous or improvident. In re Marriage of Welsher, 274 N.W.2d 369, 371-72 (Iowa 1979); Harvey v. Prall, 250 Iowa 1111, 1116, 97 N.W.2d 306, 309 (1959); Critelli v. Tidrick, 244 Iowa 462, 468, 56 N.W.2d 159, 163 (1953). See Heiserman, Procedures Available for Implementation of a Judgment in Iowa, 42 Iowa L. Rev. 265, 280 (1957). If a party desires to attack the order as erroneous, it should be done by direct attack thereon by appeal or motion to set aside, not by collateral attack and then setting the error up as a defense to the contempt charge. The order must be obeyed as long as it is in effect, even if erroneous, and until it is dissolved by the court issuing it or reversed on appeal. See Hargis v. Fleck, 261 Iowa 1031, 1038, 157 N.W.2d 103, 107 (1968) (quoting Annot., 12 A.L.R.2d 1059, 1107 (1950)); Burtch v. Zeuch, 200 Iowa 49, 56, 202 N.W.2d 542, 544 (1925); Gillian v. Edwards, 176 Iowa 449, 451, 156 N.W. 805, 806 (1916). The order issued March 31, 1977, was appealed by the Board, but the appeal was dismissed pursuant to rule 19, Rules of Appellate Procedure, for want of prosecution. There is no evidence that plaintiffs joined in this appeal. Although plaintiffs here moved to set aside the contempt citation, the basis for the motion is the variance granted by the Board on July 5, 1978, which plaintiffs claim undid and reversed the act constituting the contempt. We do not agree with this conclusion.

The trial court possessed the authority to enter its order permanently enjoining Paul Willis from allowing the house to remain on the property, and he was within the jurisdiction of the court. The variance obtained by plaintiffs from the Board on July 5, 1978, did not purge Paul Willis of contempt for it neither provided for compliance with the trial court's order to remove the house nor did it undo or reverse the act of allowing the house to remain on the lot that is the basis for the contempt. Plaintiffs' **de facto** appeal of the defendant's order of March 31, 1977, to the Board was an improper and ineffectual means of appeal, as such, it could not undo or reverse the act at issue. The order stands as an enforceable final judgment commanding personal compliance. Courts are charged with a duty to guard their proceedings against anything that interferes or tends to interfere with due and orderly administration of justice. Critelli v. Tidrick, 244 Iowa 462, 472, 56 N.W.2d 159, 165 (1953). The failure of Paul Willis to remove the house in the face of a specific court order directing him to do so warranted a citation for contempt. Accordingly, the trial court properly overruled plaintiffs' motion to set aside the order finding Paul Willis in contempt of the order issued March 31, 1977.

We order the writ of certiorari annulled.

WRIT ANNULLED.