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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1046

Filed: 21 July 2020

Iredell County, No. 16-CVS-814

ROBERT W. CAHN, DAWN M. CAHN, BRETT A. WHITE, AMY L. WHITE, AND  
LEONARD SULLIVAN, JR., Plaintiffs,

v.

SHAVENDER'S BLUFF COMMUNITY ASSOCIATION, INC., CHRISTOPHER  
Sukeena, AND RACHEL SUKEENA, Defendants.

Appeal by Plaintiffs from order entered 21 February 2019 by Judge Julia Lynn  
Gullett in Iredell County Superior Court. Heard in the Court of Appeals 15 April  
2020.

*Brett A. White and Amy L. White, Plaintiffs-Appellants, pro se.*

*Copeland Richards, PLLC, by Drew A. Richards, for Defendants-Appellees.*

DILLON, Judge.

Plaintiffs Brett A. White and Amy L. White appeal from an order denying their  
Motion for Contempt.<sup>1</sup>

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<sup>1</sup> The Plaintiffs identify the order being appealed by the correct date of entry and judge but by the wrong title. However, we conclude that the notice is adequate as it can be “fairly inferred” that Plaintiffs intended to appeal from the order denying their contempt motion, and there is no indication

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I. Background

In August 2014, Defendants Christopher Sukeena and Rachel Sukeena (“the Sukeenas”) purchased two lots in the Shavender’s Bluff neighborhood of Mooresville (the “Property”). The Property was burdened by a twenty-foot wide easement (the “Easement”) to provide lake access to neighboring landowners and guests. The Sukeenas began to build a home on the Property, a process that resulted in fill dirt being placed onto the Easement, as much as ten feet in some places.

In 2016, Plaintiffs sued the Sukeenas for blocking the Easement with fill dirt. The parties reached a settlement whereby the Sukeenas agreed to remove the dirt blocking the Easement. The Sukeenas removed some fill dirt from the Easement.

In August 2018, Plaintiffs filed a motion to compel the Sukeenas to remove more fill dirt so that the Easement would return to its former state. The next month, the trial court granted the motion, directing the Sukeenas to remove the encroachment they created on the Easement within thirty (30) days. Sometime thereafter, the Sukeenas notified the court and opposing counsel that they had complied with the order.

Believing that the Sukeenas had not in fact complied with the order, Plaintiffs filed a Verified Motion for Contempt. The court denied the motion, explaining:

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that the Sukeenas have been misled. *See State ex. rel. Utilities Comm’n v. MCI*, 132 N.C. App. 625, 631, 514 S.E.2d 276, 281 (1999) (holding that notice of appeal is adequate if it misidentifies the order being appealed, but where it can be “fairly inferred” which order was intended and appellees have not been misled).

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The Court does remember the last court date. And I do remember holding up this picture and saying this is what the Court wants it to look like. The whole reason for that was because the Court had understood the lawsuit was based on what happened on July 25th when truckloads of dirt were allegedly dumped on the property. The Court used that picture as an example to show what the Court thought was the answer.

And evidently, [the Sukeenas] understood what I was talking about. The Court does believe that the Sukeenas have followed the Court's orders. I appreciate the fact that they tried to do so immediately. I understand that there's a misunderstanding as to what the Court intended and for that, I am sorry. That was never the Court's intent, but I do believe that the Sukeenas have complied with what the court ordered them to do.

The trial court reduced its oral decision to a written order months later. Plaintiffs appealed from the denial of their motion for contempt.

## II. Analysis

Plaintiffs' evidence showed that the Sukeenas had essentially returned the Easement to its former state, which contained many uneven sections. This evidence included photographs of the Easement area before the Sukeenas' deposit of fill dirt, the Easement area on 25 July 2016 after truckloads of dirt were deposited, and the Easement area after the Sukeenas completed grading work as ordered by the trial court. The Sukeenas offered evidence that included an invoice from the grading contractor and comparison plats from a licensed professional surveyor comparing the Easement before the Sukeenas began their construction and after they had the fill dirt removed. However, Plaintiffs still argued that the Sukeenas had not returned

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the Easement to its former state by not leveling many parts of it. The trial court resolved this conflict by determining that the Sukeenas complied with its prior order. We conclude that the trial court's order is supported by competent evidence and that the court did not err or otherwise abuse its discretion in denying Plaintiffs' contempt motion.

AFFIRMED.

Judges DIETZ and INMAN concur.

Report per Rule 30(e).