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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1193-21**

TAMARA THOMAS,

Plaintiff-Respondent,

v.

Jael BROWN,

Defendant-Appellant.

Submitted October 20, 2022 – Decided November 2, 2022

Before Judges DeAlmeida and Mitterhoff.

On appeal from the Superior Court of New Jersey,
Chancery Division, Salem County, Docket No.
C-000007-21.

Jael Watts, appellant pro se.

Hoffman DiMuzio, attorneys for respondent (Leonard
L. Grasso, Jr. and Michael C. Donio, on the brief).

PER CURIAM

In this real property dispute, defendant appeals from a September 14, 2021 order that rendered a lot line determination for the subject property; found defendant committed trespass on plaintiff's property; permanently ejected defendant from the subject property; found defendant in contempt of a June 3, 2021 order; and permitted plaintiff to file a motion requesting damages suffered as a result of defendant's contempt. We affirm.

We discern the following facts from the record. Plaintiff, Tamara Thomas, is a one-third owner of the subject property,¹ identified as Block 70, Lot 5 on the Alloway Township Tax Map. Defendant, Jael Watts f/k/a Jael Brown, owns the lot adjacent to the subject property, identified as Block 70, Lot 4 on the Alloway Township Tax Map. A temporary fence separated the two properties of the subdivision and, because she did not use the subject property as her residence,² plaintiff kept a lock on the gate leading to the driveway.

Plaintiff testified that she would visit the property "quite a bit" and, on one occasion, she noticed that the lock she placed on the subject property's gate

¹ Plaintiff inherited the land in or around 1981, along with her brother and her cousin, when her grandmother died; however, plaintiff has always been individually responsible for the lot's property taxes. Both plaintiff's brother and her cousin have since died.

² The home formerly affixed to the land was demolished following a house fire. The home's concrete fireplace is the only remaining fixture currently on the land.

was no longer there. After replacing the lock, plaintiff once again observed the lock missing on a subsequent trip.

On yet another trip to the subject property, plaintiff "saw [that] a car had gone through [her] property." As she looked around, defendant came outside and approached plaintiff. Defendant told plaintiff that the subject property was "her land," leading to a dispute between the parties over ownership.

Due to plaintiff's belief that defendant was encroaching on her property, plaintiff retained a surveyor to determine the precise location of the subject property's boundary lines. The first time the surveyors came out, they were unable to complete the survey because the defendant kicked them off the land after telling them it was her property. Defendant also put her own lock on the gate to prevent the surveyor from accessing the subject property in the future. Plaintiff further observed building materials on the subject property. Plaintiff called the State Troopers who informed her that they would not intervene until a court order was issued.

On April 9, 2021, plaintiff filed an ejectment action and an order to show cause against defendant, seeking defendant's ejectment; a claim for trespass; a lot line determination; and a request for interim restraints. On June 3, 2021, the court entered an order granting plaintiff the following relief:

[1] Fralinger Engineering, P.A. is appointed to finish the survey they began to make a determination as to the lot line between Block 70, Lot 5 and Block 70, Lot 4.

[2] Defendant shall permit Fralinger Engineering, P.A. onto the property to complete the survey.

[3] Defendant shall remove all locks on fences, allowing Fralinger Engineering, P.A. full access to the property.

[4] Defendant shall be permitted to obtain her own survey, at her own cost, of the Subject Property.

[5] Neither party shall cause any interference with, or prohibit, any survey being conducted on the properties as per this Order.

[6] No construction or building on this property is permitted until a subsequent Order is granted by this Court.

Thereafter, defendant, in violation of the June 3rd order, commissioned tree and dirt removal on the subject property, cutting down all the trees on plaintiff's property and essentially clearing the land. When plaintiff visited the subject property, defendant's surveyor was there. Plaintiff further noticed that the property corners installed by plaintiff's surveyor had been removed.

On July 9, 2021, plaintiff filed a motion to enforce litigant's rights, and on July 13, 2021, the court entered an order granting plaintiff's motion but holding attorney's fees and sanctions in abeyance. The order found that defendant may

have violated the prior June 3rd order and scheduled a hearing for August 31, 2021 to determine the issue; the hearing was also to determine the lot line issue. In addition, the order specified that further violations may result in defendant being held in contempt.

On August 3, 2021, defendant filed a motion to recuse the judge who entered the June 3rd order and for a jury trial. Both motions were denied.

At the August 31, 2021 hearing, both parties and the plaintiff's surveyor testified.³ At the close of evidence, the court rendered its ruling in an oral opinion.

First, the court found in favor of the plaintiff on the lot line issue, finding that the survey completed by plaintiff's surveyor set the appropriate lot lines for Lot 4 and Lot 5. The court made this determination after hearing the surveyor's "extremely credible" testimony and finding him "very well qualified." The court found it significant that, in preparing his survey, the surveyor reviewed the original 1952 development plan for the subdivision and a 1958 survey commissioned by the subject property's prior owner. In addition, the surveyor identified defendant's property back to a 1957 survey, which the township

³ Defendant commissioned her own survey and attempted to testify as to the contents of a letter allegedly prepared by her surveyor; however, the court found that her testimony as to the letter's contents was inadmissible hearsay.

owned at the time. The surveyor then tracked the purchase of that property to defendant by way of a recorded deed in December of 2008.

Second, the court found defendant committed trespass by commissioning the destruction of the subject property with "full knowledge" that she was not the owner. The court reached this determination after hearing defendant's "incredible and unbelievable" testimony, stating that "this wasn't even a close call." Ultimately, the court directed plaintiff to file a motion to address plaintiff's claim for monetary damages as a result of defendant's destruction.

On September 14, 2021, the court entered an order memorializing its August 31st ruling. This appeal followed.

On appeal, defendant raises the following arguments:

I. THE CHANCERY COURT'S AUGUST 31ST HEARING DEPRIVED THE DEFENDANT OF HER CONSTITUTIONALLY PROTECTED RIGHT TO A JURY'S FACTUAL DETERMINATION CONCERNING LAND POSSESSION CLAIMS AND DEFENSES. (Not Raised Below).

II. THE CHANCERY COURT'S AUGUST 31ST HEARING DEPRIVED THE DEFENDANT OF HER CONSTITUTIONALLY PROTECTED RIGHT TO A JURY'S FACTUAL DETERMINATION CONCERNING THE ISSUE OF CONTEMPT. (Not Raised Below).

III. THE CHANCERY COURT'S AUGUST 31ST HEARING DEPRIVED THE DEFENDANT OF HER

RIGHT TO AN OBJECTIVE HEARING. (Not Raised Below).

We find defendant's arguments are without merit. Under Article 1, Paragraph 9 of the New Jersey Constitution, the right to a jury trial "remain[s] inviolate" where it previously existed under the common law. Apollo v. Kim Anh Pham, 192 N.J. Super 427, 430 (App. Div. 1983). However, the constitutional right to a jury trial is subject to a court's equitable jurisdiction. Fleischer v. James Drug Stores, Inc., 1 N.J. 138, 150-51 (1948).

It is the settled rule that where a court of equity has assumed jurisdiction over a cause of action, it "may retain the cause for all purposes, and proceed to a final determination of the entire controversy and, except where the jurisdiction of equity depends on the prior establishment of a right at law, settle purely legal rights and grant legal remedies." Id. at 150. An equitable cause of action "draws the cause completely within the cognizance of equity" to avoid a multiplicity of suits and that "jurisdiction of the whole controversy may be assumed for the doing of complete justice in the one suit." Ibid. Equitable jurisdiction is specifically tested by the facts that exist at the "inception of the suit" and "will not be defeated by subsequent events which render equitable relief impracticable or unnecessary or unsuitable." Mantell v. Int'l Plastic Harmonica Corp., 141 N.J. Eq. 379, 393 (E. & A. 1947).

Additionally, "[e]quity has a general jurisdiction to adjudicate ancillary and incidental matters. This jurisdiction is co-extensive with the rights of the parties in the subject-matter of the suit." Fleischer, 1 N.J. at 150. To make this determination, a court must evaluate whether the legal issues are ancillary or incidental to the equitable claim in relation to the facts existing at the inception of the lawsuit. Boardwalk Properties, Inc. v. BPHC Acquisition, Inc., 253 N.J. Super. 515, 527 (App. Div. 1991). Stated differently, a chancery court possesses the "power to adjudicate legal matters without a jury if the issues are 'germane to or grow out of the subject-matter of the equitable jurisdiction.'" Id. at 538 (quoting Fleischer, 1 N.J. at 150).

Under Rule 4:3-1(a)(4)(F), actions for ejectment, as here, may be brought in the chancery division: "If ownership or monetary damages pertaining to an ejectment is the only relief sought, the matter shall be filed and heard in the Law Division, Civil Part, the Law Division, Special Civil Part, or the Chancery Division, General Equity." R. 4:3-1(a)(1) further provides that the chancery division has jurisdiction over matters in which the primary right or relief sought is equitable in nature, "even though legal relief is demanded in addition or alternative to equitable relief."

Based on these principles, we reject defendant's claim that the court erred in denying her a jury trial on the ejectment complaint. Plaintiff's complaint primarily sought relief which was cognizable in the chancery division and any ancillary legal claims grew out of plaintiff's equitable claims. In fact, plaintiff's entitlement to monetary damages arose directly from defendant's violation of an order of the chancery court. Therefore, we find that the chancery court did not violate defendant's constitutional right to a trial by jury concerning the ejectment remedy or her adverse possession defense.

We also reject defendant's argument that the court erred in denying her application for recusal and/or a jury trial prior to entering an order for contempt. Whether a litigant gets a jury trial under either Rule 1:10-2 (Summary Contempt Proceedings on Orders to Show Cause or Order for Arrest) or Rule 1:10-3 (Relief to Litigant) is within the court's discretion. See R. 1:10-2(c) ("Unless there is a right to a trial by jury, the court in its discretion may try the matter without a jury."). We find that the chancery court did not abuse its discretion in denying defendant's request for a jury trial.

Additionally, after defendant's violation of the chancery court's June 3, 2021 order, plaintiff filed a motion to enforce litigant's rights pursuant to Rule 1:10-3. That rule explicitly states that "[a] judge shall not be disqualified

because he or she signed the order sought to be enforced[.]" R. 1:10-3.
Therefore, we find that the chancery court did not deprive defendant of an
objective hearing by denying defendant's motion for recusal.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION