

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

JAMES M. KULBACK	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
RONALD J. KULBACK	:	
	:	
Appellant	:	No. 250 WDA 2022

Appeal from the Order Entered February 7, 2022
In the Court of Common Pleas of Cambria County Civil Division at No(s):
2019-2904

BEFORE: STABILE, J., SULLIVAN, J., and PELLEGRINI, J.*

MEMORANDUM BY SULLIVAN, J.: **FILED: November 22, 2023**

Ronald J. Kulback ("Ronald") appeals from the order granting the petition filed by James M. Kulback ("James") to enforce prior court orders, finding Ronald in contempt, imposing sanctions, and resolving the remaining issues in James's underlying partition action in James's favor. James has filed a petition to dismiss the appeal.¹ We affirm in part, vacate the order, and

* Retired Senior Judge assigned to the Superior Court.

¹ James, in his application to dismiss the appeal, asserts that Ronald violated numerous Rules of Appellate Procedure concerning the designation of the contents, service, and form of the reproduced record, as well as the contents of his brief. **See** James's Application to Dismiss, 11/8/22, at 1-5 (citing Pa.R.A.P. 2101, 2116, 2152, 2154, 2171-2175, 2186, 2188). James asserts that he prepared a more complete reproduced record and seeks reimbursements of those costs. **See id.** at 5 (citing Pa.R.A.P. 2155). We conclude that the asserted violations of the Rules of Appellate procedure have not hindered this Court's review. Accordingly, we deny Ronald's application to dismiss the appeal.

remand for further proceedings consistent with this decision, and deny James's application.

Ronald and James were brothers.² In 2001, Ronald's and James's parents granted them each a one-half interest in two parcels, known as 255 and 260 Tower Road (collectively, "the property"), as joint tenants. Ronald and James lived together in a residence on 260 Tower Road, but their relationship deteriorated.³ In 2019, James filed a complaint to partition the property, although he and Ronald continued to live together until late 2020.⁴

In January 2020, Ronald and James reached a mediated agreement for the partition of the property. A January 13, 2020 court order ("the January 13, 2020 order") memorialized the terms of the agreement as follows:

1. Ronald Kulback shall receive the residence located at 255 Tower Road and all of the land north of Tower Road, with James Kulback having ***a lifetime right to farm the tillable land.***

² James died shortly after Ronald took this appeal. James's counsel has filed a notice of death and motion of substitution of James's estate as a party in the trial court.

³ Ultimately, the brothers only communicated through notes or their attorneys.

⁴ We note Pa.R.Civ.P. 1551-1574 governs a partition action. Those rules divide a partition action into "two, distinct, chronological parts" that each produce "its own, distinct, appealable order." ***McGoldrick v. Murphy***, 228 A.3d 272, 277 (Pa. Super. 2020). The first part partitions the parties' legal interests into "severalty." ***Id.*** (internal citation omitted). In the second part the trial court may divide "the partitioned property among the parties." ***Id.*** The second part may also involve a trial court's determination and order finalizing the partition, as well as the calculation of costs, credits, charges, and owelty. ***See*** Pa.R.Civ.P. 1558, 1569-1570.

2. Ronald Kulback shall receive the residence located at 260 Tower Road and the land south of the residence to a line which would be drawn from the west to the east, consistent with the property line of his [other] brother, Robert Kulback's[,], land, with James Kulback having **a lifetime right to farm the tillable land** up to the fence line.
3. James Kulback shall receive the balance of the land on the southerly side of Tower Road, not otherwise given to Ronald Kulback; and Ronald shall have an easement for the water and sewage drainage on the barn side of the property, which will become under the ownership of James Kulback.
4. **After the appraiser and surveyor have performed their duties as required by this settlement, there shall be an exchange of moneys to fairly compensate the one brother receiving a lesser value of either land or property so that each party receives an equitable 50/50 value.**

* * * *

6. So that this settlement is clear, James Kulback shall have a 25-foot easement along the westerly side of the land [("the twenty-five-foot easement")], which is being partitioned to Ronald Kulback as per Paragraph No. 2 for his access to his acreage on the southerly side of Tower Road.
7. The parties shall split the cost of all fees to have the property surveyed, reevaluated by the appraiser, and any costs involved to Croyle Township for subdivision approval and recording costs of the deeds to Cambria County.
8. Lastly, each party agrees to fully cooperate with each other and their attorneys and those experts necessary for the accomplishment of this settlement.

Order, 1/13/20, at unnumbered 1-2 (emphases added).

Despite this agreement, Ronald and James continued to have difficulties resolving the underlying partition action, and the trial court held a series of status conferences and hearings. In April 2020, the court entered an order

finding Ronald in contempt of the January 13, 2020 order and directing him to pay his share of the costs of a survey. **See** Order, 4/29/20, at unnumbered 2-3. In July 2020, John E. Cox surveyed the proposed partition of the property (“the Cox survey”), and several days later, the court entered an order locating an eastern boundary of James’s partitioned lands based on the Cox survey. **See** Order, 7/7/20, at unnumbered 1. In January 2021, following another hearing, the court entered an order clarifying that: (1) James’s lifetime right to farm the tillable land on Ronald’s partitioned lands ran to a “mow line” shown on the Cox survey; and (2) the twenty-five-foot easement belonged to James, his heirs, personal representatives, successors, and assigns. Order, 1/6/21, at unnumbered 1-2. By the end of January 2021, the parties recorded a deed partitioning the property into Ronald’s and James’s partitioned lands. D. Roger Hostetler, who previously appraised the property in 2017, updated his appraisals of the partitioned lands in December 2020 and February 2021 (“the Hostetler reappraisal”).

In March 2021, Ronald and family members opposing James stopped James’s nephews from removing a tree that impaired James’s lines of sight from the twenty-five-foot easement to a roadway.⁵ Ronald also removed wooden stakes that marked the boundaries of the twenty-five-foot easement.

⁵ Ronald’s and James’s family included their sisters, Patricia Petak, Linda Arnold, and Karen Wess, and at least one other brother, Robert Kulback, who became involved Ronald’s and James’s dispute. Generally, Robert, Patricia, and Patricia’s family supported James. Linda and Karen, and their respective families, opposed James’s uses of the property.

In April 2021, family members opposing James began placing firewood, cars, and other items on portions of Ronald's partitioned land over which James had a lifetime right to farm. When James's nephews attempted to clear the obstructions, the family members moved the obstructions back into the area James wanted to farm.

James's counsel emailed a demand that Ronald remove the items that impeded James's lifetime right to farm on Ronald's partitioned land, but Ronald did not respond or clear the obstructions. James's counsel also emailed a proposed accounting that Ronald pay James \$54,941.86 per the January 13, 2020 order.

In May 2021, James filed a "Petition to Enforce Orders of Court for Sanctions and Contempt" ("the contempt petition"). Therein, James alleged Ronald, and other family members, interfered with his attempt to remove the tree blocking the sightlines from the twenty-five-foot easement and impeded his right to farm tillable land by placing firewood, cars, and other items on Ronald's partitioned land. **See** Contempt Petition, 5/17/21, at 3-4. James asserted Ronald failed to respond to his proposed accounting. **See id.** at 7. James further requested Ronald pay his attorney's fees from March until May 2021. **See id.** at 11.

The trial court convened hearings at which the parties agreed to resolve the contempt petition and all outstanding issues in the underlying partition

action.⁶ On February 7, 2022, the court entered an order (“the February 7, 2022 order”) requiring Ronald to: (1) pay a fine of \$5,000; (2) remove, and in the future not place, items interfering with James’s right to farm; and (3) ensure family members did not impede James’s right to farm. **See** Order, 2/7/22, at unnumbered 2-3. The court’s order also permitted James to remove trees and shrubs encroaching on, or located within, the twenty-five-foot easement and directed Ronald pay for a surveyor to reset wooden stakes marking the twenty-five-foot easement. **See id.** at unnumbered 3. The court further required Ronald to pay James’s demand for \$54,941.86 to achieve an equitable 50/50 split. **See id.** Lastly, the court for Ronald to pay James’s attorney’s fees and directed James’s attorney to submit an itemized statement of his fees. **See id.**⁷ Ronald did not file post-trial motions, but timely appealed from the February 7, 2022 order. Ronald complied with the trial court’s orders for the submission of a Pa.R.A.P. 1925(b) statement. The court adopted its February 7, 2022 order as dispositive of the issues raised by Ronald.

⁶ At the hearings, James presented testimony from himself, his brother-in-law Richard Petak and his nephews Adam and Allan Petak. The trial court admitted James’s counsel’s proposed accounting as Exhibit 20 over Ronald’s objection. **See** N.T., 9/1/21, at 39-40. Ronald presented testimony from himself, his sisters Karen Wess and Linda Arnold, and the appraiser D. Roger Hostetler.

⁷ James’s attorney subsequently filed an itemized billing statement for \$10,008.35 for services rendered to enforce the prior orders of the court. On March 2, 2022, the trial court entered an order for Ronald to pay that amount. Ronald has not separately appealed the March 2, 2022 order determining the amount of James’s attorney’s fees.

Ronald raises the following issues, which we have reordered for ease of disposition:

- I. Whether the trial court erred in finding [Ronald] in contempt of the January 13, 2020 order of court.
- II. Whether the trial court erred in placing a specific duty on [Ronald] to prevent third parties from violating the order.
- III. Whether the trial court erred in requiring [Ronald] to pay a surveyor to place wooden stakes on the right-of-way.
- IV. Whether the trial court erred in determining [Ronald] owed . . . [James] \$54,941.86 to achieve the stated equitable 50/50 division.
- V. Whether the trial court erred in permitting inadmissible evidence into the record by [James] over the objection during the hearing.
- VI. Whether the trial court erred in preventing [Ronald] from presenting admissible and relevant testimony and evidence during the hearing.
- VII. Whether the trial court, erred in permitting [James's] counsel to submit evidence related to his fees and costs after the conclusion of the hearing without review or comment from [Ronald].

Ronald's Brief at 12 (some capitalization omitted).

Before addressing Ronald's arguments, we must consider whether the February 7, 2022 order is an appealable final order that disposed of all claims against all parties, **see** Pa.R.A.P. 341, and whether Ronald preserved any issues for appeal, **see** Pa.R.Civ.P. 227.1. Here, the parties' decision to intermingle several separate actions into a single set of hearings and the trial court's issuance of a single order resolving each action complicates our review of this threshold issue. **Cf. *Lachat v. Hinchcliffe***, 769 A.2d 481, 491 (Pa.

Super. 2001) (concluding that the trial court improperly used a contempt hearing as a forum to resolve “all the myriad disputes” between the parties concerning the boundaries of an easement).

Initially, in its February 7, 2022 order, the trial court found Ronald in contempt of its prior orders, imposed sanctions, including a fine, and directed Ronald to take actions to protect James’s rights on Ronald’s partitioned land. We conclude these aspects of the February 7, 2022 order were final, and Ronald’s appeal was timely.⁸ Moreover, we conclude Ronald was not required to file post-trial motions from those aspects of the February 7, 2022 order granting James’s petition for contempt. **See** Note to Pa.R.Civ.P. 227.1(c)(2) (stating that “[a] motion for post-trial relief may not be filed to matters

⁸ We note that the February 7, 2022 order also granted James’s request that Ronald pay his attorney’s fees, but the court did not award a specific amount of fees until March 2, 2022. This procedural wrinkle calls into question whether the February 7, 2022 order disposed of all claims against all parties, and whether Ronald should have appealed from the March 2, 2022 order calculating James’s attorney’s fees. **See *Stahl v. Redcay***, 897 A.2d 478, 487 (Pa. Super. 2006) (noting that for a contempt order to be final, the order must impose sanctions and require no further order for the sanctions to take effect). While we acknowledge that Ronald’s appeal from the February 7, 2022, order was premature, we decline to quash this appeal given the mingling of the separate sanctions and actions and the largely ministerial nature of the March 2, 2022 order. **See** Pa.R.A.P. 905(a)(5) (noting that “[a] notice of appeal filed after the announcement of a determination but before the entry of an appealable order shall be treated as filed after such entry and on the day thereof”); **cf. *Turney Media Fuel, Inc. v. Toll Bros., Inc.***, 725 A.2d 836, 838 n.1 (Pa. Super. 1999).

governed exclusively by the rules of petition practice”) (subsequently reorganized as a comment effective Oct. 1., 2023).

Next, the February 7, 2022 order resolved issues to finalize the underlying partition action and required Ronald pay \$54,941.86. Typically, an order and decision finalizing a partition action would require the entry of a judgment and the filing of post-trial motions. **See Funk v. Empfield**, 281 A.3d 315, 319 (Pa. Super. 2022). Here, the parties and the trial court, as discussed further below, proceeded as if resolving the matter as a question of contempt, or the enforcement, of the January 13, 2020 order. Such orders are appealable when entered and do not require the filing of post-trial motions. **See Bennett v. Juzelenos**, 791 A.2d 403, 406 (Pa. Super. 2002) (noting that post-trial motions may not be filed from an order enforcing a settlement agreement); **Overnite Transp. Co. v. Teamster Local 107**, 779 A.2d 533, 535 (Pa. Super. 2001) (noting that post-trial motions cannot be filed from a contempt order, but declining to quash the appeal where the parties and the trial court mistakenly believed post-trial motions from a contempt order were permissible), *rev’d sub nom. Overnite Transp. Co. v. Local Union No. 107*, 786 A.2d 173 (Pa. 2001) (concluding that this Court erred in declining to quash the appeal). Therefore, Ronald’s failure to file post-trial motions to the finalization of the underlying partition action does not result in waiver. For these reasons, we decline to quash this appeal, and we will address the issues raised.

Ronald's first three issues challenge the trial court's finding he was in contempt.⁹ The following principles govern our review of a contempt order:

[A]n appellate court has the authority to determine whether the findings of the trial court support its legal conclusions, but may only interfere with those conclusions if they are unreasonable in light of the trial court's factual findings. This Court will not reverse or modify a final decree unless there has been an error of law or an abuse of discretion, or if the findings are not supported by the record, or there has been a capricious disbelief of the credible evidence. Furthermore [e]ach court is the exclusive judge of contempt against its process, and on appeal its actions will be reversed only when a plain abuse of discretion occurs.

Sutch v. Roxborough Mem'l Hosp., 142 A.3d 38, 67 (Pa. Super. 2016) (internal citation and emphasis omitted).

In his first issue, Ronald argues the trial court erred in finding him in contempt of the January 13, 2020 order's term that James had a lifetime right to farm tillable land on Ronald's partitioned land.

In conducting our review, this Court "must first examine the order itself and must then ascertain whether the movants sustained their burden of proving that the non-movants failed to comply with the court's order."

McNelis v. Lear, 889 A.2d 617, 619 (Pa. Super. 2005) (*en banc*) (internal

⁹ We note the difference between civil and criminal contempt impacts the contemnor's procedural rights. ***See Lachat***, 769 A.2d at 487. Because Ronald argues his issues purely as a matter of civil contempt, we need not delve into the distinctions between civil and criminal contempt. ***But see Philadelphia Marine Trade Ass'n v. Int'l Longshoremen's Ass'n, Local Union No. 1291***, 140 A.2d 814, 820-21 (Pa. 1958) (noting that the procedures for the specific types of contempt should not be comingled). Furthermore, because Ronald has not challenged the trial court's decision to impose a \$5,000 fine payable to the court's prothonotary, we will not address that aspect of the order.

citation omitted). “The order forming the basis for the contempt finding must be definite, clear, and specific, leaving no doubt or uncertainty regarding the prohibited conduct.” **Id.** (internal citation omitted). Further, to establish civil contempt, the petitioning party must prove by a preponderance of the evidence that: (1) the contemnor had notice of the specific order or decree which he is alleged to have disobeyed; (2) the act constituting the contemnor’s violation was volitional; and (3) the contemnor acted with wrongful intent. **See Stahl**, 897 A.2d at 489.

This Court has stated that holding an individual in contempt for the actions of third parties “would appear inappropriate and, therefore, unsupportable unless the [contemnor] consciously directed the third party to act as he did and possessed such authority over the third party that [the directing individual] could compel compliance with the directive.” **Sutch**, 142 A.3d at 68 (internal citation, brackets, and quotation omitted). Further, even when the contemnor directed a third party to act, the contemnor must have the requisite wrongful intent. **See id.**

Ronald asserts there was no clear understanding of the terms of the January 13, 2020 order, and the parties continuously required the trial court’s intervention to resolve the outstanding disputes. Specifically, Ronald claims the terms of James’s lifetime right to farm tillable land on Ronald’s partitioned land were insufficiently clear to sustain a finding of contempt. Ronald asserts that it was reasonable to believe that “tillable land” meant land historically farmed and did not include areas the family previously used for gardens,

memorials, and other leisure areas. Ronald further contends he did not impede James's access to the tillable land and, citing **Sutch**, asserts he cannot be held in contempt for the actions of the other family members who moved firewood, cars, and other items onto his partitioned lands.

In its February 7, 2022 order, the trial court explained that it was enforcing the January 13, 2020 order granting James a lifetime right to farm "tillable land," a term chosen by the parties and their attorneys when reaching the agreement to resolve the partition action. **See** Order, 2/7/22, at unnumbered 1-2. The court found Ronald had notice of the January 13, 2020 order and knew that his conduct or omissions was improper. **See id.** at unnumbered 2. The court thus directed Ronald, in part, "to remove and in the future not place any items . . . which would interfere with James M. Kulback's right to farm" **See id.**

Following our review, we discern no abuse of discretion or error of law in the trial court's conclusion. The term "tillable land" is definite, clear, and specific. "Tillable" simply means land "capable of being tilled: arable." Merriam-Webster.com Dictionary.¹⁰ There was no dispute that family members moved logs, cars, and other items onto Ronald's partitioned land. James and his nephews testified that these obstacles sat on tillable portions of Ronald's partitioned lands, remained there, and caused him to miss a season of planting corn. **See** N.T., 9/1/21, at 28-39. Ronald's attempt to

¹⁰ **See** <https://www.merriam-webster.com/dictionary/tillable>.

characterize his role as an innocent bystander to the acts of his family members is unavailing. Ronald was the deeded owner of the partitioned land over which James had a lifetime right to farm. He thus had an affirmative duty to protect James's clear rights set forth in the January 13, 2020 order, including preventing others from interfering with James's right to farm tillable land, but more specifically removing, or cooperating with James to remove, the impediments others placed on **his** land. There was evidence that Ronald had notice that other family members had placed impediments on his property, **see** N.T., 12/14/21, at 34-44, 60-61; James demanded their removal; but Ronald took no action to remove the impediments until he unilaterally decided to remove the impediments from his property, **see id.** Based on this record, we discern no error in the trial court's decision to hold Ronald in contempt for failing to prevent other family members from interfering with James's right to farm and failing to remove those items in a timely manner before the finalization of the partition.¹¹

¹¹ Ronald's reliance on **Sutch** is unavailing. In **Sutch**, this Court concluded the trial court erred in holding an attorney in contempt for failing to warn a witness not to discuss a decedent's smoking habit at trial. **See Sutch**, 142 A.3d at 74-75. The **Sutch** Court determined: (1) the prior order precluding such testimony was insufficiently clear upon the attorney's duty to warn the witness not to discuss smoking; (2) the trial court improperly shifted the burden of proof to the attorney; and (3) the record did not support a finding the attorney intentionally and willfully violated the terms of the prior order. **See id.** Here, by contrast, James's lifetime right to farm tillable land on Ronald's partitioned land was sufficiently clear, as was Ronald's duty to protect that right. Moreover, unlike **Sutch**, where the attorney lacked adequate control over a witness, Ronald, as the owner of the partitioned lands, *(Footnote Continued Next Page)*

In his second issue, Ronald claims the trial court erred in requiring him to prevent other family members from interfering with James's right to farm in the future. We conclude that this issue is moot. ***See Com., Dep't of Env't. Prot. v. Cromwell Twp., Huntingdon Cnty.***, 32 A.3d 639, 651-52 (Pa. 2011) (discussing the mootness doctrine and the exceptions thereto). Here, James died shortly after the entry of the February 7, 2022 order, and his lifetime right to farm on Ronald's partitioned lands has ended. Therefore, there is no actual controversy, and any decision regarding this portion of the February 7, 2022 would have no legal effect. ***See id.*** at 651 (noting that "[a]n issue can become moot during the pendency of an appeal due to an intervening change in the facts of the case . . ."). Moreover, no exception to the mootness doctrine applies. ***See id.*** at 652 (noting exceptions to the mootness doctrine exist "where the conduct complained of is capable of repetition yet likely to evade review, where the case involves issues important to the public interest or where a party will suffer some detriment without the court's decision" (internal citation omitted)). Accordingly, we will not address Ronald's second issue.

In his third issue, Ronald argues the trial court erred in requiring him to pay for a surveyor to replace wooden stakes marking the twenty-five-foot easement. By way of background to this issue, the twenty-five-foot easement was in dispute throughout the history of this case. Ronald consistently argued

indisputably had control over his own property and could have protected James's rights by removing the impediments.

the twenty-five-foot easement was unnecessary, exceeded what was necessary to move farming equipment to James's partitioned land, and should exist for the sole benefit of James during James's lifetime. **See** N.T., 12/21/20, at 46-47. The trial court disagreed and previously issued an order stating that the twenty-five-foot easement was for the benefit of James, his heirs, personal representatives, successors, and assigns to access James's property. **See** Order, 1/6/21. After the parties recorded a deed memorializing those terms, a further dispute among the family occurred when James attempted to have a tree blocking the sightlines along the easement removed, and at one point, family members called the police. **See** N.T., 9/1/21, at 26-27, 41-42; N.T., 10/27/21, at 12-14; N.T., 10/28/21, at 12-16, 40-41, 50. During his testimony, Ronald admitted that he removed two wooden stakes set by the surveyor along the easement. **See** N.T., 10/28/21, at 177.

In the February 7, 2022 order finding Ronald in contempt, the trial court resolved the continuing dispute by authorizing James to remove trees and shrubs encroaching on or located within the twenty-five-foot easement and directing Ronald not to harass James and others from accessing the easement. The trial court further directed Ronald to pay for a surveyor to reset the wooden stakes he removed. **See** Order, 2/7/22, at unnumbered 3.

When reviewing a sanction for contempt, we are mindful that "[t]he power to punish for contempt, including the power to inflict summary punishment, is a right inherent in the courts and is incidental to the grant of judicial power under the Constitution." ***In re Estate of DiSabato***, 165 A.3d

987, 992 (Pa. Super. 2017) (internal citation omitted). “A court may exercise its civil contempt power to enforce compliance with its orders for the benefit of the party in whose favor the order runs but not to inflict punishment.” **Id.** (internal citation and some capitalization omitted).

Ronald argues that the wooden stakes along the easement were temporary markers. He asserts the surveyor set official pins in the ground, and the survey and deeds are now complete. He suggests that the trial court abused its discretion by requiring that he pay for a surveyor to replace temporary marks when official and formal pins exist.

Although the trial court did not explain its decision to require Ronald to pay for a surveyor to replace the wooden stakes, our review of the record reveals support for the court’s ruling. The trial court heard ample evidence concerning the continuing need to clear the twenty-five-foot easement of shrubs and trees. **See** N.T., 9/1/21, at 41-42; N.T., 10/28/21, at 11-15. Moreover, unlike James’s lifetime right to farm, the easement ran in favor of James and his heirs, personal representatives, successors, and assigns. **See** Order, 1/6/21. There was evidence of the continuing dispute that arose over the removal of the tree and the boundaries of the easement. **See** N.T., 10/28/21, at 14-15. Lastly, the court heard testimony concerning the need for visible markers to reduce the possibility of future disputes among the family members supporting James and Ronald. **See id.** (indicating that James’s nephew attempted to show Ronald where a pin was located but Ronald did not appear to understand). Under these circumstances, we discern

no clear abuse of discretion by the trial court in requiring that a neutral party replace the stakes Ronald removed and requiring Ronald to pay the costs of replacing those visible markers. Thus, Ronald's third issue merits no relief.

In his fourth, fifth, and sixth issues, Ronald contests the portions of the February 7, 2022 order that finalized the underlying partition action.

When reviewing an equitable decision in a partition action, our standard of review is limited, and we "will reverse only where the trial court was palpably erroneous, misapplied the law or committed a manifest abuse of discretion." **See McGoldrick**, 228 A.3d at 275-76. "Where there are any apparently reasonable grounds for the trial court's decision, we must affirm it." **Id.** at 276.

Further, when the trial court's order enforces a settlement agreement, this Court will consider the enforceability of the agreement according to principles of contract law. **See Mastroni-Mucker v. Allstate Ins. Co.**, 976 A.2d 510, 517 (Pa. Super. 2009). Because contract interpretation is a question of law, this Court our review is *de novo* and plenary. **See id.** at 517-18.

Ronald's fourth issue focuses on the portion of the February 7, 2022 order requiring him to pay \$54,941.86 to achieve the equitable 50/50 division set forth in the January 13, 2020 order. Ronald contends the trial court appeared to adopt James's proposed accounting without any further explanation. He argues James's proposed accounting was faulty because it did not achieve an equitable 50/50 division of the property and

overcompensated James. Additionally, Ronald claims that the Hostetler reappraisal, which James incorporated into his proposed accounting, was unreliable, failed to consider factors diminishing the value of Ronald's partitioned land, and excluded Ronald's input. Ronald argues that the trial court also failed to allocate maintenance and utility costs for the property pursuant to Ronald and James's own agreement to split those costs evenly.

The trial court offered no explanation for its decision to adopt James's proposed accounting. Rather, the court apparently decided the issue as a matter of contempt or the enforcement of a settlement agreement. **See** Order, 2/7/22, at unnumbered 1 (stating that "[i]n arriving at the following disposition, the [c]ourt is relying on interpreting the language chosen by the parties at the January 13, 2020 mediation"); **see also id.** at unnumbered 2-3 (finding Ronald in contempt and "therefore" ordering he pay James \$54,941.86 "pursuant to the January 13, 2020 [o]rder as the value of the proposed land and improvements resulting in an equitable 50/50 split").

Here, since there are no grounds for the wholesale adoption of James's proposed accounting, this Court cannot determine whether the trial court's decision was reasonable. Initially, we disapprove of the trial court's apparent decision to merely adopt James's proposed accounting without any further discussion. **See Commonwealth v. Weiss**, 986 A.2d 808, 816 n.4 (Pa. 2009) (discouraging courts from the wholesale adoption of facts or law as presented by the litigants); **see also A.V. v. S.T.**, 87 A.3d 818, 823 (Pa. Super. 2014) (discussing the proper function of the trial court and the

necessity of the court's articulation of an independent judicial analysis in support of dispositive orders).

In any event, the record does not support the trial court's decision to rely on its prior orders as a basis for determining the amount of owelty whether as a matter of contempt or the enforcement of the January 13, 2020 order. The January 13, 2020 order called for the parties to share the costs of a reevaluation by an appraiser, and "[a]fter the appraiser and surveyor have performed their duties as required by this settlement, there shall be an exchange of moneys to fairly compensate the one brother receiving a lesser value of either land or property" Order, 1/13/20, at unnumbered 2. The January 13, 2020 order set forth a standard that "each party receive[] an equitable 50/50 value." ***Id.*** The parties agreed that D. Roger Hostetler, who previously appraised the property in 2017, would update his appraisals of the partitioned lands. ***See id.*** at 2; ***see also*** N.T., 12/14/21, at 12-13 (indicating Ronald knew D. Roger Hostetler would conduct the reappraisal called for in the January 13, 2020 order); Ronald's Brief at 13, 36 (conceding that the January 13, 2020 order provided D. Roger Hostetler to reappraise the partitioned lands and Ronald requested the update of the 2017 appraisal).

Neither the January 13, 2020 order, nor any other prior order in this matter required Ronald or the trial court to accept values determined in the Hostetler reappraisal. The terms of the January 13, 2020 order did not waive Ronald's right to either participate in or challenge the Hostetler reappraisal or seek other charges or costs. Thus, we conclude the terms of the January 13,

2020 order were not sufficiently specific to bind Ronald to the valuations reached in the Hostetler reappraisal, a particular calculation of the equitable 50/50 value, or the propriety of any charges and costs associated with the partition. **See McNelis**, 889 A.2d at 619-20 (holding that a contempt order directing a party to execute document and pay a fine was premature where a settlement agreement did not require the party to execute a specific document). Therefore, we vacate the portion of the February 7, 2022 order requiring Ronald to pay \$54,941.86, and remand for the trial court to determine whether the values in the Hostetler reappraisal were consistent with the agreement set forth in the January 13, 2020 order, whether James's proposed accounting reflects that **each party receives an equitable 50/50 value**, and any remaining issues concerning charges and costs that are not subject to the parties' prior agreements.¹² **See id.**

¹² Upon remand, the trial court shall reconsider the parties' respective arguments as to what constitutes a proper starting point to achieve the January 13, 2020 order's term that each party receive an equitable 50/50 value. As noted by Ronald, James asserted the proper definition of equitable 50/50 value began with calculating Ronald's larger share of the value in the partitioned lands and the difference between what Ronald and James received. Ronald proffered an opposing definition of an equitable 50/50 value that he and James should each receive property and/or money equal to half of the total value of partitioned lands.

The difference in these approaches is critical. Assuming, for the purposes of illustration, the total value of the property was \$500, Ronald received \$280 in land, and James received \$220 in land. James's definition of an equitable 50/50 value was the difference between what Ronald and James received, resulting in an owelty of \$60 due to James. Ronald's baseline would start with the presumption that each brother should receive land and owelty equal to
(Footnote Continued Next Page)

In his remaining challenges to the finalization of the partition, Ronald's fifth and sixth issues focus on the evidentiary rulings by the trial court.

It is well settled that the admission of evidence is within the sound discretion of the trial court, and we may reverse only upon a showing of abuse of discretion or error of law. ***See Zuk v. Zuk***, 55 A.3d 102, 112 (Pa. Super. 2012). To constitute reversible error, an evidentiary ruling must not only be erroneous, but also harmful or prejudicial to the complaining party. ***See id.***

In support of his fifth issue, Ronald asserts that the trial court erred in admitting James's proposed accounting and demand into evidence as Exhibit 20. Although this issue is moot in light of our decision to vacate and remand the trial court's award of owelty, we discern no merit to his argument. James's proposed accounting and demand was part of the contempt petition, *i.e.*, James's allegation that Ronald failed to respond to the demand, and a review of the record establishes that James substantiated the values used in Exhibit 20 through other testimony and evidence presented at the hearings. Thus, Ronald's claim that the trial court erred in admitting Exhibit 20 merits no relief.

Ronald's sixth issue challenges the trial court's rulings to preclude relevant evidence, specifically: (1) his sister's testimony about the historical uses of the partitioned lands; (2) Ronald's counterproposal concerning the

one half of the total value of the property before the partition, *i.e.*, \$250, and the owelty due James, who had received \$220 in land, would be \$30. Although the trial court chose James's approach, it provided no explanation for adopting James's approach over Ronald's approach. Moreover, the court provided no reasoning why one approach was superior to the other when achieving the agreed upon term that each party receive an equitable 50/50 value.

value of the partitioned lands, including a competing appraisal of the partitioned lands, and (3) Ronald's testimony concerning adjustments for personal property left on the partitioned lands. "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Pa.R.E. 401.

Here, testimony from a third-party about the historical uses of the partitioned lands was irrelevant to Ronald and James's understanding of their agreement that James had a lifetime right to farm the tillable land on Ronald's partitioned lands. Moreover, as we have stated above, the term "tillable land" was clear and not subject to a reasonable interpretation that tillable meant historically farmed land. Thus, the trial court properly excluded testimony from Ronald's sister concerning the historical uses of the partitioned land.

As to Ronald's evidence concerning his counterproposal and disputes concerning the Hostetler reappraisal, we have already concluded that the trial court erred in attempting to finalize the underlying partition as a matter of Ronald's contempt of, or the enforcement of the terms of, the January 13, 2020 order. To the extent the trial court excluded Ronald's evidence as irrelevant to its consideration of whether Ronald was in contempt, whether to enforce the settlement agreement, or the cost, charges, and owelty due we are constrained to conclude that the trial court erred.

For these reasons, we conclude that the trial court abused its discretion when directing Ronald pay the \$54,941.86 demanded by James. Accordingly,

we vacate that portion of the February 7, 2022 order and remand for further proceedings to finalize the underlying partition action.¹³

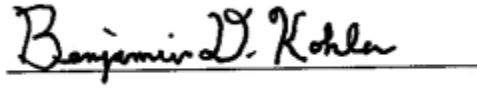
In his seventh and final issue, Ronald claims that the trial court erred in ordering he pay James's attorney's fees without first holding a hearing. We have affirmed, in part, the trial court's conclusion that Ronald was in contempt for his actions related the James's right to farm and the twenty-five-foot easement. Our decision vacating those portions of the February 7, 2022 order concerning the finalization of the underlying partition action necessarily disturbs the trial court's decision to award attorney's fees for the remaining dispute over the \$54,941.86 demanded by James, as well as the amount of fees associated with the contempt. Thus, we vacate the February 7, 2022 order in its entirety, as well as the March 2, 2022 order setting the amount of fees owed, and remand further consideration of the award of attorney's fees for Ronald's contempt.¹⁴

Order affirmed in part and vacated. Case remanded for proceedings consistent with this decision. Application to dismiss denied. Jurisdiction relinquished.

¹³ Although we will not require Ronald to file post-trial motions after the further proceedings upon remand, the trial court may determine that such motions are required. If the trial court so decides, it shall indicate in its order resolving the remand issues that a motion for post-trial relief is required pursuant to this rule. **See** Pa.R.Civ.P. 227.1(i)(2).

¹⁴ The trial court is free to reimpose its findings of contempt and sanctions related to the James's right to farm and the twenty-five-foot easement. We leave it to the trial court to determine whether it is appropriate to do so in a single consolidated order, as it did here, or in a separate order.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 11/22/2023