

**PAULA A. LUCKRING v. CHRISTOPHER BLAIR**

No. 11-53896

**COMMON PLEAS COURT OF DELAWARE COUNTY, PENNSYLVANIA***2014 Pa. Dist. & Cnty. Dec. LEXIS 362***December 3, 2014, Filed**

**SUBSEQUENT HISTORY:** [\*1] PA Superior Court Docketing No. 2390 EDA 2014.

**COUNSEL:** DAVID S. DESSEN, ESQUIRE, Attorney for the Plaintiff.

DOUGLAS P. HUMES, Attorney for the Defendant.

**JUDGES:** CHARLES B. BURR, II, S.J.

**OPINION BY:** CHARLES B. BURR, II

**OPINION**

## CIVIL ACTION - LAW

BURR, S.J.

The Plaintiff, Paula Luckring, has appealed from this Court's Settlement Enforcement Order of March 14, 2014 granting relief to both herself and to the Defendant, Christopher Blair, in this action alleging that borderline trees owned by the Defendant encroached upon and caused damage to the Plaintiff's adjacent real property. The parties settled the case pre-trial by executing and stipulating to a Settlement Agreement and Release that called for the Defendant to grant title to the Plaintiff, free of charge, to an eleven foot strip of his own land and to build, at his own expense, a fence marking the new boundary line between their respective parcels. Nevertheless, the parties were back in court a year later seeking to resolve the predictable drama ensuing from the Plaintiff's abject and literal refusal to allow the fence company to set foot on her newly acquired property in order to erect the structure. The contractor then built the fence thirteen inches inside the Defendant's [\*2] side of the new property line in order to appease the Plaintiff in that regard. Adding further insult to injury to a neighbor suffering from severe Parkinson's Disease, the Plaintiff complained that such work must be accomplished without setting foot on her land when the Defendant attempted to clear his property remaining on the Plaintiff's side of the fence of tall grass and weeds. Plaintiff has since insisted that she would do so herself if granted an easement to that additional piece of the Defendant's property.

This Court enforced the parties' Settlement Agreement, in part, by ordering the Plaintiff to move the fence to the boundary line of their respective properties at her own expense. Notice of this appeal was filed approximately five months following entry of that Order.

First and foremost, this appeal must be quashed as untimely. The Plaintiff's Notice of Appeal, filed on August 12, 2014, states that she is appealing from the "judgment entered on the docket on August 7, 2014 pursuant to the Order of the Honorable Charles B. Burr, II dated March 14, 2014, and specifically those portions of the Order that direct [the Plaintiff] to relocate, at her expense, a fence owned by [the [\*3] Defendant] to the shared property line and that [the Plaintiff] pay [the Defendant's] attorney's fees. . . ." (*Id.*). The Plaintiff's untimely appeal from this Order led to the Defendant's Motion to Quash which the Pennsylvania Superior Court deferred ruling thereon in an Order dated September 24, 2014 following receipt of the Plaintiff's response to its Order of September 9, 2014 issuing a Rule upon the Plaintiff to show cause as to why quashal of her appeal was unwarranted.

Although the Plaintiff responded to that Rule to Show Cause with an argument that her failure to timely perfect her rights from the appealed from Order awaited this Court's subsequent ruling denying her Post-Trial Motions, the latter disposition was memorialized in an Order dated May 6, 2014 from which no appeal was ever taken by the Plaintiff. (Appellant's Response to Rule to Show Cause issued by the Pennsylvania Superior Court in the above-captioned appeal, pp. 5-6). That the filing of a post-verdict motion cannot prevent time-barring of the instant appeal was duly noted by the Superior Court in its Rule to Show Cause Order of September 9, 2014 *via* citation to the case authority of *Bennett v. Juzelenos*, 791 A.2d 403 (Pa. Super. 2002)(filing of motion for post-trial [\*4] relief is not permitted from an order granting a petition to enforce a settlement agreement, and, therefore, is not required to preserve claims concerning the agreement for appellate review). However, Plaintiff's subsequent rejoinder that she, nevertheless, was permitted to overlook the foregoing lapses and appeal directly from the judgment entered in the case on August 7, 2014 has no

support in the Rules of Civil Procedure, nor in the relevant case law. (Appellant's Response to Rule to Show Cause issued by the Pennsylvania Superior Court in the above-captioned appeal, pp. 6-7). Indeed, the Plaintiff submitted no relevant legal authority whatsoever in support of this contention. (*Id.*).

The entry of judgment is the procedural mechanism that operates to grant jurisdiction to the appellate courts of this Commonwealth to entertain an appeal, but such jurisdiction will be disallowed where there exists no timely challenge to trial court actions and/or rulings surrounding the appellate issues presented for review. *Diamond Reo Truck Co. v. Mid-Pacific Industries, Inc.*, 806 A.2d 423 (Pa. Super. 2002), citing to *Pennsylvania Rule of Appellate Procedure 1925(b)* and *Pennsylvania Rule of Civil Procedure 227.1(c)*. Consequently, because the record clearly reflects that Plaintiff's notice of appeal filing on August 12, 2014 arose from and concerns only issues emanating from [\*5] a final Order dated five months earlier on March 14, 2014, this appeal should be deemed a nullity and quashed. *Pennsylvania Rules of Appellate Procedure 341(b)(1)* and *903(a)*.

If, however, the Plaintiff's appeal is allowed to proceed, this litigation was initiated by the Plaintiff's Complaint alleging that the Defendant's "[p]ine and sycamore trees trespassed onto Plaintiff's property" and caused public safety issues that had been presented to the local township authorities. (*Id.*, Paragraph 4). Plaintiff additionally complained of damage caused by "tree sap, needles, branches, cones, roots" constituting a "nuisance" because the trees overhung, fell upon, and grew under her property which caused damage such as a broken window, damage to a deck and stamped concrete, as well as clogging a sewer line and causing landscape damage. (*Id.*, Paragraphs 5-9). Plaintiff asserted an entitlement to costs in the amount of \$13,369 for cutting down or trimming the offending trees and restoring her property to its previous condition, plus attorney fees, among further demands for monetary relief. (*Id.*, Paragraphs 7-9).

The Defendant averred in New Matter submitted in response to the Plaintiff's Complaint that: (1) the parties possessed the same rights and obligations [\*6] with respect to the subject sycamore boundary tree; (2) Plaintiff was given permission to trim the Defendant's sap dripping white pine tree and did so all the way back to its trunk, thus causing the sap to drip excessively on Plaintiff's property because there were no tree branches remaining to catch and absorb its flow; and (3) the Plaintiff accepted the Defendant's written permission and cut down the encroaching white pine tree at her own expense and should not now be able to renegotiate that contract and force the costs thereof upon the Defendant. (*Id.*, Paragraphs 11-14).

The Defendant also counterclaimed against the Plaintiff for one-half the cost involved in trimming and removing the boundary line sycamore tree, and alleged a continuing trespass on his property arising from the Plaintiff's: (a) rebuilding, in 2009, of a deck, the dimensions of which violated a zoning set back ordinance and encroached upon the Defendant's property; (b) construction of a retaining wall and fence posts that encroached upon another area of the Defendant's property; (c) planting ivy that encroaches upon Defendant's property; and (d) rerouting her storm water downspouts that now direct water flow onto [\*7] the Defendant's property. (*Id.*, Counts One through Three). The Defendant additionally averred Counterclaims against the Plaintiff sounding in Ejectment and Quiet Title related to the portions of his property felt to be encroached upon by the Plaintiff as hereinabove described. (*Id.*, Counts Four and Five).

The Plaintiff responded, in relevant part, to the foregoing allegations by admitting that a portion of the retaining wall and posts on her property are "within the legal definition of the [D]efendant's property as contained in his deed". (Plaintiff's Reply to the Defendant's New Matter and Counterclaims, Paragraph 25). Plaintiff contended, however, that her possession of that "strip" of Defendant's land has been "open, notorious, actual, distinct, visible, continuous, hostile, and adverse to [D]efendant and [D]efendant's property in excess of 21 (sic) years" and that she had perfected a claim of adverse possession to that area. (*Id.*). The Plaintiff pleaded further in this regard that: "it is admitted that under the doctrines of prescriptive easement, adverse possession and other applicable doctrines, all improvements, including[,] but not limited to[,] the posts, deck and retaining wall are entitled to remain in their [\*8] respective locations at all times forever[;] [D]efendant owns title to such areas[;] and [D]efendant has no right to cause the removal of the same. By way of further answer, [P]laintiff being in sole possession of the areas in question and having been in possession for 25 years or more, need not and cannot be compelled to bring any action in ejectment. ..." (*Id.*, Paragraph 36).

The parties eventually negotiated and signed a Stipulation of Settlement that was approved and filed on March 12, 2013 as an Order of this Court setting forth the following provisos in summary of the parties' lengthy Settlement Agreement and Release: "1 (a) Within not more than 3 business days after Defendant Blair's receipt of this order, Defendant Blair shall by deed convey to Plaintiff Luckring a strip of land eleven feet in width immediately adjoining the current boundary line of the parties' properties as further described in the Settlement Agreement ('Strip'); (b) Upon the execution and recording of that deed, (i) each party shall thereafter own the resulting property that is described in the Settlement

Agreement and (ii) the Strip shall become consolidated with and part of the property now owned by Luckring. . . ; (c) The claims of the [\*9] parties in this Civil Action No. 11-53896 shall be and hereby are dismissed with prejudice; (d) the parties shall thereafter abide by the terms of their Settlement Agreement; and 2. The Court shall retain jurisdiction to specifically, enforce the terms of this Order, and the Settlement Agreement of the parties." /s/ Charles B. Burr, II, S.J. (*Id.*).

The parties' Settlement Agreement and Release allowed for the Defendant to construct a fence parallel to, but on the Defendant's side, of the parties' new shared property line attendant to conveyance of the long disputed "strip", the boundary lines for which were to be ascertained by means of a survey to be made at the Plaintiffs expense. (*Id.* (appended to the foregoing Order with the parties' Stipulation of Settlement and Motion for Entry of Order Approving Settlement), Paragraph 1 - "Stipulation and Execution of the Deed, p. 1; Paragraph 3 - "Property Improvements", p. 2). The Plaintiff thereby covenanted and agreed that "she will not oppose in any manner the erection of the fence, and waives any and all objections thereto." (*Id.*) The parties additionally contracted for payment of the attorney fees of the prevailing party "[i]n the event of [\*10] any litigation or other dispute arising as a result of or by reason of this Agreement (including[,] but not limited to[,] the enforcement of the terms hereof). . . ." (*Id.*, Paragraph 5 - "Miscellaneous", Subparagraph (a) - "Attorney's Fees", p. 4. The parties concluded this Agreement by contracting to "reasonably cooperate with each other, in good faith, in order to effectuate the intent and purposes of this Agreement. (*Id.*, Subparagraph (i) - "Cooperation", p. 5).

Eventually, and unsurprisingly, it came to pass that the Defendant's Petition to Enforce the parties' Settlement Agreement and Release was submitted to this Court for disposition. The Defendant averred therein, in relevant part, that:

o The Court's Order approving the parties' Settlement Agreement and Release was signed on March 11, 2013, and, on the same day, the signed deed to the strip of land at issue was mailed to the attorney for the Defendant's brother to record pursuant to a power of attorney granted by the Defendant, Who suffers from severe Parkinson's disease. (*Id.*, Paragraphs 4:-5).

o On April 3, 2013, the Defendant's attorney was advised that a title search had turned up an old mortgage on the property, after which [\*11] he obtained a satisfaction piece and delivered, on April 6, 2013, a mortgage release to the Plain-

tiff's title company agent, and filed it with the Office of the Delaware County Recorder of Deeds on April 10, 2013. (*Id.*, Paragraph 6).

o The Plaintiff submitted the deed and the Defendant's power of attorney for recording at the Office of the Delaware County Recorder of Deeds on April 26, 2013. (*Id.*, Paragraph 8).

o After the Defendant applied for a building permit for the subject fence in May of 2013, the Plaintiff: (1) made multiple calls to Haverford Township officials to note her opposition to the fence despite having covenanted not to oppose in any manner the erection of the fence and to waive any and all objections thereto; (2) erected signs on her property pointing in the direction of the Defendant's residence saying "No Trespassing"; (3) erected a sign on her property ordering the Defendant's fence company not to install the fence all the way to the sidewalk, contrary to the Defendant's instructions; (4) initiated a verbal confrontation with the Defendant's former spouse and current housemate, Mary Blair, in which she accused the Defendant and Ms. Blair of being "too cheap to get [\*12] their own survey", even though Paragraph 1 of the parties' Settlement Agreement and Release required the Plaintiff to bear that expense; and (5) hammered stakes into the ground on the Defendant's property. (*Id.*, Paragraphs 9-13).

o In June of 2013, following erection of the Defendant's new fence, the Plaintiff entered upon his property to "wash" the brand new fence. (*Id.*, Paragraph 14).

In her Response to Defendant's Petition to Enforce Settlement, the Plaintiff denied instructing the fence contractor not to install the fence all the way to the sidewalk, but stated that she gave the contractor "a copy of that portion of the Settlement Agreement that refers to the manner in which the fence is to be erected." (*Id.*, Paragraph 11 ). Plaintiff went on to aver that, on the day the fence was installed, Defendant and Ms. Blair knew the location of the property line. (*Id.*, Paragraph 29). Nevertheless, according to the Plaintiff, the Defendant "directed his contractor to install the fence on Defendant's property 13 inches short of the property line," after

which the contractor had left dirt and debris on her side of the fence that the Plaintiff was left to clean up. (*Id.*, Paragraphs 14, 31). Plaintiff [\*13] asserted that "[t]he [thirteen inch wide] area [of the Defendant's] property [situated] on [Plaintiff's] side of the fence cannot be mowed or otherwise maintained by [Defendant] or his agents without trespassing on [Plaintiff's] property. (*Id.*, Paragraph 32). Plaintiff contended that she would not maintain this area herself, however, without the granting of a recorded easement giving her the right to do so. (*Id.*, Paragraph 33). The Plaintiff contended that she had paid her attorney \$265.00 to remove the reported encumbrances from the strip in order for the deed for the parcel to be recorded. (*Id.*, Paragraph 27).

A Hearing on the Defendant's Petition to Enforce Settlement was conducted on January 27, 2014. The Defendant's attorney provided testimony reiterating his written explanation for the delay in providing an encumbrance-free title to the strip of land conveyed to the Plaintiff, and said that he had filed the Petition to Enforce the Settlement Agreement after the Plaintiff filed a now-withdrawn claim with the local District Justice for attorney fees connected with resolving the deed issues. (1/27/14 N.T. 4-6, 9-16). Defense counsel presented, as Hearing Exhibit P-1, an invoice listing [\*14] fees in the approximate amount of \$6,000.00 incurred during the year since the Settlement Order was issued, as well as in the filing and litigation of the within Petition. (*Id.*, 6-7; Hearing Exhibit [B]-1 ). No specific challenge to the amount or reasonableness of the fees set forth in that invoice was made during counsel's cross-examination by the attorney for the Plaintiff. (*Id.*, 9-16; Hearing Exhibit [B]-1). Mary Blair testified on behalf of the Defendant that the re-application for the previously granted permit to build the disputed fence was submitted to the Township on May 4, 2013, but was refused on May 9, 2013 due to objections, but then granted on May 28, 2013. (*Id.*, 22-23, 45-46). Ms. Blair also testified regarding the placement of the Plaintiff's "protest" sign notifying the fence contractor where to build the fence and of a third stake being hammered into the ground by an unknown person in the middle of the two stakes placed at the ends of the property line by the fence company. (*Id.*, 24-27).

Ms. Blair said that when the fence contractor arrived and began placement of the fence at the location of the "Fence Starts Here" sign erected by the Plaintiff, she had to show him the [\*15] permit allowing for it to originate 40 feet forward on the property before he agreed to start it there at the Defendant's direction. (*Id.*, 27; Photograph of "Fence Starts Here" sign - Hearing Exhibit B-2). The witness indicated that the contractor was additionally disturbed by the "No Trespassing" sign erected on the Plaintiff's side of the property line and had told her that "somebody approached the fence company and asked

that no dirt fall on her side of . . . the property line." (*Id.*, 27-30; Hearing Exhibit B-3). Ms. Blair testified that the fence company employee had subsequently informed her that, as a result of this directive, he had to move the fence 13 inches onto the Defendant's property in order to allow room for the digging necessary for installing the fence posts. (*Id.*, 30-31). Ms. Blair said that, when she returned to the property after being away for a weekend, the woman who was watching the house told her that she had observed the Plaintiff trespassing on the Defendant's property and washing the fence. (*Id.*, 32-33). Counsel for the Plaintiff cross-examined Ms. Blair as to her understanding of the need for installing the fence on the property line without trespassing on [\*16] property newly deeded to the Plaintiff, despite the apparent illogic and unreasonableness of hardline enforcement of a requirement that led to a continuation of a dispute that the parties had wanted to put behind them forever. (*Id.*, 38-44).

The Plaintiff then testified that her attorney had billed \$265.00 to getting the question of the mortgage on the subject eleven foot strip of land resolved. (*Id.*, 50-51; Hearing Exhibit R-1). The Plaintiff denied having had any involvement with the ultimate placement of the fence thirteen inches onto the Defendant's property from the new property line, but admitted that she had presented the contractors with the page of the Settlement Agreement and Release setting forth the parties' understanding regarding where the fence would be placed. (*Id.*, 55-56, 59-60; Hearing Exhibit R-14 -- Settlement Agreement and Release). The Plaintiff admitted that she had complained to the Defendant on August 8, 2013 that [his] landscaper had trespassed on her property in order to trim the high grass and weeds that were growing on her side of the fence, but on the Defendant's thirteen inch parcel of land still abutting the Plaintiff's property line. (*Id.*, 57-58).

When [\*17] asked by the Court to expound upon her belief that the parties must strictly adhere to the terms of their Settlement Agreement regarding the need to care for the portion of the Defendant's ground outside the fence line and abutting her property, the Plaintiff replied that, if the caretaker stepped on her property during this process, he would be trespassing and-that she would bring a complaint for that conduct. (*Id.*, 60-62). Despite covenanting that she would not oppose, in any way, the erection of the fence and her waiver of any objections thereto, the Plaintiff said she had erected the "Fence Starts Here" and "No Trespass" signs to convey to the Defendant and oddly, to herself, where she thought the fence was going to go. (*Id.*, 65-66; Hearing Exhibits B-2 and B-3). The Plaintiff denied complaining to township authorities about the fence, but testified that she had called an individual known to her there merely to "advise them that[,] per the terms of the [A]greement[,] it had to

abide by the township code, and we just wanted to make sure it abided by the township code." (*Id.*, 67). Plaintiff further admitted that she had visited the township office on May 20, 2013 and received a copy of the [\*18] Defendant's file, and had cleaned up the debris left by the fence company on Defendant's side of the property line, but not that she had washed the fence. (*Id.*, 67-68). The Plaintiff additionally admitted that she still had possession and had never returned the original power of attorney granted by the Defendant to his brother. (*Id.*, 68-69).

Following the parties' submission of Proposed Findings of Fact and Conclusions of Law, this Court entered the following ruling on the Defendant's Petition to Enforce the Settlement Agreement:

**"SETTLEMENT ENFORCEMENT ORDER** AND NOW, this 14th day of March, 2014, after careful and thoughtful consideration of the Defendant, Christopher Blair's, Petition to Enforce the Settlement Agreement and Release entered into on February 25, 2013 between the Defendant and the Plaintiff, Paula A. Luckring, and subsequently endorsed by this Court by an Order dated March 11, 2013, as well as the oral and written arguments, evidentiary proffers, and their Proposed Findings of Fact and Conclusions of Law submitted subsequent to a Hearing held on January 27, 2014, it is hereby ORDERED and DECREED that, in accord with the evidentiary and testimonial record deemed credible [\*19] by the Court:

1. The Plaintiff, Paula A. Luckring, breached the provisions of the parties' Settlement Agreement that required her: (a) not to oppose in any manner the erection of the fence installed by the Defendant parallel to the subject property line and to waive any and all objections thereto, and (b) to reasonably cooperate with the Defendant in good faith in order to effectuate the intent and purposes of their Agreement. (*Id.*, Paragraphs 3: "Property Improvements", p. 2; and 5

(i): "Cooperation", p. 5). Therefore, the Plaintiff is ORDERED, at her own expense, to remove the existing fence from its present location and to replace it upon the denoted property line of the parcel conveyed by the Defendant to the Plaintiff by Deed, so as to create an impenetrable demarcation between the two properties in question, within 60 days from the date of notice of this Order or risk the imposition of additional sanctions upon the Defendant's application to the Court.

2. The Defendant, Christopher Blair, breached his obligation, set forth in Paragraph 1 of the parties' Settlement Agreement and Release, to timely convey a good, marketable and insurable title to the subject eleven foot strip of property [\*20] deeded by the Defendant to the Plaintiff for nominal consideration. (*Id.*, "Stipulation and Execution of Deed", p. 1). Therefore, the Defendant must pay to the Plaintiff the sum of \$265.00 for attorney fees expended to remove an encumbrance from the conveyed strip of land. (*Id.*, Paragraph 5 (a), "Attorney Fees", p. 4).

IT IS FURTHER ORDERED and DECREED that the parties, both of whom have prevailed in this action to enforce the Settlement Agreement and Release, shall bear the responsibility for each other's attorney fees and costs as shown in Exhibits R-17 and Blair 1. (*Id.*, Paragraph 5(a), p. 4).

IT IS FURTHER ORDERED and DECREED that the terms of the previously approved Settlement Agreement and Release shall remain in full force and effect.

IT IS FURTHER ORDERED and DECREED that the Court hereby relinquishes jurisdiction over any dispute which may arise between the parties after the date of this Order.

BY THE COURT:

/s/ Hon. Charles B. Burr, II, S.J."

The Plaintiff, who neither filed a timely appeal from the foregoing Order, nor from the subsequent Order denying her Post-Trial Motions, has, nonetheless, submitted the following Concise Statement of Matters Complained of on Appeal:

"1. The [\*21] record from the January 27, 2014 evidentiary hearing does not contain facts to establish that [the Plaintiff] 'opposed' as that term is used in the Settlement Agreement, Blair's erection of the fence.

2. The record from the January 27, 2014 evidentiary hearing does not contain facts to establish that [the Plaintiff] 'did not reasonably cooperate,' as that term is used in the Settlement Agreement, with Blair to effectuate the purposes of the Settlement Agreement.

3. The Court erred and abused its discretion when it ordered [the Plaintiff] to relocate the fence from its current location because:

a. [The Defendant] did not demand as a remedy the relocation of the fence;

b. The fence is [Defendant's] property and the Court does not have the authority to authorize either [the Plaintiff] or her contractors to touch or tamper with [the Defendant's] property[;] and

c. The Court's [O]rder improperly modifies the terms of the [A]greement between the parties [that] specifies that the fence be located only on [the Defendant's] side of the property line." (*Id.*, pp. 1-2).

The Plaintiff's contentions on appeal are discussed under the appropriate heading below:

The Plaintiff Violated the Parties' Settlement Agreement and [\*22] Release in Extreme Bad Faith

A mere cursory review of the Plaintiff's pleadings and her own testimony at the Hearing on the Defendant's Petition to Enforce Settlement adduces an ongoing pattern of bullying of a Defendant who granted her the moon and the stars in acquiescing to her unceasing demands, and yet was confronted with demands for more. The parties' Settlement Agreement and Release provided for a fence to be built by the Defendant on his side of the new boundary line of the neighboring properties, albeit without trespassing on the Plaintiff's land. A reasonable interpretation of this requirement would result in the edge of the fence being placed on the edge of the Plaintiff's new property line and not crossing this point of demarcation. Moreover, the momentary intrusion involved in its construction would be of no concern whatsoever with regard to the fence contractor's presence on the Plaintiff's side of the boundary line in order to complete the effort.

However, the Plaintiff took the extreme position that enforcement of these provisions must be strict, and refused to permit the fence installer to step on her property to undertake its construction in the place designated by [\*23] the Defendant in express accordance with the parties' stipulated Agreement. As a result, the fence contractor took it upon itself to erect the structure thirteen inches inside the Defendant's side of the boundary line, instead of on the line itself, in order to placate the Plaintiff. The Plaintiff then added to this mix of unreasonableness and bad faith by complaining that the Defendant's landscaper was stepping on her property when clearing weeds and high grass growing on the thirteen inch strip on her side of the fence that remained in the ownership and possession of the Defendant. All of the foregoing admissions of the Plaintiff to behavior described in the Defendant's pleadings and in Ms. Blair's testimony, were clearly and expressly proscribed by provisions of the parties' Settlement Agreement and Release disallowing the Plaintiff from objecting to the fence in any manner and requiring that she act in good faith. Hence, the Order mandating that the Plaintiff move the fence to the boundary line between the two parcels according to the parties' stated

intention at her own expense was warranted and necessary to achieve justice in this case.

#### Conclusion

When reviewing a trial court's [\*24] decision to enforce a settlement agreement, the appellate court's scope of review is plenary as to questions of law, and it is free to draw its own inferences and reach its own conclusions from the facts as found by the court that are supported by competent evidence and not predicated on an error of law. *Salsman v. Brown*, 51 A.3d 892, 893-894 (Pa. Super. 2012), with citation to *Bennett v. Juzelenos*, *supra*, 791 A.2d at 406; *Mastroni-Mucker v. Allstate Ins. Co.*, 976 A.2d 510, 518 (Pa. Super. 2009), *App. den.*, 605 Pa. 715, 995 A.2d 313 (2010)(Table). The prevailing party is entitled to have the evidence viewed in the light most favorable to its position and the trial court's decision will be overturned only when the factual findings of the court are against the weight of the evidence or its legal conclusions are erroneous. (*Id.*).

Settlement agreements are enforced according to principles of contract law. *Mastroni-Mucker v. Allstate Ins. Co.*, *supra*, 976 A.2d at 518, citing to *Pulcinello v. Consolidated Rail Corp.*, 784 A.2d 122, 124 (Pa. Super. 2001), *App. den.*, 568 Pa. 703, 796 A.2d 984 (2002). Where a settlement agreement contains all of the requisites for a valid contract, a court must enforce the terms of the agreement. *Mastroni-Mucker v. Allstate Ins. Co.*, *supra*, 976 A.2d at 518, citing to *McDonnell v. Ford Motor Co.*, 434 Pa. Super. 439, 643 A.2d 1102, 1105 (1994), *App. den.*, 539 Pa. 679, 652 A.2d 1324 (1994). Courts will enforce a settlement agreement if all of the material terms of the bargain are agreed upon, and "[i]f the parties agree upon essential terms and intend them to be binding, 'a contract is formed ...'. The intent of the parties is a question of fact which must be determined by the factfinder. A reviewing [\*25] court must defer to the findings of the trier of the facts if they are supported by the evidence." *Mellish v. Hurlock Neck Duck Club, Inc.*, 886 A.2d 1151, 1158 (Pa. Cmwlth. 2005), *App. den.*, 589 Pa. 724, 907 A.2d 1104 (2006)(Table), citing to *McDonnell v. Ford Motor Co.*, *supra*, 643 A.2d at 1105-1106.

The Plaintiff has not challenged the validity or wording of the parties' Settlement Agreement and Re-

lease, but takes issue in this appeal only with the Court's interpretation of the evidence with regard to her conduct in bringing the terms thereof to fruition. Plaintiff contended that the evidence submitted at the Hearing does not establish that she opposed the fence and that she did not cooperate with the Defendant in effectuating the purposes of the Agreement. (Concise Statement, Paragraphs 1 and 2). Nevertheless, the record is replete with Plaintiff's opposition to the fence that included, but was not limited to, unquestionably obdurate and bad faith conduct in erecting her "Fence Goes Here" sign to direct the positioning and the size of the structure against the Defendant's instructions. Further, the Plaintiff's "No Trespassing" sign and exhibition of the Settlement Agreement to the contractor were actions designed to and which did, in fact, intimidate the fence contractor into placing the structure elsewhere besides on the intended mutual property [\*26] boundary line expressly contemplated in the parties' Settlement Agreement.

The Plaintiff also faults the Court for refusing to adopt her torturous and unreasonably obsessive position that the parties' Settlement Agreement must be so strictly enforced as to prohibit the fence contractor from standing on her side of the boundary line in the process of undertaking and completing the construction of a fence intended to be situated at that precise place pursuant to the Agreement. (Concise Statement, Paragraphs 3 (a) through (c)). However, here again, the remedy of ordering the Plaintiff to move the fence to the agreed upon boundary line at her own expense was intrinsic to the parties' Settlement contract and completely in line with the parties' stipulation that endowed this Court with the jurisdiction and hence, the power, to enforce their Agreement.

For all of the foregoing reasons, this appeal must either be quashed or this Court's granting of the Defendant's Petition to Enforce the parties' Settlement Agreement must be allowed to stand and not be reversed.

BY THE COURT:

/s/ Charles B. Burr, II

CHARLES B. BURR, II S.J.

