

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOHN and BRENDA RHINEHART, : No. 02-00184
: :
Plaintiffs : :
: :
vs. : Civil Action - Law
: :
PIATT TOWNSHIP ZONING HEARING :
BOARD, : Reconsideration of the
Defendants : Bill of Costs

OPINION AND ORDER

This matter came before the Court on the Plaintiffs' Motion for Reconsideration of the Court's ruling refusing to assess costs for the transcript of the proceeding before the Piatt Township Zoning Hearing Board against Defendant.

The Plaintiff purchased land in Piatt Township in 2002 with the intention of residing and operating a business on the property as a continuation of a prior nonconforming commercial use of the prior landowner. The nonconforming use of the prior landowners was permitted because it was in existence before the applicable ordinance went into effect. The Defendant denied the Plaintiffs' proposed use finding the use had been abandoned by Plaintiffs' predecessor in title.

After filing the appeal, the Plaintiffs requested a de novo hearing before the Court because Plaintiffs wanted to present testimony, including testimony from the prior landowner. The court permitted this request over the objection of Piatt Township. The Court held a hearing on April 30, 2002. Dennis

Rerrick, (the previous owner of the land), Plaintiff Brenda Rhinehart, and David Hines (Piatt Township Zoning Officer) testified at the hearing.

In an Opinion and Order dated June 7, 2002, the Court found in favor of the Plaintiffs and allowed them to continue the nonconforming commercial use finding that the use had not been abandoned.

Subsequently, Plaintiffs filed a "Bill of Costs" that included a requested reimbursement from Piatt Township for \$456.36, the sum that Plaintiffs had paid a court reporter for preparation of the transcript of the hearing held before the Zoning Hearing Board. Although the Court heard this appeal in a de novo hearing, both Plaintiffs and the Township agreed that the record before the Zoning Hearing Board would also be submitted to the Court and incorporated as part of the record. See also the Court's Order dated March 13, 2002 granting Plaintiffs' Motion for the Taking of Additional Testimony.

On August 2, 2002, Piatt Township filed exceptions to the Bill of Cost submitted by the Plaintiffs primarily arguing that the municipal code at 53 P.S. Section 10908(7)¹ required Plaintiffs to pay for the transcript costs. The Plaintiffs contends that they were the prevailing party before the Court of

¹ 53 P.S. Section 10908(7), in pertinent part, states that transcription costs shall be paid by the person appealing from the decision of the board.

Common Pleas in their appeal and that section 1726 of the Judicial Code, 42 Pa.C.S.A. §1726, allows the Court to place such transcript costs on Piatt Township. Section 1726 indicates that the governing authority shall prescribe by general rule the standards governing imposition of taxable costs and the items that constitute taxable costs and the litigants should bear such costs. Section 1726 further states that the governing authority should be guided by certain considerations including allowing the prevailing party in a litigation to recover his costs from unsuccessful litigant. See 42 Pa.C.S.A. §1726(a)(2).

After argument by both parties on this issue, the court denied the Plaintiffs' request for Piatt Township to reimburse them for the transcript costs in an Order dated October 25 2002. The Court relied primarily upon 53 P.S. §10908(7), which places the costs of transcription on the party appealing from the decision of a Zoning Hearing Board. The Court also relied upon the fact that the hearing was a de novo, as opposed to the appeal being based upon a review of the transcribed record before the Zoning Hearing Board.

On or about November 4, 2002, the Plaintiffs filed a Motion for Reconsideration and requested en banc argument of the matter. The Court denied an en banc argument, and the undersigned heard argument on this issue from both Plaintiffs and Piatt Township on February 26, 2002.

The right to recover costs in litigation in Pennsylvania is purely statutory. In Kojeszowski v. Brigantine, 302 Pa.Super. 500, 449 A.2d 28 (1982), the Superior Court stated:

The right to recover costs in litigation is therefore, purely statutory; normally costs can be imposed only by statute, and the power to impose costs in a proceeding based on a statute must be found in the statute. In the absence of express statutory authorization a successful party cannot recover costs. Further, the right exists only to the extent authorized by the legislature enactment.

449 A.2d at p. 30. The Plaintiffs argue Section 1726 and local rules of court permit recovery of the transcript cost in this case. The Court cannot agree. Lycoming Rules of Court L602 and L227.3 do not appear to apply to a record of a proceeding before a local zoning hearing board. Local Rule 602B applies to the transcript of a record of a trial. Local Rule 227.3 refers to post trial motions and appeals to higher courts and concerns payment of transcript costs depending upon the success or failure of an appeal to an appellate court.

Conversely, 53 P.S. Section 10908(7) specifically seems to be protective of local zoning hearing boards by requiring the transcript of a hearing before a local board to be paid "by the person appealing from the decision of the board if such appeal is made."

It is also pertinent to note that at the request of the Plaintiffs, the Court heard this matter in a **de novo**

proceeding. In Kojeszewski v. Brigantine, supra, a successful Plaintiff in a personal injury trial requested as costs expenses relating to videotape and deposition testimony in the amount of \$722.55. The Pennsylvania Superior held that the video and deposition expenses were not recoverable as costs. The Superior Court noted that if the witnesses appeared in Court the only costs imposed would be a mileage fee and standard witness fee. The Court found no statutory authority to allow the imposition of video and deposition costs on the unsuccessful litigant. This case stands for the proposition that when testimony is presented through transcripts, in lieu of live testimony, the transcript costs are not recoverable.

Under the circumstances and in light of 53 P.S. §10908(7), the Court cannot say that there is statutory authority to require Piatt Township to pay the transcript cost of the hearing before the zoning board.

Accordingly, the Court will **DENY** the request for reconsideration of the Court's Order dated October 25, 2002.

O R D E R

AND NOW THIS _____ day of April 2003, the Court **DENIES** the Plaintiffs' Request for Reconsideration of the Bill of Costs. The Court hereby reinstates its Order dated October 25, 2002, granting Piatt Township's exceptions to the Bill of Costs submitted by the Plaintiffs.

By The Court,

Kenneth D. Brown, Judge

cc: Marc Drier, Esquire
Christopher Williams, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work File