

[J-17-1998]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

ROBERT ROHRBAUGH AND CAROLA ROHRBAUGH,	:	No. 76 M.D. Appeal Dkt. 1997
	:	
v.	:	Appeal from the Order of the
	:	Commonwealth Court entered on July 12,
	:	1995, at No. 1971 C.D. 1994 reversing the
PENNSYLVANIA PUBLIC UTILITY COMMISSION, WEST PENN POWER COMPANY, INTERVENOR	:	order entered July 12, 1994 at No. C-00924632 of the Pennsylvania Public Utility Commission.
	:	
APPEAL OF WEST PENN POWER COMPANY, INTERVENOR.	:	ARGUED: February 2, 1998
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ROBERT ROHRBAUGH AND CAROLA ROHRBAUGH,	:	No. 77 M.D. Appeal Dkt. 1997
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DISSENTING OPINION

MR. JUSTICE NIGRO

DECIDED: March 26, 1999

The majority concludes that a utility company does not violate its statutory duty to provide reasonable and adequate service as required by Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501, where extensive damage is caused to a rental property after the

utility company disconnects utility service for the property at a ratepayer's request in the dead of winter without first notifying the landlord of the disconnection. In so doing, the majority reverses the order of the Commonwealth Court which found that West Penn Power Company ("West Penn") violated its statutory duty to provide reasonable and adequate service to the Appellees pursuant to 66 Pa. C.S. § 1501. I respectfully disagree with the majority's conclusion, and instead would affirm the order of the Commonwealth Court, based on West Penn's failure to follow the applicable notice procedures set forth at 52 Pa. Code § 56.72 (section 56.72) before discontinuing its provision of electric service to Appellees' property on December 7, 1989.

Section 56.72, which governs the procedures that utility companies must follow before discontinuing utility service at a specific property, provides as follows:

A utility may discontinue service without prior written notice under the following circumstances:

(1) Ratepayer's residence. When a ratepayer requests a discontinuance at his residence, when the ratepayer and members of his household are the only occupants.

(2) Other premises or dwellings. Other premises or dwellings shall be as follows:

(i) When a ratepayer requests discontinuance at a dwelling other than his residence or at a single meter multifamily residence, whether or not his residence but, in either case, only under either of the following conditions:

(A) The ratepayer states in writing that the premises are unoccupied. The statement shall be on a form conspicuously bearing notice that information provided by the ratepayer will be relied upon by the Commission in administering a system of uniform service standards for public utilities and that any false statements are punishable criminally. When the ratepayer fails to provide a notice, or when the ratepayer has falsely stated the premises are unoccupied, the ratepayer shall be responsible for payment of utility bills until the utility terminates service.

(B) The occupants affected by the proposed cessation inform the utility orally or in writing of their consent to the discontinuation.

(ii) Where the conditions set forth in subparagraph (i) have not been met, the utility, at least 10 days prior to the proposed termination, shall conspicuously post notice of termination at the affected premises.

(A) When the premises is a multi-family residence, notice shall also be posted in common areas.

(B) Notices shall, at a minimum, state: the date on or after which termination will occur, the name and address of the utility; and the requirements necessary for the occupant to obtain utility service in the occupant's name. Further termination provisions of this chapter except § 56.97 (relating to procedures upon ratepayer or occupant contact prior to termination) do not apply in these circumstances.

(C) This section does not apply when the ratepayer is a landlord. See §§ 56.121 -- 56.126 (Reserved).

52 Pa. Code. § 56.72.

For the reasons that follow, I disagree with the majority's determination that West Penn did not violate its statutory duty to provide reasonable and adequate utility service by failing to provide Appellees with advance notice of the disconnection of electric service to their property because they were not statutorily required to do so pursuant to 52 Pa. Code § 56.72(1).

The majority summarily concludes that because the tenant in the instant case was the ratepayer for Appellees' rental property, and because the tenant requested West Penn to disconnect the electric service that it provided to Appellees' rental property, West Penn was permitted, pursuant to 52 Pa. Code § 56.72(1), to discontinue its provision of electric service to the property without first providing notice of the discontinuation to the Appellees. The majority thereby ignores the fact that 52 Pa. Code § 56.72(1) is only applicable when a ratepayer requests that a utility provider discontinue its utility service **at his residence**.

The term residence is not defined in the Pennsylvania Utility Commission's regulations. The Statutory Construction Act, at 1 Pa. C.S. § 1903(a), provides that the "[w]ords and phrases [of a statute] shall be construed according to rules of grammar and

according to their common and approved usage. . . .” This Court has “generally used dictionaries as source material for determining the common and approved usage of a term.” Fogle v. Malvern Courts, Inc., 1999 WL 19154 (Pa.) (citing Love v. City of Philadelphia, 518 Pa. 370, 374, 543 A.2d 531, 532 (1988)). BLACK’S LAW DICTIONARY defines the term residence as a “[p]lace where one actually lives or has his home; a person’s dwelling place or place of habitation; an abode; house where one’s home is; a dwelling house.” BLACK’S LAW DICTIONARY 1308-09 (6th ed. 1990). The definition of the term residence provided in the BLACK’S LAW DICTIONARY is virtually identical to the definition of the term set forth by this Court in Gestell v. Knight, 345 Pa. 83, 26 A.2d 329 (1942). In Gestell, this Court stated that “[r]esidence, in its popular as well as its dictionary sense, means a place of abode, it is where one lives, either alone, or with one’s family. . . .” Gestell, 345 Pa. at 84, 26 A.2d at 330. Upon applying the foregoing definitions of the term residence to the facts of the instant case, it becomes clearly apparent that West Penn was not entitled to rely on 52 Pa. Code § 56.72(1) as a justification for its decision not to notify Appellees of the impending disconnection of the electric service at their property.¹

¹ In the eighth footnote of its opinion, the Majority takes issue with my determination that 52 Pa. Code § 56.72(1) is not applicable to this matter. In short, the Majority asserts that Appellees have conceded the applicability of section 56.72(1), and that the Court is therefore constrained to accept the applicability of the section. However, my review of the record indicates that nowhere do Appellees expressly concede the applicability of section 56.72(1). Rather, Appellees argue in their brief to this Court that even if section 56.72(1) is applicable, and even if West Penn complied with the terms of the regulation, West Penn still violated its statutory duty to provide reasonable service pursuant to 66 Pa. C.S. § 1501 by discontinuing the electric service at their property in the dead of winter without giving them advance notice. See Brief of Appellee at 12, 15, 20. Furthermore, by asserting that it is inappropriate for this Court to “create a dispute” concerning the applicability of section 56.72(1), the Majority fails to recognize that this Court may affirm the decision of the immediate lower court on any basis, without regard to the basis on which the court below (continued...)

As the majority correctly notes, the tenant in the instant case vacated the Appellees' rental property on October 31, 1989, under threat of eviction for non-payment of rent.² The tenant did not request that West Penn discontinue its provision of electric service to Appellees' property until December 4, 1989, more than a month after she left the property on threat of eviction. By that point in time, Appellees' property was no longer the tenant's residence as that term has been commonly defined, because the tenant no longer dwelled there. Because Appellee's property was not the tenant's residence at the time that she requested that West Penn discontinue providing electric service to the property, West Penn was not entitled to rely on 52 Pa. Code § 56.72(1) as a justification for disconnecting the electric service at Appellees' property without first giving them notice.³

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relied. See, e.g., Donnelly v. Bauer, 720 A.2d 447, 454 (Pa. 1998); Adams Sanitation Co., Inc. v. Commonwealth Department of Environmental Protection, 715 A.2d 390, 396 (Pa. 1998), E.J. McAleer & Co. v. Iceland Products, Inc., 475 Pa. 610, 613 n. 4, 381 A.2d 441, 443 n. 4 (1977). Appellees argued before the ALJ that the applicable notice regulation for West Penn to follow was not section 56.72(1), but section 56.72(2)(ii), because the tenant was no longer residing at the rental property when she requested that West Penn discontinue providing electric service there. (N.T., 3/9/93, at 89, 135.) Accordingly, the issue of the applicability of section 56.72(1) is apparent from the record, and is a proper basis upon which this Court can affirm the decision of the Commonwealth Court. Finally, I would add that the Majority's assertion that the Commonwealth Court's "characterization" of the record somehow indicates that section 56.72(1) was both applicable to this matter and fully complied with by West Penn is not supported by the Commonwealth Court's published majority opinion at 663 A.2d 809 (Pa. Commw. 1995).

² Appellee Robert Rohrbaugh testified at the March 9, 1993 hearing before the ALJ that he instituted eviction proceedings against the tenant in September of 1989. (N.T., 3/9/93, at 34.)

³ It is unclear from the record whether or not the tenant informed West Penn that she was no longer residing at Appellees' rental property when she called on December 4, 1989 and asked West Penn to discontinue providing electric service to the property. Assuming that the tenant did not so inform West Penn, the utility company nevertheless should have known that the tenant was not currently residing at Appellees' property, because it knew (continued...)

However, the inapplicability of 52 Pa. Code § 56.72(1), does not end the inquiry into the propriety of West Penn's decision to discontinue its provision of electric service to Appellees' property without providing advance notice to them. Section 56.72(2) sets forth the procedures that utility companies must follow before discontinuing service at a property when the ratepayer who is requesting the discontinuation either does not reside at the property, or resides at a single meter multifamily residence. The section states that when a ratepayer requests that one of his utilities be discontinued, but does not reside at the property at which the utility service is to be discontinued, the utility company must either obtain a signed written statement from the ratepayer verifying that the property is not occupied, or get oral or written consent from the occupants of the property who would be affected by the cessation of service before proceeding to discontinue the utility service there. 52 Pa. Code § 56.72(2)(i)(A), (B).

In the instant case, West Penn did not receive a signed statement from the tenant verifying that Appellees' property was unoccupied. Nor could West Penn secure oral or written consent from the occupants of Appellees' property to discontinue the electric service there, since there were no occupants of the house at that time. Therefore, pursuant to 52 Pa. Code § 56.72(2)(ii), West Penn was obligated to conspicuously post notice of termination at Appellees' property at least 10 days prior to the proposed disconnection of service, which notices would have to state the date on which the electric service was to be

(...continued)

that the heating system at the property was dependent on electric service to operate, and the tenant was requesting that West Penn discontinue providing electric service at Appellees' property in the dead of winter.

disconnected, its name and address, and information on how Appellees could obtain utility service at the property in their names. 52 Pa. Code § 56.72(2)(ii), (2)(ii)(B).

West Penn failed to abide by its obligation pursuant to 52 Pa. Code § 56.72(2)(ii) to post a ten-day advance notice of electric service discontinuation at Appellees' property. Had West Penn instead abided by its obligation to post conspicuous ten-day notices of discontinuation at Appellees property, then the Appellees would have seen the discontinuation notices when they visited the property on December 11, 1989, and would have had an opportunity to arrange to have the electric service at the property continued in their names. Instead, West Penn simply discontinued its provision of electric service to Appellees' property without providing advance notice to them, even though it knew that the heater at the property was dependent on electric service. As a result, when Appellees arrived at their property on December 11, 1989, just four days after West Penn disconnected the electric service, and just seven days after the tenant requested that the electric service be discontinued, they were greeted with a burst radiator and pipes, as well as extensive water damage to the floors, wall coverings, walls, ceilings, plumbing fixtures, and electrical wiring.

As the above discussion indicates, West Penn had a statutory duty to post conspicuous ten-day notices at Appellees' property before discontinuing its provision of electric service to the property. By failing to satisfy its statutory duty to post the notices pursuant to 52 Pa. Code § 56.72(2)(ii), West Penn also failed to provide "adequate, efficient, safe and reasonable service and facilities" as is "necessary or proper for the accomodation, convenience, and safety of its patrons, employees and the public." 66 Pa. C.S. § 1501. While the Commonwealth Court did not consider the possibility that West

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Penn violated its statutory notice obligations under 52 Pa. Code § 56.72, it nevertheless found that West Penn violated its statutory duty to provide adequate and reasonable service to the Appellees under 66 Pa. C.S. § 1501 based on its failure to notify them of the impending discontinuation of electric service at their property. Accordingly, I would affirm the order of the Commonwealth Court, albeit on a different basis.