

[Cite as *Fierro v. Greater Cincinnati Water Works*, 2010-Ohio-4314.]

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

CAROL FIERRO	:	APPEAL NO. C-100041
	:	TRIAL NO. A-0810551
and	:	
FIERRO, INC.,	:	<i>DECISION.</i>
Defendants-Appellants,	:	
vs.	:	
GREATER CINCINNATI WATER WORKS	:	
and	:	
CITY OF CINCINNATI,	:	
Plaintiffs-Appellees.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: September 15, 2010

*Nicole L. Sanders, Assistant City Solicitor, for Plaintiffs-Appellees,*

*Nicolas D. Wayne, for Defendants-Appellants.*

Please note: This case has been removed from the accelerated calendar.

**SYLVIA S. HENDON, Judge.**

{¶1} Defendant-appellant Carol Fierro is the owner of property located at 635 Shepard Drive, in Cincinnati, Ohio. Fierro leased that property to Edward Jackson, who ran a commercial dry-cleaning business on the property. Jackson obtained effluent sewer services from the city to dispose of the waste water generated by the dry-cleaning business. The Greater Cincinnati Water Works (“GCWW”) mailed the bills for the effluent services to the Shepard Drive property. But Jackson defaulted on these bills and accrued a delinquent balance of approximately \$40,000. Fierro discovered Jackson’s debt to GCWW when she reclaimed possession of her property. The charges and late fees accrued by Jackson were levied against Fierro’s account.

{¶2} In January 2008, Fierro requested a hearing before a GCWW hearing examiner to contest these effluent-service and late-fee charges. Citing Cincinnati Municipal Code (“C.M.C.”) 401-94 and 401-103, the hearing examiner determined that Fierro was responsible for all charges incurred by Jackson. C.M.C. 401-94 provides that owners of real estate are responsible for all water and service charges levied against their premises. And C.M.C. 401-103 provides that property owners may receive duplicate bills for their premises, and that failure to receive a bill does not relieve a property owner from financial responsibility for that bill.

{¶3} Fierro filed an administrative appeal in the common pleas court pursuant to R.C. Chapter 2506. Her appeal was first referred to a magistrate, who, following oral argument, affirmed the decision of the hearing examiner. Fierro filed objections to the magistrate’s decision, which the trial court overruled. In addition

to holding Fierro responsible for the debt under the C.M.C. provisions relied upon by the hearing examiner, the trial court ruled that C.M.C. 719-67 subjected Fierro to responsibility for the debt incurred by Jackson. C.M.C. 719-67 concerns sewerage-service charges, providing that “the owner of any premises from which water is discharged from commercial wells into city sewers shall \* \* \* pay sewer service charges to the city.” The trial court further relied on R.C. 6117.02 and Metropolitan Sewer District (“MSD”) Resolution 2008-0231 in making its decision. Collectively, these authorities provide that the MSD is to provide sewer services that are to be billed by and payable to GCWW.

{¶4} Fierro has appealed, raising three assignments of error. Unlike the trial court, which must consider the entire record and determine whether the administrative order was supported by a preponderance of substantial, reliable, and probative evidence, this court has a limited power of review when considering an administrative appeal pursuant to R.C. 2506.04.<sup>1</sup> We must review the trial court’s judgment only on questions of law and do not have the power to weigh the evidence in the record.<sup>2</sup>

***New Evidence and R.C. 2506.03***

{¶5} In her first assignment of error, Fierro argues that the trial court erred in relying on new evidence that was not introduced by either party. Specifically, Fierro takes issue with the trial court’s reliance on R.C. 6117.02 and MSD Resolution 2008-0231. It is Fierro’s position that because neither she nor the city had cited

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<sup>1</sup> *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 147, 2000-Ohio-493, 735 N.E.2d 433.

<sup>2</sup> *Id.*

these provisions to the hearing examiner or the magistrate, the trial court could not rely on them.

{¶6} Fierro relies upon R.C. 2506.04, which provides that any new or additional evidence considered by the trial court in an administrative appeal must be admitted pursuant to R.C. 2506.03. R.C. 2506.03 explains when new evidence may be added to the record of an administrative appeal.<sup>3</sup> Fierro asserts that the trial court's reliance on R.C. 6117.02 and MSD Resolution 2008-0231 was contrary to R.C. 2506.03.

{¶7} We reject Fierro's argument. The trial court did not add new evidence to the record through its consideration of R.C. 6117.02 and MSD Resolution 2008-0231. Rather, the trial court relied on additional legal authorities that it deemed to be applicable to the facts of this case. These legal authorities are not the type of evidence contemplated by R.C. 2506.03. Courts of law are bound to apply the relevant law to the cases that come before them. We cannot conclude that a court should disregard applicable law merely because neither party to the case has cited it.

{¶8} Further, the trial court did not use R.C. 6117.02 and MSD Resolution 2008-0231 to supplant the legal authority that was relied on by the magistrate and the hearing examiner and that was argued by the parties. In its decision, the trial

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<sup>3</sup> R.C. 2506.03 provides that the trial court shall be confined to the transcript of the administrative proceedings unless "(1) The transcript does not contain a report of all evidence admitted or proffered by the appellant; (2) The appellant was not permitted to appear and be heard in person, or by the appellant's attorney, in opposition to the final order, adjudication, or decision, and to do any of the following: (a) [p]resent the appellant's position, arguments, and contentions; (b) [o]ffer and examine witnesses and present evidence in support; (c) [c]ross-examine witnesses purporting to refute the appellant's position, arguments, and contentions; (d) [o]ffer evidence to refute evidence and testimony offered in opposition to the appellant's position, arguments, and contentions; (e) [p]roffer any such evidence into the record, if the admission of it is denied by the officer or body appealed from; (3) The testimony adduced was not given under oath; (4) The appellant was unable to present evidence by reason of a lack of the power of subpoena by the officer or body appealed from, or the refusal, after request, of that officer or body to afford the appellant opportunity to use the power of subpoena when possessed by the officer or body; [or] (5) The officer or body failed to file with the transcript conclusions of fact supporting the final order, adjudication, or decision."

court clearly indicated that the magistrate's decision relying on C.M.C. Chapter 401 should not be vacated. The court found that the code sections relied on by the magistrate and the hearing examiner were applicable to this case, and that these sections imposed liability upon Fierro. The court then cited R.C. 6117.02 and MSD Resolution 2008-0231 in further support of its decision. This was not improper. We conclude that the trial court did not improperly rely on new evidence, and we overrule Fierro's first assignment of error.

*Sufficiency of Record*

{¶9} In her second assignment of error, Fierro argues that the trial court erred by relying on a record that did not contain a preponderance of reliable, probative, and substantial evidence to support the hearing examiner's decision. As we have stated, this court may not weigh the evidence in the record, and we review the trial court's judgment only on questions of law.

{¶10} The trial court relied on C.M.C. 401-94 to hold Fierro responsible for her tenant's debt. This provision states that "[a]ny owner of real estate premises installing or maintaining water service connections shall \* \* \* be liable for all water and service charges for such premises." C.M.C. 401-2-W1 defines a water-service connection as "the physical connection of a service branch with a water main." Fierro argues that because she received her water service from the city of Lockland, not from Cincinnati, she did not maintain a water-service connection with the city of Cincinnati, and the provisions relied upon by the trial court did not control in this case.

{¶11} The trial court was not persuaded by Fierro's argument. It determined that because the effluent services resulted in waste water being expelled from the

property into the sewer, Fierro's property maintained a water-service connection. And because she maintained a water-service connection, C.M.C. 401-94 was applicable. The trial court then cited R.C. 6117.02 and MSD Resolution 2008-0231, the provisions that Fierro has taken issue with in her first assignment of error, to demonstrate that GCWW was responsible for collecting payment of effluent-service charges. We agree with the trial court's determination that these provisions were applicable in this case, and that they imposed liability upon Fierro.

{¶12} Fierro further objects to the trial court's reliance on C.M.C. 719-67. She contends that the trial court could not have relied on this provision because it was not referred to by the magistrate or the hearing examiner, and that it was inapplicable to her case. Our ruling on Fierro's first assignment of error resolves her first contention. As we have already stated, C.M.C. 719-67 provides that "the owner of any premises from which water is discharged from commercial wells into city sewers shall \* \* \* pay sewer service charges to the city." Fierro asserts that because she did receive her water from a commercial well, this statute was inapplicable. C.M.C. 719-1-C defines a commercial well as "any well used to obtain water for business or industrial purposes." Although the water for Fierro's property came from the city of Lockland, it was used in a commercial dry-cleaning business. We cannot conclude that the trial court erred in concluding that this provision also imposed liability on Fierro.

{¶13} Following our review of the record, we conclude that the trial court did not err in determining that the record contained reliable, probative, and substantial evidence to support the hearing examiner's decision. The second assignment of error is overruled.

*Reasonable Notice*

{¶14} In her third assignment of error, Fierro argues that the trial court erred when it determined that she had been provided with reasonable and sufficient notice of the effluent charges, as required by due process. Due process requires both reasonable notice and an opportunity to be heard.<sup>4</sup> Fierro did not receive notice that her tenant had been accruing effluent-service charges until the charges reached approximately \$40,000.

{¶15} In support of her argument that she was not provided with sufficient notice of the accruing charges, Fierro cites *New Lexington v. Dutiel*.<sup>5</sup> *New Lexington* involved a property owner's liability for a tenant's unpaid water bill of approximately \$8,500. In that case, the property owner had likewise argued that a due-process violation had resulted from the owner's failure to receive direct notice of the charges. The *New Lexington* court held that no due-process violation had occurred, but it did note that "at some point, delinquent water bills could conceivably accrue to such a high level that an owner's due process rights would be implicated by the lack of direct notice to the owner."<sup>6</sup>

{¶16} The law is clear, and Fierro does not dispute, that a property owner is responsible for the water and service charges levied against the owner's property, even if those charges have initially accrued against a tenant.<sup>7</sup> So we must determine whether the \$40,000 in charges levied against Fierro amounted to the "high level" contemplated by the *New Lexington* court. We are cognizant that \$40,000 is a sizeable amount of money, and that it certainly constitutes an onerous burden on

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<sup>4</sup> See *Cosgrove v. Grogan* (2001), 141 Ohio App.3d 733, 740, 753 N.E.2d 256.

<sup>5</sup> 5th Dist. Nos. 01-CA-3, 01-CA-6, and 01-CA-7, 2002-Ohio-1284.

<sup>6</sup> *Id.*

<sup>7</sup> See C.M.C. 401-95.

Fierro. But we cannot conclude that Fierro's due-process rights were violated by her failure to receive direct notice of the accruing charges. Our decision is influenced by C.M.C. 401-103, which gives a property owner the opportunity to provide GCWW with a second address so that the owner can receive a duplicate bill. Fierro failed to give GCWW an alternate address so that she could examine her tenant's bills. A property owner bears some burden to monitor a tenant's activity, especially when the law makes the owner liable for the tenant's actions.

{¶17} Given that Fierro failed to provide a duplicate billing address, we hold that her due-process rights were not violated by a failure to receive adequate notice of the accruing charges. The third assignment of error is overruled.

{¶18} The judgment of the trial court is, therefore, affirmed.

Judgment affirmed.

**CUNNINGHAM, P.J., and MALLORY, J., concur.**

*Please Note:*

The court has recorded its own entry on the date of the release of this decision.