IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sandy Township, a municipal corporation, Appellant	:	
v.	:	No. 118 C.D. 2007
City of Dubois, a municipal corporation	:	Argued: February 12, 2008

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: June 6, 2008

Sandy Township appeals from the December 19, 2007 order of the Court of Common Pleas of Clearfield County (trial court) denying its motion for post trial relief. We affirm.

The City is a third class city and operates a sewage collection and treatment system for the benefit of property owners located within the boundaries of the City. The Township is a second class township and it geographically surrounds the City. The Township operates a sewage collection system for the benefit of its residents, but does not operate a sewage treatment plant. Previously, the City has provided sewage treatment and limited sewage transportation services to the Township under varying agreements from late 1988 to 2002; however, the

relationship between the parties was governed by a "Guaranty and Service Agreement" entered into on December 1, 1988 (the 1988 Agreement).
Reproduced Record (R.R.) at 196a. The terms of that agreement provided that its provisions control the relationship between the parties until either (1) the 1988 Agreement expired by operation of its terms on December 31, 2009; or (2) the agreement was terminated by the pre-payment of the City's long-term permanent Pennvest financing.

Thereafter, the Township filed a declaratory judgment action against the City alleging various violations of what is commonly referred to as the Sewer Rental Act.[1] After the filing of preliminary objections, several amended complaints were filed and preliminary objections to the final complaint were ruled upon by order dated January 8, 2004. A three day non-jury trial was held on August 9-11, 2004. On May 16, 2005, the trial court issued an opinion and order partially disposing of the issues raised. Therein, the trial court made the following findings of fact.

In 2002, Ronald Trzyna, City Manager, arrived at the conclusion that the sewer rental rate then being charged to its customers (both residential and bulk) of the City's sewage system was not sufficient to meet the costs associated with the City sewer system's normal operations combined with obligations incurred by the City under the terms of a Consent Order and Agreement entered into between the City and the Pennsylvania Department of Environmental Protection (DEP) on June 11, 2002. The City had taken steps to severely curtail, if not eliminate, Infiltration and Inflow (I/I) from its system, as well as undertaking the construction of a flow equalization tank. Either concurrent or subsequent to the City entering into its

[1] Act of July 18, 1935, P.L. 1286, as amended, 53 P.S. §§2231-2234.

Consent Order and Agreement, Mr. Trzyna performed some manner of calculation to arrive at a new proposed sewer rental rate of $6.92 per 1,000 gallons.

As a preliminary matter to the imposition of a higher rate, Mr. Trzyna opted to pre-pay the City's Pennvest loans, thus terminating the 1988 Agreement and allowing the City to charge the Township, which was the particular bulk customer affected by the 1988 Agreement, a newer rate. The City Council passed three ordinances affecting the City's sewage fee structure. One, Ordinance 1652, dealt with the imposition of a $1,800 tap fee for any new connection to the City's sewage collection system as well as imposing a $250.00 inspection fee on renewed connections to the system. The second, Ordinance 1653, dealt with the imposition of a new sewer rental rate of $6.92 per 1,000 gallons (the $6.92 Rate) of water used by a customer, based upon water meter readings within the City and measured by flow meters from customers outside the City. The third, Ordinance 1675, passed on January 12, 2004 with a retroactive effective date of June 30, 2002, retained the $6.92 Rate created in Ordinance 1653 while adding a provision that attempted to address and regulate the presence of excessive I/I flow into the City's sewage system.

In its declaratory judgment action against the City, the Township requested the following relief in the form of an order holding that:

> 1. Ordinance 1675 (passed by City Council on January 12, 2004 and having a retroactive effective date of June 30, 2002) is declared void as applied to the Township because the $6.92 Rate set forth therein is in violation of Section 2 of the Sewer Rental Act.[2]

[2] 53 P.S. §2232. Section 2 provides as follows.

Amount of rental or charge

(Continued....)

2. Ordinance 1652 (passed by City Council on May 28, 2002, and having an immediate effective date) providing for the imposition of a $1,800 Tapping Fee and $250 inspection fee upon Township residents is void as a matter of law as applied to the Township.

3. The lawful rate for sewer services imposed by the City upon the Township from June 1, 2002 through June 30, 2004 is $2.79 per 1,000 gallons.

Any such annual rental, rate or charge may be, but shall not be limited to, such sum as may be sufficient to meet any or all of the following classes of expense: (a) the amount expended annually by the county, city, borough, incorporated town, or township in the operation, maintenance, repair, alteration, inspection, depreciation, or other expenses in relation to such sewer, sewerage system, or sewage treatment works; (b) such annual amount as may be necessary to provide for the amortization of any indebtedness incurred, or non-debt revenue bonds issued, by the county, city, borough, incorporated town, or township in the construction or acquisition of such sewer, sewerage system, or sewage treatment works, and interest thereon, in order that said improvements may become self-liquidating, or as may be sufficient to pay the amount agreed to be paid annually under the terms of any contract or lease with any authority or private corporation furnishing, or undertaking to design or construct facilities with which to furnish, sewer, sewerage or sewage treatment services to such county, city, borough, town, or township and its inhabitants; and (c) sufficient to establish a margin of safety of ten per centum. Any unused surplus from any preceding year shall be paid into the fund accruing from said rentals, rates or charges and, whenever the amount in said fund exceeds the said margin of safety of ten per centum, the excess shall be paid into the sinking fund. The amount required for sinking fund and interest shall be paid into the sinking fund, and the amount so paid, including any excess as above provided, shall not be used for any other purpose. The said annual rental or whatever rate or charge shall be decided upon by the county, city, borough, incorporated town, or township shall be apportioned equitably among the properties served by the said sewer, sewerage system, or sewage treatment works.

> 4. The lawful rate for sewer services imposed by the City upon the Township from July 1, 2004 through the date of the trial court's order is $3.15 per 1,000 gallons based on net water meter readings and estimates.

In rendering its May 16, 2005 decision on the foregoing requested relief with respect to Ordinance 1675, the trial court, citing to Brandywine Homes v. Caln Township Municipal Authority, 339 A.2d 145, 148 (Pa. Cmwlth. 1975), determined that under the appropriate standard of review it was prohibited from examining the sewer rental rate set by a municipality for reasonableness, absent a showing that the municipality either manifestly abused its discretion or acted arbitrarily in setting the rate. Therefore, the trial court stated that it would only examine the reasonableness of the $6.92 Rate if it first determined that the City acted either arbitrarily or somehow otherwise manifestly abused its discretion in setting the rate at $6.92 per 1,000 gallons.

The trial court stated that several factors raised a red flag and caused the court to question the manner in which the City arrived at the $6.92 Rate. Those factors were:

> 1. The manner in which the original calculations for the $6.92 Rate was arrived at by Trzyna. Uncontradicted testimony at trial indicated that in creating the $6.92 Rate, Trzyna's calculations erroneously took into consideration approximately $15 million in debt that was never incurred by the City either before or after the adoption of the $6.92 Rate.
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> 2. Further, it appeared from Trzyna's testimony that he did not utilize actual City budget numbers in formulating the $6.92 Rate.
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> 3. The trial court noted information regarding the City's 2003 actual budget accepted into the record as part of Dennis Kalbarczyk's (Township's rate expert) expert

> report. These uncontroverted numbers indicate that for the year 2003 alone, with only City residents paying the $6.92 Rate and with the Township residents paying a rate of $2.79 from June 1, 2002 to June 30, 2004 and of $3.15 from July 1, 2004 to May 2005, the City had a net income of $845,429.00. It was also apparent that the City expended $600,457.00 for capital projects, leaving a post-improvement net income of $245,972.00. If this was the case in a scenario where only City residents were paying the $6.92 Rate, then the trial court could only surmise that in the event the Township were to be required to pay the $6.92 Rate, that the City would realize a net income grossly in excess of the amounts allowable under the terms of the Sewer Rental Act.

Trial Court Opinion filed May 16, 2005 at 5.

However, the trial court determined that it was not prepared at the time of its May 16, 2005 decision to hold that the foregoing factors constituted arbitrary acts or a manifest abuse of discretion. Therefore, the trial court denied the Township's requested relief in regard to Ordinance 1675 at that time to the extent that the $6.92 Rate should be imposed on Township residents to be effective January 1, 2005. The trial court retained jurisdiction over the case until the end of the calendar year 2005 at which time the most current and complete financial information regarding the costs of operating and maintaining the City's sewer system (and of the system components shared by the parties) was available. The trial court stated that the record was to remain open until that time and at the request of the Township, the trial court would compare the income derived from all sources during the calendar year 2005 with the total of all expenses incurred during said period. In order to facilitate the gathering of as complete a budgetary picture as possible, the Township was ordered to comply with the $6.92 Rate retroactive only to January 1, 2005.

With respect to the City's claim for tapping fees, the trial court first determined that the City was not entitled to retroactively collect tapping fees under the terms of the 1988 Agreement. Second, the trial court determined that the imposition of tap and inspection fees upon the Township's residents pursuant to Ordinance 1652 was void as it applied to the Township. Finally, in its May 26, 2005 decision, the trial court determined that the City was not entitled to counsel fees pursuant to the 1988 Agreement. Accordingly, the trial court granted in part and denied in part[3] the Township's complaint and dismissed the City's counterclaim. The trial court retained jurisdiction pending receipt of income and expense data by the City in accordance with the trial court's opinion.

After receiving the requested financial data, the trial court entered its final opinion and order in this matter on November 9, 2006, addressing the issue of the appropriateness of the $6.92 Rate. Therein, the trial court rejected the Township's assertion that the trial court's standard of review was more expansive than the one applied by the trial court in its May 16, 2005 decision. The Township asserted that the trial court must not only address whether the rate was unreasonable but also whether the rate was equitable in accordance with the Sewer Rental Act. In other words, the Township believed that the $6.92 Rate per 1,000 gallons is afforded no deference and is subject to plenary review as a matter of law. The trial court disagreed and applied the deferential standard of review in determining the reasonableness of the $6.92 Rate.

Applying the foregoing standard, the trial court determined that it had considered the three factors of concern set forth in its May 16, 2005 decision and

[3] The trial court's May 16, 2005 order states that the complaint is dismissed in part but it is clear from the opinion accompanying the order that the complaint was denied in part not

(Continued....)

concluded that the Township failed to meet its burden. With respect to the first two factors, the trial court found that the City did not abuse its discretion at the time the $6.92 Rate was determined in June 2002. The trial court found that Mr. Trzyna based his calculations on the rate on 2002 budget figures and estimated costs including those imposed by the Consent Order with the DEP. The trial court found further that Mr. Trzyna did not unilaterally enact the new rate but that both the City's engineering firm and City Council reviewed the proposal and agreed that the $6.92 Rate was appropriate.

With respect to the third factor, the trial court found that the conclusions reached by Dennis Kalbarczyk alleging that the 2003 budget numbers demonstrated a potential net income in gross excess of amounts allowed under the Sewer Rental Act were not persuasive. The trial court pointed out that Mr. Kalbarczyk settled on 2004 as being the most appropriate year because costs were not known until 2004; however, the use of the modified 2004 budget did not fully and fairly reflect the circumstances. In support of this statement, the trial court noted its prior determination that Mr. Trzyna's estimations relative to the 2002 budget numbers did not meet the standard of manifest abuse of discretion or arbitrariness. The trial court also found that it was not *per se* error for the City to pay cash for its capital projects as opposed to incurring debt. The trial court found that Mr. Kalbarczyk's self titled more appropriate rate, as it was more beneficial to the customers, based on a debt financed approach was not binding upon the court.

Accordingly, the trial court dismissed the Township's remaining claims. This appeal followed.[4]

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dismissed on the issue regarding Ordinance 1675 which set the $6.92 Rate.

[4] Our scope of review in a declaratory judgment action is limited to determining whether

(Continued....)

Herein, the Township raises the following issues:

> 1. Whether the trial court erred in applying the incorrect deferential Municipality Authorities Act[5] (MAA) standard of review to determine the lawfulness of the City's wholesale sewer rates when the controlling Sewer Rental Act contains specific requirements for setting sewer rental rates that the uncontroverted facts show were violated.
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> 2. Whether the trial court erred in holding that the City's sewer rates, adopted in June 2002 by Ordinances 1652, 1653, and 1675, are not unlawfully arbitrary and capricious or an abuse of discretion in violation of the Sewer Rental Act in light of the facts of this case.

In support of the first issue raised, the Township argues that the trial court erred by applying a deferential standard of review where the Sewer Rental Act clearly controls this case. The Township contends that the test applied by the trial court is clearly inconsistent with the law. The Township contends that the City's power to set sewer rates is controlled by statute; therefore, the power is limited to the expression of statutory authorization found in the Sewer Rental Act. The Township points out that The Third Class City Code[6] authorizes the City to collect rates by ordinance as authorized by law. See Section 3211 of The Third Class City Code, 53 P.S. §38211.[7] The Township argues that pursuant to Section

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the trial court's findings are supported by substantial evidence and whether the trial court committed an error of law or abuse of discretion. Juniata Valley School District v. Wargo, 797 A.2d 428 (Pa.Cmwlth. 2002).

[5] 53 Pa.C.S. §§5601-5623.

[6] Act of June 23, 1931, P.L. 932, as amended, 53 P.S. §§35101 - 39701.

[7] Section 3211 provides that "[c]ities may provide by ordinance for the imposition and the collection of an annual rental, rate or charge for the use of sewers, sewer systems, or sewage treatment works as authorized by law."

3212 of The Third Class City Code, 53 P.S. §38212, "[s]uch annual rental, rate or charge shall not exceed the amount authorized by law" and that the Sewer Rental Act, in turn, is the "law" that controls the amount the City may charge for sewer treatment services through its rates.

The Township argues that a critical distinction of this case is that municipal authorities have broader statutory powers than Third Class cities to set sewer rates. The Township contends that the MAA allows authorities to establish rates that are "reasonable and uniform" and that standard does not apply to the City as the City is not a municipal authority. See Section 5607(d)(9) of the MAA, 53 Pa.C.S. §5607(d)(9). The Township argues that instead, the more specific and limiting Sewer Rental Act provides the City with its sole legal power to set sewer rates. The Township contends that the trial court erred by failing to recognize and apply the important distinction between the MAA's relatively broad and reasonable uniform standard and the much narrower and stricter "actual cost plus ten per centum" authority of Section 2 of the Sewer Rental Act. 53 P.S. §2232. The Township argues that the trial court's conclusion that the City's statutorily unlawful rates may only be examined if the City acted arbitrarily renders the language of the Sewer Rental Act meaningless. The Sewer Rental Act permits rates to recover actual expenses and debt and permits a surplus of no more than ten percent. The Township contends that a rate that violates these requirements is illegal under the statute.

Upon review, we disagree with the Township that the trial court erred by applying the incorrect standard of review. In the case relied upon by the trial court, Brandywine Homes, this Court was called upon to determine whether sewer rates established by the township pursuant to the Sewer Rental Act were: (1) not uniform; (2) unreasonable; and (3) discriminatory. In disposing of this issue, we

stated that "[o]ur review of a rate resolution is limited to a determination of whether or not there has been a manifest and flagrant abuse of discretion or an arbitrary establishment of the rate system." Brandywine Homes, 339 A.2d at 148. Contrary to the Township's assertions herein, this standard of review is not inconsistent with the requirements of the Sewer Rental Act.

Section 1 of the Sewer Rental Act[8] authorizes a city to provide by ordinance for the imposition and collection of an annual rental, rate or charge for

[8] 53 P.S. §2231. Section 1 provides as follows:

> **Rentals for use of sewage system**
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> Whenever any county, city, borough, incorporated town, or township, either singly or jointly with other municipalities or townships, (a) has, wholly or partially, constructed or completed or shall hereafter, wholly or partially, construct or complete any sewer, sewerage system or sewage treatment works, either wholly or partially at public expense, or (b) has acquired or shall hereafter acquire the same, either wholly or partially at public expense, or (c) has entered or shall hereafter enter into any contract with any authority established in accordance with law or with any private corporation for the design or construction of sewers, sewerage systems or sewage treatment works or for the furnishing of sewer, sewerage or sewage treatment services, for its or their benefit and the benefit of the inhabitants thereof, such county, city, borough, incorporated town, or township may provide by ordinance or resolution, enacted either before or after the acquisition or construction thereof, or the entry into such contract, for the imposition and collection of an annual rental, rate or charge for the use of such sewer, sewerage system, or sewage treatment works from the owners of, or the users of water in or on the property served or to be served by it, or from both the owner and the water user, whether such property is located within or without the corporate limits of such county, city, borough, town, or township.
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> The annual rental, rate or charge so imposed shall be a lien on the properties served, and such liens may be filed in the office of the prothonotary and collected in the manner provided by law for the filing and collection of municipal claims.

the use of its sewer system or treatment plant. Section 2 of the Sewer Rental Act authorizes a city to establish a sewer rental rate sufficient to cover its expenses and amortize indebtedness. Specifically, Section 2 provides that "[a]ny such annual rental, rate or charge may be, but shall not be limited to, such sum as may be sufficient to meet any or all of [three classes] of expenses." 53 P.S. §2232 (emphasis added). As such, the language of Section 2 clearly provides a city, such as the City of Dubois, discretion in setting the sewer rental rate. In addition, the language of Section 2, by requiring that that the sewer rental rate or charge be sufficient to meet certain classes of expenses, imposes a duty on a city, such as the City of Dubois, to follow the guidelines therein and not arbitrarily establish such rate. Accordingly, we conclude that the trial court utilized the correct standard of review as espoused by this Court in Brandywine Homes as set forth above.

With the foregoing standard in mind, we turn to the second issue raised by the Township in this appeal: whether the trial court erred in holding that the City's sewer rates are not unlawfully arbitrary and capricious or an abuse of discretion in violation of the Sewer Rental Act in light of the facts of this case. In support of this issue, the Township argues that the City acted arbitrarily and capriciously or abused its discretion in setting the $6.92 Rate and its I/I rates. The Township contends that the trial court made three findings of fact which support the conclusion that the City acted arbitrarily and capriciously or abused its discretion. The Township argues that these findings are supported by the record and are unchallenged by the City.

The Township contends that the record shows that the rate was based upon an arbitrary assumption by Mr. Trzyna that the total debt required in the future would be 15 million dollars. However, the debt and the annual debt service included by Mr. Trzyna in his rate calculation never materialized thus the rate was

based on fictional debt and debt service. The Township argues further that, in addition, the 2002 budget invented by Mr. Trzyna for rate purposes was substantially higher than the 2002 approved budget used by the City for operating purposes.

It is well settled that the party challenging the rate structure bears the burden of proof that the rate structure is either not equitably apportioned or is not uniformly applied throughout a class thereunder. Ack v. Carroll Township Authority, 661 A.2d 514 (Pa. Cmwlth. 1995), petition for allowance of appeal denied, 543 Pa. 731, 673 A.2d 336 (1996). That a court may have a different opinion or judgment in regard to the action of the agency is not sufficient grounds for interference; judicial discretion will not be substituted for administrative discretion. Id.

Herein, in an opinion in support of the May 16, 2005 order, the trial court set forth three factors which raised a red flag and caused the trial court to question the manner in which the City arrived at the $6.92 Rate. The Township contends that these factors are three findings of fact which support the conclusion that the City acted arbitrarily and capriciously or abused its discretion. However, in an opinion in support of its November 9, 2006 final order, the trial court states that its May 16, 2005 opinion and order outlined three factors of concern and that the trial court carefully considered these factors in determining that the Township had failed to meet its burden. The trial court then addresses the three factors and sets forth its reasons as to why further review of the record dispelled the trial court's concerns. As such, we decline to treat the trial court's three factors of concern as final findings of fact and will review the trial court's reasons for

denying the Township its requested declaratory relief, as set forth in the November 9, 2006 opinion, in accordance with the appropriate scope of review.[9]

The trial court first evaluated whether the City abused its discretion at the time the $6.92 Rate was determined in June 2002. In making this evaluation, the trial court reviewed the testimony of: (1) Mr. Trzyna, the City Manager; (2) David M. Meredith, a civil engineer employed by Chester Engineers; and (3) Gary D. Shambaugh, an expert in the area of rate-making and rate design.

With regard to the first two factors of concern, the trial court stated that it was initially concerned that Mr. Trzyna's original calculations in arriving at the $6.92 Rate were erroneous because he utilized an estimated 15 million dollar debt that was never incurred. After reviewing the record, the trial court found that while Mr. Trzyna arrived at the $6.92 Rate after conducting extensive calculations based upon 2002 budget figures and estimated costs, he did not unilaterally enact the rate. The trial court found that both the City's engineering firm and the City Council reviewed the proposal and agreed that the $6.92 Rate was appropriate. This finding is supported by the record in this matter.

Mr. Trzyna testified that he chose the 15 million dollar number in May 2002 after discussions with the City's engineering firm, which was Chester Engineers. See R.R. at 33a. Mr. Trzyna testified further that the 15 million dollar figure was based on estimates of what the engineering firm said would have to be done to comply with the Consent Order and Agreement entered into by the City and DEP. Id. at 186. Mr. Trzyna testified that he believed that the City was going to have to borrow 15 million dollars because it did not have the money on hand to start with the corrective action required by the Consent Order. Id. at 187.

[9] See Footnote 4.

The Township entered into the record Exhibit P-24 which sets forth Mr. Trzyna's calculations in setting the $6.92 Rate. R.R. at 313a. This document contains the statement that it was reviewed and approved by Chester Engineers. Id.

Mr. Meredith testified that Chester Engineers was asked to provide an informal review of the rate calculations performed by Mr. Trzyna. R.R. at 103a. When presented with Exhibit P-24, Mr. Meredith testified further that Chester Engineers reviewed the calculations performed by Mr. Trzyna in establishing the $6.92 Rate. Id. at 106a.

Mr. Shambaugh testified that he was contacted in January 2004 by the City to review the rates that were calculated by Mr. Trzyna and implemented by City Council. R.R. at 144a; Original Record (O.R.), August 12, 2004, Notes of Testimony at 52.[10] Mr. Shambaugh testified that in addition to performing an additional independent rate calculation, he reviewed the Mr. Trzyna's calculations with regard to the $6.92 Rate. Mr. Shambaugh testified that Mr. Trzyna's calculations met the acceptable standards for calculating rates under the Sewer Rental Act. R.R. at 178a.

In addition, Mr. Shambaugh initially testified that his independent rate review, based on the 2003 budget, resulted in the conclusion that the ultimate sewer rental rate that the City should charge the Township was $8.10 and with profit included, $8.91. R.R. at 154a. Mr. Shambaugh testified further that, based on the known and measurable level of debt service and the more conservative allocation of the capacity costs of the Township, the rate of $7.34 to $7.45 was

[10] We note that the Township did not reproduce the entire certified record in this matter. Therefore, where necessary, we will cite to the original certified record.

probably more representative of the cash needs of the City at the present time. R.R. at 164a-65a. Finally, Mr. Shambaugh testified that the $6.92 Rate did not provide any profit to the City. O.R., August 12, 2004 Notes of Testimony at 50.

The trial court concluded, based on the foregoing, that the City's actions prior to the rate increase coupled with the testimony of Mr. Shambaugh were appropriate. We agree. Accordingly, contrary to the Township's position, the record supports the trial court's conclusion that the City, via Mr. Trzyna, did not arbitrarily calculate a rate that was unreasonable, discriminatory or in violation of the Sewer Rental Act.

With regard to the third factor of concern to the trial court, which was based on the testimony of the Township's expert Dennis Kalbarczyk, the trial court found that Mr. Kalbarczyk's opinions were unpersuasive. The trial court determined that Mr. Kalbarczyk's use of the modified 2004 budget numbers did not fully and fairly reflect the circumstances. The trial court found that Mr. Kalbarczyk's unilateral adjustment to establish a more equitable rate relative to the City's capital projects did not take into account the City's decision to pay cash for the capital projects including the flow equalization tank. The trial court pointed out that Mr. Kalbarczyk based his opinion of an appropriate rate on a debt financed approach and that the City's decision to pay cash for capital projects was not *per se* error.

It was well within the province of the trial court when acting as fact finder to weigh conflicting testimony, determine credibility and resolve conflicts in the evidence. D'Emilio v. Board of Supervisors, Township of Bensalem, 628 A.2d 1230 (Pa. Cmwlth. 1993). As such, the trial court did not err by rejecting Mr. Kalbarczyk's expert testimony.

The Township argues further that the City's I/I rates are also unlawful. In support of this argument, the Township relies solely upon the testimony of its expert, Mr. Kalbarczyk. However, as the trial court found Mr. Kalbarczyk's testimony unpersuasive, the Township's arguments with regard to this issue must fail.

Accordingly, we conclude that the evidence presented and reviewed by the trial court supports the trial court's finding that the City did not commit an abuse of discretion or act in an arbitrary and capricious manner in establishing its sewer rental charge in accordance with the requirements of the Sewer Rental Act. The trial court's order is affirmed.

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JAMES R. KELLEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sandy Township, a municipal corporation, Appellant	:	
v.	:	No. 118 C.D. 2007
City of Dubois, a municipal corporation	:	

O R D E R

AND NOW, this 6th day of June, 2008, the December 19, 2007 order of the Court of Common Pleas of Clearfield County entered in the above-captioned matter is affirmed.

JAMES R. KELLEY, Senior Judge