

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Fayette County Planning & Zoning :  
 :  
v. :  
 :  
Carla Gluvna and Christopher Gluvna, : No. 846 C.D. 2011  
Appellants : Submitted: November 14, 2011

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE MCGINLEY

FILED: December 30, 2011

Christopher Gluvna and Carla Gluvna (Gluvnas) appeal from an order of the Court of Common Pleas of Fayette County (trial court), that determined the Gluvnas violated the zoning ordinance of Fayette County (Ordinance), which purported to regulate the number of dogs that the Gluvnas could maintain in their home. The trial court also imposed a \$100,000.00 fine, costs, and attorney fees.

In 2006, the Ordinance was approved by the county Commissioners. The Ordinance defined a “kennel” and limited the number of dogs and/or cats which a person could keep within the Borough of Masontown, PA. Prior to the approval of the 2006 Ordinance, the Gluvnas had accumulated 11 dogs.

The Gluvnas’ neighbors lodged their first complaint with the county’s zoning officer in 2007. The zoning officer visited the Gluvnas’ home and informed the Gluvnas of the complaints. Thereafter, the zoning officer filed his enforcement notice. Following the initial enforcement notice, the Gluvnas did *not*

file an appeal to the Zoning Hearing Board (ZHB). The matter went back to the Magistrate who held a hearing to determine the amount of the fine for the violations.

The Gluvnas filed an appeal to the trial court and the matter proceeded to a hearing in 2008. The trial court imposed a fine of \$500.00 and attorney fees of \$500.00.

The Gluvnas maintained the same number of dogs and a second notice was filed by the zoning officer on June 25, 2009. Following receipt of the second enforcement notice, the Gluvnas filed an appeal with the ZHB. A hearing was scheduled for August 19, 2009, but was continued at the request of the Gluvnas. The hearing was rescheduled for November 25, 2009. At the time of the rescheduled hearing the Gluvnas appeared and moved to withdraw their appeal.

The zoning officer proceeded to file a complaint with the District Justice. At hearing, the zoning officer of Fayette County testified concerning the violation. The Gluvnas did not present any testimony. The District Justice found in favor of the Fayette County Office of Planning & Zoning (County), and imposed a \$4,000.00 fine on the Gluvnas.

The Gluvnas appealed the determination of the District Justice. In response to that appeal, the County filed a Complaint for Civil Enforcement. The trial court scheduled a hearing for December 20, 2010. However, no hearing was held because the Gluvnas stipulated to the number of dogs (a few had died in the

interim leaving 8 dogs remaining) on the premises and the number of days from the hearing at the District Justice level. The Gluvnas never disputed that they lived in a residential neighborhood, zoned R-1.

The trial court determined that the Gluvnas violated the Ordinance by having more than the permitted number of dogs. Further, the trial court imposed a fine in the amount of \$100,000.00, plus costs, and attorney's fees.

The issues presented before this court are as follows: whether the Ordinance that defines the number of dogs/cats that a resident may have in an R-1 residential zone is constitutional and consistent with the law of PA?; whether the Gluvnas waived any issues as the trial court has suggested in its opinion?; and, whether the Gluvna's dogs should be governed by the Ordinance since they existed prior to the revised 2006 Ordinance?

This Court has reviewed the trial court's Opinion and the cases cited therein and concludes that it adequately addressed these issues and applied sound legal reasoning. Accordingly, the Court adopts in full the Opinion of the trial court and affirms on this basis of the Opinion at *Fayette County Office of Planning and Zoning vs. Carla Gluvna and Christopher Gluvna*, Court of Common Pleas of Fayette County, No. 1693 of 2010, G.D. (filed April 18, 2011).

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BERNARD L. MCGINLEY, Judge

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**ORDER**

AND NOW, this 30th day of December, 2011, the Order of the Court of Common Pleas of Fayette County is affirmed.

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BERNARD L. McGINLEY, Judge