

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Abbottstown Paradise Joint	:	
Sewer Authority	:	
	:	
v.	:	No. 983 C.D. 2007
	:	
William S. Carter and Ann L. Carter,	:	
Appellants	:	
	:	
Abbottstown Paradise Joint	:	
Sewer Authority,	:	
Appellant	:	
	:	
v.	:	No. 1075 C.D. 2007
	:	SUBMITTED: October 26, 2007
William S. Carter and Ann L. Carter	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: January 24, 2008

William S. Carter and Ann L. Carter (the Carters) and Abbottstown Paradise Joint Sewer Authority (Authority) have cross-appealed from the order of the Court of Common Pleas of Adams County which found valid and enforceable municipal liens for sewer rental fees and emergency service invoices and entered

judgment in favor of the Authority and against the Carters in the amount of \$107,149.52.¹ We affirm.

The Authority is a municipal sewer authority established pursuant to the former Municipality Authorities Act of 1945, Act of May 2, 1945, P.L. 382, *as amended, formerly* 53 P.S. §§ 301-322.² The Authority provides sewer removal services to Abbottstown Borough and Berwick Township, Adams County. The Carters are the owners of Beaver Creek Village Mobile Home Park (hereinafter BCV), located partly in Abbottstown Borough and partly in Berwick Township. Beginning in 2001, the Authority filed 6 municipal liens against the Carters for unpaid sewer rental fees, as a result of a continuing dispute between the parties over inaccurate meter readings from the Authority's metering pit.³ Sometime in March 2003, BCV conducted a televised inspection and repair of its sewer lines, after which the lines were flushed. The Authority's system then experienced several blockages down line which necessitated emergency service repairs. The Authority then filed two additional municipal liens against the Carters and BCV

¹ In footnote 3 of its April 19, 2007 decision, the trial court explained how it arrived at this figure, explaining that "the Court calculates sewage rental fees for the period of July 1, 2000 through December 31, 2006 to total \$551,697.04. During that same period of time, the Carters have been credited for payments in the amount of \$455,838.56 leaving an outstanding balance of \$95,858.48. A 10 percent penalty was applied against the outstanding balance for a total penalty of \$9,585.48[sic]. Sewer rentals plus penalty total \$105,444.32. \$1,705.20 was added to that amount as a result of lien 05-TL-316 (related to recovery of costs for damage to the sewage infrastructure)." Order of April 19, 2007, p. 9. We note that although the court had the amount of the penalty incorrect, as it should have been \$9,585.84, the total amount of \$105,444.32 was correct.

² This was subsequently repealed by Section 3 of the Act of June 19, 2001, P.L. 287. It was replaced by the Municipality Authorities Act, 53 Pa. C.S. §§ 5601-5623.

³ As stipulated by the parties, the following 6 liens dealt with outstanding sewer rentals: No. 03-TL-536, No. 03-TL-537, No. 03-TL-535, No. 04-TL-145, No. 05-TL-179, and No. 06-TL-281. Proposed Stipulations, Joint Exhibit 1, March 1, 2007.

seeking to recover the costs incurred as a result of the clean-up and surcharges pursuant to Authority Resolution 1989-4, Section 10.⁴ Subsequently, the Authority caused a writ of scire facias to issue. In response, the Carters filed an affidavit of defense in which they challenged the sewer rentals as excessive and improper and based on calculations made from erroneous flow readings from the Authority's metering pit. After an evidentiary hearing, the trial court found in favor of the Authority, finding that the 7 liens were valid and payable. The Carters appealed from that judgment⁵ arguing that the trial court abused its discretion in finding that

⁴ Of these two additional liens, lien No. 05-TL-316, is the only remaining lien outstanding in this litigation, as the Authority agreed not to pursue lien No. 03-TL-564, which dealt with surcharges imposed pursuant to the Authority's Resolution No. 1989-4, Section 10-Surcharges. *See*, Proposed Stipulations, Joint Exhibit 1, March 1, 2007.

⁵ Following the trial court's April 19, 2007 order and entry of judgment, filed April 20, 2007, the Carters filed an appeal with this Court. By order dated May 23, 2007, the trial court directed the parties to file a concise statement of the matters complained of on appeal, pursuant to Pennsylvania Rule of Appellate Procedure No. 1925(b). The Authority then filed an appeal with this Court on June 4, 2007. Then, on June 6 and 7, 2007, the Authority and the Carters, respectively, filed their Statement of Matters Complained of on Appeal Pursuant to Pa. R.A.P. 1925(b). In its 1925(b) Opinion, filed June 28, 2007, the trial court, after requesting affirmance based on its findings of facts and conclusions of law made in its April 19, 2007 Opinion, concluded that, because neither party had filed posttrial motions pursuant to Rule 227.1 of the Pennsylvania Rules of Civil Procedure, 42 Pa. R.C.P. No. 227.1, the appeals must be quashed. While technically correct that no posttrial motions were filed, we conclude that, because the trial court entered its judgment simultaneously with the entry of its decision following the non-jury trial, the trial court did not afford the parties the 10 day period following the entry of its decision in which Pa. R.C.P. No. 227.1 provides for the filing of post trial motions. Rule 227.1 provides that: "(c) Post trial motions shall be filed within ten days after . . . (2) notice of nonsuit or the filing of the decision in the case of a trial without jury." This is to allow the trial court the opportunity to correct any errors. Then, if the trial court does not rule on the posttrial motions within 120 days or no timely posttrial motions are filed, a party may file a praecipe for judgment, pursuant to Pa. R.C.P. No. 227.4. Following the entry of judgment, a party has thirty days to file an appeal with the appropriate court. However, because the trial court entered its *decision and judgment simultaneously*, the parties were precluded from following the proper procedure and filing posttrial motions. Accordingly, we will not quash the appeal and will reach the merits of the parties' arguments.

the Authority presented convincing evidence of its meter's accuracy in spite of its own witness' testimony that it was consistently inaccurate; and second, that the trial court erred when it found that there were only 132 days during which the meter was obstructed when the Authority's same witness testified the Authority had no way of knowing whether a blockage existed on any given day without daily inspection of the meter, which did not occur.⁶

A municipality is empowered under the Municipal Claims and Tax Lien Act to file a claim for unpaid sewer bills, which claim shall include "all penalties, interest, costs, fines, charges, expenses and fees, including reasonable attorney fees, as allowed by this act and all other applicable laws." 53 P.S. § 7101. Municipal claims constitute prima facie evidence of the facts averred within the claim. 53 P.S. § 7187. Those averments may be considered by the court as conclusive evidence except where the averments have been specifically denied by an owner's affidavit of defense. *Id.* However, even where, as here, the facts are at issue because the Carters filed an affidavit of defense, as the defendants in a *scire facias* proceeding to enforce municipal claims, they bore the burden of overcoming the Authority's prima facie case by presenting sufficient evidence that the claims were erroneous. *General Municipal Authority of the Borough of Harvey's Lake v. Yugas*, 572 A.2d 1291 (Pa. Super. 1990). In addition, we are mindful that, as factfinder, the trial court may believe all, part, or none of the evidence presented, and issues of credibility are for the trial court to resolve; we are "not permitted to

⁶ Based on the issues presented, our scope of review is limited to determining whether the findings of the trial court are supported by competent evidence. The findings of the trial judge in a non-jury case must be given the same weight and effect on appeal as those of a jury. *M & D Properties, Inc. v. The Borough of Port Vue*, 893 A.2d 858, 861 (Pa. Cmwlth. 2006), *app. den.*, 588 Pa. 790, 906 A.2d 1197 (2006) (citation omitted).

reexamine the weight and credibility determinations or substitute our judgment for that of the factfinder.” *Turney Media Fuel, Inc. v. Toll Brothers, Inc.*, 725 A.2d 836, 841 (Pa. Super. 1999).

The facts, as taken from the parties’ stipulations and as culled from the record, may be summarized as follows. BCV was created in approximately 1974 and is located partly in Abbottstown Borough and partly in Berwick Township, Adams County, Pennsylvania. BCV consists of 167 rental lots each holding one mobile home, which is typically fully rented. Since its inception, BCV has maintained an on-site well-water system which provides water to each individual mobile home and is measured by individual water meters installed at each of the 167 spaces. In addition, BCV also constructed and maintained its own on-site sewer collection system and sewage treatment facility, connecting each of its tenants. In or around 1990, the Carters connected BCV’s sewage system with the Authority’s system. For purposes of measuring the amount of sewage discharge from BCV’s system, the Authority installed a metering pit with a sewer flow meter, just beyond where BCV connects with their system. The Authority owns and maintains this pit, which is surrounded by a locked fence. In order to determine the billable sewer charges to BCV, the Authority must take readings from the control panel.

According to the Authority’s Manager, Amy Perry, the ultrasonic flow meter records the sewer discharge on a circular flow chart, which is created every seven days. Notes of Testimony (N.T.) of Amy Perry, March 1, 2007, pp. 12, 13, 17. Erratic readings on the flow chart indicate that there is a blockage in the Authority’s metering pit. *Id.* at 18, 21. The debris mainly consisted of grease and other coagulants, as well as broken pieces of PVC pipe, ballast, and rocks. *Id.*

at 21. The sewage metering system is calibrated twice a year and the metering pit is inspected three to four times per month. *Id.* at 13, 26. Ms. Perry testified that the blockages began occurring shortly after BCV connected to its system and that they attempted to ameliorate the problem by requesting that Mr. Carter install a grease trap prior to where BCV's lines connect with the Authority's system. *Id.* at 27-28. The Authority also proposed that 1) Mr. Carter be responsible for inspecting and flushing his sewer lines every 18 months; 2) the Authority would be responsible for televising the lines; 3) after 3 years, they would review the process and if grease still remained a problem, the grease trap would have to be installed as previously proposed. *See*, Plaintiff's Exhibit 12, Letter to William Carter from Amy Perry, November 13, 2002. Mr. Carter did not accept any of the Authority's proposals. N.T., at 31.

Ms. Perry also testified that, in light of the blockages that resulted in erroneous readings, the Authority adjusted several of Mr. Carter's sewage bills for ten quarters during the period between 1990 and 2000. *Id.* at 32-33. Mr. Carter paid these bills in full, including the ones that were not adjusted. *Id.* However, beginning in the third quarter of 2000, the Authority stopped adjusting BCV's sewage rental fees "[b]ecause the Board did not feel there was any cooperation from Mr. Carter's side to eliminate the problem." *Id.* at 34. This has resulted in a balance of \$111,835.01 due and owing to the Authority, including penalty of 10 percent.⁷

⁷ Based on documents produced by Amy Perry in the course of her employment with the Authority, specifically, Plaintiff's Exhibit 15, "Revised Billing Based on Corrected Flow," (3rd Quarter 2003 through 4th Quarter 2006), and Plaintiff's Exhibit 16, "Beaver Creek Village Mobile Home Park APJSA Analysis of Quarterly Sewage Flows Obstructed v. Un-Obstructed Meter Readings," the Authority revised its billing to BCV to reflect 132 days the meter was **(Footnote continued on next page...)**

Following this decision, Ms. Perry testified that Mr. Carter made his own adjustments to the sewage rental bills based on the water meter readings from his main water meter and remitted to the Authority an amount calculated at 80 % of the total water flow. *Id.* at 42. Mr. Carter testified that he based this figure on historical usage patterns from BCV and the Authority's records which show at times a 23.7% loss in the amount of water that is pumped from the well at BCV and into each of the 167 mobile home units at BCV. N.T. William Carter, March 1, 2007, at 111-112. Although Mr. Carter requested that the Authority bill his account at BCV by reading the water meters on each individual mobile home unit, this was rejected by the Authority because it would not account for inflow and infiltration⁸ and because the Authority does not own, maintain nor have the ability or authority to regularly inspect the lines at BCV.

The arguments asserted by the Carters on appeal concern the testimony of the Authority's witness, Amy Perry, who admitted that the sewer flow meter in the metering pit at BCV, owned and maintained by the Authority, has consistently reported erroneously high flows from blockages since it was installed in 1990. The Carters argue that given Ms. Perry's admissions that the meter recorded artificially high flows due to blockages, the Authority undermined any

(continued...)

obstructed resulting in \$101,668.19 in unpaid sewer rental fees plus \$10,166.82 in penalty for a total amount owed of \$111,835.01.

⁸ Amy Perry testified that “[i]nflow is when water, surface water enters your sewer system . . . [i]nfiltration is when there is actually ground water entering your sewer system from pipe breaks, cracked joints, manholes might be leaking and it's clean water that gets into your system.” N.T. 3/1/07, at p. 47. Although Ms. Perry stated that using BCV's individual water meter readings would not account for “I and I” into the system, she admitted that the Authority, using the same method of basing the sewer bills on individual water meter readings at Chesapeake Estates Mobile Homes Park, does not account for “I and I” either. *Id.* at 59.

presumption of accuracy in the amount of the claims. Specifically, the Carters assert that by “clear, uncontradicted evidence from the Authority itself,” they met their burden of proving that the claims for unpaid sewer rental fees were erroneous; and that, therefore, “it would not have been possible [for the trial court] to find in favor of the Authority for any amount because the Authority proffered no other evidence to substantiate its claim.” Appellants’ Brief at p.12 (emphasis in original). Furthermore, they argue that their own witness, Michael Kern, owner and licensed operator of Quality Water Resources, who operates the water system at BCV, testified that the erroneous readings are a direct result of the Authority’s meter. In particular, Mr. Kern testified that “[i]t’s an outdated meter that is not suitable for raw water waste and that’s why they have a lot of the problems they do.” N.T. Michael Kern, March 1, 2007, p. 9. Therefore, they argue, the court not only had Ms. Perry’s testimony that the Authority’s meter was inaccurate, but it also had the testimony from Mr. Kern which confirmed Ms. Perry’s testimony, and in disregarding this testimony, the trial court committed reversible error. We disagree.

In its decision, the trial court summarized its conclusions as follows:

I find that APJSA has presented convincing evidence that the manner in which sewage is metered is sufficiently accurate to justify the bills for sewage services rendered. The sewage meter used by APJSA is calibrated regularly and adequately inspected. Moreover, the meter used by APJSA is a permitted means for the measurement of sewage flow under the regulations of the Pennsylvania Department of Environmental Resources.

Opinion of the Trial Court, dated April 19, 2007. p.7. It is plain from reading the excerpt above that not only did the trial court consider the testimony of both

witnesses in rendering its decision, that it also concluded that Ms. Perry was a credible witness and that her testimony that the meter was calibrated twice a year and inspected 3 to 4 times a month constituted “convincing evidence” that would substantiate the Authority’s claims for unpaid sewer fees. Additionally, the Carters’ own witness, Michael Kern, testified that while the meter installed by the Authority in the metering pit at BCV did not operate to the degree of accuracy as other meters that were available, he admitted that it did operate to a degree of accuracy approved by the DEP, “as long as it’s maintained correctly.” N.T. Michael Kern, March 1, 2007, p.41. As we are not permitted to reweigh the evidence or make our own credibility determinations, *see, Turney Media Fuel, Inc.*, 725 A.2d at 841, we are bound by the trial court’s finding that the meter reported sewage flow with sufficient accuracy.

The Carters also argue that the trial court erred in rejecting their contention that tallying the flow at the individual water meters on each of the mobile home units would provide a more accurate measure of BCV’s sewer flow. The Carters maintain that the evidence supports their contention that this is the most accurate way to measure the sewage flow from BCV’s system. First, the Carters argue that the Authority admitted that they use the method of basing sewer service bills on individual water meter readings at another mobile home park in the township. *See, N.T. Amy Perry*, at 59. Secondly, the Carters argue that the court rejected the proposal that the Authority base its billing on reading the individual water meters at BCV because it mistakenly concluded that those meters were not reliable, based on Mr. Carter’s testimony that BCV lost a little more than 20% of its water between the onsite well it is pumped from to each of the 167 individual units’ meters. As Ms. Perry explained, however, the Authority rejected the

Carters' proposal to use the individual water meter readings because unlike at Chesapeake Estates, the other mobile home park it services, at BCV it did not own or have the ability or authority to directly inspect the sewer lines.⁹ Clearly the trial court considered the testimony of both Mr. Carter and Ms. Perry, and found more persuasive that of Ms. Perry. We will not reweigh this testimony.

Next, the Carters assert that the trial court erred in finding that the sewer system was blocked on only 132 days. They point to Ms. Perry's testimony that 1) there was no way of knowing if a blockage existed without someone personally inspecting the meter and 2) the meter was only inspected a few times a month and not daily. The Authority counters that this is nothing more than another challenge to the weight of the evidence and that there was ample evidence presented to support the trial court's findings. We agree. First, contrary to the Carters' assertions that there was no way to know if a blockage occurred without daily physical inspection of the sewer meter, Ms. Perry testified that the sewer meter equipment recorded a flow chart on a weekly basis and that elevations on the chart indicate obstructions, even where the obstructions have already resolved prior to the flow chart being read. N.T., Amy Perry, p. 18. Secondly, the records prepared by the Authority and presented at trial indicate that during the period in question from July 2000 through and including the fourth quarter of 2006, there were 132 days in which the metering pit was obstructed. *See*, Plaintiff's Exhibit 16, APJSA Analysis of Quarterly Sewage Flows [for Beaver Creek Village Mobile

⁹ Ms. Perry testified that if there were "proper inspections" of the sewer collection system at BCV, then the Authority would agree that using the individual water meters would be an appropriate solution. N.T. at 74.

Home Park]. This testimony was found to be credible by the trial court and we are not free to substitute our judgment. *Turney Media Fuel, Inc.*, 725 A.2d 836, 841.

Finally, we turn to the Carters' last argument, that the trial court erred in utilizing the lowest average daily flow to calculate the flow for each of the 132 days the meter was obstructed during a time period when the meter was not obstructed between August 23 and 31, 2000. The Carters assert that this was done by the court *sua sponte* and "amounts to nothing more than guesswork." Appellants' Brief at 14. As stated in its decision, however, the trial court clearly used information supplied by the Authority in using the figure of 14,847 gallons to compute the flow on the days the meter was obstructed. Findings of Fact No. 21, Opinion of the Trial Court, dated April 19, 2007, p. 4.

The trial court found, based on all of the evidence, that the Carters were unable to overcome the Authority's prima facie case. In *M & D Properties, Inc. v. The Borough of Port Vue*, 893 A.2d 858, 863 (Pa. Cmwlth. 2006), *app. den.*, 588 Pa. 790, 906 A.2d 1197 (2006), the court opined that there is no precedent for shifting the burden of proof from the property owner challenging a municipal lien and onto the Authority. The court stated that such a shift from the party bearing the burden of proof is "contrary to the decisional law of this Court stating that 'the party challenging the reasonableness of the fee bears the burden of proving it is unreasonable.' The burden does not shift to a municipality to prove that a challenged fee is reasonable; it always remains the burden of the challenger to show that the fees are unreasonable." *Id.* In the matter before us, the trial court repeatedly found that the Carters did not meet their burden of proof, finding that the Carters did not present "any credible information to support their argument,"

and further that “[t]here is insufficient information,” and that their argument “lacks factual support.” Opinion of the Trial Court, April 19, 2007, pp. 6-7.

Finally, on cross appeal, the Authority contends that as to Lien No. 05-TL-316, relating to its cleanup costs as a result of Jet Vac flushing the sewer lines at BCV in March 2003, the trial court mistakenly stated the amount of the lien to be \$1,705.20. This appears to be true. In its decision, the trial court stated that:

The parties stipulated that this action would include fees sought to be recovered by that lien. Testimony at trial established the propriety of the lien. The Carters did not challenge the Township’s claim. Accordingly, fees sought to be recovered by the lien will be included in this Court’s award, however, no penalty will be imposed as a result of those fees.

Opinion of the Trial Court, dated April 19, 2007, footnote 2, p. 8. Clearly, the Carters stipulated as to the validity of the lien for costs associated with flushing the lines. As to the amount of those costs, the Authority’s manager, Amy Perry, testified that the invoices it received as a result of the cleanup totaled \$7,869.35. N.T. Amy Perry, 3/1/07, p. 25. William Carter did not dispute that these expenses were in fact incurred by the Authority as a result of Jet Vac’s work. N.T. William Carter, 3/1/07, p. 87. As we can discern no evidence explaining the trial court’s statement as to the amount of the lien in question, No. 05-TL-316, the judgment associated with this lien must be amended.

Accordingly, for the foregoing reasons, we affirm the judgment of the trial court with respect to Lien Nos. 03-TL-536, 03-TL-537, 03-TL-535, 04-TL-145, 05-TL-179, and 06-TL-281. However, with respect to the cross appeal filed by the Authority regarding Lien No. 05-TL-316, we remand for an entry of

judgment in the amount stipulated by the parties, together with interest and fees as allowed by law.

BONNIE BRIGANCE LEADBETTER,
President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Abbottstown Paradise Joint	:	
Sewer Authority	:	
	:	
v.	:	No. 983 C.D. 2007
	:	
William S. Carter and Ann L. Carter,	:	
Appellants	:	
	:	
Abbottstown Paradise Joint	:	
Sewer Authority,	:	
Appellant	:	
	:	
v.	:	No. 1075 C.D. 2007
	:	
William S. Carter and Ann L. Carter	:	

ORDER

AND NOW, this 24th day of January, 2008, the order of the Court of Common Pleas of Adams County in the above captioned matter is hereby **AFFIRMED** as to that part of its order which found the following liens valid and payable: 03-TL-535, 03-TL-536, 03-TL-537, 04-TL-145, 05-TL-179, and 06-TL-281, as well as sewer rental fees due from October 1, 2006 through December 31, 2006. The order is **VACATED** and **REMANDED** with respect to Lien No. 03-TL-316 for entry of an order amending the amount of the judgment associated therewith.

Jurisdiction relinquished.

BONNIE BRIGANCE LEADBETTER,
President Judge