IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Edward J. Lesoon,	:	
Appellant	:	
	:	No. 9 C.D. 2009
v.	:	Argued: May 4, 2009
	:	
Pittsburgh Water & Sewer Authority	:	
	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SIMPSON **FILED: May 29, 2009**

In this appeal, Edward J. Lesoon (Property Owner) seeks review of a judgment entered on a defense verdict in favor of the Pittsburgh Water & Sewer Authority (Authority) after a non-jury trial conducted in the Court of Common Pleas of Allegheny County (trial court). Property Owner's suit sought to recover costs incurred in repairing a leaking water line that services his commercial property. Upon review, we affirm.

In 2003, a four-inch diameter water line servicing Property Owner's commercial building began leaking. A one-inch service line runs from Property Owner's building into the four-inch line, where the leak was located. The four-inch line connects with the eight-inch main line.

The dispute before the trial court centered on whether the four-inch line is a service line or a main line. A service line is the connection off the main

line that services individual buildings. A main line is the distribution line that services facilities throughout the City of Pittsburgh. If the four-inch line is a service line, Property Owner is responsible for repairs; if it is a main line, the Authority must assume responsibility.

After receiving notice of the leak, the Authority investigated and determined the four-inch line was a service line and Property Owner was responsible for its repair. Property Owner subsequently retained a master plumber and made repairs at a cost of approximately $17,276. Asserting the pipe was a main line rather than a service line, Property Owner sued the Authority for restitution of his repair costs.

During a one-day bench trial, Property Owner advanced several arguments in support of his position that the four-inch line was a main line rather than a service line, including: the four-inch line at one time serviced a fire hydrant and therefore was a municipal hydrant branch line rather than a service line; the four-inch line predated the Authority's regulations, so the regulations could not be used to determine whether the four-inch line was a service line or a main line; and, any reduction in size from the four-inch line to the one-inch service line indicates the four-inch line is a main line.

In support of these arguments, Property Owner presented the testimony of the master plumber he hired to repair the four-inch line and several exhibits.

The Authority presented its case through the submission of documentary evidence and the testimony of one of its plumbers who testified, in relevant part: 1) the four-inch line is a service line; 2) the four-inch line was always a service line; 3) the four-inch line never serviced anything but Property Owner's property; 4) it is common for service lines to reduce in size; and, 5) the service line never connected to a fire hydrant.

Ultimately, the trial court entered a verdict in favor of the Authority and subsequently denied Property Owner's motions for post-trial relief. Property Owner appealed.[1]

In its opinion and order denying Property Owner's motions for post-trial relief, the trial court initially noted that Section 5607(d) of the Municipality Authorities Act (Act), 53 Pa. C.S. §5607(d)(17), empowers the Authority to adopt "reasonable rules and regulations that apply to water and sewer lines located on a property owned or leased by a customer …." Pursuant to this statutory provision, the Authority promulgated a regulation regarding the maintenance of private water service lines, which states "maintenance of private water service lines and fire lines with a commercial or industrial rate classification … is the responsibility of the property owner up to and including the connection of the Authority main water line." See Reproduced Record (R.R.) at 132a (Regulations, Section V (1)). The trial court then concluded Property Owner was clearly liable for the repairs under

[1] Property Owner initially appealed to the Superior Court. The Authority objected to the Superior Court's jurisdiction and twice filed motions to transfer to this Court, both of which were denied. Following oral argument before a panel of the Superior Court, however, an order was issued transferring Property Owner's appeal to this Court.

the current regulation based on the Authority's investigation determining the four-inch line was and always has been a service line.

Next, the trial court addressed whether the current regulations apply to the four-inch line. Property Owner asserted the current regulations regarding service line maintenance responsibilities did not apply to the four-inch line because the four-inch line was installed before the adoption of the current regulations.

The trial court looked to this Court's decision in Glennon's Milk Service, Inc. v. West Chester Area Municipal Authority, 538 A.2d 138 (Pa. Cmwlth. 1988). There, this Court addressed an authority's regulation placing service line maintenance responsibilities on property owners. In a suit over maintenance costs, the property owner advanced the same argument made by Property Owner here regarding applicability of the current regulations. Ultimately, the Court held the date of the leak, not the date of construction of the water line, determined the applicable regulations. The Court also held the Authority's service line maintenance regulation was within its discretion under the former Municipal Authorities Act.[2] Relying on Glennon's Milk, the trial court here determined the Authority's regulations were reasonable, and Property Owner was responsible for repair of the four-inch line.

[2] The former Municipality Authorities Act of 1945, Act of May 2, 1945, P.L. 382, as amended, formerly 53 P.S. §306B(h), repealed by Section 3 of the Act of June 19, 2001, P.L. 287. Identical language is now codified at 53 Pa. C.S. §5607(d)(9).

The trial court further noted the Act grants the Authority wide discretion in determining its maintenance responsibilities with respect to service and declined to overrule the Authority's determinations absent an abuse of discretion. Here, Property Owner did not prove the Authority abused its discretion. To the contrary, the Authority presented credible evidence that the four-inch line is and always has been a service line, a determination Property Owner failed to credibly refute. Absent sufficient evidence to prove the Authority's regulations were unreasonable or applied in an unreasonable manner, the trial court refused to disturb the verdict in favor of the Authority.

This matter is now before us for disposition.

On appeal, Property Owner argues the trial court's verdict is against the weight of the evidence, and the trial court erred in deferring to the Authority's interpretation of its regulation, which allocates maintenance responsibilities based on whether a water line is a service line or a main line. In support of his position, Property Owner presses his documentary evidence and expert testimony, and he contends this evidence proves the four-inch line is a main line. In particular, he asserts his documents prove the only service line ever on the property is the one-inch line and the four-inch line once served a fire hydrant. Property owner points to the testimony of his master plumber, who explained that the lack of a corporation stop valve regulating the flow between the four-inch line and the main line indicates the four-inch line is a main line and the four-inch line once serviced a fire hydrant rendering it a municipal water line.

In his motion for post-trial relief, Property Owner sought a new trial and judgment notwithstanding the verdict. In his brief in support of post-trial relief, Property Owner argued only that the trial court's verdict was against the weight of the evidence.

Our review of a judgment following a non-jury trial is limited to determining whether the trial court's findings are supported by competent evidence and whether an error of law was committed. Swift v. Dep't of Transp., 937 A.2d 1162 (Pa. Cmwlth. 2007). We may not reweigh the evidence or substitute our judgment for that of the fact-finder. Id. As fact-finder, the trial court is the sole arbiter of issues of credibility and evidentiary weight. Beaver Dam Outdoors Club v. Hazleton City Auth., 944 A.2d 97 (Pa. Cmwlth. 2008).

Here, Property Owner urges us to reweigh the evidence already evaluated by the trial court. We decline to do so.

The trial court based its determination that the four-inch line is a service line on the Authority's witness's testimony and a Department of Public Works inspection report noting a four-inch service line connecting Property Owner's property to the Authority's main line. See R.R. at 90a-91a (witness testimony); 122a (1906 report). Despite evidence that may tend to support Property Owner's argument, the trial court, as fact-finder, was free to reject Property Owner's evidence and base its findings on the evidence presented by the Authority. Beaver Dam Outdoors Club. Because the trial court's findings are supported by competent evidence, we may not disturb them.

We also reject Property Owner's argument that the trial court's verdict is against the weight of the evidence because he presented evidence showing the four-inch line at some time serviced a fire hydrant, and, therefore, could not be a service line. Property Owner relies on Boyle v. City of Pittsburgh, 21 A.2d 243 (Pa. Super. 1941), for the proposition that a city is responsible for maintenance of municipal water lines servicing fire hydrants. He asserts the four-inch line previously serviced a fire hydrant rendering it a municipal line that the Authority must continue to maintain.

Property Owner's reliance on Boyle is misplaced. In Boyle, a property owner sought damages from the city as a result of flooding caused by a negligently maintained municipal water line servicing a fire hydrant on the property. There, the physical nature of the water line was not in dispute—it was a municipal branch line servicing only a fire hydrant whose maintenance was the city's responsibility. The city sought to escape liability not by denying maintenance responsibility, but, instead, by a claim of government immunity. The Superior Court held the city liable because when it operated and maintained a water distribution system for its citizens, it acted in a proprietary rather than a governmental capacity. Thus, the city could not escape liability by a claim of government immunity.

Here, credited testimony and documentary evidence support the trial court's conclusion the four-inch line was not a municipal branch line, but instead is and always has been a service line. Further, the primary issue in Boyle was whether the defense of governmental immunity shielded the city from liability

where its negligent maintenance of a municipal water line resulted in damages to private property. As such, Boyle is inapposite.

Property Owner also challenges the Authority's interpretation of its regulations. The Authority is a local government authority created by the Act, which empowers it to adopt "reasonable rules and regulations that apply to water and sewer lines located on a property owned or leased by a customer …." 53 Pa. C.S. §5607(d)(17).

Pursuant to this statutory provision, the Authority promulgated a regulation regarding the maintenance of private water service lines, which states that "maintenance of private water service lines and fire lines with a commercial or industrial rate classification … is the responsibility of the property owner up to and including the connection of the Authority main water line." See R.R. at 132a (Regulations, Section V (1)).

In Glennon's Milk, we considered a challenge to a similar regulation promulgated pursuant to identical statutory language. There, we described our standard of review as:

> limited to a determination of whether the [a]uthority abused its discretion in promulgating its regulations which imposed the obligation of maintenance of service lines upon the customer. … The burden of proof is on the party challenging the reasonableness of the service to prove initially, that the [a]uthority abused its discretion by implementing a service and secondly, that the service itself is unreasonable.

Glennon's Milk, 538 A.2d at 139.

In Glennon's Milk, we concluded an authority's imposition of service line maintenance responsibilities on commercial property owners was reasonable. We held the language of the Act "bestows upon the Authority the discretion to determine the maintenance responsibilities with respect to service." Id. at 140.

Here, the Authority's maintenance allocation regulation was promulgated based on identical statutory language. Accordingly, we find the regulation reasonable.

Nevertheless, Property Owner asserts the Authority abused its discretion by ignoring the shut-off valve location when it determined the four-inch line was a service line. He argues it is unreasonable for the Authority to require a commercial property owner to maintain water lines beyond a stop valve. Property Owner contends there is always a stop valve at the tap-in point to the main line allowing a property owner to shut off his connection to the main line when he must repair the service line.

Essentially, Property Owner asks us to adopt his interpretation of the Authority's regulation. However, Property Owner's interpretation is at odds with the Authority's interpretation of its regulation, which the trial court deemed reasonable. An agency's interpretation of its own regulation is controlling unless it is inconsistent, plainly erroneous, or inconsistent with the underlying legislation. Bologna v. Pa. Dep't of Labor & Indus., 816 A.2d 407 (Pa. Cmwlth. 2003). As

previously discussed, in Glennon's Milk this Court determined the same water line maintenance allocation was consistent with the underlying Act, and the trial court here determined the regulation was reasonable. Thus, we cannot conclude the Authority's interpretation is plainly erroneous. Property Owner's argument to the contrary fails.

Based on the foregoing we conclude the trial court properly denied Property Owner's motions for a new trial and judgment n.o.v. Accordingly, we affirm.

ROBERT SIMPSON, Judge

Judge McGinley did not participate in the decision in this case.

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O R D E R

AND NOW, this 29th day of May, 2009, the order of the Court of Common Pleas of Allegheny County is **AFFIRMED**.

ROBERT SIMPSON, Judge