

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

THOMAS GATZ AND CHRISTINE L. GATZ,

Appellants

v.

BIRDSBORO MUNICIPAL WATER
AUTHORITY, COMMONWEALTH OF
PENNSYLVANIA DEPARTMENT OF
CONSERVATION & NATURAL
RESOURCES, WILLIAM J. JR., AND
FELICIA ONEIL AND NATURAL LANDS
TRUST,

Appellees

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 565 MDA 2013

Appeal from the Order Entered March 20, 2013
In the Court of Common Pleas of Berks County
Civil Division at No(s): 12-05800

BEFORE: BENDER, P.J., WECHT, J., and FITZGERALD, J.*

MEMORANDUM BY BENDER, P.J.

FILED DECEMBER 02, 2013

Appellants, Thomas and Christine L. Gatz, appeal from the trial court's March 20, 2013 order awarding attorneys' fees in the amount of \$4,962.50 to Appellee, Birdsboro Municipal Water Authority, et al. After careful review, we affirm.

The trial court set forth the facts and procedural history of this case as follows:

The history of the litigation in this case is extensive. Thomas Gatz and Christine Gatz (Plaintiffs) or Thomas Gatz

* Former Justice specially assigned to the Superior Court.

individually have filed a number of previous actions all concerning the same parcel of land, access to the land, and adjacent lands.

On April 13, 2012, the Plaintiffs filed the above docketed lawsuit for an action in quiet title/adverse possession. This Court dismissed the lawsuit with prejudice after the filing of preliminary objections by the Defendant based in part on *res judicata*. The Plaintiffs then filed an appeal of this Court's Order dismissing the lawsuit with prejudice which appeal the Superior Court dismissed on October 18, 2012 for failure of the Plaintiffs to file a brief. On March 19, 2013, this Court granted Defendant's Motion for Counsel Fees based on the vexatious conduct of the Plaintiffs pursuant to 42 Pa.C.S. § 2503.^[1]

Trial Court Opinion (TCO), 5/16/13, at 1-2 (citations to the record omitted).

Appellants filed a timely notice of appeal from the court's order awarding attorney's fees to Appellees.² Additionally, they filed a timely concise statement of errors complained of on appeal pursuant to Pa.R.A.P.

¹ That order was entered on the trial court's docket on March 20, 2013.

² We note that Appellants' notice of appeal states that they are appealing from both the March 20, 2013 order awarding attorneys' fees, and from the court's June 6, 2012 order granting Appellee's preliminary objections and dismissing Appellants' complaint with prejudice. In their brief, Appellants ask this Court to "reopen" their appeal from the June 6, 2012 order and remand to permit them "to file a second amended complaint." **See** Appellant's Brief at 15 (unnumbered pages). However, Appellants' March 28, 2013 notice of appeal is patently untimely in regard to the June 6, 2012 order. Pa.R.A.P. 903(a) (directing that "the notice of appeal required by Rule 902 (manner of taking appeal) shall be filed within 30 days after the entry of the order from which the appeal is taken"). Accordingly, this Court is without jurisdiction to grant Appellants' requested relief. **State Farm Fire and Cas. Co. v. Craley ex rel.**, 784 A.2d 781, 785 n.5 (Pa. Super. 2001) (citations omitted) (stating "untimely appeal divests the Superior Court of jurisdiction"), *rev'd on other grounds*, **Motorists Mut. Ins. Co. v. Pinkerton**, 830 A.2d 958 (Pa. 2003).

1925(b). Herein, Appellants set forth 25 issues covering seven pages of their appellate brief. **See** Appellants Brief at 5-11 (unnumbered pages). However, the Argument portion of Appellants brief is not “divided into as many parts as there are questions to be argued” as mandated by Pa.R.A.P. 2119(a).

Instead, Appellants present one unseparated argument, in which they first discuss “the doctrine of *res judicata*.” However, as Appellants are appealing from the court’s order awarding attorneys’ fees, their discussion of *res judicata* is irrelevant.

Next, Appellants set forth the legal principles involving the award of attorneys’ fees. For instance, they cite 42 Pa.C.S. § 2503(9), which provides:

The following participants shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter:

(9) Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith.

42 Pa.C.S. § 2503(9). Appellants then provide definitions of the terms arbitrary, vexatious, and bad faith. They also note that the party requesting attorneys’ fees bears the burden of proving the propriety of such an award. Appellant’s Brief at 14 (unnumbered pages).

However, instead of going on to explain how these legal principles apply to their case and render the award of attorneys’ fees improper, Appellants merely state, “[t]he cost of [a]ttorney fees incurred by [Appellee]

was inflated and should if awarded be significantly reduced.” **Id.** at 15. Regarding the appropriate reduced amount, Appellants cite an attachment to their brief (labeled “Exhibit E”) which appears to be a proposed order for attorneys’ fees of \$2,705.00. Neither that proposed order, nor Appellants’ brief, explains how they computed that lesser amount.

Appellants’ argument (or lack thereof) regarding why the court’s award of attorneys’ fees was improper and/or excessive is wholly meritless. This Court has explained:

The trial court has great latitude and discretion with respect to an award of attorneys' fees pursuant to a statute. **Cummins v. Atlas R.R. Construction Co.**, 814 A.2d 742, 746 (Pa. Super. 2002). In reviewing a trial court's award of attorneys' fees, our standard is abuse of discretion. **Lucchino v. Commonwealth**, 809 A.2d 264, 269-70 (Pa. 2002); **Miller v. Nelson**, 768 A.2d 858, 861 (Pa. Super. 2001). If there is support in the record for the trial court's findings of fact that the conduct of the party was obdurate, vexatious or in bad faith, we will not disturb the trial court's decision. **Scalia v. Erie Insurance Exchange**, 878 A.2d 114, 116 (Pa. Super. 2005); **see also Kulp v. Hrivnak**, 765 A.2d 796, 799 (Pa. Super. 2000), *questioned on other grounds*, **Brickman Group, Ltd. v. CGU Insurance Co.**, 829 A.2d 1160 (Pa. Super. 2003).

In re Padezanin, 937 A.2d 475, 483-484 (Pa. Super. 2007).

Instantly, the trial court provided the following explanation for its award of attorneys’ fees to Appellee:

[Appellants] have filed multiple actions against [Appellee] all concerning the same tract of property. The instant case involves the filing of a complaint that is nearly identical to the suit filed by Thomas Gatz[, individually,] in 2006 which went to trial and a verdict was entered against Mr. Gatz. When [Appellants] filed the instant action, they knew the legal issues had already been decided in 2007; [Appellant], Thomas Gatz[,]

testified at the trial in 2007. When the instant matter was dismissed with prejudice, [Appellants] appealed causing [Appellee] to incur additional legal fees and costs.

It is clear to this [c]ourt that the above[-]docketed suit is frivolous and entirely without merit. The facts are nearly identical, the legal basis is the same and [Appellees] are the same as the suit that was filed in 2006 and decided by [the Honorable Albert] Stallone in 2007. There is no doubt in this [c]ourt's mind that sanctions are appropriate in this matter to deter [Appellants] from filing vexatious litigation in the future concerning the same issues and property. Both [Appellants] signed the documents that were filed and they should both be held equally responsible and sanctioned pursuant to 42 Pa.C.S. § 2503(9). The actions of [Appellants] are clearly vexatious and they must be ordered to compensate [Appellee] for counsel fees that have been incurred as a result of [Appellants'] conduct and disregard for basic legal principles.

TCO at 3.

The record supports the trial court's determination that Appellants filed a second lawsuit against Appellee (and an appeal from the dismissal thereof) with the intent to be vexatious. ***See Berg v. Georgetown Builders, Inc.***, 822 A.2d 810, 821 (Pa. Super. 2003) (citation omitted) ("Parties have been found to have acted 'vexatiously' when they have pursued their claim in the face of settled law or in contravention of clear court rulings that their claim was without merit."). Appellants have provided no discussion of how the record proves otherwise. They also do not explain why the award of \$4,962.50 was excessive. Accordingly, we conclude that the court did not abuse its discretion in awarding attorneys' fees to Appellee.

Order affirmed.

J-A27007-13

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/2/2013