

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

JOHN GAGLIARDI,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
PENNSYLVANIA MUNICIPAL SERVICE	:	
COMPANY (PAMS) AND BOROUGH OF	:	
JEFFERSON HILLS,	:	
	:	
Appellees	:	No. 1730 WDA 2011

Appeal from the Order entered on October 24, 2011
in the Court of Common Pleas of Allegheny County,
Civil Division, No. GD 11-016878

BEFORE: MUSMANNO, WECHT and COLVILLE*, JJ.

MEMORANDUM BY MUSMANNO, J.:

Filed: April 11, 2013

John Gagliardi ("Gagliardi") appeals, *pro se*, from the Order granting the second amended Petition for counsel fees filed by Pennsylvania Municipal Service Company ("PAMS"), and requiring Gagliardi to pay \$750.00 to PAMS within ten days. We affirm.

The pertinent facts of this case are as follows:

This action was initiated on August 19, 2011[,] when Gagliardi filed a Petition for Special Injunctive Relief requesting that Respondents PAMS and the Borough of Jefferson Hills (hereinafter, "the Borough") be enjoined from sending Gagliardi invoices for sewage charges at 191 Wall Road and from filing municipal liens against Gagliardi's person or property. Both PAMS and the Borough filed Preliminary Objections to Gagliardi's Petition pursuant to Pa.R.C.P. 1028(a)(6), which allows Preliminary Objections to be filed on the basis of pendency of a prior action.^{fn}

*Retired Senior Judge assigned to the Superior Court.

^{fn} In Case # GD 09-003936, Gagliardi filed a First Amended Complaint alleging he was entitled to damages and other relief as a result of bills sent to Gagliardi by PAMS on behalf of the Borough for sewage services at 191 Wall Road. On August 30, 2010, the Honorable Paul F. Luty, Jr. entered an Order of Court granting PAMS's Motion for Summary Judgment. Gagliardi appealed the grant of summary judgment to the Superior Court (Docket Number 1523 WDA 2010). Oral argument was held before a three judge panel on August 16, 2011, three (3) days prior to the filing of Gagliardi's Petition for Special Injunctive Relief at Case # GD 11-016878. As of October 24, 2011, the date the Order of Court subject to this appeal was entered, no decision had been rendered in the appeal at 1523 WDA 2010. It should be noted that on December 16, 2011, the Superior Court affirmed Judge Luty's grant of summary judgment in a Memorandum Opinion.

On September 1, 2011, Gagliardi filed a Motion for Declaratory Relief, requesting, *inter alia*, a declaration that the utility services account in question is not the responsibility of Gagliardi. PAMS and the Borough filed Preliminary Objections to Gagliardi's Motion pursuant to Pa.R.C.P. 1028(a)(6). In addition, PAMS filed an Amended Petition for Counsel Fees. Oral argument on the Respondents' Preliminary Objections was held on September 9, 2011, at which time this Court entered Orders sustaining PAMS and the Borough's Preliminary Objections to Gagliardi's Petition for Special Injunctive Relief and Motion for Declaratory Relief, and dismissing said Petition and Motion.

On September 13, 2011, Gagliardi filed a Motion for Reconsideration in which he requested the Court to reconsider its Orders sustaining PAMS and the Borough's Preliminary Objections to his Petition for Special Injunctive Relief, and moved for his previously-requested declaratory relief. On September 29, 2011, PAMS filed a Second Amended Petition for Counsel Fees alleging that the Court has discretion to award counsel fees pursuant to 42 Pa.C.S.A. § 2503(9). Oral argument was held before the [trial court] on October 24, 2011, at which time the Court entered an Order denying Gagliardi's Motion for Reconsideration, and another Order granting PAMS's Second Amended Petition for Counsel Fees

and requiring Gagliardi to pay \$750 to PAMS within ten (10) days.

Gagliardi filed his Notice of Appeal on October 31, 2011. The Notice clearly indicates that Gagliardi is only appealing the October 24, 2011 Order of Court granting PAMS's Second Amended Petition for Counsel Fees. Gagliardi filed his Statement of Matters Complained of on Appeal (hereinafter, "Statement") on November 14, 2011. No appeal has been filed to the October 24, 2011 Order denying Gagliardi's Motion for Reconsideration.

Trial Court Opinion, 12/30/11, at 1-3 (footnote in original).

Gagliardi raises the following issues on appeal:

1. In a continuing dispute over mounting liability for sewer services allegedly provided to a parcel, is an action filed in 2011 for purely declaratory and injunctive relief sufficiently distinct for *res judicata* from a 2009 action (now on appeal) which requested primarily statutory relief through monetary damages?
2. Do new causes of action arise from each billing occurrence and/or refusal to address demands for correction of the alleged account established for the disputed sewer services?
3. Was the commencement and maintenance of an action seeking declaratory and injunctive relief for a continuing and compounding problem "arbitrary, vexatious or in bad faith" within the meaning of 42 Pa.C.S.A. § 2503(9) because of the appeal involving the same parties pending in the Superior Court?
4. Did the untranscribed proceeding conducted by the judge awarding sanctions pursuant to 42 Pa.C.S.A. § 2503(9), which did not provide for witness testimony and cross examination, satisfy due process?
5. Is it manifestly unreasonable to impose sanctions upon a litigant who challenges a clearly erroneous sewer bill where non-liability is palpably suggested by the uncontradicted facts?

Brief for Appellant at 11.

“Trial courts have great latitude and discretion in awarding attorney fees when authorized by contract or statute.” ***Cummins v. Atlas R.R. Const. Co.***, 814 A.2d 742, 746 (Pa. Super. 2002). “[T]he denial of a request for attorney’s fees is a matter within the sound discretion of the trial court, which will be reversed on appeal only for a clear abuse of that discretion.”

Id.

After reviewing the record, we conclude that the trial court did not abuse its discretion in awarding counsel fees to PAMS. The trial court has correctly addressed all of the issues presented by Gagliardi, and we affirm on the basis of the trial court’s well-reasoned Opinion. **See** Trial Court Opinion, 12/30/11, at 3-5.¹

Order affirmed.

¹ As indicated by the trial court, the claims raised by Gagliardi on appeal do not entitle him to relief.

COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN GAGLIARDI,

Petitioner,

vs.

PENNSYLVANIA MUNICIPAL
SERVICE COMPANY (PAMS) and
BOROUGH OF JEFFERSON HILLS,

Respondents.

CIVIL DIVISION

No. GD 11-018678

Superior Court No: 1730 WDA 2011

OPINION

WALKO, J.

December 30th, 2011

Petitioner John Gagliardi (hereinafter, "Gagliardi") appeals this Court's October 24, 2011 Order of Court granting Respondent Pennsylvania Municipal Service Company's (hereinafter, "PAMS") Second Amended Petition for Counsel Fees and requiring Gagliardi to pay \$750 to PAMS within ten (10) days. For the reasons set forth in this Opinion, the Order should be affirmed.

This action was initiated on August 19, 2011 when Gagliardi filed a Petition for Special Injunctive Relief requesting that Respondents PAMS and the Borough of Jefferson Hills (hereinafter, "the Borough") be enjoined from sending Gagliardi invoices for sewage charges at 191 Wall Road and from filing municipal liens against Gagliardi's person or property. Both PAMS and the Borough filed Preliminary Objections to Gagliardi's Petition pursuant to Pa.R.C.P. 1028(a)(6), which allows Preliminary Objections to be filed on the basis of pendency of a prior action.¹

¹ In Case # GD 09-003936, Gagliardi filed a First Amended Complaint alleging he was entitled to damages and other relief as a result of bills sent to Gagliardi by PAMS on behalf of the Borough for sewage services at 191 Wall

On September 1, 2011, Gagliardi filed a Motion for Declaratory Relief, requesting, *inter alia*, a declaration that the utility services account in question is not the responsibility of Gagliardi. PAMS and the Borough filed Preliminary Objections to Gagliardi's Motion pursuant to Pa.R.C.P. 1028(a)(6). In addition, PAMS filed an Amended Petition for Counsel Fees. Oral argument on the Respondents' Preliminary Objections was held on September 9, 2011, at which time this Court entered Orders sustaining PAMS and the Borough's Preliminary Objections to Gagliardi's Petition for Special Injunctive Relief and Motion for Declaratory Relief, and dismissing said Petition and Motion.

On September 13, 2011, Gagliardi filed a Motion for Reconsideration in which he requested the Court to reconsider its Orders sustaining PAMS and the Borough's Preliminary Objections to his Petition for Special Injunctive Relief, and moved for his previously-requested declaratory relief. On September 29, 2011, PAMS filed a Second Amended Petition for Counsel Fees alleging that the Court has discretion to award counsel fees pursuant to 42 Pa.C.S.A. § 2503(9). Oral argument was held before the undersigned on October 24, 2011, at which time the Court entered an Order denying Gagliardi's Motion for Reconsideration, and another Order granting PAMS's Second Amended Petition for Counsel Fees and requiring Gagliardi to pay \$750 to PAMS within ten (10) days.

Gagliardi filed his Notice of Appeal on October 31, 2011. The Notice clearly indicates that Gagliardi is only appealing the October 24, 2011 Order of Court granting PAMS's Second Amended Petition for Counsel Fees. Gagliardi filed his Statement of Matters Complained of on

Road. On August 30, 2010, the Honorable Paul F. Luty, Jr. entered an Order of Court granting PAMS's Motion for Summary Judgment. Gagliardi appealed the grant of summary judgment to the Superior Court (Docket Number 1523 WDA 2010). Oral argument was held before a three judge panel on August 16, 2011, three (3) days prior to the filing of Gagliardi's Petition for Special Injunctive Relief at Case # GD 11-016878. As of October 24, 2011, the date the Order of Court subject to this appeal was entered, no decision had been rendered in the appeal at 1523 WDA 2010. It should be noted that on December 16, 2011, the Superior Court affirmed Judge Luty's grant of summary judgment in a Memorandum Opinion.

al (hereinafter, "Statement") on November 14, 2011. No appeal has been filed to the October 24, 2011 Order denying Gagliardi's Motion for Reconsideration.

The matters complained of in Paragraphs 1 and 2 of Gagliardi's Statement clearly address the merits of the Preliminary Objections filed with regard to his Petition for Special Injunctive Relief and Motion for Declaratory Relief. The Preliminary Objections were sustained by Orders of Court dated September 9, 2011, Reconsideration of those Orders was denied on October 24, 2011, and no appeal was taken within thirty (30) days as required by Pa.R.A.P. 903(a). The only Order of Court at issue in this appeal is the October 24, 2011 Order granting counsel fees. Because the merits of that Order are not addressed in Paragraphs 1 and 2, it is not necessary for this Court to address those matters.

Paragraph 3 of Gagliardi's Statement reads, "Was the commencement and maintenance of an action seeking declaratory and injunctive relief for a continuing and compounding problem 'arbitrary, vexatious or in bad faith' within the meaning of 42 Ps. C.S.A. 2503(9) [sic] because of the appeal involving the same parties pending in the Superior Court? SUGGESTED ANSWER: Negative." (Document 37 on Trial Court Docket)

This Court's decision to award counsel fees to PAMS pursuant to 42 Pa.C.S.A. § 2503(9) is supported by the record. This statute allows an award of counsel fees in cases where, "the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith." 42 Pa.C.S.A. § 2503(9). A litigant can be deemed to have acted "vexatiously" if the suit was filed, "without sufficient grounds in either law or in fact and if the suit served the sole purpose of causing annoyance." *Hart v. Arnold*, 884 A.2d 316, 342 (Pa. Super. 2005) (citing *Thunberg v. Strause*, 682 A.2d 295, 299 (Pa. 1996)).

Gagliardi's suit is clearly without sufficient grounds in law, as evidenced by the sustaining of Respondents' Preliminary Objections, which was not appealed by Gagliardi. The instant action was initiated by Gagliardi while another action involving the same parties, and requesting relief based on the same claim that PAMS is wrongfully billing him for utility services provided at 191 Wall Road, was pending before the Superior Court. It is also clear that the current action was initiated for the purpose of causing annoyance to PAMS. After Gagliardi had not received his desired relief in Case # GD 09-003936, he filed a Petition for Special Injunctive Relief at GD 11-016878 making the same claims as he had in the previous action. Gagliardi further filed a Motion for Declaratory Relief and a Motion for Reconsideration, which PAMS was forced to defend against. Because the previous case was pending before the Superior Court, Gagliardi's filings in the instant action, which are wholly without merit, can have no conceivable purpose other than to cause annoyance.

Paragraph 4 of Gagliardi's Statement reads, "Did the untranscribed proceeding conducted by the judge awarding sanctions pursuant to 42 Pa.C.S.A. 2503(9), which did not provide for witness testimony and cross examination, satisfy due process? SUGGESTED ANSWER: Negative." (Document 37)

Gagliardi suggests that his due process rights were violated by this Court's award of counsel fees without witness testimony and cross examination. There is no merit to this argument. PAMS's Second Amended Petition for Counsel Fees put Gagliardi on notice that PAMS would be requesting counsel fees pursuant to 42 Pa.C.S.A. § 2503(9). The Court's decision to award fees pursuant to this statute is supported by the face of the record, and no witness testimony was warranted in making this determination. Preliminary Objections to Gagliardi's Petition for Special Injunctive Relief and Motion for Declaratory Judgment were

sustained on the grounds that a prior action was pending. The docket entries in both the current action and the pending prior action show that Gagliardi's claims are essentially the same in each case. It is therefore clear on the face of the record that Gagliardi's conduct in initiating this action were "vexatious" within the meaning of 42 Pa.C.S.A. § 2503(9), as the action had no basis in law, and served only to annoy PAMS. *See Hart, supra.*

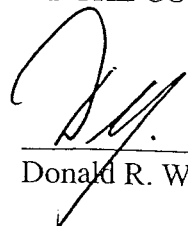
Paragraph 5 of Gagliardi's Statement reads, "Is it manifestly unreasonable to impose sanctions upon a litigant who challenges a clearly erroneous sewer bill where non-liability is palpably suggested by the uncontradicted facts? SUGGESTED ANSWER: Affirmative."

To the extent that this statement speaks to the strength of Gagliardi's claims set forth in his Petition for Special Injunctive Relief and Motion for Declaratory Relief, which were dismissed by the September 9, 2011 Orders of Court, this Court is not required to respond for the reasons set forth in the discussion of Paragraphs 1 and 2.

With respect to Gagliardi's claim that it was manifestly unreasonable for this Court to award counsel fees, this Court argues that its award was reasonable and supported by law. Title 42 Pa.C.S.A. § 2503(9) allows an award of counsel fees in cases where, "the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith." 42 Pa.C.S.A. § 2503(9). For the reasons set forth above, Gagliardi's conduct in commencing this matter was "vexatious" within the meaning of the statute. Given these facts, this Court's award of \$750 was very reasonable.

For the foregoing reasons, this Court's Order dated October 24, 2011 should be affirmed.

BY THE COURT:


_____, J.
Donald R. Walko, Jr., Judge