In the Commonwealth Court of Pennsylvania

Docket No. 449 C.D. 2015

CITY OF HARRISBURG, et al.

Appellants

v.

U.S. LAW SHIELD OF PENNSYLVANIA, LLC, et al.,

Appellees

Brief for Appellees

Appeal from the Order of
The Dauphin County Court of Common Pleas,
Docket No. 2015-255

Respectfully submitted,
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I. Table of Contents

II. Table of Authorities

Cases:

III. Counter-Statement of Questions Involved

Did the trial court abuse its discretion in granting the preliminary injunction?

Suggested Answer: No

Did any reasonable grounds exist for the preliminary injunction issued by the trial court?

Suggested Answer: Yes

Are there no grounds to support the preliminary injunction or was the rule of law relied upon *at the time the decision was made* palpably erroneous or misapplied?

Suggested Answer: No

Does the record reveal that there is any bias, ill will, prejudice, or partiality by the trial court in the rendering of its decision?

Suggested Answer: No

IV. Scope and Standard of Review

In reviewing the grant or denial of a preliminary injunction, the appellate court is bound by a limited scope and guided by a *highly deferential* standard in favor of the trial court's determination. Under this limited standard, "an appellate court reviews an order granting or denying a preliminary injunction for an abuse of discretion." *SEIU Healthcare Pennsylvania v. Com.*, 104 A.3d 495, 501 (Pa. 2014) (citing *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1000 (2003)). Abiding by this standard, the appellate court's sole task is "to decide whether 'any reasonable grounds' exist for the injunction issued by the trial court." *The Woods at Wayne Homeowners Ass'n v. Gambone Bros. Const. Co.*, 893 A.2d 196, 204 (Pa. Cmwlth. 2006).

It is crucial to note that this is a review not of a final or permanent injunction, but of a preliminary or temporary injunction.

An appellate court's "scope of review of the grant or denial of a preliminary injunction is a narrow one." *Dillon v. City of Erie*, 83 A.3d 467, n.7 (Pa. Cmwlth. 2014). Provided this narrow scope and the "highly deferential standard of review, an appellate court does not inquire into the merits of the controversy . . ." *SEIU Healthcare Pennsylvania,* 104 A.3d at 501 (quoting *Summit Towne Centre, Inc.,* 828 A.2d at 1000) (additional citations omitted). Upon this type of very limited review, an appellate court is not to substitute its judgment for that of the trial court and appellants ought not to invite the appellate court to do so or invite re-litigation in the appellate court. Instead, it is a cold, hard look at the record and the state of the law at the time that the matter was decided. Only if it is plain that "no grounds exist to support the

decree or that the rule of law relied upon was palpably erroneous or misapplied will we interfere with the decision of the [Court]." *The Woods at Wayne Homeowners Ass'n,* 893 A.2d at 204 (quoting *Mazzie v. Commonwealth,* 432 A.2d 985, 988 (1981)).

In *Hicks v. Am, Natural Gas Co.*, the Supreme Court of Pennsylvania explained the highly deferential standard, declaring:

> It is somewhat embarrassing to an appellate court to discuss the reasons for or against a preliminary decree, because generally in such an issue we are not in full possession of the case either *as to the law or testimony*—hence our almost invariable rule is to simply affirm the decree, or if we reverse it to give only a brief outline of our reasons, reserving further discussion until appeal, should there be one, from final judgment or decree in law or equity.
>
> 57 A. 55, 55-56 (1904) (emphasis added).

To further emphasize the very heavy burden that Appellants now bear in their task of overturning this preliminary injunction, we refer to the classic definition of what constitutes an abuse of discretion. An abuse of discretion requires proof of more than a mere error in judgment, but rather evidence that the law was misapplied or overridden, or that the judgment was manifestly unreasonable or based on bias, ill will, prejudice, or partiality. See *Crawford v. Crawford*, 633 A.2d 155, 156 (Pa. Super. 1993); see also *Spitzer v. Tucker*, 591 A.2d 723, 724 (Pa. Super. 1991), appeal denied, 607 A.2d 255 (Pa. 1992). An abuse of discretion is not found lightly, but only upon a showing of clear and convincing evidence. *Smith v. Smith*, 904 A.2d 15, 18 (Pa. Super. 2006), (quoting *McCoy v. McCoy*, 888 A.2d 906, 908 (Pa. Super. 2005)).

Accordingly, the role of an appellate court in reviewing a preliminary injunction is significantly limited, and disruption of a

preliminary injunction is only appropriate under somewhat extraordinary circumstances.

V. SUMMARY OF THE ARGUMENT

When viewed through the lens of an abuse of discretion standard together with the scope of review that this Honorable Court must entertain, coupled with the highly differential posture that this Honorable Court must adopt in favor of upholding the preliminary injunction, it is impossible for Appellants to prevail on this review of the trial court's preliminary injunction. The appellants in this matter blatantly invite this Honorable Court to re-litigate the issues that they did not prevail upon at the trial court level. Such an examination is wholly inappropriate for the reasons below.

First, this is a preliminary injunction. This is not a final determination. As such, our Pennsylvania Supreme Court has clearly and unequivocally held that an order granting or denying a preliminary injunction cannot be disturbed if there exist any

apparently reasonable grounds for the action of the court below. Further our Pennsylvania Supreme Court has held that appellate review of a preliminary injunction is subject to a highly deferential standard. In doing so, a review of the record reveals that there is not even a scintilla of evidence that there was bias, ill will, prejudice, or partiality by the trial court in the rendering of its decision.

In its brief, Appellants specifically attack two prongs of the preliminary injunction standard. In doing so, they wish to invite this Court to re-litigate the matter and substitute its judgment for that of the trial court. Such review, if appropriate, is reserved to a final determination or a final injunction. We are not at that stage of the litigation.

The trial court's lengthy written opinion, its detailed reference to authority, its reference to the burdens of production and persuasion, and its careful determination that included

denying the plaintiffs relief when it comes to two out of the five questioned ordinances gives ample evidence that this was a product of labored thought and scholarship, not one of frolic and capriciousness. Far from an abuse of discretion, the preliminary injunction was correct in all respects.

VI. Argument

This is not a review of the merits of the underlying case in controversy. This is not a vehicle to further litigate the legality of Act 192. This is only a review of the preliminary injunction that was issued by the trial court at a time when Act 192 was the law of the land. In essence, the properly framed question before this Court is ***not*** "How would we rule based upon this record?" Such a question would be *de novo* or plain error legal review. Further, the question before this Court is ***not*** "Now that we have found Act 192 to have been enacted in a means that was not constitutional, what should we do with this preliminary injunction that the trial court issued?" As such, much of Appellants' brief is wholly irrelevant. References to the Third Class City Code and to Act 192 and most of its citations to the record serves as misplaced diversion from the task that is before this Court.

The review that this Honorable Court can undertake is a very limited one and a very modest one:

1. Based upon the law that was in place at the time of its decision, did the trial court abuse its discretion when it issued the preliminary injunction?
2. Are there no grounds to support the preliminary injunction or was the rule of law relied upon at the time the decision was made palpably erroneous or misapplied?
3. Is the trial court's decision was a product of partiality, prejudice, bias, or ill-will as shown by the evidence or the record?

In reviewing the grant or denial of a preliminary injunction, just this past year our Pennsylvania Supreme Court held that an appellate court is bound by a limited and *highly*

deferential standard. Under this limited standard, "an appellate court reviews an order granting or denying a preliminary injunction for an abuse of discretion." *SEIU Healthcare Pennsylvania,* 104 A.3d at 501 (citing *Summit Towne Centre, Inc* at 1000). Abiding by this standard, the appellate court's sole task is "to decide whether 'any reasonable grounds' exist for the injunction issued by the trial court." *The Woods at Wayne Homeowners Ass'n.,* 893 A.2d at 204.

Our Pennsylvania Supreme Court in *Commonwealth v. Myers,* 722 A.2d 649, 651 (Pa., 1998) wrote of abuse of discretion as follows:

> 'Abuse of discretion' is synonymous with a failure to exercise a sound, reasonable, and legal discretion. It is a strict legal term indicating that appellate court is of [the] opinion that there was commission of an error of law by the trial court." *Commonwealth v. Powell,* 590 A.2d 1240, 1245 n. 8

> (Pa. 1991). Therefore, our Courts apply the abuse of discretion standard "not merely for an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will as shown by the evidence or the record ..." *Commonwealth v. Chambers,* 685 A.2d 96, 104 (Pa. 1996); *Commonwealth v. Smith,* 673 A.2d 893, 895 (Pa. 1996) (reviewing court will find the imposition of sentence a manifest abuse of discretion only where the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality prejudice, bias or ill-will).

To further amplify this concept, the Pennsylvania Superior Court has held that an abuse of discretion should not be found lightly, but only upon a showing of clear and convincing evidence. *Smith v. Smith*, 904 A.2d 15, 18 (Pa. Super. 2006), quoting *McCoy v. McCoy*, 888 A.2d 906, 908 (Pa. Super. 2005)

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In *Hicks v. Am, Natural Gas Co.*, the Supreme Court of Pennsylvania explained the highly deferential standard, declaring:

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>
> 57 A. 55, 55-56 (1904) (emphasis added).

In this brief, we will not delve into the merits of the controversy as to do so would violate the limited function of review that this Honorable Court may entertain upon review. We simply ask this Court to note the trial court's lengthy written opinion, its detailed reference to authority, its reference to the burdens of production and persuasion, and its careful

determination that included denying the plaintiffs relief when it comes to two out of the five questioned ordinances serves as ample evidence that this was a product of labored thought and scholarship, not one of frolic and capriciousness. Far from an abuse of discretion, the preliminary injunction was correct in all respects.

VII. Conclusion

This Court is tasked with a limited role in reviewing a preliminary injunction. Review is limited to determining whether the trial court had apparently reasonable grounds to formulate its decision. Appellants, however, ask this Court to scrutinize each and every detail on the merits of the underlying issue, a request that if honored would ignore binding and controlling precedent from our Pennsylvania Supreme Court.

Appellants insist upon disregarding the boundaries commanded by our Supreme Court, and invite this Honorable Court to apply an inappropriate standard of review and an inappropriate scope of review. They seek to have this Court disturb the trial court's ruling, overcomplicate the issues and second-guess decades of authority, or focus upon issues beyond substance. We ask this Court to avoid such a path.

Instead, we respectfully request this Court decline to disturb the Preliminary Injunction granted by the trial court.

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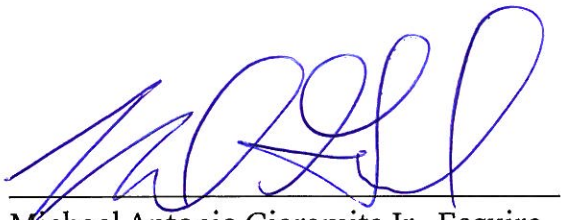

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Certificate of Service

I, Michael Antonio Giaramita Jr., Esquire, on this 12th day of August, 2015, hereby certify that the following service has been completed in compliance with the Rules of Appellate Procedure via United States mail, postage prepaid, to all known counsel of record listed below:

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