

CLERK COMMON
PLEAS COURT
LICKING CO. OHIO

IN THE LICKING COUNTY COMMON PLEAS COURT

2024 NOV -4 AM 11:20

Board of Trustees of Etna Township,
Licking County, Ohio, :

Appellant, :

-vs- :

Etna Township, Licking County, Ohio,
Board of Zoning Appeals, et al. :

Appellees. :

Case No. 2024 CV 00385

Judge W. David Branstool

OLIVIA C. PARKINSON
CLERK

**ORDER GRANTING APPELLEE 8900 NATIONAL ROAD'S
MOTION FOR ATTORNEY FEES**

This matter came before the Court on Appellee 8900 National Road Co., LLC's ("8900 National Road) Motion for Attorney Fees Resulting from Appellant's Frivolous Conduct, filed on July 25, 2024. Appellant Board of Trustees of Etna Township, Licking County, Ohio, ("Trustees"), filed a Memorandum in Opposition on August 8, 2024. The Court held an evidentiary hearing on September 6, 2024. This matter is now ripe for a decision. For the reasons set forth below, the motion is granted.

I. Background

The facts relevant to this motion begin with Nita Hanson's brief employment with Etna Township as Township Administrator. She is also the owner of 8900 National Road, the Appellee in this case. On March 7, 2023, the Trustees adopted a resolution hiring Hanson as Township Administrator. Following her hiring, Trustee Mark Evans began conducting personal attacks against Hanson by filing public records requests for records that he already had in order to make busy work for her, by speaking in public about terminating her employment, by posting derogatory comments about her on Facebook,

and by accusing her and other township officials of lying. These actions ultimately led to Hanson filing an employee complaint against Trustee Evans. The Trustees hired a third-party investigator to conduct an investigation into the complaint. The investigator determined that Trustee Evans had engaged in bullying behavior in violation of Etna Township's personnel policies and Trustee Evans was publicly reprimanded for his conduct related to Hanson and others. Ultimately, Hanson's employment with the Township did not last and Hanson received a settlement to compensate her for the treatment she received during her employment.

The Board of Trustees filed this appeal from the decision of the Etna Township Board of Zoning Appeals ("BZA") to approve a variance to Richard Kennedy. The variance permitted a billboard to appear closer to a road and nearby residences. The variance application was brought by Richard Kennedy. Kennedy is a tenant of 8900 National Road, which owns the premises at 8900 National Road, Etna, Ohio. The variance was approved at a meeting on January 30, 2024.

The Trustees filed a Notice of Appeal with this Court on April 1, 2024, challenging the BZA's decision to grant the variance. The Trustees named the BZA and 8900 National Road as Appellees. Significantly, Kennedy was not named as an Appellee, although he later joined the case after he moved to intervene. The Trustees did not file a praecipe for filing the transcript or record of the BZA, as required by R.C. 2506.02, until eight weeks after the filing of the Notice of Appeal, and only did so after 8900 National Road moved to dismiss the appeal.

Between the filing of the appeal and the filing of the praecipe, Kennedy and 8900 National Road filed motions to dismiss. The Trustees filed timely memorandums in

opposition to these motions. 8900 National Road's motion to dismiss was granted due to the Trustees' lack of standing to pursue the appeal.

II. Analysis

8900 National Road brings this motion under R.C. 2323.51, which governs frivolous conduct in civil actions. Under R.C. 2323.51, "the court may assess and make an award to any party to the civil action or appeal who was adversely affected by frivolous conduct..." R.C. 2323.51(B)(1). Conduct includes the filing of a civil action. R.C. 2323.51(A)(1)(a). R.C. 2323.51(A)(2)(a)(i) defines frivolous conduct to include the conduct of a party in a civil action or a party's counsel of record that "obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase to the cost of litigation."

Based on the arguments and testimony, the Court agrees that there is substantial evidence that the Trustees filed this appeal to harass or maliciously injure Appellee 8900 National Road's owner, Nita Hanson.

First, the Trustees named only the BZA and 8900 National Road as Appellees, but did not name Kennedy, the actual applicant for the variance, in the appeal. If the Trustees intended to dispute the decision of the BZA on the merits, it would have named Kennedy as an Appellee as he played the most direct role in getting the variance application approved by the BZA, and was the tenant actually seeking the variance to construct the billboard. Kennedy would have been the best suited to argue this case on the merits, and Trustees' failure to name Kennedy as an Appellee and to name 8900 National Road instead, was suspect, at best.

Second, the Trustee's failure to timely file a praecipe is also suspicious. Under R.C. 2506.02, the appellant is required to file a praecipe requesting the administrative body from which the appeal is taken to prepare a record. Without a record, a court is unable to consider any evidence. *Wickliffe Firefighters Assn., Local 1536 etc. v. Wickliffe*, 66 Ohio App. 3d 681 (11th Dist. 1990). In this case, the Trustees initially failed to file a praecipe, and only did so after 8900 National Road raised the issue in its motion to dismiss. Ultimately, the praecipe in this case did not get filed until May 30, 2024, almost two months after the Notice of Appeal was filed with the Court on April 1, 2024, and after the Trustees' brief was due. The Trustees assert that the failure to file a praecipe was inadvertent, however, after considering record, the Court disagrees. The failure to file a praecipe clearly suggests that Trustees did not bring this suit to determine the appeal on the merits, as a determination on the merits would be impossible without the records from the BZA. The Court agrees that failing to file a praecipe is additional evidence the Trustees' purpose in filing the appeal was to harass Hanson and force her to expend time and resources in obtaining a dismissal.

Third, the Trustees' failure to file a brief in this case demonstrates that the Trustees did not intend to litigate and decide this case on the merits. On April 14, 2024, this Court entered a judgment entry setting a brief schedule for this case. The Appellant Trustee's brief was set to be due on or before May 27, 2024. Despite this order, the Trustees failed to file a brief in this case, nor did the Trustees ever request an extension to the briefing schedule to allow for a brief to be timely filed. This stands in stark contrast to the Trustees' actions in regards to the Appellees' motions to dismiss, to which the Trustees made sure to file timely memorandums in opposition. The fact that Trustees were quick to respond

to any motion to dismiss, but failed to prosecute their case by filing a timely praecipe or brief further demonstrates that Trustees did not bring this appeal to decide this case on the merits, but rather to harass Hanson by forcing her to seek dismissal of this case.

The failure of Trustees to take the required action necessary to prosecute their appeal and come to a resolution of the merits in this case, combined with Trustee Evans' history of interactions with Hanson; the result of investigation into her complaint; and the settlement the Trustees reached with Hanson, leads the Court to conclude that this appeal was brought to harass Hanson. The filing of this appeal therefore constitutes frivolous conduct under R.C. 2323.51(A)(2)(a)(i).

R.C. 2323.51 requires a trial court to determine whether the challenged conduct adversely impacted any party. *Olthaus v. Niesen*, 2024-Ohio-1953 (1st Dist.). The evidence shows that 8900 National Road incurred substantial attorney fees by defending and seeking a dismissal of this appeal. Therefore, it is clear that the challenged conduct, the appeal, adversely affected 8900 National Road and the award of attorney fees and other costs under R.C. 2323.51 is proper.

III. Conclusion

For all the foregoing reasons, Appellee 8900 National Road's Motion for Attorney Fees is granted.

The Court finds no reason to depart from the lodestar figure and therefore, Appellee 8900 National Road is awarded judgment against the Appellant Trustees for attorney fees in the amount of \$27,030.72.

The Clerk of Courts is hereby ORDERED to serve a copy of the Judgment Entry upon all parties or counsel.

It is so ordered.



Judge W. David Branstool

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