



The City of Erie, Pennsylvania

Joseph E. Sinnott, Mayor

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AGI

October 10, 2013

Commonwealth Court Chief Clerk's Office
Pennsylvania Judicial Center, Suite 2100
601 Commonwealth Avenue
P.O. Box 69185
Harrisburg, PA 17106-9185

RE: *Dillon, J. v. City of Erie*
No. 1038 CD 2013

Dear Prothonotary:

Enclosed for filing in the above referenced please find and original and fourteen (14) copies of Appellee City of Erie's Brief. Also, two (2) copies of this brief were mailed this day to Attorney Prince.

Sincerely,

Eileen Nowosielski
Eileen Nowosielski, Paralegal

Enclosures as stated.

EN/s

CC: Joshua Prince, Esq.

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

NO. 1035 C.D. 2013

JUSTIN DILLON,

APPELLANT

v.

CITY OF ERIE

APPELLEE

**Appeal from the June 20, 2013 Order in the Court of Common Pleas of Erie
County, Pennsylvania, Civil Division, Docket No. 11482-2013**

BRIEF FOR APPELLEE

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<i>Techtmann v. Howie</i> , 720 A.2d 143 (Pa. Super. 1998)	5
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I. COUNTER-STATEMENT OF JURISDICTION

The City maintains that this Court does not have jurisdiction to review the order in question. Contrary to Dillon's assertion, the order appealed from has already been decided by final appeal and the matter should be properly referred back to the trial court in accordance with the terms of its initial order.

II. COUNTER-STATEMENT OF QUESTIONS PRESENTED

A. Whether Dillon's request for emergency relief has been finally determined after being denied on appeal by both this Court and the Supreme Court?

Proposed Response: Yes

B. Whether this Court lacks jurisdiction over this matter pursuant to the terms of the trial court's June 20, 2013 interlocutory order?

Proposed Response: Yes.

III. SUMMARY OF THE ARGUMENT

Dillon's request for emergency relief has been denied by both this Court and the Supreme Court and is not appropriately before this Court again. In the alternative, it is the City's position that the trial court order being challenged by Dillon directed that the case will proceed "in due course" and is therefore interlocutory. This matter should be referred back to the trial court for final disposition.

IV. ARGUMENT

On September 12, 2013, Appellant Justin Dillon (“Dillon”) filed a brief for his case docketed at No. 1038 C.D. 2013 in the Commonwealth Court challenging an order issued by Erie County Court of Common Pleas Judge Ernest J. DiSantis which stated as follows:

AND NOW, this 20th day of June 2013, it is hereby **ORDERED** that Plaintiff’s request for a preliminary injunction is **DENIED**. The case will proceed in due course.

BY THE COURT:

/s/ E. DiSantis

Ernest J. DiSantis, Jr., Judge

Appellant’s Brief, p. 1.

On June 20, 2013, Dillon filed with this court an appeal styled as an Emergency Application for Stay and Request for Injunction Pending Appeal, at docket no. 1038 C.D. 2013. This Emergency Application for Stay was from the same Order issued by the Honorable Ernest J. DiSantis, cited above.

After a telephone conference, by order dated June 21, 2013, the Honorable Dan Pellegrini affirmed Judge DiSantis’ order and denied Dillon’s application for emergency relief.

Thereafter, Dillon sought further review with the Pennsylvania Supreme Court. By *per curiam* order dated July 19, 2013, the Pennsylvania Supreme Court denied Dillon's Emergency Application Demanding a Preliminary Injunction. Dillon now files a brief, at docket no. 1038 C.D. 2013, again challenging the order issued by trial Judge DiSantis.

It is the City's position that Dillon's application for a preliminary injunction has already been finally resolved by the Pennsylvania Supreme Court against him, and for that reason the appeal should be dismissed. Alternatively, this matter should be dismissed because it is an appeal from an interlocutory order, not made appealable by Pa. R.A.P. 311 or Chapter 13 of the Rules of Appellate Procedure. *Techtmann v. Howie*, 720 A.2d 143 (Pa. Super. 1998).

Dillon initially filed an action against the City challenging an ordinance regulating the possession of firearms in City parks. Dillon sought preliminary injunctive relief, declaratory and injunctive relief. To date, in addition to the trial court, two appellate tribunals have denied Dillon's request for preliminary relief.

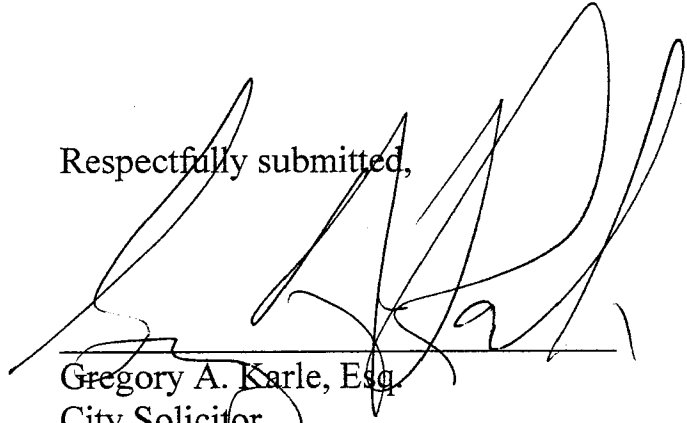
In the alternative, the City maintains that that this court lacks jurisdiction because the trial court has yet to act on Dillon's request for declaratory and permanent injunctive relief.

It has not issued a definitive, final decision in furtherance of its June 20, 2013 order which directed that “[t]he case will proceed in due course.” The Commonwealth Court lacks jurisdiction over this matter because the trial court order at issue is not a final, appealable order subject to appellate court review.

V. CONCLUSION

For the foregoing reasons, the City requests an order from the Commonwealth Court dismissing Dillon's appeal as a question already decided or as an improper interlocutory appeal under the Pennsylvania Rules of Appellate Procedure.

Respectfully submitted,

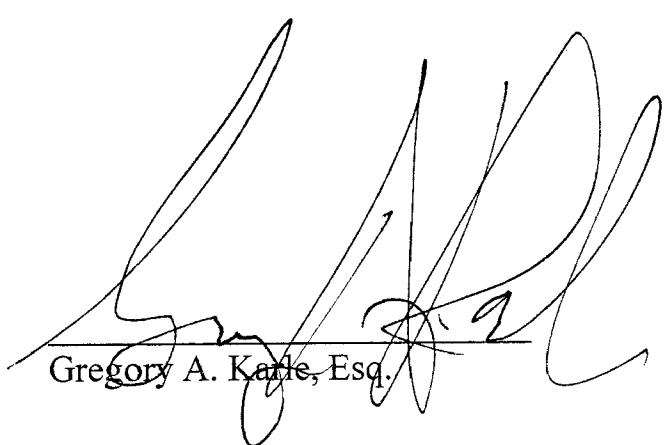
A large, stylized handwritten signature in black ink, appearing to read 'G. Karle', is written over a horizontal line. The signature is fluid and cursive, with long, sweeping strokes.

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CERTIFICATE OF COMPLIANCE

I, Gregory A. Karle, counsel for Appellee City of Erie, hereby certify that this brief is in compliance with the Pennsylvania Rule of Appellate Procedure 2135. The word count, inclusive of this Certification is 861, according to the word count provided by Microsoft Word, which was used to prepare this brief.

Dated: October 10, 2013



Gregory A. Karle, Esq.

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing Brief for Appellee, City of Erie upon the persons and in the manner indicated below which service satisfies the requirements of

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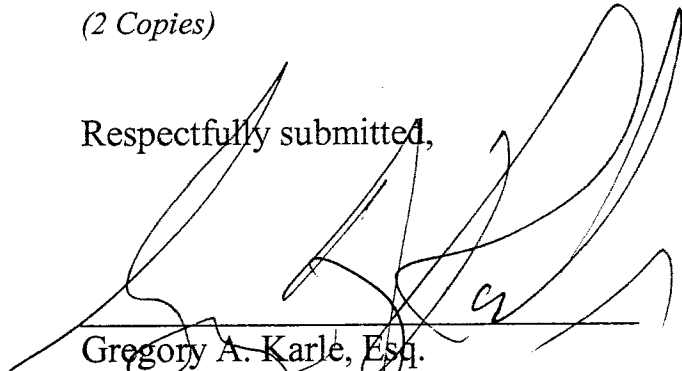
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Respectfully submitted,



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DATE: October 10, 2013