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The City of Erie, Pennsylvania

JOSEPH E. SINNOTT, Mayor

September 17, 2013

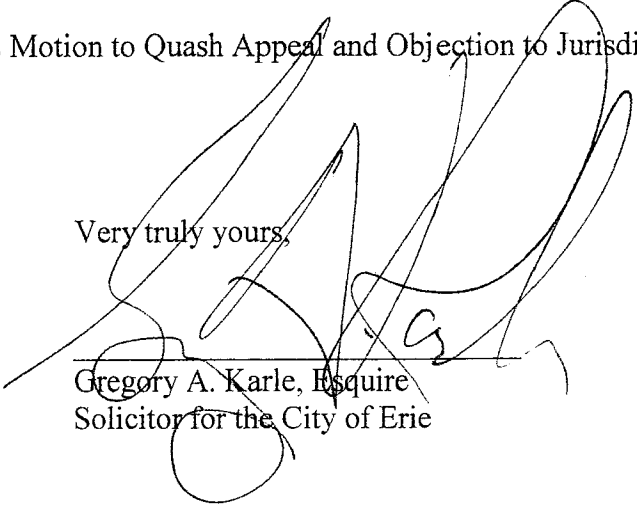
Commonwealth Court of Pennsylvania
 Pennsylvania Judicial Center
 601 Commonwealth Avenue - Suite 2100
 P O Box 69185
 Harrisburg PA 17106-9185

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

Commonwealth Court Filing Office:

Enclosed please find Appellee's Motion to Quash Appeal and Objection to Jurisdiction for filing in the above matter.

Very truly yours,


 Gregory A. Karle, Esquire
 Solicitor for the City of Erie

GAK/cb
 Enclosure

cc. Joshua Prince, Esquire
 ✓ 646 Lenape Road
 Bechtelsville, PA 19505

Office of the City Solicitor
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 626 State Street, Room 505, Erie, PA 16501-1128
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Justin Dillon, :
Appellant :
 :
v. :
 :
City of Erie, :
Appellee : No. 1038 C.D. 2013

MOTION TO QUASH APPEAL AND OBJECTION TO JURISDICTION

AND NOW, comes the Appellee, the City of Erie and files this Motion to Quash Appeal and Objection to Jurisdiction under Rule 741 of the Rules of Appellate Procedure stating in support the following:

1. On September 12, 2013, 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:

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

2. On June 20, 2013, Appellant filed an appeal styled as an Emergency Application for Stay and Request for Injunction Pending Appeal at docket No. 1038 C.D. 2013.

3. The Application for Stay was from the same Order issued by the Honorable Ernest J. DiSantis as stated in paragraph one herein.

4. By Order dated June 21, 2013, the Honorable Dan Pellegrini, after a telephone conference, issued an Order affirming the lower court's order and denying Dillon's Application for Emergency relief. A copy of that Order is appended hereto as Exhibit 1.

5. Thereafter, Dillon sought further review with the Pennsylvania Supreme Court.

6. By Order dated July 19, 2013, the Pennsylvania Supreme Court by a *Per Curiam* Order denied Dillon's Emergency Application demanding a Preliminary Injunction. A copy of that Order is appended as Exhibit 2.

7. Dillon now files a Brief, at docket No. 1038 C.D. 2013 again challenging the Order issued by Judge DiSantis. Dillon's Brief, Order in Question, Page 1.

8. The City avers that this question has already been resolved against Dillon unfavorably and for that reason the appeal should be dismissed.

9. In the alternative, the Appeal should be dismissed because it is an appeal from an Interlocutory Order not made appealable by Rule 311 or Chapter 13 of the Rules of Appellate Procedure.

10. By Complaint filed in the trial court, Dillon filed an action against the City challenging a City Ordinance regulating the possession of firearms in City parks. Dillon sought preliminary injunctive relief, declaratory and injunctive relief.

11. The trial court, as well as two appellate tribunals, has denied Dillon's request for preliminary relief.

12. The trial court has yet to act on Dillon's request for declaratory and injunctive relief. And 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."

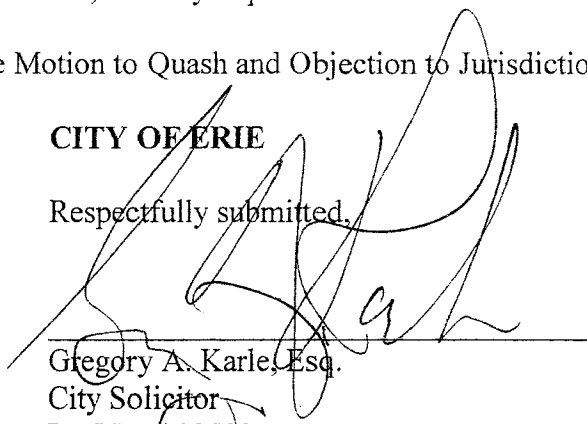
13. The Commonwealth Court lacks jurisdiction of this matter because the Order at issue is not a final appealable order subject to court review.

14. Further, the City seeks an order staying Appellee's briefing schedule until disposition of this motion.

WHEREFORE, the City requests an Order from the Commonwealth Court quashing Dillon's appeal as a question already decided or as an improper interlocutory appeal under the Pennsylvania Rules of Appellate Procedure. In addition, the City requests an order of Court staying Appellee's briefing schedule pending the Motion to Quash and Objection to Jurisdiction.

CITY OF ERIE

Respectfully submitted,

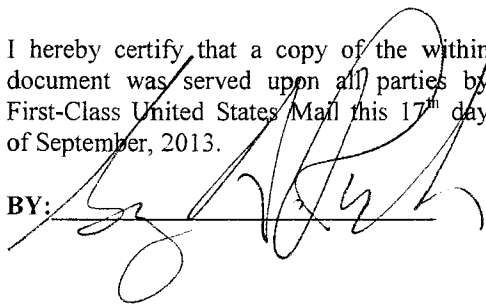


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Fax: 814/455-9438
E-mail: gkarle@erie.pa.us
(Attorney for Defendant, City of Erie)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within document was served upon all parties by First-Class United States Mail this 17th day of September, 2013.

BY:



JUN 25 2013
BY _____

Justin Dillon,

Appellant

v.

City of Erie

:
:
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:
:
:
:

No. 1038 C.D. 2013

ORDER

AND NOW, this 21st day of June, 2013, having reviewed the opinion and order of the Court of Common Pleas of Erie County, dated June 20, 2013, Judge DeSantis did not abuse his discretion and there were reasonable grounds for his decision. *See Summit Towne Centre, Inc. v. The Shoe Show of Rocky Mount, Inc.*, 573 Pa. 637, 828 A.2d 995 (2003). Accordingly, Appellant's Emergency Application for Stay and Request for Injunction Pending Appeal is denied.

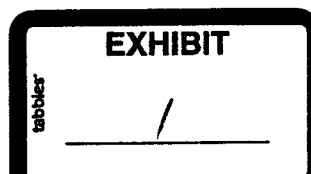


DAN PELLEGRINI, President Judge

Certified from the Record

JUN 21 2013

And Order Exit



IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

JUSTIN DILLON,	:	No. 45 WM 2013
	:	
Petitioner	:	
	:	Emergency Application for Stay from the
v.	:	Oral Order of the Commonwealth Court,
	:	June 21, 2013, and Request for Injunction
	:	
CITY OF ERIE,	:	
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 19th day of July, 2013, Petitioner's Emergency Application for Stay and Request for Injunction is hereby **DENIED**.

