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OCT 09 2013
AGDE/EF

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

MEMORANDUM AND ORDER

Appellee City of Erie has filed a motion to quash asserting that this appeal should be dismissed because the order from which the appeal is taken is interlocutory and not subject to immediate appeal and because relief pending appeal was denied by both this court and the Supreme Court. Appellant Justin Dillon has filed an answer to the motion, and has filed a motion to expedite and his brief on the merits of the appeal.

The City of Erie initially argues that the appeal should be dismissed, because Mr. Dillon sought relief pending appeal pursuant to Pa.R.A.P. 1732 and Pa.R.A.P. 3315, and such interim relief was denied. Commonwealth Court order of June 21, 2013 at 1038 C.D. 2013; Supreme Court order of July 19, 2013 at 45 W.M. 2013. This argument erroneously equates review of the merits of an appeal with the ancillary issue of the propriety of relief during the pendency of an appeal. The denial of relief for the duration of an appeal is not a ruling on the merits of the appeal, except to the extent that the standard of review for relief pending appeal includes a determination of the likelihood of success on the merits of the appeal. See

Pennsylvania Public Utility Commission v. Process Gas Consumers Group, 502 Pa. 545, 467 A.2d 805 (1983). Thus, denial of relief pending disposition of the merits of an appeal is not disposition of the merits of the appeal.

The City of Erie's second argument is that the order denying the motion for preliminary injunctive relief is interlocutory and not subject to immediate appellate review. The parties agree that the trial court denied a preliminary injunction, and as such, it is clearly appealable under Pa.R.A.P. 311(a)(4).

We turn now to Mr. Dillon's motion to expedite, which is based on the subsequent development that Mr. Dillon has been subjected to criminal sanctions, now on appeal, stemming from enforcement of the ordinance he sought to enjoin. The court next sits in Pittsburgh in November 2013 and April 2014. Mr. Dillon's initial brief was filed September 12, 2013, and the City of Erie's brief is due shortly.

We further note that the City of Erie seeks an extension of the briefing schedule pending disposition of its motion to quash. See Pa.R.A.P. 1972. In light of Mr. Dillon's request that the matter be expedited, only limited extension is possible.

Accordingly, we enter the following.

ORDER

Now, October 8, 2013, appellee City of Erie's motion to quash is denied. Appellant Justin Dillon's motion to expedite is granted. The Chief Clerk shall list this appeal for argument during the next available argument session in Pittsburgh.

The City of Erie's brief (15 copies) shall be filed on or before October 28, 2013. Any reply brief shall be filed on or before November 4, 2013. No extensions will be granted absent extraordinary circumstances.

A handwritten signature in black ink, appearing to read "Keith B. Quigley", is written over a horizontal line.

Keith B. Quigley, Senior Judge

Certified from the Record

OCT - 8 2013

and Order Exit

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AOPC 1231 Rev.10/08/2013