

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM

BARBARA J. LACY, JAMIE B. SHAFER,

Plaintiffs,

and

KENT A. MCNEIL,

Intervening Plaintiff,

v

File No. 99-7580-AW
HON. PHILIP E. RODGERS, JR.

KATHY B. JOHNSON, Treasurer;
SALLY R. PETRIE, Clerk; AUDREY J.
GLANDER, Trustee; EDWARD H
NIEPOTH, JR., Trustee,

Defendants.

Barbara J. Lacy
Plaintiff in Pro Per

Jamie B. Shafer
Plaintiff in Pro Per

Kent A. McNeil
Intervening Plaintiff in Pro Per

Kevin A. Elsenheimer (P49293)
Young, Graham & Elsenheimer, P.C.
Attorney for Defendants

DECISION AND ORDER REGARDING SETTLEMENT

This action was filed by the Plaintiffs challenging the propriety of certain actions taken and procedures followed by Kearney Township officials. The case was scheduled for a final settlement conference on January 14, 2000. At that conference, one of the then-named Defendants, the

Township Supervisor Charles Belanger, was dismissed from the case because he had already resigned his position with the Township.

In addition, as a result of the conference, a settlement was reached and the terms and conditions of that settlement were recited upon the record. Specifically, the settlement consisted of the following: (1) the lawsuit would be dismissed; (2) the Defendants would pay the Plaintiffs the sum of One Hundred and Sixty-Five Dollars (\$165.00) representing their filing fees; (2) the Defendants would apologize on the record; and (3) the parties would execute a release which would cover the initial actions of the Township in adopting its first budget and the actions of the Township in adopting its second budget for the fiscal year 1999-2000. Counsel for the Defendants was ordered to "draft the release, the stipulation and order to dismiss and see to the issuance of a check from the Township." Mr. Elsenheimer drafted the release and the stipulation and order to dismiss. The Township issued a check to the Plaintiffs to cover their filing fees. The Plaintiffs refused to sign the release, stipulation and order to dismiss, or accept the check. On February 18, 2000, the Defendants filed a Motion to Enforce Settlement or For Relief from Judgment. The motion was heard by the Court on March 20, 2000. On March 23, 2000, the Defendants submitted a proposed order regarding settlement to the Court for signature pursuant to the seven-day rule. MCR 2.602(B). The Plaintiffs timely objected to the Defendants' proposed order and to the release that Mr. Elsenheimer had prepared on behalf of the Defendants. The Plaintiffs submitted their own proposed order to which the Defendants timely objected.

On March 28, 2000, the Plaintiffs filed a Motion for Contempt and for Sanctions. The Defendants filed a timely response and supplemental response to that motion and the Plaintiffs filed a timely reply to the response. On April 4, 2000, the Court issued a Pre-Hearing Order regarding the Motion for Contempt and Request for Sanctions, Objections to Order Regarding Settlement, Objections to Defendant's Proposed Release, and Defendants' Objections to Plaintiff's Proposed Order Regarding Settlement. The time for responding to the motions/objections and replying to the responses has now passed.

The Court has reviewed the motions, proposed orders, objections, corresponding briefs and exhibits and is otherwise fully advised in the premises. The Court dispenses with further oral argument on these matters and issues this written Decision and Order. MCR 2.119(E)(3).

I.

On January 14, 2000, the parties hereto reached an agreement settling this litigation. The settlement agreement was placed upon the record in open Court and, therefore, is binding and enforceable. MCR 2.507(H). Accordingly, this case is dismissed with prejudice.

II.

Pursuant to the parties' agreement and the ruling of this Court from the bench at the March 20, 2000 hearing that "it's perfectly appropriate to use government funds for that purpose," the Township shall immediately issue a check to the Plaintiffs in the amount of One Hundred Sixty-Five Dollars (\$165.00) to reimburse them for filing fees they incurred in pursuing this matter. The Plaintiffs have seven (7) days from the date of this Decision and Order to accept that payment or they will be considered to have waived their right to recover said amount.

III.

Pursuant to the parties' agreement, the Defendants acknowledged on January 14, 2000 on the record that the public notice of the 1999-2000 fiscal budget hearings that were held on March 1 and 10, 1999 did not comply with MCL 141.412 and they apologized for any inconvenience or expense this may have caused the residents of Kearney Township. This apology was "written and approved by both parties or both sides."

IV.

Pursuant to the parties' agreement and the order of this Court, counsel for the Defendants was to draft a release covering "the initial actions of the Township in adopting its first budget and the actions of the Township in adopting its second budget for the fiscal year 1999-2000." Counsel for the Defendants did so, but the Plaintiffs refused to accept the release as written. At the March 20, 2000 hearing, this Court found that the release as written was "over broad." The Court ordered counsel for the Defendants to redraft the release which he did. On March 27, 2000, the Plaintiffs filed their motion for contempt and for sanctions again complaining that the Defendants' proposed release was unacceptable.

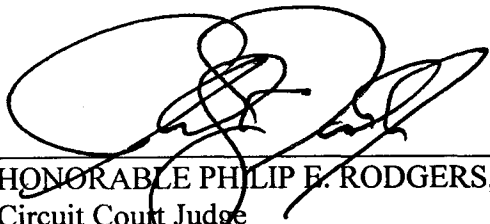
For whatever reason, it is clear that the parties to this action are incapable of effectively communicating with one another. Both sides must remember that this litigation was about the failure of Kearney Township officials to comply with the law when noticing the 1999-2000 fiscal budget hearings. Those officials have admitted their error and have apologized publicly for it. The Plaintiffs have had their grievances aired and redressed. It is time to lay this matter to rest. Therefore, the parties are ordered to execute this attached release and file the original with the Court within seven (7) days of the date of this Decision and Order.

CONCLUSION

Public officials are human beings. They sometimes make mistakes. There has never been any evidence presented to this Court that would indicate that these officials knowingly or intentionally engaged in any illegal or unethical conduct. The Plaintiffs have brought their mistake to the attention of the public and it has been rectified. If the Township officials make other mistakes, the Plaintiffs have recourse. In the meantime, the Court would strongly urge the Township's counsel to facilitate a peaceful working relationship between the Kearney Township Board and the residents of Kearney Township. No good will be served by Township officials having an adversarial relationship with the residents of their Township.

As for the instant case, it is dismissed with prejudice. Within seven days (7) of the date of this Decision and Order, the Township shall pay the Plaintiffs and the Plaintiffs shall accept, or be deemed to have waived, the sum of One Hundred Sixty-Five Dollars (\$165.00)¹ and the parties shall execute the attached release and file it with the Court.² All pending motions, proposed orders/releases and objections are hereby resolved or rendered moot.

IT IS SO ORDERED.



HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: 4/26/00

¹The Township may pay the Plaintiffs by mailing its check made payable to the Plaintiffs to any one of the Plaintiffs at his/her address as shown in the caption of this Decision and Order.

²The parties may execute duplicate originals of the release and file them with the Court.

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Attorney for Defendants

RELEASE

This release is entered into by the remaining parties to this litigation.

The Defendants, having acknowledged that "the public notice of the 1999-2000 fiscal budget hearings that were held March 1 and 10, 1999 did not comply with MCL 141.412" and having

apologized for “any inconvenience or expense this may have caused the residents of Kearney Township;” and

The Defendants, having agreed to pay the Plaintiffs the sum of One Hundred Sixty-Five Dollars (\$165.00) to reimburse them for filing fees they incurred in pursuing this matter; and

The Plaintiffs, having agreed to dismiss this lawsuit with prejudice;

NOW THEREFORE, the Plaintiffs release and forever discharge the Defendants from any liability for their actions in adopting the Township’s budget for the 1999-2000 fiscal year.

Barbara J. Lacy, Plaintiff

Jamie B. Shafer, Plaintiff

Kent A. McNeil, Plaintiff/Intervenor

Edward Niepoth, Defendant

Sally Petrie, Defendant

Kathy Johnson, Defendant

Audrey Glander, Defendant