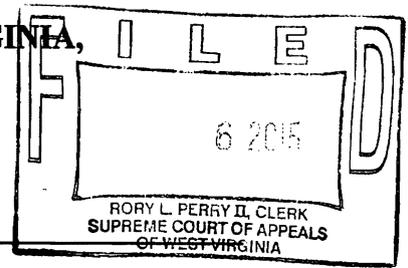


**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA,  
Docket No. 15-0392**



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**PATRICK RUSSELL and  
SYLVIA SMITH,**  
**Petitioners**

v.

**TOWN OF GRANVILLE,**  
**Respondent**

FROM THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA  
CIVIL ACTION NO. 14-C-571

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**PETITIONER'S BRIEF OF PATRICK RUSSELL AND SYLVIA SMITH**

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**July 2, 2015**

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## **PETITIONER'S BRIEF OF PATRICK RUSSELL AND SYLVIA SMITH**

Comes now the Petitioner and respectfully provides this Honorable Court with their petition for appeal. The petitioner asserts to assignments of error:

- A. The Monongalia County Circuit Court erred in ruling that West Virginia Code Section 8A-11-1 did not prohibit the Town of Granville from disallowing the Plaintiff to place a mobile home on their property as a remedy to the housing code violation.

### **STATEMENT OF THE CASE**

The Petitioner, Patrick Russell, is a resident of Monongalia County and owns the property located at 320 Price Street, Granville, WV. He also is a person with a disability of blindness. The Petitioner, Sylvia Smith, is a resident of Monongalia County and has resided with Patrick Russell at 320 Price Street, Granville, WV. She is the caretaker of Patrick Russell.

The Respondent, Town of Granville, is a municipal corporation located in Monongalia County, West Virginia, and has a duty to legally comply with all town ordinances and state law.

On or about September 2013 the Petitioner, Patrick Russell, received a certified letter from the Respondent stating that his house was in violation of the Respondent's code. The Petitioner attempted to make all repairs to the property, but realized that the only possible way to bring the property up to code was to place a mobile home on the property and rectify the violations while living in the mobile home.

The Petitioner was provided with a mobile home and asked the Town of Granville for a variance to place the mobile home on the property because the Respondent's Ordinance 1739.03 prohibits mobile homes from being placed anywhere in Granville except in an existing mobile

home park. The Respondent denied the Petitioner's request for a variance and proceeded with the process of condemning the property.

On or about December 12, 2013 the Petitioner, Patrick Russell, was advised by phone that his house would be condemned on January 2, 2014 and both Petitioners, Patrick Russell and Sylvia Smith, would be evicted. The Petitioners were given three weeks to move.

On or about January 2, 2014 the Petitioner, Patrick Russell, received a notice of condemnation stating the reason for condemnation and that the property would be condemned on January 6, 2014. The Petitioner also received an Inspection/Search Warrant dated January 2, 2014.

On or about January 7, 2014 the Petitioner, Patrick Russell, received a letter listing numerous violations and concerns. The letter is signed by Michael Stone. The Petitioner filed an appeal and an appeal hearing was scheduled for January 8, 2014. On or about January 29, 2014 the Petitioner received an Order of Demolition of which the Petitioner appealed. An appeal was scheduled for April 1, 2014.

On April 2, 2014, the ICC Appeal Board denied the appeal. On or about April 9, 2014 the Petitioners, by counsel, sent a letter to the Respondent requesting an appeal to the Monongalia County Circuit Court of the refusal to grant a variance for a mobile home.

The Town of Granville has not officially published the ordinance prohibiting mobile homes from being located outside of mobile home parks. The ordinance was adopted on September 10, 2013, the same month the Petitioner was notified his home was in violation of the Respondent's code.

On February 24, 2015 a hearing was held before Judge Susan Tucker in the Monongalia

County Circuit Court. On March 30, 2015 Judge Tucker entered an order denying the Petitioners an appeal.

## ARGUMENT

**A. The Monongalia County Circuit Court erred in ruling that West Virginia Code Section 8A-11-1 did not prohibit the Town of Granville from disallowing the Plaintiff to place a mobile home on their property as a remedy to the housing code violation.**

Under West Virginia Code Section 8-11-1(b) and (c), “[a]ppropriate building code compliance documentation attached to a factory-built home shall constitute prima facie evidence that the products or materials contained therein are acceptable[,]” and municipalities “shall uniformly apply such design standards and associated review and permitting procedures for factory-built and other single-family constructed homes.” The Town of Granville, on September 10, 2013, adopted ordinance 1739.02(a) that defines a “mobile home” as a “movable or portable unit, designed and constructed to be towed on its own chassis, comprised of frame and wheels, and designed to be connected to utilities for occupancy. . . .”

Furthermore, on September 10, 2013, the Town of Granville adopted ordinance 1739.03 that makes it unlawful to put a mobile home on any property within the city, except for established mobile home parks, by stating that “[n]o person shall occupy a mobile home or house trailer, or locate, situate, keep, or maintain a mobile home or trailer for occupancy upon any lot or tract of land located within the Town other than such property which is currently designated to be a mobile home park.”

Prohibiting mobile homes from being located outside of established mobile home parks solely because the home is considered a mobile home, violates state law. Under West Virginia Code Section 8A-11-1, mobile homes are to be presumed acceptable forms of housing and municipalities cannot apply different standards to mobile homes than applies to other houses. The West Virginia Legislative Wrap-Up, p. 26, states that the intent of the law was to prohibit discrimination against mobile homes solely because they are a mobile home in its summary of Senate Bill 47. Vol. XVII, Final Issue (2006). The purpose of this law is to prohibit municipalities from discriminating against manufactured homes, and mobile homes are clearly a form of manufactured homes.

The Respondent relied on West Virginia Code Section 8-12-5(30), which states that a municipality may “prohibit with or without zoning the location of occupied house trailers or mobile homes in certain residential areas...” This statute was later upheld by the West Virginia Supreme Court in *Town of Stonewood v. Bell*. 270 S.E.2d 787 (W.V. 1980). However, West Virginia Code Section 8A-11-1, adopted in 2006, begins by stating that the law is enacted “[n]otwithstanding any existing provisions of law, municipal or county ordinance or state building code...” Thus, West Virginia Code Section 8A-11-1 overrides any discriminatory law, ordinance, or building code that prohibits mobile homes from being located outside of mobile home parks. In addition, the state law preempts the Granville ordinance; thus, the Granville ordinance is unenforceable.

According to the ruling by Judge Tucker, West Virginia Code Section 8A-11-1(c) does not apply to the Town of Granville because the Town has never enacted any zoning ordinance pursuant to a comprehensive plan as required by West Virginia Code Section 8A-11-1. Judge

Tucker relied on the *Stonewood* decision in upholding the ordinance by the Town of Granville.

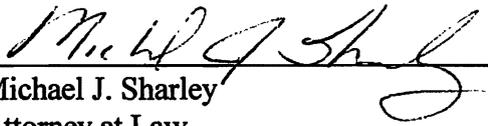
The Court held that under *Stonewood* it was determined that any municipality may have difficulty adopting a comprehensive plan if it could prohibit manufactured homes.

However, this reasoning creates a stronger burden on municipalities with comprehensive plans than municipalities without comprehensive plans. It would seem illogical to say that a municipality that has failed to adopt a comprehensive plan can discriminate against manufactured homes, but a municipality that went through all the hearings and discussions in adopting a comprehensive plan cannot discriminate against manufactured homes. In fact, it would seem that this line of reasoning may dissuade some municipalities from going through the process of adopting a comprehensive plan especially when the municipality may want to prohibit manufactured homes. It would seem more reasonable to apply West Virginia Code Section 8A-11-1(c) to all municipalities.

Therefore, the Petitioner requests that this Court rule that the Town of Granville Ordinance 1739 is invalid because it blatantly discriminates against mobile homes solely because they are manufactured homes. This would allow the Petitioner to place a mobile home on the Petitioner's property and demolish the existing house on the Petitioner's property. This would remedy the issue of condemnation.

## CONCLUSION

The Court must find that the Town of Granville ordinance 1739 is invalid because it discriminates against mobile homes simply because they are manufactured homes and this ordinance violates West Virginia Code Section 8A-11-1.



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**CERTIFICATE OF SERVICE**

I, Michael J. Sharley, do hereby certify that service of the foregoing **PETITIONERS' BRIEF** was made upon the following, by forwarding a true and exact copy thereof in a properly stamped and addressed envelope deposited in United States mail, postage prepaid, on this 2<sup>nd</sup> day of July 2015.

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