State of West Virginia
Supreme Court of Appeals

Glendale Farm Estates Homeowners Association, **Respondent**

vs) No. 101415 (Jefferson County 09-P-56)

Paula J. Frickey,
Petitioner

FILED
February 14, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

This appeal arises from the circuit court's order dated June 29, 2010, denying Petitioner Paula J. Frickey's Motion to Dismiss and granting Respondent Glendale Farm Estates Homeowners Association ("HOA") an award of attorney fees and costs. The appeal was timely filed by the Petitioner, with the entire record accompanying the Petitioner's brief. A response was filed by the Respondent. The Petitioner seeks a reversal of the circuit court's decision.

Respondent HOA filed a petition for injunctive relief against Petitioner Frickey to prevent her from continuing to build a freestanding garage against several covenants of the HOA and without approval by HOA's Board of Directors. Petitioner Frickey eventually complied with the HOA rules, and moved to dismiss the action. The circuit court denied the Motion to Dismiss, and granted attorney's fees to the Respondent HOA. On appeal, Petitioner Frickey argues that the HOA did not properly avail itself of the alternative dispute resolution procedures found in the HOA's covenants and restrictions, and had they done so, they would not have incurred attorney's fees in the civil action.

This Court has previously found that "there is authority in equity to award to the prevailing litigant his or her reasonable attorneys' fees and "costs" without express statutory authorization, when the losing party has acted in bad faith, vexatiously, wantonly or for oppressive reasons." *Syl. Pt. 6, Miller v. Lambert,* 196 W.Va. 24, 467 S.E.2d 165 (1995).

The circuit court, in denying the Motion to Dismiss and granting attorney's fees, found that the filing of the petition for injunctive relief in this matter prevented unnecessary waste and costs, because if the HOA had pursued arbitration, Petitioner

would have continued to build the garage in violation of the covenants, and then the HOA would have had to pursue removal of the garage (*Final Judgment Order, p. 8).* The filing of the petition for injunctive relief allowed proper resolution, as it restrained Petitioner Frickey from building the garage in violation of the covenants and instead allowed the parties to reach an agreement wherein Petitioner Frickey built the garage pursuant to all covenants (*Id.).* The circuit court found that Petitioner Frickey did not try to enforce the arbitration clause until the end of the proceedings, that Petitioner Frickey was obstinate throughout the proceedings, failing to cooperate with the HOA, and thus should bear the cost of her conduct (*Id.).*

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

For the foregoing reasons, we find no error in the Final Order of the circuit court denying the Motion to Dismiss and granting an award of attorney fees.

Affirmed.

ISSUED: February 14, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum, II
Justice Thomas E. McHugh