

IN THE CIRCUIT COURT OF RANDOLPH COUNTY, WEST VIRGINIA

CITY OF ELKINS,

Plaintiff

vs.

PATRICK ELZA,

Defendant.

2018 JUL -5 A 11: 56

Case No: 17-C-144

ORDER

On June 8, 2018, this matter came on for trial before the Court without a jury. The Plaintiff, City of Elkins, appeared by its counsel, Geraldine S. Roberts of McNeer, Highland, McMunn and Varner, L.C., and by its Mayor, Van T. Broughton. The Defendant, Patrick Elza, appeared pro se.

The Plaintiff called the Defendant, Patrick Elza, as an adverse witness. Following the Defendant's testimony, the Plaintiff also called Mayor Van T. Broughton, Chief Tom Meader and Ms. Tracy Judy, City Treasurer, as witnesses for the City of Elkins. During the presentation of the Plaintiff's case, counsel presented documentary evidence, namely Plaintiff's Exhibits 1-9. Upon motion of Plaintiff's counsel, the Court deemed that all of the Plaintiff's exhibits would be admitted into evidence for consideration by the Court. At the conclusion of the Plaintiff's case in chief, the Defendant made his presentation to the Court and presented no witnesses. The Defendant presented a document identified as Defendant's Exhibit 1 and requested that the Court admit it as evidence. Counsel for the Plaintiff objected to the admission of Defendant's Exhibit 1 because it was irrelevant and no foundation was laid or presented by the Defendant for its admission. The Court sustained Plaintiff's counsel's objection and Defendant's proposed Exhibit 1 was excluded as documentary evidence.

Following the presentation of the evidence by Plaintiff's counsel and by the Defendant, the Court heard the arguments of Plaintiff's counsel and the Defendant in support of their respective positions.

Whereupon, after considering the entire record, including the pleadings, the proffers of Plaintiff's counsel and the Defendant, the testimony of the witnesses, and other evidence presented and made a part of the record herein, the Court, pursuant to Rule 52, West Virginia Rules of Civil Procedure, makes the following Findings of Fact and Conclusions of Law:

1. In 2014, the City of Elkins, pursuant to its plenary power and authority, passed an ordinance pursuant to West Virginia Code § 8-13-13, which imposed a fire protection service fee on properties within the Elkins Fire Department First Due Response Area which includes the area within the municipal boundaries and an area beyond the municipal boundaries which has been designated as the Elkins Fire Department's response area by the West Virginia State Fire Commission and the State Fire Marshal. In 2015, said ordinance was amended and the fire protection service fee continued as set forth in the earlier ordinance.

2. The Elkins Fire Department is a combination fire department which is an organization providing fire protection services to a specific geographical area under the authority of the City of Elkins, as is defined and classified by the West Virginia State Fire Commission.

3. Since the adoption of the fire protection services fee ordinance covering all of the Elkins Fire Department's First Due Response Area, which increased the revenues available to the Elkins Fire Department, the Elkins Fire Department has hired four additional paid firefighters, purchased new equipment, and is considering the construction of an auxiliary fire station outside of the City boundaries.

4. The City of Elkins has assessed a fire protection service fee on the real property owned by the Defendant which real property is located in the First Due Response Area for the Elkins Fire Department.

5. The real property owned by the Defendant, which is in the First Due Response Area for the Elkins Fire Department, is described as Parcel A 0.44 acres, Kennedy Subdivision, Beverly District, Randolph County, West Virginia.

6. Beginning in February, 2016, the City of Elkins billed a fire protection service fee quarterly to the Defendant for the property described in Paragraph 5.

7. The annual amount for the fire protection service fee for the Defendant's property described in Paragraph 5 is \$262.50.

8. The Defendant has not paid the fire protection service fees that are owed to the City of Elkins for the property described in Paragraph 5.

9. As of the date of the trial, the Defendant owed the City of Elkins a total of \$1,275.13 in unpaid fire protection service fees and penalties.

10. W. Va. Code § 8-13-13 provides in relevant part as follows:

(a) Notwithstanding any charter provisions to the contrary, a municipality which furnishes any essential or special municipal service, including, but not limited to, police and fire protection, parking facilities on the streets or otherwise, parks and recreational facilities, street cleaning, street lighting, street maintenance and improvement, sewerage and sewage disposal, and the collection and disposal of garbage, refuse, waste, ashes, trash and any other similar matter, has plenary power and authority to provide by ordinance for the installation, continuance, maintenance or improvement of the service, to make reasonable regulations of the service, and to impose by ordinance upon the users of the service reasonable rates, fees and charges to be collected in the manner specified in the ordinance. (emphasis added)

11. Pursuant to West Virginia Code § 8-13-13, the City of Elkins adopted ordinances in 2014 and 2015, which imposed a fire protection service fee on properties within the Elkins Fire Department First Due Area.

12. The fees for the properties within the municipal boundaries and for the area beyond the municipal boundaries which has been designated as the First Due Response Area are the same amount and are reasonable for the purpose for which it was enacted.

13. C.S.R. § 87-6-2.6, Legislative Rules of the State Fire Commission, defines "First Due Area" as a fire protection district for which the Commission has assigned primary responsibility to a local fire department to provide fire protection and rescue services.

14. The City of Elkins has the plenary power and authority to impose a fire protection service fee on properties located in the Elkins Fire Department's First Due Response Area.

15. The City of Elkins cannot use its general revenue funds and fire protection services fees to provide fire protection services to properties outside the City's municipal boundaries, unless it receives reasonable payment for such services in exchange for providing such services.

16. As long as the City of Elkins is required to provide fire protection services in the First Due Response Area as designated by the State Fire Marshal, the City of Elkins must be paid a reasonable fee for providing such fire protection services to the users thereof.

For the reasons set forth above, it is ORDERED that the relief sought by the Plaintiff for the payment of delinquent fire fees, penalties and costs by the Defendant is hereby GRANTED. It is further ORDERED that the Defendant owes the Plaintiff, City of Elkins, \$1,275.13 for unpaid fire protection fees and penalties, costs and interest from the date of this judgment.

The Defendant shall pay the costs of this action as taxed by the Clerk of this Court. To any adverse rulings, the parties object and except.

This civil action is removed from the docket of the Court.

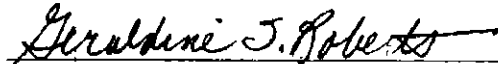
The Clerk is directed to send certified copies of this Order to counsel of record and to the Defendant.

Enter: 5 July 18



Honorable David H. Wilmoth

Prepared by:



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ENTERED

JUL 05 2018

PHILIP D. RIGGLEMAN, CLERK

cc:
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P. Glza