

STATE OF INDIANA)
)SS:
COUNTY OF LAKE)

Filed in Open Court
LAKE SUPERIOR COURT
CIVIL DIVISION, ROOM TWO
EAST CHICAGO, INDIANA
OCT 15 2010

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SUPERIOR COURT OF LAKE COUNTY
CIVIL DIVISION COURT ROOM 2

RODNEY A. LOGAL and ZENA LOGAL,)
Husband and Wife,)
Plaintiffs,)
vs.)
TOWN OF SCHERERVILLE, LAKE)
COUNTY, INDIANA, a Municipal)
Corporation, et al.,)
Defendants.)

) CAUSE NO. 45D02-0911-PL-00172

RECEIVED

OCT 15 2010

ORDER

McGowan
CLERK LAKE SUPERIOR COURT

Comes now the Plaintiffs, Rodney A. Logal and Zena Logal, in person pro se and comes now the Defendant, Town of Schererville, Lake County, Indiana, a Municipal Corporation, by its attorney, Edward Grimmer, all for hearing on the Defendant's Motion to Dismiss.

Argument of the parties is heard and the Court, being duly advised, now finds as follows:

1. The Plaintiff, Rodney A. Logal, is the owner of certain real estate located in the Town of Schererville, Lake County, Indiana, and that there was formerly a home located on said real estate and also a separate garage.
2. The Court further finds that at some point the home was removed from said property leaving only the separate garage.
3. Thereafter, the Town of Schererville notified the Plaintiffs that the separate garage without a residence was in violation of the Town Ordinances and indicated to them that the same should be removed.
4. The Plaintiffs then brought this cause of action seeking injunctive relief asking that the Town of Schererville be prohibited from proceeding with enforcement of said ordinances. The

Plaintiff further alleges that the Defendant is annoying and harassing them in sending out a warning of an ordinance violation and they are also seeking compensatory and punitive damages. The Plaintiffs have also alleged violation of constitutional rights and that issue is before a Federal Court.

5. Thereafter, the Defendant filed its Motion to Dismiss and has since asked that the Court summarily dismiss their Complaint for reason that the Plaintiffs did not comply with Local Trial Rule 4 by responding to their Motion to Dismiss.

6. The Defendant argues that the Plaintiffs as pro se litigants are required to follow the State and Local Trial Rules the same as attorneys and also points out that the Plaintiff, Zena Logal, is an attorney although her license to practice law is currently suspended.

7. The Court further finds that the ultimate sanction of dismissal would not be appropriate for said violation of a Local Trial Rule for failure to respond to the Defendant's Motion to Dismiss.

8. The Court further finds that the Defendant in its underlying Motion to Dismiss has argued that at this point the Defendant has taken no action against the Plaintiffs other than to notify them that they were in violation of a Town Ordinance and could be subjected to fines and costs.

9. The Court further finds that the Plaintiffs have taken no action with the Town of Schererville to challenge the contention that they are in violation of its Town Ordinance. The Plaintiffs should have at least requested a hearing before the Board of Zoning Appeals and perhaps they could have obtained a waiver of any ordinance which they were violating, or persuade the Board of Appeals that the ordinances were invalid

10. The Court, therefore, finds that the Plaintiffs have not exhausted their administrative remedy.

11. The Court further finds that since the Town of Schererville has taken no action against the Plaintiffs, they have not been damaged in any way. However, in the event the Town of Schererville eventually determines that the Plaintiffs are in violation of a Town Ordinance or Ordinances and proceeded to enforce the same Indiana Code 33-35-2-8 provides, in part, as follows:

“Sec. 8 (a) A town court has exclusive jurisdiction of all violation of ordinances of the town.”

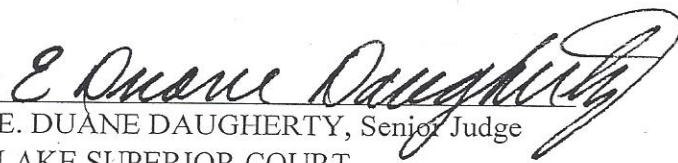
12. If the town court finds that the Plaintiffs are in violation of a town ordinance that would be the appropriate time to submit the matter to a state court.

13. The Court, therefore, finds that the Plaintiffs, at the very least, are premature in guessing or assuming what action the Defendants might take and in not pursuing their administrative remedies.

14. The Court, therefore, finds that the Plaintiffs Complaint does not state a cause of action and pursuant to Trial Rule 12(B)(6), that the Defendant’s Motion to Dismiss should be granted.

IT IS, THEREFORE, ORDERED BY THE COURT that the Defendant’s Motion to Dismiss is hereby granted, and this cause is dismissed pursuant to Trial Rule 12 (B)(6).

DATED: 10-15-10


E. DUANE DAUGHERTY, Senior Judge
LAKE SUPERIOR COURT
CIVIL DIVISION ROOM TWO
EAST CHICAGO, INDIANA

CLERK TO NOTIFY ATTORNEYS AND/OR PARTIES OF THIS ORDER PURSUANT TO TR 72 D