

STEVE W. FEIGLES and	:	IN THE COURT OF COMMON PLEAS OF
DAWN L. FEIGLES,	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	
vs.	:	NO. 99-00,516
	:	
WANDA P. LITTLE and ALL UNKNOWN	:	
PERSONS CLAIMING ANY RIGHT,	:	CIVIL ACTION - LAW
LIEN, TITLE OR INTEREST IN THE	:	
WITHIN DESCRIBED REAL ESTATE,	:	APPLICATION FOR LEAVE TO
Defendants	:	PROCEED <i>IN FORMA PAUPERIS</i>

DATE: SEPTEMBER 21, 2000

OPINION AND ORDER

This Order is entered in relation to the application of Defendant for leave to proceed *in forma pauperis* on appeal. This application was filed August 2, 2000, concurrently with Defendant's filing an Application for Reconsideration, as well as a Notice of Appeal. Defendant submitted a verified financial statement in support of the application. The Court set August 21, 2000 as the date for argument and hearing on the application, as the Court had certain concerns regarding the information contained in the verified statement.

Prior to the hearing, the Court had requested Defendant produce income tax returns. The Court had also requested Defendant produce statements of rental income which appeared to be available to Defendant, as testimony at trial revealed Defendant owns a mobile home site utilized by her sister and brother-in-law, as well as a car repair garage utilized by her nephew.

On August 21, 2000, Defendant's testimony substantially supported the information in the verified financial statement. Defendant further testified that income tax returns were not available because

Defendant was not required to file income tax returns. Defendant introduced additional testimony that the garage was not really a commercial venture, but rather one which did not produce income for the nephew; thus, he paid no rent. Defendant also introduced testimony and documentary evidence that Defendant asserts gave her sister and brother-in-law the right to have the mobile home on her property for the nominal sum of \$1.00 per year.

The garage and mobile home sites are situate on the home residence premises of Defendant which were involved in this litigation. Defendant asserts in her verified financial statement that her residence has a market value of \$95,000. The verified financial statement also discloses that the only other significant asset of Defendant is an interest in a residential property in Muncy in which her mother resides and which is subject to her mother's life estate, thus not able to be disposed of at this time. The statement also verifies that a U.S. District Court allowed Defendant *in forma pauperis* status in 1991.

The issue is whether Defendant's financial situation is such that she should be allowed to pursue an appeal at the expense of her fellow citizens, the taxpayers of Lycoming County. To decide this issue, the Court must determine if Defendant's true income and available assets fall within the established guidelines in our County which entitle a litigant to be relieved of Court-related expenses. The standards the Court applies concerning income level of individuals who wish to pursue *in forma pauperis* standing or obtain other financial assistance, such as being appointed a public defender, are kept confidential.

Defendant is 67 years old. She was last employed in 1964 at the rate of \$240 per month and now receives Social Security and SSI benefits of \$559.40 per month (\$6,712.80 annually). In

making a determination as to whether Defendant qualifies under the guidelines, it is clear that it would be inappropriate to force Defendant to sell the property she resides in so that she may take an appeal. This property is the only apparently available asset that would have any monetary significance. Nor does it appear to the Court that Defendant has sufficient income to make payments on a loan, which she might conceivably obtain, that would be secured by her real estate.

However, this Court is not convinced that Defendant should not have income imputed to her representing a fair rental payment from the use of the garage and mobile home site. The documents produced at the hearing do not, in this Court's view, establish any legal restraint on Defendant that would prevent her from charging rent for the mobile home site. Further, whether it be family congeniality or connivance, allowing her nephew to use the car repair garage for non-income producing purposes should not excuse Defendant from using this asset to finance the litigation. This is especially true where no evidence was produced that the garage had no commercially viable purpose. Further, this litigation has benefited the garage portion of Defendant's premises inasmuch as it has forced Plaintiffs to concede title to her of a portion of the lands described in their deed, based upon the stipulation that the garage had been adversely erected upon lands of Plaintiffs for a period in excess of 21 years.

Unfortunately, the hearing was not an adversarial proceeding and there was no testimony introduced as to the reasonable value of the garage or mobile home site that might be imputed to the Defendant. This Court would have to engage in a somewhat speculative calculation if it were to in fact impute such income to Defendant. We choose to not engage in such speculation.

Given all of the foregoing, this Court finds it cannot make an appropriate determination as to whether Defendant does or does not qualify for *in forma pauperis* status in this case. In order for this Court to make such determination, Defendant will have to supply to this Court a verified statement of an appropriate real estate appraiser or duly licensed real estate agent who can attest to the fair rental values of the mobile home site and garage. Upon receipt of such verified statements, which should be filed of record along with an amended application for leave to proceed *in forma pauperis*, this Court will decide the issue. Accordingly, the following Order is entered:

ORDER

It is DIRECTED that a decision on the application for leave to proceed *in forma pauperis* on appeal filed by Defendant on August 2, 2000 be deferred. Defendant, in accordance with the foregoing Opinion, is DIRECTED to file an amended application setting forth the verified statement of an appropriate appraiser or licensed real estate agent doing business in Lycoming County as to the fair rental value of the mobile home site and commercial automobile repair garage located upon Defendant's property known as Carpenter Street, Muncy, PA. Said information shall be filed of record within thirty days of this date. Otherwise, this Court will proceed on the basis that it is not being applied and will enter an Order denying the Application.

BY THE COURT:

William S. Kieser, Judge

cc: Court Administrator
Carl E. Barlett, Esquire
J. Howard Langdon, Esquire
Judges
Nancy M. Snyder, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)