

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

LYCOMING TOWNSHIP,	:	
Plaintiff	:	
v.	:	NO. 99-01,330
GARY L. SAUERS,	:	
Defendant	:	

OPINION
Issued Pursuant to Pa. R.A.P. 1925(a)

The defendant, Gary Sauers, has appealed this court’s assessment of damages from a default judgment entered against him because of his violations of the Lycoming Township Zoning Ordinance and the Lycoming Township Nuisance Ordinance.¹ Mr. Sauers has not requested that the default judgment be stricken or opened. Therefore, the matters raised in his Statement of Matters Complained of Appeal pertaining to whether a violation should have been found have been waived and need not be addressed by this court. The sole issue before us at the 8 November 1999 hearing was assessment of damages.

The Lycoming Township Zoning Ordinance § 1203 provides that upon being found liable in a civil enforcement proceeding, the defendant shall:

pay a judgment of not more than \$500.00 plus all court costs, including reasonable attorney fees incurred by the Township as a result thereof. . . . Each day that a violation continues shall constitute a separate violation, unless the District Justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership, or corporation violating the Ordinance to have believed that there was no such violation

The Lycoming Township Nuisance Ordinance Section X provides that anyone found in violation of the ordinance in a civil enforcement proceeding shall:

pay a find not exceeding \$,1000 plus all court costs, including reasonable attorney’s fees, incurred by the Township. Each day that a violation continues shall constitute a separate violation unless the District Justice determining that there has been a violation further determines that there was a good faith basis for the person violating the ordinance to have believed that there was no such violation

¹ This case began at the District Justice level, and was appealed by Mr. Sauers.

There were two issues for this court to determine at the hearing: (1) Did Mr. Sauers have notice of the violation? and (2) What damages should be assessed? During the hearing Mr. Sauers admitted receiving notice of the violation on 16 March 1998. Therefore, it only remained for this court to assess damages, and we did so in the amount of \$8,000 plus interest and costs under the Zoning Ordinance and \$4,000 plus interest under the Nuisance Ordinance. This is an appropriate assessment for the following reasons.

The testimony showed that Mr. Sauers was issued a permit to construct a residence on the property at issue on 8 October 1990 and the permit was renewed on 30 November 1993. Mr. Sauers built the foundation and subfloor five or six years ago, but has not done any further work. In the meantime, the property has become an eyesore to the subdivision in which it is located, and has become a hazard to the children in the area.

The Township has been very patient with Mr. Sauers throughout the last six years. Finally, in August 1998, it obtained a District Justice judgment against him, which Mr. Sauers appealed. Even after that, the Township granted Mr. Sauers extensions in order to obtain financing to complete the project. His efforts failed, however, and nearly one year after the complaint was filed in the Court of Common Pleas, the Township finally took a default judgment against him.

The Zoning and Nuisance ordinances have important purposes, and the Township has every right to enforce these ordinances. This court feels that when an individual fails to comply with these ordinances for years and does not correct the violation even after being officially notified of the violation, losing at the District Justice level, and appealing to the Court of Common Pleas, then the Township is entitled to significant damages.

BY THE COURT,

Clinton W. Smith, P.J.