

SUPREME COURT OF WASHINGTON

Advocates for Responsible Development and John E. Diehl v. Western Washington Growth Management Hearings Board, Mason County and Shaw Family, LLC

Advocates for Responsible Development and John E. Diehl v. Western Washington Growth Management Hearings Board, 245 P.3d 764 (Wash. 2010) · No. No. 84501-8 · Decided November 18, 2010

SUMMARY

The Washington Supreme Court held that an appeal was not frivolous because it presented at least one debatable issue, including whether a nonlawyer could represent an environmental organization in court. The court reversed the Court of Appeals' award of attorney fees as sanctions under RAP 18.9(a).

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Washington
DECIDED	November 18, 2010
DOCKET	No. 84501-8
DISPOSITION	reversed
PROCEDURAL POSTURE	Petition for review of the Washington Court of Appeals' decision affirming the superior court and imposing attorney-fee sanctions for a frivolous appeal under RAP 18.9(a).
STANDARD OF REVIEW	Whether an appeal is frivolous for purposes of RAP 18.9(a) is assessed by considering the entire record and asking whether the appeal presents any debatable issue on which reasonable minds might differ and whether there is any possibility of reversal; doubts are resolved in favor of the appellant.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; precedential.
PARTIES	Advocates for Responsible Development, John E. Diehl v. Western Washington Growth Management Hearings Board, Mason County, Shaw Family, LLC

TOPICS

sanctions

attorney fees

appellate procedure

judicial review of agency action

administrative law

PRACTICE AREAS

appellate procedure

administrative law

land use

QUESTIONS PRESENTED

1. Whether the Court of Appeals properly imposed attorney-fee sanctions under RAP 18.9(a) on the ground that the appeal was frivolous.
2. Whether an appeal is frivolous in its entirety when at least one issue raised presents a debatable question on which reasonable minds could differ.

HOLDINGS

1. An appeal is not frivolous in its entirety when it raises at least one debatable issue upon which reasonable minds might differ or for which reversal is possible.
2. The argument that Diehl could represent the association in court was not so devoid of merit as to be frivolous, even though the court did not hold that the argument had merit.

KEY QUOTATIONS

“Raising at least one debatable issue precludes finding that the appeal as a whole is frivolous.” (766)

“Because the action was not frivolous in its entirety, the Court of Appeals should not have awarded attorney fees as sanctions.” (766)

FACTUAL BACKGROUND

Advocates for Responsible Development challenged three proposed Mason County land use ordinances through submissions made by its president, John Diehl. After the county adopted the ordinances, Diehl sought review before the Western Washington Growth Management Hearings Board both on behalf of the association and individually. The board dismissed Diehl for lack of personal participation standing but allowed the association to proceed and allowed Diehl to represent it before the board as a nonlawyer group member. After the superior court and Court of Appeals affirmed, the Court of Appeals imposed sanctions based on the argument that Diehl could represent the association in court.

PROCEDURAL HISTORY

Advocates for Responsible Development and John E. Diehl sought judicial review of a Growth Management Hearings Board decision concerning Mason County land use ordinances. The superior court affirmed the board and ruled that Diehl could not represent the association in court. The Court of Appeals affirmed and imposed sanctions against Diehl and the association, finding frivolous their argument that Diehl could represent the association. The Washington Supreme Court granted review and reversed the sanctions award.

DISPOSITION

reversed

CASES CITED

- Reid v. Dalton, 124 Wash. App. 113, 128, 100 P.3d 349 (2004)
- Tiffany Family Trust Corp. v. City of Kent, 155 Wash. 2d 225, 241, 119 P.3d 325 (2005)
- Vermont Agency of Natural Resources v. Upper Valley Regional Landfill Corp., 159 Vt. 454, 458, 621 A.2d 225 (1992)
- Green River Community College District No. 10 v. Higher Education Personnel Board, 107 Wash. 2d 427, 443, 730 P.2d 653 (1986)

OPINION

PER CURIAM.

245 P.3d 764 (2010) ADVOCATES FOR RESPONSIBLE DEVELOPMENT and John E. Diehl, Petitioners, v. WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD, Mason County and Shaw Family, LLC, Respondents. No. 84501-8. Supreme Court of Washington, En Banc. Considered November 4, 2010. Decided November 18, 2010. John E. Diehl, Advocates for Responsible Development, Shelton, WA, for Petitioners.

Stephen Talcott Whitehouse, Shelton, WA, Jerald R. Anderson, Alan D. Copsey, Office of the Attorney General, Olympia, WA, for Respondents. *765 PER CURIAM. ¶ 1 In a challenge to a county's land use ordinances by a nonprofit association, the Court of Appeals held that the association's president did not have personal participation standing to appeal the ordinances to the Western Washington Growth Management Hearings Board and that he could not represent the association before the courts as a layperson.

Finding frivolous the argument that the president could represent the organization in court, the Court of Appeals imposed sanctions. The president and the association petitioned for this court's review, challenging the sanctions.

We grant the petition and reverse the Court of Appeals for the reasons discussed below. ¶ 2 In 2006 Advocates for Responsible Development (ARD) challenged three proposed Mason County land use ordinances through two letters that John Diehl, its president, submitted to the county on ARD's behalf.

After the county adopted the ordinances, Diehl, acting again on ARD's behalf and inserting himself individually as a petitioner, sought review of the ordinances before the Western Washington Growth Management Hearings Board. ¶ 3 The Shaw Family LLC, whose property was affected by at least one of the ordinances, intervened in ARD's appeal. Shaw Family moved to dismiss Diehl from the action on the ground that Diehl had no participation standing under the

Growth Management Act (chapter 36.70A RCW) because he did not appear at the county level individually.

Shaw Family also moved to dismiss ARD on the ground that ARD was not a registered entity with either the Secretary of State or the Department of Revenue. The board dismissed Diehl for lack of personal standing, but it ruled that ARD had participation standing by virtue of Diehl's remarks on ARD's behalf at the county level.

The board also ruled that Diehl, though not an attorney, could represent ARD in proceedings before the board. See WAC 242-02-110(1) (nonlawyer member of a group may represent group before growth management hearings board).

After a hearing on the merits of ARD's claims, the board ruled that the county violated the Growth Management Act in adopting one of the ordinances. ¶ 4 Diehl and ARD (represented by Diehl) sought judicial review, challenging, among other things, the board's ruling that Diehl lacked personal participation standing.

The superior court affirmed, further ruling that Diehl could not represent ARD in court. ¶ 5 The Court of Appeals affirmed and awarded Shaw Family attorney fees as sanctions against Diehl and ARD for filing a frivolous appeal pursuant to RAP 18.9(a). Specifically, the court found frivolous the argument that Diehl could represent ARD in court. But the court found not frivolous Diehl's argument that he had personal standing before the board. ¶ 6 RAP 18.9(a) permits an appellate court to award a party attorney fees as sanctions, terms, or compensatory damages when the opposing party files a frivolous appellate action.

Reid v. Dalton, 124 Wash. App. 113, 128, 100 P.3d 349 (2004). An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ, and that the appeal is so devoid of merit that there is no possibility of reversal. Tiffany Family Trust Corp. v. City of Kent, 155 Wash.2d 225, 241, 119 P.3d 325 (2005).

All doubts as to whether the appeal is frivolous should be resolved in favor of the appellant. Id. ¶ 7 The Court of Appeals erroneously imposed sanctions under RAP 18.9(a) for filing a frivolous appeal. The issue of lay representation is not frivolous because at least one court in a foreign jurisdiction has allowed nonattorney representation of an environmental organization where the lay representative shared a common interest with the organization.

See Vermont Agency of Natural Res. v. Upper Valley Reg'l Landfill Corp., 159 Vt. 454, 458, 621 A.2d 225 (1992). While we do not hold that the argument has merit, it is not so totally devoid of merit as to be frivolous.

Moreover, even if the issue was frivolous, it did not alone justify the Court of Appeals in awarding sanctions under RAP 18.9(a) because the court specifically acknowledged that the issue of Diehl's personal *766 standing was not frivolous. Raising at least one debatable issue precludes finding that the appeal as a whole is frivolous. See Green River Cmty. Coll.

Dist. No. 10 v. Higher Educ. Pers. Bd., 107 Wash.2d 427, 443, 730 P.2d 653 (1986). Because the action was not frivolous in its entirety, the Court of Appeals should not have awarded attorney fees as sanctions. ¶ 8 The Court of Appeals award of attorney fees under RAP 18.9(a) is reversed.