

SUPREME COURT OF WASHINGTON

Advocates for Responsible Development v. Western Washington Growth Management Hearings Board

170 Wash. 2d 577 (2010) · Decided November 18, 2010

SUMMARY

The Washington Supreme Court held that the Court of Appeals improperly imposed sanctions under RAP 18.9(a) against Advocates for Responsible Development and its president for pursuing an appeal concerning participation standing and lay representation. Because the appeal presented at least one debatable issue and was not frivolous in its entirety, the award of attorney fees as sanctions was reversed.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Washington
DECIDED	November 18, 2010
DISPOSITION	reversed
PROCEDURAL POSTURE	Advocates for Responsible Development and John E. Diehl petitioned for review of a Court of Appeals decision affirming an administrative decision and imposing attorney-fee sanctions under RAP 18.9(a) for a frivolous appeal.
STANDARD OF REVIEW	Whether an appeal is frivolous under RAP 18.9(a), considering the entire record and resolving doubts in favor of the appellant.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Advocates for Responsible Development, John E. Diehl v. Western Washington Growth Management Hearings Board, Shaw Family LLC

TOPICS

[administrative law](#) [judicial review of agency action](#) [appellate procedure](#) [sanctions](#) [attorney fees](#)

PRACTICE AREAS

[administrative law](#) [appellate procedure](#) [environmental and land use law](#)

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 may be deemed frivolous as a whole when it raises at least one debatable issue, even if another issue lacks merit.

HOLDINGS

1. The appeal was not frivolous because it presented at least one debatable issue upon which reasonable minds could differ.
2. The lay-representation issue, standing alone, did not justify sanctions because the appeal also raised a nonfrivolous personal-standing issue.

KEY QUOTATIONS

“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.” (at 580)

“Raising at least one debatable issue precludes finding that the appeal as a whole is frivolous.” (at 581)

FACTUAL BACKGROUND

ARD challenged three proposed Mason County land use ordinances through submissions made by its president, John Diehl. Diehl later sought board review both on ARD's behalf and individually, although he had not appeared individually at the county level. The growth management hearings board dismissed Diehl individually but allowed ARD's challenge to proceed and ruled that the county violated the Growth Management Act in adopting one ordinance.

PROCEDURAL HISTORY

ARD challenged Mason County land use ordinances before the county and then the Western Washington Growth Management Hearings Board. The board dismissed Diehl individually for lack of participation standing but allowed ARD to proceed and ruled that the county violated the Growth Management Act. The superior court affirmed and ruled that Diehl could not represent ARD in court. The Court of Appeals affirmed and imposed attorney-fee sanctions, finding frivolous the argument that Diehl could represent ARD. The Washington Supreme Court granted review and reversed the sanctions award.

DISPOSITION

reversed

CASES CITED

- Reid v. Dalton, 124 Wn. App. 113, 128, 100 P.3d 349 (2004)
- Tiffany Family Trust Corp. v. City of Kent, 155 Wn.2d 225, 241, 119 P.3d 325 (2005)

- *Vt. Agency of Natural Res. v. Upper Valley Reg'l Landfill Corp.*, 159 Vt. 454, 458, 621 A.2d 225 (1992)
- *Green River Cmty. Coll. Dist. No. 10 v. Higher Educ. Pers. Bd.*, 107 Wn.2d 427, 443, 730 P.2d 653 (1986)

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