

SUPREME COURT OF RHODE ISLAND

George Karousos et al. v. Jonathan Pardee et al.

992 A.2d 263 (R.I. 2010) · No. Nos. 2008-174-Appeal, 2008-188-Appeal · Decided April 23, 2010

SUMMARY

The Rhode Island Supreme Court affirmed summary judgment for Jonathan Pardee and the other defendants in an abuse-of-process action arising from a zoning appeal concerning the proposed use of Fairlawn as a culinary school. The Court held that the defendants' petitioning activity was not subjectively baseless and therefore qualified for immunity under Rhode Island's anti-SLAPP statute. The Court also affirmed the award of reasonable attorneys' fees and costs, while remanding for determination of fees and costs incurred in defending the judgment on appeal.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Flaherty, J.; Suttell, C.J.; Goldberg, J.; Robinson, J.
JURISDICTION	Rhode Island
DECIDED	April 23, 2010
DOCKET	Nos. 2008-174-Appeal, 2008-188-Appeal
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed the Superior Court's grant of summary judgment for defendants on an abuse-of-process claim and its award of attorneys' fees and costs under Rhode Island's anti-SLAPP statute. Pardee and the other appellees cross-appealed the amount of the fee award.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The evidence is viewed in the light most favorable to the nonmoving party, and summary judgment is proper when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. The amount of attorneys' fees and costs is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Rhode Island Supreme Court opinion; precedential.
PARTIES	George Karousos, Anna Karousos v. Jonathan Pardee, Jay Schochet, Sidney S. Gorham III, Alfred Carpionato

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QUESTIONS PRESENTED

1. Whether Pardee's petition to the Newport Zoning Board was subjectively baseless under Rhode Island's anti-SLAPP statute and therefore outside the statute's conditional immunity.
2. Whether the Superior Court properly granted summary judgment on the abuse-of-process claim.
3. Whether the Superior Court properly limited the award of attorneys' fees and costs to reasonable fees and costs associated with the successful assertion of anti-SLAPP immunity.
4. Whether Pardee was entitled to reasonable attorneys' fees and costs incurred in defending the judgment on appeal.

HOLDINGS

1. Pardee's zoning appeal was not subjectively baseless because the evidence showed that he sought the outcome of the governmental process—to prevent the property's use as a culinary school—rather than attempting to use the governmental process itself for direct effects such as harassment or delay. His petitioning activity therefore qualified for anti-SLAPP immunity.
2. Summary judgment for defendants was proper because Karousos failed to produce evidence of the ulterior or wrongful purpose required for an abuse-of-process claim.
3. The Superior Court did not abuse its discretion by excluding fees and costs incurred in defendants' unsuccessful initial summary-judgment motion and unsuccessful certiorari petition. The anti-SLAPP statute makes an award mandatory for a prevailing party, but the amount must still be reasonable and is subject to the trial court's discretion.
4. Pardee was entitled under the anti-SLAPP statute to reasonable attorneys' fees and costs incurred in defending the judgment on appeal, with the amount to be determined by the Superior Court on remand.

KEY QUOTATIONS

“Because we agree with the motion justice's ruling that Pardee's appeal to the zoning board of review did not meet the second prong of the sham exception in that it was not subjectively baseless, we need not, and do not reach the issue of whether his efforts were objectively baseless.” (270)

“As a result, Pardee's petitioning activity was not a sham and warrants immunity under the anti-SLAPP statute.” (272)

“The motion justice was correct when she concluded that the anti-SLAPP statute's attorneys' fees and costs provision was mandatory, but that the amount of the fees and costs were subject to her determination of what was reasonable.” (273)

FACTUAL BACKGROUND

Fairlawn, a property on Bellevue Avenue in Newport, had formerly been used as a school but had later been used as a residence. George Karousos leased and later purchased the property intending to operate a culinary school, relying on zoning-enforcement letters indicating that the educational use remained permissible as a legal nonconforming use. Jonathan Pardee, who purchased an adjacent lot, appealed a 1996 zoning-enforcement letter to the Newport Zoning Board, seeking a determination that the culinary-school use was impermissible. Karousos characterized the zoning appeal as an abuse of process undertaken to delay or prevent the school, while Pardee testified that his purpose was to prevent commercial activity next to his planned home.

PROCEDURAL HISTORY

Karousos sued Pardee and other defendants for abuse of process based on Pardee's appeal to the Newport Zoning Board concerning the proposed culinary-school use of Fairlawn. After an initial summary-judgment motion was denied and certiorari was denied, defendants conducted discovery and renewed the motion. The Superior Court granted summary judgment, concluding that Pardee's petitioning activity was not subjectively baseless and that the abuse-of-process claim also lacked evidence of an ulterior motive. A later Superior Court justice awarded only fees and costs related to the successful assertion of anti-SLAPP immunity, excluding fees from the unsuccessful initial motion and certiorari petition.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The record is remanded to the Superior Court to determine the reasonable attorneys' fees and costs Pardee incurred in defending the judgment on appeal, and for further proceedings not inconsistent with the opinion.

CASES CITED

- Berardis v. Louangxay, 969 A.2d 1288, 1291 (R.I. 2009)
- Alves v. Hometown Newspapers, Inc., 857 A.2d 743, 752, 754, 757 (R.I. 2004)
- Hometown Properties, Inc. v. Fleming, 680 A.2d 56, 58-62 (R.I. 1996)
- Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 144 (1961)
- United Mine Workers of America v. Pennington, 381 U.S. 657, 670 (1965)
- Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc., 508 U.S. 49, 60-61 (1993)
- Cove Road Development v. Western Cranston Industrial Park Associates, 674 A.2d 1234, 1239 (R.I. 1996)
- Global Waste Recycling, Inc. v. Mallette, 762 A.2d 1208, 1210-13 (R.I. 2000)
- Pound Hill Corp. v. Perl, 668 A.2d 1260, 1262, 1264-65 (R.I. 1996)
- Brito v. Capone, 819 A.2d 663, 666 (R.I. 2003)
- Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1225-26 (R.I. 1996)
- Lavoie v. North East Knitting, Inc., 918 A.2d 225, 228 (R.I. 2007)
- Casco Indemnity Co. v. Gonsalves, 839 A.2d 546, 548 (R.I. 2004)
- Fiorenzano v. Lima, 982 A.2d 585, 590 (R.I. 2009)

- Palazzo v. Alves, 944 A.2d 144, 154 (R.I. 2008)
- Schroff, Inc. v. Taylor-Peterson, 732 A.2d 719, 721 (R.I. 1999)
- Annunziata v. ITT Royal Electric Co., 479 A.2d 743, 744 (R.I. 1984)
- Gliottone v. Ethier, 870 A.2d 1022, 1028 (R.I. 2005)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986)
- Hunt v. Cromartie, 526 U.S. 541, 552 (1999)
- Aetna Casualty & Surety Co. v. Farr, 594 A.2d 379, 381 (R.I. 1991)

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