[Cite as *Sellers v. Union Twp. Bd. of Trustees,* 2010-Ohio-1138.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DAVID H. SELLERS, et al.	:	JUDGES:
	:	
	:	Hon. William B. Hoffman, P.J.
Plaintiffs-Appellants	:	Hon. Julie A. Edwards, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2009 CA 00073
BOARD OF TOWNSHIP TRUSTEES OF UNION TOWNSHIP	:	
	:	
	:	
	:	
Defendant-Appellee	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Licking County Court of Common Pleas, Case No. 08 CV 833
JUDGMENT:	AFFIRMED
DATE OF JUDGMENT ENTRY:	March 19, 2010

APPEARANCES:

For Plaintiffs-Appellants:

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For Defendant-Appellee:

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Delaney, J.

{¶1} Plaintiffs-Appellants, David H. Sellers and Blue Belle, Inc. appeal the April 28, 2009 judgment entry of the Licking County Court of Common Pleas granting summary judgment in favor of Defendant-Appellee, Board of Township Trustees of Union Township.[1]

STATEMENT OF THE FACTS AND THE CASE

{¶2} Appellants own 90 acres of farm property located in Union Township, Licking County, Ohio. Portions of the property were divided into phases for the Fairmount Subdivision, a residential development. Prior to April 2003, Appellants filed an application for approval of a sketch plan for the Fairmount Subdivision Phases 6, 7, and 8 with the Licking County Planning Department. In order to obtain approval for the sketch plan, Appellants obtained a re-designation of the property to Low Density Residential (R-1) in April 2003. In April 2003, an area zoned R-1 required a minimum lot area of two acres.

{¶3} On December 7, 2005, the Union Township Zoning Commission passed a resolution at a published, scheduled meeting, to amend the Union Township Zoning Resolution. The amendment would change Sections 904, 905 and 914. The language of the proposed amendment specifically at issue in the present case states as follows:

{¶4} "Section 904 Low Density Residential (R-1)

{¶5} "Lot Area, Width and Depth: Every lot shall have a minimum road frontage and width of 250 feet through the lot and a minimum lot area of not less than four (4) acres exclusive of road right-of-way, and shall be in addition to any easements of

[1] Appellants originally named the Licking County Planning Commission as a second defendant. Appellants voluntarily dismissed the Commission on September 3, 2008.

record, and shall not exceed a maximum depth to width ratio of 3:1. The width to depth ration is measured from the front yard setback."

{¶6} On December 8, 2005, the resolution was sent to the Licking County Planning Commission.

{¶7} The Union Township Zoning Commission held a public hearing to discuss the amendments on January 4, 2006. Appellant David H. Sellers attended the hearing and spoke to the Commission members to explain how the amendment of Section 904 would impact the Fairmount Subdivision. The lots were currently 2.8 acres and with a four-acre minimum, the lots available would change from 37 to 20.

{¶8} A member of the Licking County Planning Commission stated at the hearing that Sellers was in the preliminary planning stages of his development and the development would be affected if Sellers did not get the preliminary plan approval before the zoning amendments were approved and took effect. Tom Frederick of the Union Township Zoning Commission explained that after the public hearing to discuss the proposed amendments, the Zoning Commission had thirty days to give their recommendation to the Union Township Trustees. He further explained that the Union Township Trustees would hold a public hearing and make a decision within the prescribed period. Frederick told Sellers that he would have a short period of time in which to receive preliminary plan approval to be unaffected by the amendment.

{¶9} The Zoning Commission resolved to hold the vote on the amendments to allow those with projects in process to obtain approval. A hearing was scheduled for January 18, 2006 where the Zoning Commission would vote on the amendments.

{¶10} After the January 4, 2006, hearing Appellants obtained the services of an engineering firm for the purpose of preparing the plats for Phases 6, 7, and 8 for approval by the Licking County Planning Commission. Appellants paid over $100,000.00 to the engineering firm for preparation of the plats. Appellants submitted the Preliminary Plans and Final Plats to the Licking County Planning Department in January 2006 for Phases 6, 7, and 8 of the Fairmount Subdivision.

{¶11} On January 18, 2006, the Zoning Commission held a public meeting and voted to accept the proposed amendments to the Zoning Resolution. The recommendation was sent to the Union Township Board of Trustees on January 18, 2006.

{¶12} The Union Township Board of Trustees received the recommendation of the Zoning Commission on February 6, 2006. On February 20, 2006, the Union Township Board of Trustees held a meeting to discuss the proposed amendments to the Zoning Resolution and the effect they would have on subdivision plans that were currently being reviewed for approval by the Planning Commission. The Board of Trustees voted to accept the following:

{¶13} "Any plats for development of real property which have received final plat approval from the Licking County Planning Commission (including any extensions) prior to the effective date of any new township zoning ordinance or regulations shall be exempt from said new ordinance or regulation."

{¶14} The Union Township Board of Trustees published a notice that a public hearing would be held on March 8, 2006 to receive public comments on the proposed amendments to Sections 904, 905, and 914 of the Union Township Zoning Resolution.

Sellers did not attend the hearing on March 8, 2006. When asked at the hearing when the changes would take effect, a Township Trustee explained that the Trustees had 20 days from the date of the hearing to make a decision and the next regular scheduled meeting was on March 20, 2006. The zoning amendments would go in effect 30 days after they were approved.

{¶15} At the March 20, 2006 meeting, the Union Township Board of Trustees voted to adopt the proposed amendments to the Zoning Resolution. Sellers did not attend the meeting.

{¶16} Appellants received a letter dated March 31, 2006 that the Licking County Planning Commission conditionally approved the Preliminary Plan for Phases 6, 7, and 8 of the Fairmount Subdivision and stated the Preliminary Plan approval was valid until March 31, 2008. Final plat approval is valid for 12 months and expired on March 31, 2007.

{¶17} The zoning amendments became effective on April 19, 2006; thirty days after the Board of Trustees adopted the zoning amendments.

{¶18} In early 2008, Seller contacted the Licking County Planning Commission to inquire whether the Union Township Board of Trustees had adopted the proposed zoning amendments. The Planning Commission informed Sellers that it had not received the zoning amendments. Sellers also contacted the Licking County Recorder's Office to find out if the proposed zoning amendments had been recorded. The Recorder's Office had not received the zoning amendments for filing.

{¶19} Appellants completed Phase 7 and began construction of Phase 6 of the Fairmount Subdivision before March 31, 2008. Appellants were granted an extension

for Phase 6 and 8 for the purpose of obtaining final plat approval. Appellants obtained final plat approval for Phase 6 by March 26, 2008. Phase 6 and 7 were constructed with two-acre lots. Appellants did not begin construction on Phase 8 of the Fairmont Subdivision before the expiration of the Preliminary Plan approval on March 31, 2008, nor did Appellants ever obtain final plat approval for Phase 8.

{¶20} In April 2008, Seller learned from the Union Township Zoning Inspector that the Union Township Board of Trustees adopted the zoning amendments and the amendments were effective on April 19, 2006. Appellants were notified that Phase 8 of the Fairmount Subdivision would be in violation of Section 904 of the Zoning Resolution if Appellants constructed Phase 8 with two-acre lots instead of four-acre lots.

{¶21} The zoning amendments were not filed with the Licking County Recorder's Office until October 20, 2008.

{¶22} Appellants filed a complaint on April 17, 2008 with the Licking County Court of Common Pleas seeking a declaration that the zoning amendments were null and void for procedural deficiencies and inapplicable to Appellants' property as a violation of Appellants' due process rights under the United States and Ohio Constitution.

{¶23} Appellee filed a motion for summary judgment arguing that Appellants filed their claim beyond the statute of limitations and that Appellants had no vested interest in the prior zoning regulations as to Phase 8 of the Fairmount Subdivision, so their constitutional due process rights could not have been violated. The trial court agreed with Appellee's arguments and granted summary judgment in favor of Appellee on April 28, 2009.

{¶24} It is from this judgment Appellants now appeal.

ASSIGNMENTS OF ERROR

{¶25} Appellants raise two Assignments of Error:

{¶26} "I. THE TRIAL COURT ERRED BY GRANTING SUMMARY JUDGMENT ON STATUTE OF LIMITATIONS GROUNDS WHERE APPELLEE HAD FAILED TO PROPERLY RECORD THE ADOPTED ZONING AMENDMENTS.

{¶27} "II. THE TRIAL COURT ERRED BY GRANTING SUMMARY JUDGMENT ON APPELLANTS' DUE PROCESS CLAIM."

STANDARD OF REVIEW

{¶28} We will first address the standard of review applicable to Appellants' Assignments of Error. Summary Judgment motions are to be resolved in light of the dictates of Civ.R. 56. Said rule was reaffirmed by the Supreme Court of Ohio in *State ex rel. Zimmerman v. Tompkins,* 75 Ohio St.3d 447, 448, 1996-Ohio-211:

{¶29} "Civ.R. 56(C) provides that before summary judgment may be granted, it must be determined that (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made. *State ex. rel. Parsons v. Fleming* (1994), 68 Ohio St.3d 509, 511, 628 N.E.2d 1377, 1379, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 4 O.O3d 466, 472, 364 N.E.2d 267, 274."

{¶30} As an appellate court reviewing summary judgment motions, we must stand in the shoes of the trial court and review summary judgments on the same standard and evidence as the trial court. *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35.

I.

{¶31} Appellants argue in their first Assignment of Error that the trial court erred in granting summary judgment in favor of Appellee based on Appellants failure to challenge the validity of the zoning amendments within two years of the adoption of the zoning amendments. We disagree.

{¶32} Appellants allege in their complaint that the amendments to the Zoning Resolution were "improperly and unlawfully adopted, accepted, certified, and recorded." Appellee argues pursuant to R.C. 519.122, Appellants are barred by the statute of limitations for challenging the zoning amendments. The statute states:

{¶33} "No action challenging the validity of a zoning resolution or of any amendment to such resolution because of a procedural error in the adoption of the resolution or amendment shall be brought more than two years after the adoption of the resolution or amendment."

{¶34} Appellants do not dispute that the Union Township Board of Trustees adopted the zoning amendments on March 20, 2006 and Appellants did not file their complaint for declaratory judgment until April 17, 2008; Appellants were therefore outside the statute of limitations to file a challenge to the amendments as proscribed by R.C. 519.122. It is Appellants' contention, however, that the statute of limitations does

not commence until the property owners are put on actual or constructive notice that the zoning amendments have been adopted.

{¶35} Appellants state that they did not have actual or constructive notice of the adoption of the zoning amendments because the zoning amendments were not filed with the Licking County Recorder's Office until October 20, 2008. Under R.C. 519.12(H), a Board of Township Trustees is required to "file the text and maps of the amendment in the office of the county recorder and with the court or regional planning commission" within five working days after an amendment's effective date. The zoning amendments at issue in the present case were filed over two years after the date required by R.C. 519.12(H).

{¶36} However, the failure to timely file a zoning amendment does not invalidate the amendment. R.C. 519.12(H) states:

{¶37} "The failure to file any amendment, or any text and maps, or duplicates of any of these documents, with the office of the county recorder or the county or regional planning commission as required by this section does not invalidate the amendment and is not grounds for an appeal of any decision of the board of zoning appeals."

{¶38} Appellants do not argue that the failure to file the zoning amendments in a timely fashion invalidated the zoning amendments, but rather that Appellee's failure to timely file the zoning amendments impacted the statute of limitations for which Appellants could bring their procedural challenge to the zoning amendments. It is Appellants' contention that because R.C. 519.12(H) does not require Appellee to timely file the zoning amendments, how were Appellants to be put on notice that the zoning

amendments were adopted so that Appellants could file their procedural challenge within two years of adoption pursuant to R.C. 519.122?

{¶39} Appellants urge this Court to apply the "discovery rule" to find that the statute of limitations was tolled until Appellants received actual or constructive notice of the adoption of the zoning amendments, those dates being either April 2008 or October 2008. Appellants cite *Hambleton v. R.C. Barry Corp* (1984), 12 Ohio St.3d 179, 465 N.E.2d 1298 for the proposition that,

{¶40} "[i]n order to determine if this action is timely, then, this court must determine when the cause of action accrued, *i.e.,* the time when the party discovered the wrongdoing. The discovery of the wrongdoing may be constructive as well as actual, for in *Schofield v. Cleveland Trust Co.* (1948), 149 Ohio St. 133, 142, 78 N.E.2d 167 [36 O.O. 477], this court, in construing the predecessor to R.C. 2305.09, stated as follows:

{¶41} " 'If a person has knowledge of such facts as would lead a fair and prudent man, using ordinary care and thoughtfulness, to make further inquiry, and he fails to do so, he is chargeable with knowledge which by ordinary diligence he would have acquired.' * * * "

{¶42} *Hambleton*, supra, involves a case where the Ohio Supreme Court determined the statute of limitations applicable for an unjust enrichment cause of action. Appellants have not cited any case law where it has been found that the discovery rule was applicable to the toll the statute of limitations established in R.C. 519.122.

{¶43} Further, when R.C. 519.12(H) and R.C. 519.122 are in read conjunction, it appears it was the intent of the General Assembly that the *adoption* of the zoning

amendment triggers the statute of limitations. While Appellees were required to file the zoning amendments within five days of adoption, the failure to file the zoning amendments with the Recorder's Office or Planning Commission is not grounds to bring procedural challenge to the zoning amendments. Based on the lack of supporting case law and the wording of the referenced statutes, we decline to find the discovery rule applicable to R.C. 519.122.

{¶44} Looking at this matter from the perspective of the Civ.R. 56 evidence submitted, we further find that reasonable minds could only conclude that Appellants had notice of the pending adoption of the zoning amendments. Sellers attended the Zoning Commission hearing on January 4, 2006 where the zoning amendments were discussed. A public notice was published that stated the Union Township Board of Trustees was holding a public hearing on March 8, 2006 to take public comments on the adoption of the zoning amendments. Sellers did not attend that hearing. At the March 8, 2006 hearing, the Board of Trustees stated their next regular meeting was scheduled for March 20, 2006 where they would discuss the adoption of the zoning amendments. Sellers did not attend the March 20, 2006 meeting.

{¶45} The adoption of the zoning amendment changing the lot size requirement for an R-1 district from two-acres to four-acres was of great importance to Appellants' development project, as it would greatly impact the design of the development. After attending the January 4, 2006 Zoning Commission meeting, Sellers immediately hired an engineering firm and filed his Preliminary Plans for the Fairmount Subdivision with the Planning Commission because he wanted his plans approved before the zoning amendments went into effect. Appellee held further public meetings to discuss the

adoption of the zoning amendments, but Sellers chose not to attend those meetings nor did he make any inquiry into the pending adoption of the zoning amendments before 2008. We find there is no genuine issue of material fact that Appellants had actual and constructive notice of the adoption of the zoning amendments.

{¶46} As such, we find the trial court did not err in granting summary judgment in favor of Appellee on Appellants' first claim. Appellants' first Assignment of Error is overruled.

II.

{¶47} Appellants argue in their second Assignment of Error the trial court erred in granting summary judgment in favor of Appellee on Appellants' claim that the application of the zoning amendments to Phase 8 of the Fairmount Subdivision was an impermissible retroactive application of a zoning change. We disagree.

{¶48} In support of their second Assignment of Error, Appellants state they had made a substantial nonconforming use of the property at issue, Phase 8, prior to the effective date of the zoning amendment changing the lot size from two-acres to four-acres. The Fairmount Subdivision consisted of three phases – 6, 7, and 8. Appellants expended $100,000.00 to pay an engineering firm to prepare the plat sketches for Phases 6, 7, and 8. Appellants obtained Preliminary Plan approval from the Planning Commission for the project on March 31, 2006, before the effective date of the zoning amendments on April 19, 2006, but the Preliminary Plan approval expired on March 21, 2008. After the effective date of the zoning amendments, Appellants were granted an extension until March 26, 2008 for obtaining Final Plat Approval for Phase 6 and 8. Appellants obtained Final Plat Approval for Phase 6 by March 26, 2008. Appellants

never obtained Final Plat Approval on Phase 8 before March 26, 2008 and never began construction on Phase 8.

{¶49} Appellants contend they had a vested interest in the property because Phase 8 was an integral part of the Fairmount Subdivision project for which Appellants had expended money and effort. They argue the enforcement of the zoning amendment was an impermissible violation of Appellants' Fourteenth Amendment rights under the United States Constitution and Section 16, Article I of the Ohio Constitution.

{¶50} A nonconforming use of land is a use that was lawful before the enactment of a zoning amendment, but one which, although no longer valid under the current zoning rules, may be lawfully continued. *City of Wooster v. Entertainment One, Inc*., 158 Ohio App.3d 161, 2004-Ohio-3846, 814 N.E.2d 521, ¶44 citing *C.D.S., Inc. v. Gates Mills* (1986), 26 Ohio St.3d 166, 168, 26 OBR 142, 497 N.E.2d 295. "The Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution recognize a right to continue a given use of real property if such use is already in existence at the time of the enactment of a land use regulation forbidding or restricting the land use in question." Id., citing *Dublin v. Finkes* (1992), 83 Ohio App.3d 687, 690, 615 N.E.2d 690, citing *Akron v. Chapman* (1953), 160 Ohio St. 382, 52 O.O. 242, 116 N.E.2d 697, paragraph two of the syllabus.

{¶51} In *Smith v. Juillerat* (1954), 161 Ohio St. 424, 53 O.O. 340, 119 N.E.2d 611, the Supreme Court of Ohio articulated a standard for deciding whether a property owner has acquired a vested right to the use of his or her property:

{¶52} "[W]here no substantial nonconforming use is made of property, even though such use is contemplated, and money has been expended in preliminary work to

that end, a property owner acquires no vested right to such use and is deprived of none by the operation of a valid zoning ordinance denying the right to proceed with his intended use of the property." Id. at 431, 53 O.O. 340, 119 N.E.2d 611. See, also, *Torok v. Jones* (1983), 5 Ohio St.3d 31, 33-34, 5 OBR 90, 448 N.E.2d 819.

{¶53} In *Juillerat,* the Supreme Court had occasion to assess whether a landowner wishing to strip-mine his land had established a nonconforming use prior to the adoption of a local zoning ordinance that prohibited strip mining. The landowner had applied for and obtained a license for use in connection with the land, had entered into leases with nearby property owners, and had drilled a hole on the land for testing purposes. Nevertheless, the court stated that, because no coal had actually been mined and the landowner was not prepared to mine at the time the ordinance took effect, a nonconforming use was not established. Id. at 431, 53 O.O. 340, 119 N.E.2d 611. See *Booghier,* 67 Ohio App.3d at 471, 587 N.E.2d 375 (upholding an injunction to enjoin a property owner from operating an adult business where the premises were not open for business as of the date the zoning was changed). *City of Wooster*, supra, at ¶¶50-52.

{¶54} "Ohio courts have held that the failure to establish that a permitted use occurred prior to a change in the zoning law renders this use nonconforming, and eliminates the property owner's right to the use. *Smith v. Wadsworth* (Oct. 23, 1996), 9th Dist. No. 2550-M, 1996 WL 603849, citing *Schreiner v. Russell Twp. Bd. of Trustees* (1990), 60 Ohio App.3d 152, 573 N.E.2d 1230." Id.

{¶55} The Ninth District Court of Appeals examined a similar argument as Appellants in *City of Wooster v. Entertainment One, Inc.*, supra. In that case, the City of

Wooster sought a declaration that an amendment to a city ordinance prohibiting a sexually oriented business from specified locations was constitutional. The corporation counterclaimed, arguing that the business operated as a nonconforming use; therefore, it was immune from the zoning amendment. The Ninth District affirmed the decision of the trial court to find that the business did not qualify as a nonconforming use. In its analysis, the court discussed the pertinent case law on the matter of what qualified as a nonconforming use:

{¶56} "The [trial] court then concluded that Erotica's use did not exist prior to the change in the zoning ordinance, and that the nonconforming use defense failed as a result.

{¶57} "The trial court relied on [*Harris v. Fitchville Twp. Trustees* (N.D. Ohio 2001), 154 F.Supp.2d 1182], and *Juillerat* for this conclusion, stating that it found these cases persuasive on the nonconforming use question. In *Harris,* the district court reviewed a regulation adopted by the Fitchville Township Board of Trustees on December 27, 1999, which governed the location of adult cabarets and other adult-oriented businesses, and also conditioned the operation of these businesses on the acquisition of a current, valid permit. The court found, inter alia, that 'although [plaintiffs] expended funds on preliminary work and contemplated use of their site as an adult cabaret, no substantial nonconforming use of the property was made prior to the effective date of the regulations [on January 26, 2000].' *Harris,* 154 F.Supp.2d at 1188.

* * *

{¶58} "Additionally, the court in *Harris* rejected the plaintiffs' claim that they had a vested right to the use of their property as a cabaret prior to the effective date, since

they had applied for and received a permit and had begun construction before the regulations were passed, and because 95 percent of the building was completed before the regulations' effective date. The plaintiffs based their argument on *Gibson v. Oberlin* (1960), 171 Ohio St. 1, 12 O.O.2d 1, 167 N.E.2d 651, which stated:

{¶59} 'Where * * * a property owner has complied with all the legislative requirements for the procurement of a building permit, and his proposed structure falls within the use classification of the area in which he proposes to build it, he has a right to such permit * * *. Subsequent legislation enacted pending applicant's attempted enforcement of such right * * * cannot deprive him of the right. The right became vested, under the law applicable thereto, upon the filing of the application for the permit.' Id. at 5-6, 12 O.O.2d 1, 167 N.E.2d 651.

{¶60} However, the court found that the application of this principle to the plaintiffs' case was misplaced, because the standard for the issuance of a building permit is to be distinguished from the one governing the establishment of a specific use as articulated in *Juillerat. Harris,* 154 F.Supp.2d at 1188. Indeed, logically, the facts that a landowner receives a building or zoning permit and that general construction has occurred or improvements have been made, do not help to establish that the premises were *used* in a particular manner." (Emphasis added). Id. at ¶¶56-59.

{¶61} We find the analysis in *City of Wooster, Harris, Juillerat* to be persuasive to the facts in our present case. As the court in the *City of Wooster* reasoned, even though the business owner had obtained building permits, had the ability to open the business, and had the intention to open the business, *ability* and *intention* were not sufficient to establish a *use* or a *substantial use*. Id. at ¶61.

{¶62} In the present case, Appellants had obtained Preliminary Approval and an extension for Final Plat Approval for Phase 8, but Appellants had let the Preliminary Approval and the Final Plat Approval extension lapse. Appellants had expended money and effort for the planning of Phase 8, but it never started construction on Phase 8. We find Appellants had the intention to construct Phase 8 with two-acre lots, by their actions in letting the permits lapse, reasonable minds can only conclude that Phase 8 was never used in that manner. "* * * [T]he current state of the law compels this court to conclude that actual operation, and not a mere intention, or a *claim* of intention to operate, must be shown to establish a nonconforming use pursuant to the *Juillerat* standard." *City of Wooster*, supra at ¶62.

{¶63} We find the trial court did not err in finding that Appellants failed to establish there was a genuine issue of material fact that a substantial nonconforming use existed on the effective date of the zoning amendments and Appellants were immune to the zoning change.

{¶64} Appellants' second Assignment of Error is overruled.

{¶65} The judgment of the Licking County Court of Common Pleas is affirmed.

By: Delaney, J.

Hoffman, P.J. and

Edwards, J. concur.

HON. PATRICIA A. DELANEY

HON. WILLIAM B. HOFFMAN

HON. JULIE A. EDWARDS

PAD:kgb

[Cite as *Sellers v. Union Twp. Bd. of Trustees,* 2010-Ohio-1138.]

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO

FIFTH APPELLATE DISTRICT

DAVID H. SELLERS, et al.	:	
	:	
	:	
Plaintiffs-Appellants	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
BOARD OF TOWNSHIP TRUSTEES OF UNION TOWNSHIP	:	
	:	
	:	
	:	Case No. 2009 CA 00073
Defendant-Appellee	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Licking County Court of Common Pleas is affirmed. Costs assessed to Appellants.

HON. PATRICIA A. DELANEY

HON. WILLIAM B. HOFFMAN

HON. JULIE A. EDWARDS