

8-30-2010

County of Twin Falls v. Hettinga Appellant's Reply Brief Dckt. 37047

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IN THE SUPREME COURT OF THE STATE OF IDAHO

THE COUNTY OF TWIN FALLS,
A Political Subdivision of the
State of Idaho,

Plaintiff/Respondent,

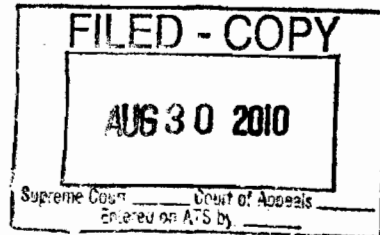
v.

ERIC HETTINGA,

Defendant/Appellant,

SUPREME COURT NO. 37047-2009

District Court Case No. CV-09-79



REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO IN AND FOR
THE COUNTY OF TWIN FALLS**

**HONORABLE DISTRICT COURT JUDGE G. RICHARD BEVAN
PRESIDING**

Williams Law Office Chtd.
Tim J. Williams/ISB #3910
PO Box 282
401 Gooding Street N, Suite 101
Twin Falls, ID 83303-0282
208-736-0699

Attorney for the Appellant

Wonderlich and Wakefield
Fritz Wonderlich/ ISB #2591
PO Box 1812
Twin Falls, ID. 83303
208-352-0811

Attorney for the Respondent

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Twin Falls, ID 83303-0282
208-736-0699

Attorney for the Appellant

Wonderlich and Wakefield
Fritz Wonderlich/ ISB #2591
PO Box 1812
Twin Falls, ID. 83303
208-352-0811

Attorney for the Respondent

Williams Law Office Chtd.

Tim J. Williams ISB NO. 3910

PO Box 282

401 Gooding Street N, Suite 101

Twin Falls, ID 83303-0282

208-736-0699

FAX: 736-0508

timjwilliamslaw@yahoo.com

Attorney for the Defendant/Appellant

IN THE SUPREME COURT OF THE STATE OF IDAHO

* * * * *

THE COUNTY OF TWIN FALLS,

STATE OF IDAHO,

A political subdivision of Idaho

Plaintiff/Respondent,

v.

ERIC HETTINGA,

Defendant/Appellant,

Supreme Court

Docket No. 37047-2009

Twin Falls County District

Court Case No. CV-08-79

APPELLANT'S REPLY

BRIEF ON APPEAL

Comes Now, Appellant, Eric Hettinga, and hereby submits his reply brief for consideration as follows.

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ARGUMENT

In reply Hettinga (Appellant) will address Twin Falls' (Respondent) arguments in order as presented in their brief. Hettinga maintains that he was not running a business from his residence and that in any event his activity of trucking only agricultural products is a permissive use under the zoning ordinance.

FACTS RELEVANT TO THE ISSUE ON APPEAL

Twin Falls cites Filer City Code 9-5-2 for the proposition that the R-A district is "intended to provide areas for low density residential development and continuation of farm uses where compatible with each other". Respondent's Brief (Brief) at p.3. (This cite should actually be referring to 9-5-1).

However, the ordinance cited also goes on to state: "It is appropriate to be applied to areas which have, by nature of uses and land division activity, already begun a conversion from rural to urban use.....and in rural land with marginal suitability for agricultural production."

This would certainly indicate that preservation of the area only for the growing of crops is not so sacred as to disallow other uses. This argument is made always keeping in mind that Hettinga argues that first, he does not run a business from the property. And second, that in any event he is trucking agricultural products and his activities are a permitted use under 9-5-2 as compatible with farming activities.

In paragraph 10 Twin Falls quotes “Overall, there is very little difference between the Appellant’s parking lot and any other secure storage yard in a commercial or industrial area. R. p. 77” Brief pp. 4-5.

However this is a quote from the District Judge’s conclusions. This statement is not evidence. The description of the parking lot regarding fences, lighting and paving itself is evidence, but not that conclusion. It can be just as readily being concluded that such a lot is similar to many farmyards in that it affords lighting and protection to property and livestock.

Additionally, Hettinga testified as to the reasons such measures as fencing, lighting and paving were taken. His property had been vandalized more than once. Initially Hettinga had only a yard light and upon recommendation of the sheriff he put up the fence and security cameras. Tr. pp. 125-127.

At paragraph 12 Twin Falls states Hettinga had employees come to the property and drive trucks to and from the property. Brief p.5.

However this is Mr. Nielsen’s testimony. When he was asked if Hettinga had employees come onto the property his answer was “He did have at least one or two, only in the summertime. I think when—I’m just assuming now—when business is busy for him, and he’s moving hay at that one period of time, he did have a gentleman driving another truck, yes, uh-huh.” Tr. p.53 ll 10-15.

This is a far cry from running a business with employees coming and going. Hettinga himself testified that he does not have any employees. Tr. p.116. ll 22-23.

Although Hettinga amended his testimony to allow that he has had one temporary employee. In June or July. Tr. p.134 ll. 7-19.

At paragraph 13 Twin Falls states that a DVD shows a semi being noisy, personal property for maintenance and workers performing maintenance on a truck. Brief p.5. Hettinga testified the property shown was an air compressor so the truck does not have to idle. There was sealant used once a year and some fuel. Tr. pp. 135-136. These are the same items that can be found on any farm.

Hettinga does not keep tools for maintenance on his property. He does not do regular maintenance nor have people come to his property to do maintenance except one time for polishing. Tr. pp. 117-119.

LEGAL AUTHORITY APPLIED TO RELEVANT FACTS

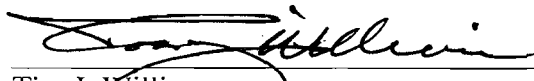
Much of Twin Falls' arguments focus on calling Hettinga's activities from the property a business. As previously pointed out in Appellant's Brief Hettinga does not run a business from the property. There very little indicia, if any, of business activity occurring. Hettinga only parks trucks. He then uses those trucks at other locations to do business. The actual business portion of the activity (records, phone calls, sales) are not done on the property.

Twin Falls also cites many cases and makes the comparison of Hettinga to residential uses and ordinances. The ordinance at issue is also an agricultural one that allows activities consistent with farming.

CONCLUSION

Hettinga requests this Court reverse the District Court in its finding of fact that Hettinga's activity is a business conducted at the property in question. Hettinga requests that this Court determine also as a matter of law that Hettinga's activities are permissible under the zoning ordinances at issue.

Respectfully Submitted this 27th, day of August, 2010.


Tim J. Williams

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that on the 27 day of August, 2010, I caused a true and correct copy of the foregoing to be delivered, with all charges pre-paid, via the method indicated below, addressed to:

Fritz Wonderlich
Wonderlich and Wakefield
PO Box 1812
Twin Falls, ID. 83303

[x]

Hand Delivered Court Box

Supreme Court
Of the State of Idaho
c/o Clerk of the Court
Stephen Kenyon
PO Box 83720
Boise, ID. 83720-0101

[x]

US MAIL



Tim J. Williams

