

CASE INFORMATION SHEET
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COUNTY AND COURT:

United States District Court for the Middle District of Florida

NAME OF CASE:

Donald Watson and Christine Watson

Plaintiff,

v.

Lake County

Defendant

CASE DOCKET NO.: 5-09-CV-399-oc-34- **JUDGE:** Paul A.
GRJ Magnuson

PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL:

Dennis Wells, Esquire

DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL:

Henry W. Jewett, Esquire
Joshua T. Frick, Esquire

AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT:

N/A

FOR WRONGFUL DEATH CASES, PLEASE GIVE AGE AND RELATIONSHIP OF SURVIVORS:

N/A

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

April 2007

CAUSE OF INJURY:

Code Enforcement Violation.

NATURE OF INJURY:

Plaintiffs alleged violation of their equal protection and substantive due process rights.

PLAINTIFF'S EXPERT WITNESSES:

- 1) Alan Perlman, Forensic Linguistics Expert
- 2) Robert Risner, Real Estate Appraiser

DEFENDANT'S EXPERT WITNESSES:

None.

DATE OF SUMMARY JUDGMENT:

Summary Judgment entered in favor of Lake County on February 23, 2011.

DEFENDANT'S OFFER:

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PLAINTIFF'S DEMAND:

\$85,000

ATTORNEY'S COMMENTS:

Plaintiffs filed a complaint in the United States District Court for the Middle District of Florida claiming that their equal protection and substantive due process rights had been violated. The genesis of the federal claim was a Lake County Code Enforcement violation Plaintiffs had received after they impermissibly dumped approximately 150 dump-truck loads of dirt onto their vacant residential lot. Plaintiffs never graded or leveled the dirt, and instead, simply left large mounds of dirt which not only presented an eye-sore for the neighborhood, but also presented run-off problems and drainage issues in the neighborhood.

Plaintiff fought the Code Enforcement violation in front of a Special Master, on appeal to the Circuit Court sitting in its appellate capacity, and to the 5th DCA via a petition for writ of certiorari review. Plaintiff lost on all levels. Thereafter, Plaintiff filed a Motion for Declaratory Judgment in the 5th Circuit Court arguing that the Special Master in the Code Enforcement action acted *ultra vires* when he found the Watsons in violation. Defendant filed a Motion to Dismiss which was granted. That case is currently on appeal to the 5th DCA.

The basis for Plaintiffs' federal equal protection claim was that Lake County had created a "class of one" when it found Plaintiffs in violation of Lake County Land Development Regulations Code for dumping the dirt. In Plaintiffs' opinion, they were the "only people" in Lake County who were cited for a violation of Lake County Land Development Regulations for importing fill dirt onto their property. In reality, numerous individuals in Lake County had been found in violation by Lake County for "storage of dirt" which is what Lake County determined Plaintiffs had been doing when they dumped the dirt on the property without leveling it off.

The case proceeded through approximately sixteen months of litigation, including full discovery where numerous Lake County employees who dealt with the Code Enforcement action, and even the Code Enforcement Special Master, were deposed. At the conclusion of discovery, Defendant filed a Motion for Summary Judgment based upon the doctrine of *res judicata* and substantive arguments that Plaintiff had not gathered sufficient facts to support their equal protection and substantive due process claims.

Judge Paul Magnuson denied Defendant's Motion for Summary Judgment on *res judicata* finding that Plaintiffs could properly bring the federal claims even though these claims also could have been brought in Plaintiff's direct appeal of the Code Enforcement action. However, Judge Magnuson granted Defendant's Motion for Summary Judgment on the substantive arguments finding that Plaintiffs had gathered insufficient facts to show that Lake County had violated Plaintiffs' equal protection or substantive due process rights.

Plaintiffs have appealed to the 11th Circuit Court of Appeals. The appeal is pending.

Submitted Joshua T. Frick Date: May 17, 2011
By:

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& McLain, P.A.

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