

Memo

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CITY CLERK'S OFFICE

To: City Council, Mayor
From: David W. Kuhn, City Solicitor
Date: January 4, 2006
Subject: Mollette v. Portsmouth City Council

Attached, for your information and review, is correspondence received from Joe Griffith regarding the above referenced subject matter.

D. JOE GRIFFITH
144 E. Main Street
P.O. Box 667
Lancaster, Ohio 43130-0667

740/653-6464, Ext. 122
Fax 740/653-8522

*Board Certified as a Specialist in
Civil Trial Advocacy by the National
Board of Trial Advocacy

David W. Kuhn, Esq.
612 Sixth Street, Suite A
Courthouse Annex
Portsmouth, OH 45662

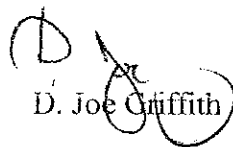
Lawrence E. Barbieri, Esq.
SCHROEDER, MAUNDRELL, BARBIERE
& POWERS
11935 Mason Road, Suite 110
Cincinnati, OH 45249

RE: Teresa Mollette, et al. v. Portsmouth City Council

Dear Counsel:

Enclosed you will find a Notice of Cross-Appeal and Statements of Assignments of Error which I have filed in this case.

Very truly yours,


D. Joe Griffith

DJG/ljp
Enclosures

DAGGER
JOHNSTON
MILLER
OGILVIE &
HAMPSON LLP
ATTORNEYS AT LAW

Portsmouth Office
801 John Street
Portsmouth, Ohio 45662

(740) 355-6644

djgriffith@daggerlaw.com

December 30, 2005

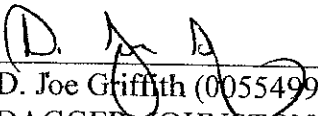
IN THE COURT OF APPEALS OF SCIOTO COUNTY, OHIO
FOURTH APPELLATE DISTRICT

TERESA MOLLETTE, ET AL., :
 :
 :
 PLAINTIFFS/APPELLEES, : Appellate Court Case No.
 : 05 CA 3051
 :
 V. :
 :
 :
 PORTSMOUTH CITY COUNCIL, : Trial Court Case No. 04 CIH-110
 :
 :
 DEFENDANT/APPELLANT. :

NOTICE OF CROSS-APPEAL

Now come Plaintiffs/Cross-Appellants, Theresa Mollette and Robert Mollette, by and through counsel, and pursuant to Appellate Rule 4 B(1) hereby gives notice of their cross appeal to the Court of Appeals of Scioto County, Ohio, Fourth Appellate District from the Trial Court's Entry of December 2, 2005. A copy of the Judgment Entry begin appealed from is attached hereto as Exhibit "A". The order appealed from is a final appealable order pursuant to R.C. 2505.02 and Civil Rule 54(B).

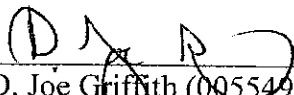
Respectfully submitted,



D. Joe Griffith (0055499)
DAGGER, JOHNSTON, MILLER,
OGILVIE & HAMPSON
144 E. Main Street
P.O. Box 667
Lancaster, OH 43130
(740)653-6464
(740)653-8522 - Fax
Attorney for Appellee/Cross-Appellant
Teresa and Robert Mollette
djgriffith@daggerlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice has been served by ordinary U.S. Mail service on David W. Kuhn, Attorney for Appellant, Portsmouth City Council, 728 Second Street, Room 22, Portsmouth, OH 45662 and Lawrence E. Barbieri, Attorney for Appellant, Portsmouth City Council, 11935 Mason Road, Suite 110, Cincinnati, OH 45249 OH 45249 this 7th day of December, 2005.



D. Joe Griffith (0055499)
DAGGER, JOHNSTON, MILLER,
OGILVIE & HAMPSON
144 E. Main Street
P.O. Box 667
Lancaster, OH 43130
(740)653-6464
(740)653-8522 - Fax
Attorney for Appellee/Cross-Appellant
Teresa and Robert Mollette
djgriffith@daggerlaw.com

IN THE COURT OF COMMON PLEAS
SCIOTO COUNTY, OHIO
GENERAL DIVISION

SCIOTO COUNTY
OHIO
FILED

05 DEC -2 PM 4:09

[Signature]
CLERK OF COURTS

TERESA MOLLETTE, et al.

Plaintiff

CASE NO. 04CIH00110

Vs.

JUDGMENT ENTRY

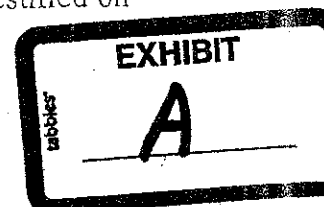
PORTSMOUTH CITY COUNCIL

Defendant

This matter comes before the Court on three separate issues. 1) whether or not the Plaintiffs are entitled to Attorney fees, 2) whether or not the attorney fees requested by the Plaintiffs were reasonable and 3) whether or not the Defendant is entitled to a reduction of the award of attorney fees pursuant to Revised Code Section 121.22(H)(2)(a)(i)-(ii).

As to issue one, the Court finds that on August 31, 2005, an oral hearing was held wherein the parties requested clarification of this Court's prior judgment entry regarding Plaintiffs' request for injunctive relief. This Court granted plaintiffs' injunctive relief which was appropriate under the catch all prayer "for any such other relief as the Court found just and equitable". Therefore Plaintiffs are entitled to attorney fees pursuant to section 121.22 of the Revised Code.

The second issue before the Court is whether or not the attorney fees requested by the Plaintiffs are reasonable. Based upon the testimony of Attorney Dan Ruggiero, who has been practicing law in this area for 33 years and 90% of his practice being civil, he stated that a normal hourly rate would be \$125-\$150 per hour on behalf of the Plaintiffs. Attorney Steve Mowery, who also has a general civil practice attorney, and testified on



Based upon the foregoing it is therefore Ordered that Plaintiffs shall be granted judgment against the Defendants in the sum of Eighteen thousand three hundred dollars and seventy cents (\$18,317.70) as and for their attorney and law clerks' fees and expenses in addition to a \$500.00 civil forfeiture required pursuant to section 121.22 (I)(2)(a) for a total of Eighteen thousand eight hundred seventeen dollars and seventy cents, plus court costs.

There be no just reason for delay, this is a final appealable order.

SO ORDERED.



JUDGE WILLIAM T. MARSHALL

Cc: Attorney D. Joe Griffith
Attorney for Plaintiffs

Attorney Lawrence E. Barbieri
Attorney David W. Kuhn
Attorneys for Defendants

IN THE COURT OF APPEALS OF SCIOTO COUNTY, OHIO
FOURTH APPELLATE DISTRICT

TERESA MOLLETTE, ET AL.,	:	
	:	
PLAINTIFFS/APPELLEES,	:	Appellate Court Case No.
	:	05 CA 3051
V.	:	
	:	
PORTSMOUTH CITY COUNCIL,	:	Trial Court Case No. 04 CIH-110
	:	
DEFENDANT/APPELLANT.	:	

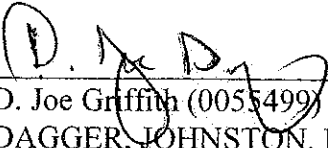
STATEMENTS OF ASSIGNMENTS OF ERROR

In accordance with Rule 9(B) of the Ohio Rules of Appellate Procedure, Appellee/Cross-Appellants, Robert Mollette and Teresa Mollette, set for the following assignments of error which they intend to present on their cross-appeal.

1. The trial court committed plain error in reducing the amount of attorneys fees granted to Plaintiffs/Appellees/Cross-Appellants.
2. The trial court abused its discretion in reducing the award of attorneys fees to Plaintiffs/Appellees/Cross-Appellants.
3. The trial court abused its discretion in denying Plaintiffs/Appellees/Cross-Appellants' Motion for Leave to Amend their Complaint to join as a necessary party the City of Portsmouth, Ohio, a municipal corporation.

These assignments of error are submitted in accordance with Appellate Rule 9(B). Cross-Appellants note that Appellants have ordered the entire transcript of the proceedings and the civil docket statement was attached with Appellant's original Notice of Appeal.

Respectfully submitted,

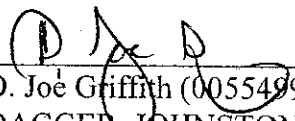


D. Joe Griffith (0055499)
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(740)653-8522 - Fax
Attorney for Appellee/Cross-Appellant
Teresa and Robert Mollette
djgriffith@daggerlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Statement has been served by ordinary U.S. Mail service on David W. Kuhn, Attorney for Appellant, Portsmouth City Council, 728 Second Street, Room 22, Portsmouth, OH 45662 and Lawrence E. Barbieri, Attorney for Appellant, Portsmouth City Council, 11935 Mason Road, Suite 110, Cincinnati, OH 45249 OH

45249 this 30th day of December, 2005.



D. Joe Griffith (0055499)
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OGILVIE & HAMPSON
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(740)653-8522 - Fax
Attorney for Appellee/Cross-Appellant
Teresa and Robert Mollette
djgriffith@daggerlaw.com

FORM 6

FOURTH DISTRICT COURT OF APPEALS
CIVIL CASE DOCKET STATEMENT

- 1. Counsel for the appellant, or the appellant if pro se, must complete, serve and file this docketing statement at the time the notice of appeal is filed.
2. A copy of the judgment entry or order which is being appealed must be attached to the notice of appeal.
3. A copy of the order for the transcript must be filed with the clerk and served on the Court Reporter.
4. If less than the entire transcript of proceedings is to be included in the record, appellant must, at the time the notice of appeal is filed, file a statement of the assignments of error appellant intends to present on appeal.

Court of Appeals Case No. 05CA3051 County Scioto
Case Caption Teresa Mollette, et al. v. Portsmouth City Council

Counsel for Appellant or Appellant pro se:

Name Lawrence Barbieri

Address and phone: 11935 Mason Rd., Suite 110, Cin., OH
(See back for additional counsel 45249

Counsel for Appellee or Appellee pro se:

Name D. Joe Griffith

Address and phone: P.O. Box 667, Lancaster, OH 43130

Trial Judge: Marshall

Trial Court Case No.: 04 CIH 110

Date Notice of Appeal filed December, 2005

Date that Judgment or Order appealed from was filed: November 23, 2004, September 15, 2004, December 2, 2005
Related Appeals Nos.

Did this case involve multiple parties? Yes X No

Did this case involve multiple claims? Yes X No

Does Civ. R. 54(B) apply? Yes No X

Is there "no just reason for delay" certification? Yes No X

Record (indicate type of record to be filed):

There will be a full X/partial transcript of the proceedings filed (designate parts):

There will be an App. R. 9(C) statement. No

There will be an App. R. 9(D) agreed statement to be filed: No

No transcript, statement, or agreed statement to be filed:

Has a notice of appeal been previously filed in this court concerning this case? Yes X No

If yes, what was the previous appellate case number? 04CA2980

Nature of the case: (for example, personal injury; administrative appeal; will contest; domestic relations; etc.)
Sunshine Law Claim

Is appellate counsel different from trial counsel? Yes No X

Does this case turn upon an interpretation or application of a particular case(s) or statute(s)? Yes X No

If yes, please cite cases or statutes. ORC 121.22; Portsmouth City Charter, Section 4

How would you characterize the extent of your settlement discussions prior to judgment in the trial court?

None X Minimal Modest Extensive

Have post-judgment settlement discussions taken place:

Yes X No

Would a preliminary "settlement" mediation conference be of any assistance in the resolution of this matter?
(Note - the primary purpose of the preliminary conference is to encourage the parties to explore any possibilities for settlement of this case before incurring additional expenses, or, if settlement is not possible, to limit the issues on appeal). Yes No X Please explain

~~Security information is exempt from public release unless a statement of the assignments of error has been filed with the clerk of the trial court pursuant to App. R. 9(B). (Attach a separate sheet if necessary).~~

D. J. Griffith
Name D. Joe Griffith
Attorney for Cross-Appellants
