

FILED

SEP 15 2009

*Kim Smith*  
CLERK JEFFERSON CIRCUIT COURT

IN THE  
INDIANA COURT OF APPEALS

APPELLATE CASE NO. 39A01-0908-CV-408

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SHERRY CHAPO and JESSIE A. CHAPO-STITSWORTH, Defendants/Appellants	)	Appeal from the Jefferson Circuit Court - Civil Division
VS.	)	TRIAL COURT NO. 39C01-0706-PL-304
JEFFERSON COUNTY PLAN, COMMISSION Plaintiff/Appellee.	)	Honorable Ted R. Todd Trial Court Judge

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**NOTICE OF FILING OF TRANSCRIPT**

Angelia M. Rogers, the Court Reporter for the Jefferson Circuit Court, hereby notifies the parties, pursuant to Appellate Rule 11(A), that the Transcript in this cause has been prepared and certified and is complete. This 15th day of September, 2009, the transcript was filed with the Clerk of the Trial Court in accordance with Appellate Rule 28.

*Angelia M. Rogers*

Angelia M. Rogers  
Court Reporter  
Jefferson Circuit Court

**NOTICE TO THE PARTIES**

I certified that on September 15, 2009, I sent by United States Mail, postage pre-paid a copy of this notice to all parties of record.

*Angelia M. Rogers*

Angelia M. Rogers



1 STATE OF INDIANA

2 SS:

3 COUNTY OF JEFFERSON

4 IN THE JEFFERSON CIRCUIT COURT

5 IN MADISON, INDIANA

6 JEFFERSON COUNTY PLAN )

7 COMMISSION, )

8 )  
9 Plaintiff, )

10 )  
11 VS. ) CAUSE NO. 39C01-0706-PL-304

12 )  
13 SHERRY J. CHAPO and )

14 JESSIE A. CHAPO-STITSWORTH, )

15 )  
16 Defendants. )

17  
18 **TRANSCRIPT OF THE PROCEEDINGS** held in the above-  
19 captioned cause on April 9, 2009 before the Honorable Ted R.  
20 Todd, Judge of the Jefferson Circuit Court, Fifth Judicial  
21 Circuit in the Jefferson County Courtroom in Madison,  
22 Jefferson County, Indiana.

23  
24 **ANGELIA M. ROGERS**

25 **OFFICIAL COURT REPORTER**

**A P P E A R A N C E S**

**KRISTEN VANDEWATER**

KEMPER & VANDEWATER

218 E. Second Street

Madison, IN 47250

(812) 265-3311

**On behalf of the Jefferson County Plan Commission**

**A. RICHARD M. BLAIKLOCK**

LEWIS WAGNER

501 Indiana Avenue, Suite 200

Indianapolis, IN 46202

(317) 237-0500

**On behalf of Jessie A. Chapo-Stitsworth, Defendant**

**SHERRY J. CHAPO**

10214 W. Deputy Pike Road

Deputy, IN 47230

(812) 866-5299

**Defendant**

COURT DISCUSSION

1  
2 JUDGE TODD: This is Cause Number 39C01-0706-PL-304 in  
3 which the Jefferson County Plan Commission is  
4 the Plaintiff and Sherry L. Chapo and Jessie  
5 Chapo are the Defendants. We're here...  
6 Kristen Vandewater is present and  
7 representing the Plaintiff, and...you are  
8 Mr. Blaiklock?

9 MR. BLAIKLOCK: Yes, Your Honor.

10 JUDGE TODD: Okay...representing the uh...defendants on  
11 a 41E Motion, and uh...is the...do you wish  
12 to...are you opposing the Motion?

13 K. VANDEWATER: Yes, Your Honor.

14 JUDGE TODD: Okay. Then you may proceed.

15 MR. BLAIKLOCK: Thank you, Judge. Your Honor, I have with  
16 me, Sherry Chapo, one of my clients. Judge,  
17 on June 12<sup>th</sup>, 2007, the Jefferson County Plan  
18 Commission filed suit against Sherry and  
19 Jessie Chapo, and it related to allegations  
20 of failing to get certain permits.

21 JUDGE TODD: I'm familiar with the file. I read it over  
22 this morning.

23 MR. BLAIKLOCK: The reason I say that, Judge, is the house is  
24 now five years old, and at the time the suit  
25 was filed, it was three years old. The suit



1 **COURT DISCUSSION**

2 since September 7<sup>th</sup> without any action...I'm  
3 sorry...20 months...22 months since the law  
4 suit was filed without any action to  
5 prosecute it. Finally, in December of 2008  
6 we filed this case, and I would just point  
7 out to the Court that this is not an  
8 insignificant case. The county is asking  
9 that the residence of the address be  
10 prohibited from residing in the address and  
11 that they be charged 2,500 dollars per day  
12 that the address is violation of certain  
13 ordinances. So this has been hanging over  
14 our client's head...excuse me...for almost  
15 two years without any action whatsoever by  
16 the Plaintiffs. Yesterday, four months after  
17 I filed this motion before the Court in  
18 December, I received an e-mail from the  
19 county's attorney, the Plan Commissions's  
20 attorney, advising that they would be filing  
21 a Motion to Amend and a uh...request for jury  
22 trial. I don't have it. I don't have any  
23 opposition to this motion, and we would  
24 object to any such pleadings. But my point  
25 is that for 22 months this...Miss Chapo and





1 COURT DISCUSSION

2 we're about to prosecute this case, which is  
3 what I learned about yesterday, this Motion  
4 to Amend and the Request for Jury Trial, I  
5 found a case, Your Honor. May I approach the  
6 Court with the case?

7 JUDGE TODD: You may.

8 Mr. BLAIKLOCK: And the crux of this case, Your Honor, is  
9 that it's too late once a Motion to Dismiss  
10 has been filed to begin prosecuting the case  
11 and use the resurrection of the activity as  
12 justification for not dismissing the case,  
13 and I'll just briefly go over a few things  
14 from this case. It says, first of all, the  
15 purpose of Rule 41E is to ensure the  
16 Plaintiffs will diligently pursue their  
17 claims. The burden of moving the litigation  
18 rests on the Plaintiffs. And particularly  
19 here it says the courts cannot be asked to  
20 carry cases on their dockets and definitely  
21 ...indefinitely and the rights of the adverse  
22 party, the Chapos, should also be considered.  
23 He should not be left with a lawsuit hanging  
24 over his head indefinitely. That's after 22  
25 months now. The Court goes into several



COURT DISCUSSION

1 title. There's a lawsuit pending against our  
2 client, and the time has come and the time  
3 has passed for the county to prosecute it.  
4 The county, I assume, will say this is a  
5 drastic measure dismissing the case with  
6 prejudice. Well, Your Honor, it's a drastic  
7 measure to sue somebody. This isn't somebody  
8 who's got insurance coverage. This isn't,  
9 you know, some allegations regarding, you  
10 know, the one similar to what we just heard.  
11 This is allegations of you violated some  
12 ordinances, and it's been 22 months since the  
13 case was filed and five years since they  
14 built the house, and there's been absolutely  
15 no action taken. So I would say, yes, this  
16 might be a severe remedy, but the  
17 government's had it's time, and the time has  
18 passed. It is a severe inconvenience for our  
19 client to be sued, first of all, to have the  
20 suit hanging over their head for 22 months,  
21 and that severity, Your Honor, outweighs any  
22 drastic remedy that the county might argue  
23 equal to dismissal. Your Honor, I would  
24 request that the Court not (inaudible) in  
25

COURT DISCUSSION

1  
2 this delay, not require out client to  
3 continue to expend her funds defending this  
4 case when five years, memories have faded,  
5 the events are stale, and that the Court  
6 dismiss the case with prejudice. And I  
7 finally will refer the Court to Trial Rule 1  
8 which I...I think is quite telling here. It  
9 says uh...the trial rules shall be construed  
10 to secure the just speedy and inexpensive  
11 determination of every action. Your Honor,  
12 Trial Rule 14 is there for a reason. Our  
13 client should not have to spend anymore time,  
14 money and effort worrying about this case and  
15 defending this case, and we would  
16 respectfully request that it be dismissed  
17 with prejudice.

18 JUDGE TODD: Thank you.

19 K. VANDEWATER: Thank you, Your Honor. I also have the  
20 Belcaster case for you, but...I will submit  
21 it, and in the Belcaster case it does not  
22 stand for a basic proposition that there is  
23 some length...some certain length of time  
24 where after which you need to dismiss a case.  
25 So obviously...

COURT DISCUSSION

1  
2 JUDGE TODD: I understand that.

3 K. VANDEWATER: The fact that it was ten months there and 22  
4 months here is...really is relevant as you  
5 find it I suppose. As it relates to the  
6 Belcaster case though, that case sets forth  
7 the balancing test to determine whether or  
8 not this remedy is proper. This case does in  
9 fact date back to 2004. I believe at the  
10 time that Mike Walro was the Plan Commission  
11 attorney. There have been several attorneys  
12 since then representing the Plan Commission,  
13 and uh...what had occurred during the period  
14 that they were representing the commission  
15 was various letters back and forth to the  
16 Chapos saying that this is what our ordinance  
17 says, this is how you have not complied with  
18 it, and this is what we want you to do. The  
19 Chapos continued to ignore any of the...the  
20 notices that they received from the  
21 government, and so it isn't that we just  
22 sprung to sue them immediately. We did so as  
23 a last result...resort. As it relates to the  
24 uh...allegation that we're saying we're  
25 requesting them not to live in the house, we

COURT DISCUSSION

1  
2 have not requested that injunction. We have  
3 Not gone forward with a hearing on that to  
4 kick them out of the house, and really our  
5 goal is just enforcement. We just...we just  
6 want for the Court to figure out and listen  
7 to the facts of the case, tell us whether or  
8 not they've complied, whether they haven't  
9 complied. We think they haven't complied.  
10 They thing that they don't need to comply,  
11 and that's basically what we're looking for.  
12 I think that one of the uh...key factors of  
13 the balancing test is whether or not they  
14 have been prejudiced by the delay, and uh...  
15 they've been able to refinance their house.  
16 That was not an issue. They have not  
17 contacted me since then. And the reason that  
18 the Amended Complaint was not filed, by the  
19 way, was simply because I had actually  
20 drafted it, and it's been in my file since I  
21 even wrote that, but I didn't realize that it  
22 had not been filed. The only change to the  
23 complaint, it's not a substantive amendment.  
24 It is...we were off by a digit in the  
25 address essentially. And that's the only...

COURT DISCUSSION

1  
2 JUDGE TODD: Well, I'm not so concerned about that as I am  
3 about the fact...has there been any discovery  
4 ongoing? Has there been any action taken to  
5 try to proceed to move the case along?

6 K. VANDEWATER: Right. And as it relates to that, I mean I  
7 ...I have found at least kind of 41E motions  
8 historically in this county to be kind of...  
9 to spur it along and to get it set, and I  
10 have communicated with Mr. Blaiklock and told  
11 him, "Let's go ahead and set this," and I've  
12 have no problem with doing that, and we can  
13 do that soon. There has, in fact, been  
14 discovery since that. They have requested  
15 discovery, which we provided to them in  
16 November. In November there was an issue of  
17 whether or not we actually were required to  
18 give them the documents they requested  
19 because they requested a number of documents  
20 that were matters of public record. I told  
21 them, "That's fine. I don't think...I don't  
22 think that we have to do this. I will  
23 produce those things for you," and then I  
24 proceeded to spend 255 dollars getting copies  
25 of public documents to help them in their

COURT DISCUSSION

1  
2 case and then requested reimbursement for  
3 that, and they refused to pay that. So uh...  
4 then after that Miss Chapo filed a...a  
5 separate action concerning the propriety of  
6 the Plan Commission charging a certain amount  
7 of documents...or a certain amount per page  
8 for copying a request, and so we went through  
9 that proceeding and...

10 JUDGE TODD: Well, how does that...I mean I understand  
11 that that was because of this case perhaps,  
12 but it really isn't relevant to the...

13 K. VANDEWATER: And it really wasn't. I just kind of was  
14 letting that play out, and...and I mean at  
15 this point we're ready to go forward, and  
16 I've just asked that it be set for a trial  
17 date. Nothing has changed substantively.  
18 They know what we're asking them to do and  
19 what we've been asking them to do for several  
20 years. They've made no actions to do that.  
21 So another issue on the balancing test if the  
22 desirability of deciding the case on the  
23 merits.

24 JUDGE TODD: I understand that.

25 K. VANDEWATER: The simple fact is we're not going to reach



COURT DISCUSSION

an agreement on this.

JUDGE TODD:

But the...you...you refer to historically the way that these matters have been handled culturally here, and usually those are because there is a motion by the Court itself, and usually the motion is...the case is dismissed unless both parties say, "No, keep it on because we were...we were trying to negotiate," and yadda-yadda-yadda or something like that. But I can't recall...I... the Court usually takes seriously if...if one of the parties actually does want it dismissed and it's by the party. I think our standard has not been that. It's been more, "What's happening here," or "Is it being processed," or, "Is it being treated..." I mean, "Is it benign neglect or is it being treated with...is it just being ignored," and I...I'm having trouble understanding here... In other words, what contacts have there been between you and the defense between the time of the filing and the time...?

K. VANDEWATER: Arguments over discovery.

JUDGE TODD: Huh?

1 COURT DISCUSSION

2 K. VANDEWATER: And related to the second case that she  
3 filed. I mean I don't think that there's  
4 ever been any question that we weren't  
5 willing to resolve this by an agreement. We  
6 ...we need to pursue it. I mean we need to  
7 try it. I'm asking for a trial date.

8 JUDGE TODD: I mean nobody's asked for mediation, or  
9 nobody's...I guess the Court could have  
10 *sua sponte*.

11 K. VANDEWATER: And I really don't believe based on our  
12 communication so far that a mediation would  
13 even be successful so...

14 JUDGE TODD: Uh...okay. I understand your argument.  
15 Reply?

16 MR. BLAIKLOCK: Thank you, Your Honor. First of all, I would  
17 just point out to...to maybe emphasize what  
18 the Court said, uh...what happened in some  
19 other proceeding in which I'm minimally...  
20 well, first of all, not involved. There were  
21 some copying expenses. I don't know anything  
22 about that other than what I've just heard  
23 here and some minimal information from my  
24 client. That's not this case. It's got  
25 nothing to do with it. Secondly, this prior





COURT DISCUSSION

1  
2 personal responsibility on the part of  
3 Belcasters which is the Plaintiffs  
4 themselves. Third, less drastic sanctions  
5 and dismissal were available. However, on  
6 this point we note that the Court is held  
7 that the Court need not impose a sanction  
8 less severe than a dismissal. I don't know  
9 what the county's innocence or not is in this  
10 situation. My concern is with our client in  
11 defending this case, and I would look at  
12 those factors, Your Honor, and just walk  
13 through them from the Belcaster case. The  
14 length of the delay, 22 months. The reason  
15 for the delay? We haven't heard it. The  
16 degree of personal responsibility on the part  
17 of the actual Plaintiff? We don't know.  
18 That Court's got no evidence before it on  
19 that. The degree to which the Plaintiff will  
20 be charged for the acts of his attorney?  
21 Well, you know, again we don't know if there  
22 will be a dismissal in this case, and that  
23 would be that. The amount of prejudice to  
24 the Defendant caused by the delay? Memories  
25 have faded. This was five years ago when

COURT DISCUSSION

1  
2 this all started, two years since the case  
3 happened. This isn't the simple you've  
4 breach the ordinance case. There's a lot...  
5 There's facts involved that the Court will  
6 need to hear if it gets to that point. We  
7 certainly hope it does. The presence or  
8 absence of a lengthy history of having  
9 deliberately proceeded in a dilatory fashion?  
10 Well, we don't know, but it hasn't been  
11 proceeded in, so that doesn't weigh against  
12 us or in favor of them. The existence and  
13 effectiveness of sanctions less drastic than  
14 a dismissal? There are none, Your Honor.  
15 Our clients...by the time I drive back up to  
16 Indianapolis and pursue this motion and spend  
17 a significant amount of money defending this  
18 case to this point, pursuing this motion at  
19 her cost, and dismissal is the only  
20 appropriate remedy in this case, Judge. The  
21 desirability of deciding the case on the  
22 merits? That does not control (inaudible).  
23 And the extent to which the Plaintiff has  
24 been stirred into action by a threat of  
25 dismissal as opposed to diligence on the

**COURT DISCUSSION**

1  
2 Plaintiff's part? Well, I don't think we can  
3 argue that the Plaintiff was going to do  
4 anything but for my motion when it took four  
5 months after my motion and less than 24 hours  
6 before today for me to get any response  
7 whatsoever. So the...the Plaintiff is not  
8 showing this Court that this is an important  
9 case that should not be dismissed, and in the  
10 meantime our client here has this shadow  
11 hanging over her head, 2,500 dollars a day.  
12 The Plaintiffs said that they weren't asking  
13 for injunction. Let me read you the  
14 Complaint.

15 JUDGE TODD: I understand it. It does say that.

16 MR. BLAIKLOCK: They are asking for it. So we would ask that  
17 the Court dismiss this case with prejudice,  
18 and that would be it. Thank you, Judge.

19 JUDGE TODD: Thank you. I will take the matter under  
20 advisement and let you all know.

21  
22 \* CONCLUSION OF THE HEARING \*  
23  
24  
25

STATE OF INDIANA )  
 ) ss:  
COUNTY OF JEFFERSON )

IN THE JEFFERSON CIRCUIT COURT  
MADISON, INDIANA

JEFFERSON COUNTY PLAN )  
COMMISSION, )  
 )  
Plaintiff, )  
 )  
VS. )  
 )  
SHERRY J. CHAPO and )  
JESSIE A. CHAPO-STITSWORTH, )  
 )  
Defendants. )

CAUSE NO. 39C01-0706-PL-304

FILED

SEP 15 2009

*Kim Smith*  
CLERK JEFFERSON CIRCUIT COURT

**CERTIFICATION**

**OFFICIAL COURT REPORTER**

I, Angelia M. Rogers, Official Court Reporter for the Jefferson Circuit Court, State of Indiana, do hereby certify that I am the Court Reporter of said Court, duly appointed and sworn to report the evidence of cause tried therein.

That upon the hearing held on April 9, 2009, in the above captioned cause, I took down by machine recording all of the statements by counsel, the evidence given during the hearing of this cause, and the Court's rulings thereon.

I further certify that the foregoing transcript, as prepared is a true, correct and complete transcript of the hearing held in this cause.

In witness thereof, I have hereunto set my hand and affixed my seal this 15<sup>th</sup> day of September, 2009.

*Angelia M. Rogers*  
\_\_\_\_\_  
Angelia M. Rogers  
Official Court Reporter  
Jefferson Circuit Court



**Form 10-2 Notice Of Completion Of Transcript**

IN THE  
INDIANA [SUPREME COURT OR COURT OF APPEALS]

Case No.: 39A01-0908-CV-00408

Sherry Chapo &	)	Appeal from the Jefferson Circuit
Jessie A. Chapo-Stitsworth	)	Court – Civil Division
Appellant(s),	)	
vs.	)	Trial Court Case No:
	)	39C01-0706-PL-304
Jefferson Co. Planning Commission	)	
Appellee (s).	)	The Honorable Ted R. Todd
	)	Judge

**NOTICE OF COMPLETION OF TRANSCRIPT**

Kim Smith, the Clerk of Jefferson Circuit Court, hereby notifies the parties, pursuant to Appellate Rule 10(D), that the Transcript in this case has been completed.

  
\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date issued  
09/29/2009

**CERTIFICATE OF SERVICE**

I certify that on 09/29/2009 I sent copies of this document to all parties of record and to the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court by United States Mail, postage pre-paid.

  
\_\_\_\_\_  
Clerk