

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

CHARLOTTE MAE SINKEWITZ,

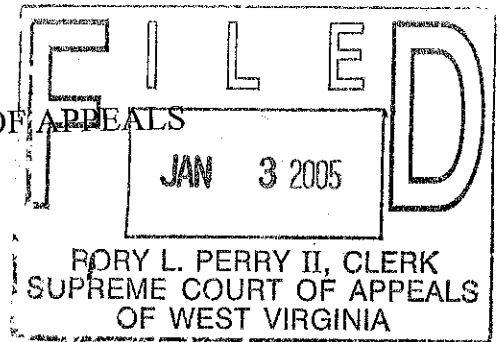
Appellee,

vs.

APPEAL NUMBER: 32053

From the Circuit Court of Wayne County, W.Va.

Civil Action No. 02-C-248



THE CITY OF HUNTINGTON,

Appellant.

REPLY BRIEF OF THE APPELLANT, THE CITY OF HUNTINGTON

In 1997, the Appellee Charlotte May Sinkewitz sued The City of Huntington challenging the constitutionality of the City's zoning ordinance in Wayne County Circuit Court. The Circuit Court ruled in favor of the City upholding the constitutionality of the ordinance and Sinkewitz did not appeal the Circuit Court's decision. The judgment therefore became final and binding on the parties. Five years later, Sinkewitz sued the City a second time, again challenging the constitutionality of the same city zoning ordinance. Under black letter principles of *res judicata*, the second suit cannot be maintained.

When a second suit is between the same parties as the first, and on the same cause of action, the judgment in the former is conclusive of the later, not only as to every question which was decided, but also as to every other matter which the parties might have litigated and had determined, within the issues as they were made or tendered by the pleadings, or as incident or essentially connected with the subject matter of the litigation, whether the same, as a matter of fact, were or were not considered. As to such matters, a new suit on the same cause of action cannot be maintained between the same parties.

8B Michie's Jurisprudence, Former Adjudication or *Res Judicata* §49 at p. 281 and cases cited therein.

Clearly, the constitutional issue raised by Sinkewitz in her second lawsuit against the City could have been litigated in her first lawsuit against the City. Accordingly, Sinkewitz's second suit is barred by the doctrine of *res judicata*.

For the foregoing reasons, the City respectfully requests that the Court reverse the Order of the Circuit Court of Wayne County.

Respectfully submitted,


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 30, 2004, he served a copy of the foregoing "Reply Brief of the Appellant, The City of Huntington" on all counsel of record by mailing a true and exact copy thereof, postage prepaid in the United States Mails to:

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