Franklin County Legal Journal

Vol. 34, No. 34 February 17, 2017 Pages 63 - 71

Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201–2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.

David W. Bercot, and Deborah H. Bercot, Plaintiffs vs.

Amberson Valley Estates Homeowners Association, Defendant

Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, Civil Action No. 2016-1603

HEADNOTES

Joinder of Necessary Parties Under the Declaratory Judgments Act

1. Under the Declaratory Judgments Act, "[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration and no declaration shall prejudice the rights of persons not parties to the proceeding. . ." 42 Pa. C.S.A. §7540(a).

2. Joinder is not required when a non-joined party's interest in the litigation is indirect or incidental. Mid-Centre County Auth. v. Township of Boggs, 384 A.2d 1008, 1012 (Pa. Cmwlth. 1978).

3. Joinder is not required when one party can serve as the official designee of non-parties sharing an identical interest. Leonard v. Thornburgh, 467 A.2d 104, 105 (Pa. Cmwlth. 1983).

4. Property-owners are necessary parties only when their property rights will be directly affected by that litigation. If a property-owner's rights are indirectly related, they are not a necessary party and need not be joined to the action. Fulton v. Bedford County Tax Claim Bureau, 942 A.2d 240 (Pa. Cmwlth. 2008).

5. A property owner is a necessary party to any litigation which may adversely affect a property owner's right to use and enjoyment of his property. Columbia Gas Transmission Corp v. Diamond Fuel Co., 346 A.2d 788, 789 (Pa. 1975).

Indispensable Parties in General

6. In Pennsylvania, "a party is indispensable where his rights are so connected with the claims of the litigants that no decree can be made between them without impairing such rights. Mechanicsburg Area School District v. Kline, 431 A.2d 953, 956 (Pa. 1981).

7. Four questions must be answered by the court to determine whether a party is indispensable:

(1) Do absent parties have a right or interest related to the claim?

(2) If so, what is the nature of that right or interest?

(3) Is that right or interest essential to the merits of the issue?

(4) Can justice be afforded without violating the due process rights of absent parties?

Mechanicsburg Area School District v. Kline, 431 A.2d 953, 956 (Pa. 1981).

Requests for Attorneys' Fees in Declaratory Judgment Action

8. Under the American Rule, "a litigant cannot recover counsel fees from an adverse party unless there is express statutory authorization, a clear agreement of the parties or some other established exception." Mosaica Academy Chart School v. Com. Dept. of Educ., 813 A.2d 813, 822 (Pa. 2002).

9. Supplemental relief to a declaratory judgment in statutorily authorized if it is awarded to enforce the judgment. Under the Declaratory Judgments Act, "if an application for supplemental relief is deemed sufficient the court shall, on reasonable notice, require any

adverse party whose rights have been adjudicated by a previously entered declaratory judgment or decree to show cause why further relief should not be granted." 42 Pa. C.S.A. §7538(a).

10. The nature of a declaratory judgment alone does not prevent awarding of attorney's fees. Kelmo Enterprises Inc. v. Commercial Union Insurance Company, 426 A.2d 680 (Pa. Super. 1981).

OPINION

Before Meyers, J.

PROCEDURAL HISTORY

David and Deborah Bercot ("the Bercots") brought an action for declaratory judgment under 42 Pa. C.S.A. §7531 et seq. against Amberson Valley Estates Homeowners Association ("AVEHA") on May 5, 2016. AVEHA filed *Preliminary Objections* to *Plaintiffs' Complaint In Re Action For Declaratory Judgment* on June 9, 2016, claiming (1) lack of subject matter jurisdiction due to the Bercots' failure to join indispensable parties and (2) a legally insufficient claim for attorneys' fees requiring demurrer. AVEHA simultaneously filed a *Brief in Support of its Preliminary Objections to Plaintiffs' Complaint*. On June 28, 2016, the Bercots filed a *Response to Preliminary Objections* and a corresponding *Plaintiffs' Brief in Response to Defendant's Preliminary Objections*.

The parties filed a *Joint Motion to Have Defendant's Preliminary Objections Considered on the Briefs Alone* on August 17, 2016. The court's order granting that Motion was filed on August 19, 2016. This matter is now ripe for decision by this court.

FACTUAL HISTORY

The Uniform Planned Community Act (UPCA), passed in 1996, outlines the formation and organization of planned communities within Pennsylvania created after passage of this legislation. 68 Pa. C.S.A. §5101 et seq. However, certain portions of the UPCA apply retroactively to planned communities formed prior to passage of this legislation. 68 Pa. C.S.A. §5102(b)-(b.1).

The present case centers around two communities in Amberson, Pennsylvania, which were established in the 1960s, prior to passage of the UPCA. Both Spring Lake and Horseshoe Lake, the communities at issue, have been managed under AVEHA in Amberson, Pennsylvania since 2001. Defendant's Preliminary Objections ¶¶2-3. The Bercots currently live in

the Spring Lake community. Defendant's Preliminary Objections ¶5. In total, there are fifty homeowners residing in the planned communities managed by AVEHA: thirty in Spring Lake and twenty in Horseshoe Lake. Defendant's Preliminary Objections ¶4. AVEHA contends that because both Spring Lake and Horseshoe Lake are one planned community, the dues paid from homeowners in each can be commingled and spent on expenses for either sub-community.[1] Plaintiffs' Complaint ¶46. According to the Bercots, AVEHA has spent a large portion of its dues on maintenance and insurance for Horseshoe Lake's common area which has been plagued with environmental liability issues. Plaintiffs' Complaint ¶73,77.

To be a member of AVEHA, one must not merely be a homeowner in the planned community; one must also "be bound by any additional rules and regulations that the directors of AVEHA may adopt—including increased fees or additional assessments to which those lot owners would not otherwise be subject." Plaintiffs' Complaint ¶62. The Bercots claim these requirements prevent homeowners from joining AVEHA and therefore violate a retroactive portion of the UPCA mandating unit owners associations "consist exclusively of all the unit owners." Plaintiff's Complaint ¶70; 68 Pa. C.S.A. §5301.

In addition to seeking relief regarding their own related property claims, the Bercots have brought this declaratory judgment action against AVEHA seeking a declaration (1) that Spring Lake and Horseshoe Lake are two separate planned communities, (2) that the dues from each community should not be commingled, and (3) that each planned community should be managed by its own unit owners' association. Plaintiffs' Complaint p. 24.

DISCUSSION

I. APPLICABLE STANDARD: PRELIMINARY OBJECTIONS

The standard for evaluating preliminary objections, including demurrer, is laid out in Allegheny Sportsmen's League v. Ridge:

> [W]hen ruling upon preliminary objections, the Court must accept as true all well-pleaded allegations of material fact as well as all reasonable inferences deducible therefrom. The Court is not required to accept as true any conclusions of law or expressions of opinion. In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and any doubt should be

1 For purposes of discussing AVEHA's averments, the court will refer to Spring Lake and Horseshoe Lake individually as the "sub-community" and together as the "planned community." A determination on the merits of whether the two sub-communities are in fact one planned community is as yet undecided.

> resolved by refusal to sustain them. A demurrer, which results in the dismissal of a suit, should be sustained only in cases that are free and clear from doubt and only where it appears with certainty that the law permits no recovery under the allegations pleaded.

790 A.2d 350 (Pa. Cmwlth. 2002) (internal citations omitted). In consideration of this standard, this court now analyzes AVEHA's two preliminary objections.

II. ANALYSIS

A. Plaintiffs' Failure to Join Necessary Parties

AVEHA claims the Bercots' *Complaint in re Declaratory Judgment* should be dismissed with prejudice because they have failed to join necessary parties such as the other homeowners in the relevant planned communities and members of AVEHA. Under the Declaratory Judgments Act, "[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration and no declaration shall prejudice the rights of persons not parties to the proceeding. . ." 42 Pa. C.S.A. §7540(a).

In certain circumstances, joinder in accordance with the Declaratory Judgments Act is not required. See Mid-Centre County Auth. v. Township of Boggs, 384 A.2d 1008, 1012 (Pa. Cmwlth. 1978) (holding joinder is not required when non-joined party's interest in litigation is indirect or incidental); Leonard v. Thornburgh, 467 A.2d 104, 105 (Pa. Cmwlth. 1983) (holding if one party is official designee of non-joined party, designee's involvement can be enough to satisfy Declaratory Judgments Act Requirement given parties' identical interests); City of Philadelphia v. Commonwealth of Pennsylvania, 838 A.2d 566, 568 (Pa. 2003) (holding joinder of parties indirectly affected by challenged legislation would make the judicial process "impractical" because of large number of citizens affected).

Here, no specific interest of the non-joined parties has been identified by either party to this litigation and any general interests those non-joined parties may have is indirectly affected by this case as in Mid-Centre County Auth. Furthermore, the Bercots represent the identical interests of other homeowners in Spring Lake and Horseshoe Lake that wish to have two separate associations. In addition, AVEHA represents the interests of those homeowners who would like to keep the present arrangement in place. Since the homeowners' identical interests are represented by both parties, their joinder is not necessary under Leonard. Because only 49 other

parties would have to be joined to this litigation, the rule set forth in City of Philadelphia is irrelevant given the dramatic difference in the number of parties to be potentially joined.

Despite AVEHA's claims of well-settled law in its favor, property owners are deemed indispensable parties to litigation only when their property rights are directly affected, not just indirectly related. See Fulton v. Bedford County Tax Claim Bureau, 942 A.2d 240 (Pa. Cmwlth. 2008). In Fulton, a purchaser of property at a judicial sale sought to intervene when the property owner moved to have the sale set aside because she had not been served with a Rule to Show Cause. Id. at 242. The court held it was abuse of discretion not to allow the purchaser at the judicial sale to intervene because as the "legal owner of the property," he was an indispensable party. Id. The court goes on to cite additional instances where Pennsylvania appellate courts have found "property owners are indispensable parties to lawsuits affecting the property rights."[2] Id. at 244. However, in each of the cases cited by the court, the property rights affected are physical ownership rights to the property at issue. Id. For example, in Columbia Gas Transmission Corp v. Diamond Fuel Co., the court held "the fee simple owner of the servient tenement [was] an indispensable party" not merely due to his ownership, but because "the right to the use and enjoyment of his property [would] be adversely affected by any litigation involving the easement." Columbia Gas Transmission Corp v. Diamond Fuel Co., 346 A.2d 788, 789 (Pa. 1975). See also Zerr v. Com., Dept. of Envtl. Res., Bureau of State Parks, 570 A.2d 132, 133-34 (Pa. Cmwlth. 1990) (holding government mineral rights were a "significant interest in the property which could be lost forever should Petitioners prevail on the merits," making the government an indispensable party); Biernacki v. Redevelopment Auth. Of City of Wilkes-Barre, 379 A.2d 1366, 1368 (Pa. Cmwlth. 1977) (holding "the owner of real estate is an indispensable party to proceedings seeking transfer of the title to the property to another and culminating in an order purportedly vesting title in another"); Posel v. Redevelopment Auth. Of City of Philadelphia, 456 A.2d 243, 246 (Pa. Cmwlth. 1963) (holding trial court's order directly inhibited performance of non-joined party's contract, so that party was indispensable).

The preceding cases cited by AVEHA are distinguishable from the present case in several ways. AVEHA argues the other unit members of Spring Lake and Horseshoe Lake must be joined to this litigation because their property rights will "unquestionably be affected" if the two subdivisions are classified as separated planned communities. Defendant's Preliminary Objections ¶21. Without specifying how the unit owners' rights will be affected, AVEHA further avers that if the court decides the Spring Lake unit owners are entitled to membership to their own association, independent

2 The court notes AVEHA has copied this string citation in their brief verbatim from Fulton, 942 A.2d at 244.

from Horseshoe Lake unit owners, then the rights of property owners in both subdivisions "would unquestionably be affected." Defendant's Preliminary Objections ¶22. Furthermore, AVEHA contends that if this court mandated reform of its internal structure in the absence of joinder of the Spring Lake and Horseshoe Lake unit owners, those property owners' rights "would unquestionably be affected." Defendant's Preliminary Objections ¶23. This court questions whether the property owners' rights in both subdivisions will be "unquestionably" affected. Unlike the cases referred to above, none of the homeowners in the Spring Lake or Horseshoe Lake communities are at risk of losing rights directly associated with the use of their property. There are no mineral rights, easements, or transfers of title at issue that would jeopardize any of the homeowners' rights to the use and ownership of their property. Therefore, this court cannot agree with AVEHA that the other homeowners of Spring Lake and Horseshoe Lake are necessary parties merely because they own property in these communities.

In Pennsylvania, "a party is indispensable where his rights are so connected with the claims of the litigants that no decree can be made between them without impairing such rights. Mechanicsburg Area School District v. Kline, 431 A.2d 953, 956 (Pa. 1981); see also Columbia Gas Transmission Corp. v. Diamond Fuel Company, 346 A.2d 788, 789 (Pa. 1975) (holding "an indispensable party is one whose rights are so *directly* connected with and affected by litigation that he must be a party of record to protect such rights, and his absence renders any order or decree of court null and void for want of jurisdiction") (emphasis added)). The Supreme Court of Pennsylvania has outlined four questions which must be answered to determine whether a party is indispensable:

> (1) Do absent parties have a right or interest related to the claim?
>
> (2) If so, what is the nature of that right or interest?
>
> (3) Is that right or interest essential to the merits of the issue?
>
> (4) Can justice be afforded without violating the due process rights of absent parties?

Id. In answering these four questions, the Court first held "the right of the other school districts [to a correct calculation of state subsidies] was related to the claim only insofar as the right of all the school districts originated from the Code and was identical in nature." Id. at 956-57. Addressing the second question, the Court held this codified right was "a vested right to receive the benefit of the use of correct process." Id. at 957. Answering the third question, the Court held that vested right was "not essential to the merits

of the issue of correct computation" because it was "not interlocked" with the computation at issue in the case. Id. at 957-58. Finally, the Court held this cause of action was based on a statutory right to correct computation and could therefore be litigated "without impairing the lawful rights of the other school districts." Id. at 959.

Here, neither party has alleged specifically which rights or interests would be affected by the outcome of this case that would deprive the non-joined homeowners in the two communities of due process. As distinguished above, the other homeowners' property rights to use and enjoyment of the land are not at issue in this case. In addition, Section 5102 of the UPCA indicates that Section 5301 of the same act, referred to by the Bercots as a grant of rights to the exclusive membership of the association, is not in fact retroactive or granted to the homeowners in this case. 68 Pa. C.S.A. §5102(b)-(b.1). Therefore, neither party has alleged any specific rights of the non-joined homeowners which would be affected by the outcome of this litigation. Any interests the non-joined homeowners would have in relation to the present claim are minimal and well represented by either party. Even if the Bercots are successful on the merits of the case, the non-joined homeowners will still be paying members of a homeowners' association, but will not be responsible for the costs and dues of another planned community. Since no interests or rights have been identified by either party, the Court cannot address the remaining three questions laid out in Mechanicsburg Area School District.

Under both the Declaratory Judgments Act and the Mechanicsburg Area School District analysis, this court finds the other homeowners of Spring Lake and Horseshoe Lake are not indispensable parties to this litigation. Therefore, AVEHA's First Preliminary Objection is OVERRULED.

B. Plaintiffs' Demand for Attorney's Fees

AVEHA's second preliminary objection claims the Bercots' request for attorneys' fees in the ad damnum clause of their Complaint fails to comply with Pennsylvania Rules of Civil Procedure 1028(a)(2) and 102(a)(4), and should therefore be stricken with prejudice.[3] Under the American Rule, "a litigant cannot recover counsel fees from an adverse party unless there is express statutory authorization, a clear agreement of the parties or some other established exception." Mosaica Academy Chart School v. Com. Dept. of Educ., 813 A.2d 813, 822 (Pa. 2002).

Supplemental relief to a declaratory judgment in statutorily authorized if it is awarded to enforce the judgment. 42 Pa. C.S.A. §7538(a).

3 The court notes that AVEHA has not challenged the Bercots request for cost enunciated in the same paragraph as their request for attorneys' fees. Therefore, the Bercots' requests for costs is unaffected by the decision on this preliminary objection. Furthermore, the Court notes that as of the date of this Opinion, the Bercots are unrepresented by counsel.

Under the Declaratory Judgments Act, "if an application for supplemental relief is deemed sufficient the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by a previously entered declaratory judgment or decree to show cause why further relief should not be granted." Id. In Mosaica Academy Chart School, the Supreme Court of Pennsylvania cited "limited circumstances" where attorneys' fees were awarded as supplemental relief under this statute. Id. at 824 (citing Kelmo Enterprises Inc. v. Commercial Union Insurance Company, 426 A.2d 680 (Pa. Super. 1981), which held the nature of a declaratory judgment action alone did not prevent awarding of attorneys' fees). However, the Court held such an exception was inapplicable because the attorneys' fees requested were not awarded "to enforce [a] previously entered declaratory judgment," but were merely "ancillary relief." Id. at 824 (distinguishing Mosaica Academy Charter School and Kelmo Enterprises). Therefore, the Court held that "the Declaratory Judgment Act does not expressly authorize the award of counsel fees and because the award of counsel fee was not implemented as supplemental relief to effectuate the declaratory judgment pursuant to [the Declaratory Judgments Act], the grant of attorneys' fees was improper." Id. at 824-25.

If attorneys' fees are deemed proper to effectuate the declaratory judgment sought in the present case, then the court may impose such supplemental relief under the Declaratory Judgment's Act. The American Rule does not require the statutory authorization be plead alongside the request for attorneys' fees, merely that there is "express statutory authorization" supporting that request.[4] Since no declaratory judgment has yet been awarded in this case and because the Bercots remain unrepresented as of the date of this Opinion, this court finds AVEHA's second preliminary objection is premature. This Court will not bar itself from awarding statutorily authorized attorneys' fees should they be necessary and proper to effectuate a declaratory judgment in the future.

Therefore, because the Declaratory Judgments Act authorizes the awarding of attorneys' fees to effectuate declaratory judgments and because the merits of this declaratory judgment action are still pending, AVEHA's second preliminary objection is OVERRULED.

CONCLUSION

Because neither party has alleged a right or interest of the non-joined homeowners which is not also represented by the parties to this case and which will be directly affected by the result of this litigation, the court finds the non-joined homeowners in Spring Lake and Horseshoe Lake

4 No agreement by the parties or exception to the American Rule has been presented or is applicable in this case.

are not indispensable parties to this litigation. Therefore, Defendant's first preliminary objection is OVERRULED.

Furthermore, because the Declaratory Judgments Act authorizes supplemental relief such as attorneys' fees when deemed proper and necessary to enforce a declaratory judgment, the court finds AVEHA's objection to the Bercots' request is premature, given the merits of the declaratory judgment in this case are undecided. Therefore, the Defendant second preliminary objection is OVERRULED.

ORDER OF COURT

AND NOW THIS 26th day of September 2016, upon consideration of Defendant's Preliminary Objections to Plaintiff's Complaint;

IT IS HEREBY ORDERED that the Defendant's Preliminary Objections are OVERRULED.

This Order is pursuant to the attached Opinion.

Pursuant to Pa.R.C.P. 236, the Prothonotary shall give written notice of the entry of this Order, including a copy of this Order, to each party, and shall note in the docket the giving of such notice and the time and manner thereof.