

Township of Saint Thomas v. St. Thomas Development

TOWNSHIP OF SAINT THOMAS, Plaintiff,
and FRANK M. STEARN, Plaintiff, Joining,
v. ST. THOMAS DEVELOPMENT, INC., Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Action for Declaratory Judgment, No. 2004-1374

Declaratory Judgments Act; Second Class Township Code; Municipal officer's eligibility to vote on proposed quarry and plant project

1. The Declaratory Judgments Act grants courts the authority to declare the rights, status and legal relations of a party or parties; the Act's purpose is to afford relief from uncertainty and insecurity with respect to such rights, status, and other legal relations.
2. The Act can be used only where there is a definite, concrete and non-hypothetical dispute which points to an invasion or threatened invasion of a party's legal rights and where competing claims are not merely academic, but contain the ripening seeds of a controversy where litigation appears unavoidable and the court's exercise of jurisdiction would terminate the controversy.
3. Where a developer seeking to build a quarry and plant within a township advises a member of the township board of supervisors of the developer's opinion based on case law that the supervisor is biased against the project and warns of litigation if the supervisor does not recuse from voting on project-related matters before the board, and where the supervisor's position is that he cannot, under the Second Class Township Code, be disqualified from voting on such matters solely because he expressed opinions during his election campaign against the project, there is a genuine issue of material fact as to whether the supervisor must recuse himself from voting in order to protect the developer's due process rights to have its project evaluated in a non-discriminatory manner.

Appearances:

John M. Lisko, Esq., *Counsel for Township of Saint Thomas*

John H. Broujos, Esq., *Counsel for Frank M. Stearn*

G. Bryan Salzmann, Esq., *Counsel for St. Thomas Development, Inc.*

OPINION

Herman, J., September 15, 2005

Introduction

Before the court are cross-motions in limine or in the alternative, cross-motions for summary judgment as to a complaint seeking relief under the Declaratory Judgments Act, 42 Pa.C.S.A. §§7531-7541. The plaintiff is the Township of Saint Thomas, a municipal corporation with an office in Franklin County. The

joining plaintiff is Frank M. Stearn, a resident and taxpayer of the Township and a member of the three-person Board of Supervisors for Saint Thomas Township. The defendant is St. Thomas Development, Inc., a business corporation which is principally located in Blue Bell, Pennsylvania.

Background

Matters of Record

On July 11, 2003, the defendant submitted a preliminary land development plan for an asphalt and concrete plant and a quarry to be located in Saint Thomas Township. As a private citizen and resident of the Township, Stearn publicly urged the Township Board of Supervisors not to approve the defendant's plant and quarry project. After a campaign which focused on opposition to the project, Stearn was elected to the Board of Supervisors in November 2003. The election results were challenged in the Court of Common Pleas, which issued a ruling on February 6, 2004 confirming Stearn's election to the Board. In the interim, the Board as it was then constituted approved the preliminary land development plan on November 19, 2003.

Stearn was sworn in as a member of the Board on or about February 13, 2004. The defendant's counsel sent a letter dated February 18, 2004 to the chairman of the Board, alleging Stearn is biased against the project and therefore unable to carry out his duty as a public official to examine all matters which come before the Board in an unprejudiced and non-discriminatory manner. Specifically, the letter states that Stearn is biased against the quarry based on the following facts: (1) Stearn campaigned on stopping the quarry project; (2) Stearn's campaign signs stated "NO QUARRY-STEARN FOR SUPERVISOR" which were paid for by the candidate; (3) Stearn entered the campaign on the issue of the quarry; (4) At a meeting on October 2, 2003 held at the Assembly of God Church, upon announcing his candidacy, Stearn stated that he did not believe that the Board of Supervisors was powerless to stop the quarry. He also stated that there was no reason for children to listen to blasting and that F.R.O.S.T. could change the outcome of the quarry [issue]; (5) Stearn is an active member of F.R.O.S.T., a citizens group created to stop the quarry; (6) Stearn appeared before the Tuscarora School Board with the president of F.R.O.S.T. to lobby the School Board to take an active stand against the quarry project; (7) Stearn has claimed that the Township Supervisors should be doing more to oppose the quarry; (8) Stearn requested the Board of Supervisors to deny the defendant's preliminary land development plan; (9) Stearn has made several other public statements clearly in opposition to the quarry.

The February 18, 2004 letter requested Stearn to recuse himself from voting and/or expressing opposition as to all matters before the Board connected with the project, or else "liability may attach and/or may render a vote on the matter void as a matter of law." It was the defendant's position that as a Township taxpayer and one of Stearn's constituents, it is entitled to have its project reviewed by a Board which can be impartial and objective, the same as any other taxpayer within the Township. After discussing the letter with the Township Solicitor, Stearn decided to temporarily refrain from participating as a Board member on any matters connected with the project in order to avoid exposing the Township to potential legal and financial liability. He has maintained this position of non-participation up through the present time.¹

The Township filed a complaint seeking declaratory relief on May 26, 2004, asking the court to decide whether Stearn is legally entitled to vote on matters before the Board which relate, either directly or indirectly, to the defendant's quarry project, or whether he must recuse himself from such matters because of the defendant's allegation that he is biased against the project. Stearn joined in the complaint. The defendant filed an answer to the complaint containing new matter and the plaintiffs replied to the new matter. The court held a pretrial conference on May 26, 2005 and set deadlines for the filing of pretrial motions. The defendant filed this motion and Stearn followed with his own cross-motion. Counsel then submitted written argument.²

Declaratory Judgments

Under the Declaratory Judgments Act, "[c]ourts of record, within their respective jurisdictions, shall have the power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed..." 42 Pa.C.S.A. §7532. "Any person...whose rights, status or other legal relations are affected by a statute...may have determined any question of construction or validity arising under the ...statute...and obtain a declaration of rights, status, or other legal relations thereunder." §7533. The purpose of the Act is "to settle and afford relief from uncertainty and insecurity with respect to rights,

status, and other legal relations, and is to be liberally construed and administered." §7541(a); §7536.

The party seeking declaratory relief must demonstrate that an actual controversy exists between the parties which promises imminent and inevitable litigation. The Act cannot be used to determine rights in anticipation of events which might never occur, or to obtain an advisory opinion which may prove to be purely academic. Rather, there must be a definite and concrete dispute which points to an invasion or threatened invasion of a party's legal rights. Bromwell v. Michigan Mutual Insurance Co., 716 A.2d 667 (Pa.Super. 1998); Gulnac by Gulnac v. South Butler School District, 587 A.2d 699 (Pa. 1991). Sufficient grounds for a declaratory judgment action exist if the parties' competing claims, while not yet constituting a full-fledged battle, contain the ripening seeds of a controversy where litigation appears unavoidable and the court's exercise of jurisdiction would effectively terminate the controversy. Ronald H. Clark, Inc. v. Township of Hamilton, 562 A.2d 965 (Pa.Cmwlt. 1989); Barbieri v. Shapp, 368 A.2d 721 (Pa. 1977).

Discussion

The defendant argues the court must dismiss the complaint because there is no actual controversy pending which requires adjudication, nor is there imminent and inevitable litigation between the parties. According to the defendant, the sole impetus for filing the complaint was the February 18, 2004 letter which merely requested Stearn to recuse himself: "Even though the request letter acknowledges the potential for litigation, this potential does not rise to the level of an imminent or inevitable justiciable controversy." This is so, the defendant maintains, because Stearn made a wholly personal, voluntary decision to abstain from voting, and the result so far has been the absence of any legal action taken against either Stearn or the Township.

The defendant contends that any controversy is contingent upon events which might never come to pass. For example, if Stearn continues to abstain and the other two supervisors approve the project, there will be no litigation about his alleged bias because his view of the project would then be moot. Similarly, if he ceases to abstain and does vote against the project, but is out-voted by the other Board members, there will be no litigation. Finally, if he approves the project and is joined by at least one other Board member, there will likewise be no litigation. According to the defendant, this state of affairs indicates that there is as yet no actual case or controversy and the plaintiffs are simply asking the court to address a purely speculative scenario.

In its February 18, 2004 letter to the Township, the defendant cited cases which hold that a municipal official must avoid the appearance of impropriety by disqualifying himself from voting on matters in which he has a personal and/or pecuniary interest, or about which he has demonstrated bias or prejudice. These well-established concepts have since been summarized as follows:

As a general rule, a municipal officer should disqualify herself from any proceeding in which she has an immediate or direct personal or pecuniary interest...The Court recognizes that due process requires a local governing body in the performance of its quasi-judicial functions to avoid even the appearance of bias or impropriety. A showing of actual bias is unnecessary in order to assert a cognizable due process claim; the mere potential for bias or the appearance of non-objectivity may be sufficient to constitute a violation of that right...While an appearance of non-objectivity is sufficient to trigger judicial scrutiny, the significant remedy of invalidation often depends on something more tangible...Before it can be said that a judge [or ZHB member] should have recused himself, the record must demonstrate bias, prejudice, capricious disbelief or prejudgment...

Christman v. Zoning Hearing Board of the Township of Windsor, 854 A.2d 629, 633-634 (Pa.Cmwlt., July 15, 2004)(citations omitted). The plaintiffs agree with this recitation of the case law, but also cite to the Second Class Township Code, 53 P.S. §65603 as amended on April 2, 2002 which provides: "A member of the board [of Township Supervisors] shall not be disqualified from voting on any issue before the board solely because the member has previously expressed an opinion on the issue in either an official or unofficial capacity." The defendant, in turn, has responded by contending that §65603 does not protect Stearn from having to recuse because he has expressed far more than a mere opinion in opposing the quarry; he was a vocal member of F.R.O.S.T., accepting donations from that organization and contributing to it, and he actively participated in a federal lawsuit against the defendant which was dismissed in April 2005 but is now on appeal. The defendant also asserts that Stearn is biased against the quarry because he and his wife had an interest in purchasing the defendant's property before the defendant bought it.

The defendant's argument is largely premised on the assertion that Stearn's decision to abstain was not the result of duress from the threat of litigation against either himself or the Township, but was a purely personal and voluntary decision. We find this to be an unpersuasive argument and essentially a red herring regarding whether this matter is an appropriate one for the court's exercise of jurisdiction under

the Act. In reaching this conclusion, we have kept in mind the standard which governs motions for summary judgment:

After the relevant pleadings are closed...but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa.R.C.P. 1035.2. The court must examine the entire record in order to ascertain whether a question of material fact exists concerning an element of the non-moving party's claim or defense, or whether there is no genuine issue of material fact, making the moving party entitled to judgment as a matter of law. Ertel v. Patriot-News Co., 674 A.2d 1038 (Pa. 1996). The record is viewed in the light most favorable to the non-moving party, with the court granting that party the benefit of all reasonable inferences and resolving all doubt in the non-moving party's favor. Lewis v. Philadelphia Newspapers, Inc., 833 A.2d 185 (Pa.Super. 2003).

We find the record as it currently stands shows that there is, at the very least, a genuine issue of material fact as to whether Stearn is biased, prejudiced, or harbors a capricious disbelief or prejudgment against the defendant's project such that his recusal from voting on all quarry-related matters is necessary in order to protect the defendant's due process rights. Christman, supra. A justiciable controversy exists concerning whether Stearn, a democratically elected member of the Township Board of Supervisors, is disqualified from voting on all quarry-related matters before the Board, or whether his vote would be, in the defendant's words, void as a matter of law.

According to the plaintiffs, the Board must soon vote on whether to approve the final land development plan. Stearn's continued abstention would impede the Board's ability to vote because without a third member, any vote could wind up being a 1-1 decision. Such a result would in essence constitute no decision, leaving the project's status in limbo. This would deprive the Township and its constituents of the right to a full Board, and indeed this has already occurred. Several votes on quarry-related issues have arisen since February 18, 2004. For example, the Board has voted on the approval of a land subdivision for a portion of the defendant's land to be sold to adjoining landowners. Stearn did not vote on or participate in that decision. Also, once the Department of Environmental Protection issues the defendant a final permit, the Board will have to decide whether to finally approve the project. This issue is therefore not simply a hypothetical or academic one.³

For the foregoing reasons, this is precisely the kind of dispute contemplated by the Declaratory Judgments Act. The court's exercise of jurisdiction will put to rest any uncertainty about Stearn's status. It will also provide clarity about whether the defendant's right to have its project evaluated in an impartial manner will be protected if Stearn fully participates in Board business. Barbieri, supra; Snider v. Shapp, 405 A.2d 602 (Pa.Cmwlt. 1979); Widoff v. Disciplinary Board of the Supreme Court of Pennsylvania, 420 A.2d 41 (Pa.Cmwlt. 1980); §§7532 and 7533.

The court must now proceed to an evidentiary hearing to garner facts about the grounds for Stearn's position on the quarry, including the tenor of his public statements, both oral and written, about the defendant and the entire project. This inquiry is authorized under §7539(a) of the Act: "Relief may be granted under this subchapter notwithstanding the fact that the purpose or effect of the proceeding, in whole or in part, is to resolve or determine a question of fact." The court ultimately must decide whether Stearn's views exceed the bounds of mere "opinion" as provided for in §65603 of the Second Class Township Code, or whether they demonstrate a fixed prejudice which is impervious to contrary argument, rendering him unable to consider the defendant's project in a completely objective and impartial manner. Christman, supra.

We have also reviewed Stearn's cross-motion in limine/motion for summary judgment, in which he argues that he is entitled to an immediate declaration from the court that he is not biased against the defendant or its project based on the current record. We decline to grant this motion for the same reason that we decline to grant the defendant's motion. There is both a factual and legal question as to whether Stearn is irredeemably biased against the defendant and the quarry project, thereby disqualifying him from voting on the matter. Consequently, summary judgment in Stearn's favor is inappropriate.

ORDER OF COURT

Now this 15th day of September 2005, upon review and consideration of the cross-motions in limine/motions for summary judgment, the answers thereto, and the parties' written arguments, the court hereby denies the motions.

¹Although the letter does not overtly threaten Stearn himself with litigation, that is one fair interpretation of its contents.

²The Township is represented by its Solicitor, John M. Lisko, Esquire. Frank Stearn has retained John H. Broujos, Esquire, to represent him. The defendant St. Thomas Development, Inc. is represented by G. Bryan Salzmann, Esquire.

³In an effort to buttress its contention that there is no justiciable controversy, the defendant argues (though obliquely) that since the Township has no zoning ordinance, the quarry is a permitted use and therefore its final approval by the Board is a foregone conclusion. This argument strikes the court as somewhat odd. If the defendant is implying that the quarry's approval is essentially a fait accompli, the court wonders why the defendant believed it was necessary to send the February 18, 2004 letter.