

ORIGINAL

IN THE SUPREME COURT OF OHIO
CASE NO.: 13-1923

Appeal from the Court of Appeals
Eleventh Appellate District
Portage County, Ohio
Case No. 2012 PA 00055

RICHARD A. WILSON, TRUSTEE,

Plaintiff

v.

WILLIAM BELJON AND BELJON ONE, LLC,

Plaintiffs/Appellants

v.

CITY OF AURORA

Defendant/Appellee

**DEFENDANT/APPELLEE CITY OF AURORA'S
MEMORANDUM IN OPPOSITION TO JURISDICTION**

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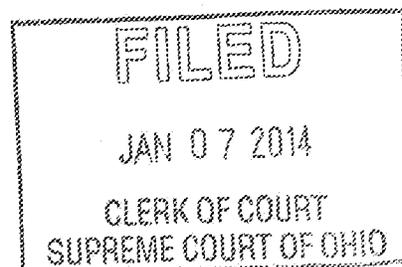
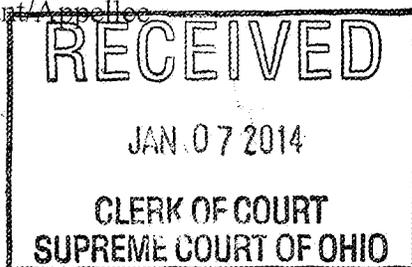


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I. THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION

This appeal does not present an issue of public or great general interest. Appellants William Beljon and Beljon One LLC (collectively "Beljon One") simply failed to oppose the evidence the City used to support its motion for summary judgment that confirmed its long-standing prescriptive easement over the subject public road. After a magistrate recommended granting summary judgment, a trial court judge granted summary judgment, and then a unanimous panel of the Eleventh District Court of Appeals affirmed that decision, Beljon One comes before this Court seeking an additional review of the summary judgment ruling. This Court must decline jurisdiction.

Beljon One's underlying claim is predicated upon the assertion that the City of Aurora has no right to maintain Pioneer Trail Road in its present location, despite the road being used by the public for more than 100 years. Beljon One wants to "revoke" the use of this well-established public road despite having no legitimate claim to it and the use even predated Beljon One's ownership of the at-issue land by decades. As all five of the previous decision makers held (the magistrate, the trial court judge and the three-judge appellate panel), Beljon One had no legal right or authority to interfere with this public road because Aurora has obtained an indefeasible right to an easement for the public's travel over Pioneer Trail through prescriptive easement.

While Beljon One makes vague references to general principles of Ohio law, these unexplained references do not articulate an issue of public or great general interest. Beljon One's first proposition of law merely states that cities have a duty "to provide for the welfare and general good of its citizens" and to allow landowners their "legal rights of ownership in their lands." This vague proposition presents a thin layer to obscure the purely factual nature of this appeal. Beljon One simply theorizes that the lower courts relied on "questionable evidence" or

"speculative evidence" in making its rulings. (Memo. in Supp. of Juris. at 3.) But, even if that were true -- which it is not -- that type of re-review of the record is not the role of this Court. Moreover, it is not true, as the Eleventh District held that "During the entire summary judgment proceeding at the trial level, the Beljon defendants never presented a countering affidavit" or evidence to rebut summary judgment. (Opinion at ¶ 64.)

Beljon One's case is entirely dependent on these specific facts and only has interest to the present parties. But, this Court's role as a court of last resort "is not to serve as an additional court of appeals on review." *State v. Bartrum*, 121 Ohio St.3d 148, 2009-Ohio-355, 902 N.E.2d 961 at ¶31. Moreover, Beljon One failed to provide any opposition to the evidence the City used to support summary judgment in its favor. In the Eleventh District's words, Beljon One "failed to present any evidentiary materials that created a factual dispute as to any element of that claim." (Opinion at ¶ 63.)

Beljon One does not show an overarching, significant legal issue that broadly affects the residents of the state or the civil justice system. Section 2(B)(2)(e) of Article IV of the Ohio Constitution dictates that the Supreme Court of Ohio's discretionary jurisdiction is reserved for "cases of public or great general interest." Cases presenting questions and issues of public or great general interest are to be distinguished from cases where the outcome is primarily of interest to the parties in a particular piece of litigation. *Williamson v. Rubich*, 171 Ohio St. 253, 254, 168 N.E.2d 876 (1960). This Appeal unequivocally falls into the latter category of cases referenced in *Williamson*. This Court's discretionary jurisdiction is reserved for cases addressing areas of the law that are unsettled, not to apply settled law to the facts of any particular case. See *Baughman v. State Farm Mutual Automobile Ins. Co.*, 88 Ohio St. 3d 480, 492, 727 N.E.2d 1265

(2000) (Cook, J., concur). Beljon One's arguments merely suggest a narrow factual dispute among the parties that would be inappropriate for review.

This Court must decline jurisdiction.

II. STATEMENT OF THE CASE AND FACTS

A. Introduction and Background

The Eleventh District provided an adequate statement of the facts, which are reproduced here for this Court's convenience:

{¶ 2} The disputed land is presently located under a 500 foot stretch of Pioneer Trail Road, a small thoroughfare which runs east-to-west through the City of Aurora and connects two major highways. The disputed span of roadway has existed in some form since prior to 1927, and has been used by the public throughout its existence. The road was initially paved at some point in the 1960's, and has remained in that state to the present.

{¶ 3} Prior to the incorporation of the City of Aurora, the disputed property was located in Lot 33 of Aurora Township. During the early 1900's, the property was part of a larger tract owned by E.K. Blauch. At some point in the 1920's, Blauch sold his tract to the Aurora Land Company. In 1927, in attempting to develop the entire tract, the land company submitted a subdivision plat to the Portage County Board of Commissioners. The subdivision plan divided the "Blauch" tract into various sublots, and also provided for creation of a new eighty-foot-wide right-of-way which would bisect the development. This planned right-of way was designated on the plan as "Pioneer Trail" road. However, it was not situated on the subdivision map in the same location as the actual roadway already in use. Instead, the planned right-of-way was located south of the existing road.

{¶ 4} The county commissioners approved the subdivision plat, but the Aurora Land Company never went forward with the development. Ultimately, the Blauch family re-acquired the entire tract in 1934 through a Sheriff's sale. Over the ensuing decades, the tract was used primarily for agricultural purposes. Nevertheless, the tract was still officially divided into the sublots, and there were certain restrictive covenants which ran with the land.

{¶ 5} In March 1946, the Blauch family conveyed its interest in the entire tract of land to Clyde and Ruth Curtis. Three years later, the Curtises then sold the tract to Jon and Eleanor Beljon, the parents of William Beljon, appellant, and his siblings. Through the years of their ownership, Jon and Eleanor became aware of the original subdivision plan of the Aurora Land Company, and of the planned alternative roadway that would have gone through the development. The Beljons were also aware that the pre-existing Pioneer Trail Road was not on the same area of land which had been designated for the planned right-of-way. As a result, the

Beljons told their children that the public's use of the existing road was by the family's permission, and that they had the ability to revoke the use at any time. Furthermore, at some point in the 1960's, Jon placed signs near the road indicating that the existing pavement was a private driveway.

{¶ 6} Through the years, certain problems developed as a result of the public's continuing use of the paved roadway. The majority of the problems were caused by a curve located within the 500 foot stretch of road. At one juncture, the city decided that it would be prudent to erect "caution" signs near the curve as a means of decreasing the number of accidents at that site. Whenever discussions were had as to the problems with the paved road, some city officials would make statements supporting the Beljons' position that the land under the disputed roadway did not belong to the city. In 1993, for example, the city law director stated in a written memorandum that if the city wanted to improve the existing road, it would be necessary to appropriate the underlying property.

{¶ 7} In 2002, the City of Aurora hired a private company to conduct a survey of the area surrounding the disputed span of Pioneer Trail Road. The results of the survey confirmed that the existing paved road did not coincide with the planned right-of-way on the 1927 subdivision plat. Specifically, the survey showed that the disputed stretch of road ran through the southern portions of sublots 318 through 322. Moreover, since the disputed stretch lay north of where the planned right-of-way was meant to be built, four sublots which were intended to abut the southern edge of the right-of-way, 381 through 384, did not directly abut the existing road.

{¶ 8} While all of the surrounding property was held by Jon and Eleanor Beljon, the fact that the four sublots did not abut the existing paved roadway did not cause any problems regarding the actual use of the land. However, in July 2002, Eleanor began to convey the sublots to her children. First, she transferred sublots 320 and 322 to William Beljon. Second, she transferred subplot 383 to Robert Beljon. Finally, she transferred sublots 318, 319, 321, 381, 382, and 384 to three of her daughters and two of her sons.

{¶ 9} Approximately two years following these transfers, the five Beljon siblings formed Beljon One, LLC, appellant, and conveyed their respective interests in the six cited sublots to that entity. William Beljon, the second appellant, has served as the president of Beljon One since its inception.

{¶ 10} In July 2008, Robert Beljon attempted to transfer his interest in subplot 383 to his brother, William Beljon. A short time later, however, Robert Beljon filed for federal bankruptcy. Richard A. Wilson was appointed trustee of Robert's assets, and this led to the nullification of the transfer of ownership of the subplot. Upon regaining control of the property, Trustee Wilson discovered that subplot 383 was landlocked due to the location of the existing Pioneer Trail Road. Accordingly, Trustee Wilson initiated the underlying civil action against William Beljon and the City of Aurora. As the case went forward and discovery was had, Beljon One, LLC was added as a party defendant.

{¶ 11} In its complaint, Trustee Wilson alleged that it was entitled to have access to the existing roadway in order to protect the fair market value of subplot 383. Thus, he sought from the two Beljon defendants an easement by necessity

across sublots 319 and 320. As to the City of Aurora, the complaint alleged that the lack of access resulted in an improper taking of subplot 383. In his amended complaint, the trustee requested a writ of mandamus to compel the city to institute appropriation proceedings

{¶ 12} In conjunction with its answer, the City of Aurora asserted a counterclaim against Trustee Wilson and cross-claims against the Beljon defendants. In relation to the existing Pioneer Trail Road, the City of Aurora sought a declaratory judgment that it was entitled to continue to use the roadway as a public street under theories of adverse possession or prescriptive easement. The Beljon defendants also raised counterclaims and cross-claims in their answer. Under their declaratory judgment claim, they sought a determination that the city's prior use of the land for the existing road had always been by permission, and that they had the right to withdraw that permission and required the city to build the right-of-way contemplated under the subdivision plat. They also raised claims sounding in unconstitutional taking of property, trespass, and nuisance.

{¶ 13} After the parties engaged in lengthy discovery, the City of Aurora moved for summary judgment on all of its pending claims and all claims asserted against it. As to its claims of adverse possession and prescriptive easement, the city maintained that its use of the disputed stretch of Pioneer Trail Road for a public thoroughfare has been ongoing continuously since 1900. In support, the city attached to its motion an affidavit of the surveyor who had conducted the 2002 investigation concerning the location of the existing roadway in comparison to the planned right-of-way in the subdivision plat. In light of the affidavit, the city asserted that its right of ownership or ability to use the land under the roadway had vested in 1921. In addition, in regard to the Beljon defendants' claims against it, the city separately argued that the claims were barred either under the governing statutes of limitations or the terms of a settlement which had been reached in a prior lawsuit between Beljon One and the city.

{¶ 14} In responding to the summary judgment motion, the Beljon defendants did not attempt to refute the factual assertions in the surveyor's affidavit. Instead, they only contended that the facts of the case were too convoluted to warrant summary judgment on any of the pending claims.

{¶ 15} The city's summary judgment motion was initially reviewed by a trial court magistrate. After hearing oral arguments from all four parties, the magistrate rendered a decision in which he recommended that the city be granted final judgment on all of its pending claims and all claims asserted against it. As to its two claims against the Beljon defendants, the magistrate concluded that the city's evidentiary materials were sufficient to satisfy all elements of adverse possession and prescriptive easement. Based upon this, the magistrate further held that, since the Beljon family did not acquire its interest in the sublots until 1949, the city's use of the roadway property was not derived from the family's permission. Regarding the Beljon defendants' other claims against the city, the magistrate accepted the city's "settlement" and "statutes of limitations" arguments. Last, the magistrate concluded that Trustee Wilson was not entitled to a writ of mandamus to compel the city to initiate an appropriation action as to subplot 383 because the city did not have any legal duty to do so.

{¶ 16} After Trustee Wilson and the Beljon defendants filed separate objections to the magistrate's summary judgment analysis, the trial court released a judgment in which it held that the city was not entitled to prevail on its adverse possession claim. As to that claim, the trial court found that the city's evidentiary materials did not establish that its use of the existing road had been exclusive during the twenty-one year period. However, since "exclusive use" was not an element for a prescriptive easement, the trial court upheld the summary judgment determination on that claim. Furthermore, the trial court adopted the magistrate's analysis as to all pending claims against the city. ...

B. The Eleventh District unanimously affirmed the trial court's order that the City had an easement

In relevant part, Beljon challenged the trial court's order granting summary judgment on appeal in the intermediate appellate court.¹ The issue on summary judgment was whether the trial court properly granted summary judgment in the City's favor, confirming a prescriptive easement. The Eleventh District affirmed the lower court's order, explaining that the Beljon Plaintiffs "in responding to the city's summary judgment motion, [] failed to present any evidentiary materials that created a factual dispute as to any element of that claim. Therefore, since the City of Aurora was entitled to prevail on its prescriptive easement claim as a matter of law, the granting of summary judgment was legally proper." (Opinion at ¶ 63.)

III. LAW AND ARGUMENT

Proposition of Law No. I: A municipal corporation is obligated as a matter of duty to provide for the welfare and general good of its citizens and the traveling public a safe roadway in compliance with existing engineering standards and to afford the owners of abutting property the full and complete enjoyment of their legal rights of ownership in their lands.

Proposition of Law No. II: Equitable relief is warranted to landowners abutting a platted right of way and summary judgment based upon speculation, which disregards the equities of the parties, is unwarranted.

¹ There was also an issue regarding adverse possession that the Eleventh District determined it did not have subject matter jurisdiction over. (Opinion at ¶64.)

Counter Proposition of Law: The Eleventh District properly granted summary judgment in favor of the City when Beljon One did not (and could not) provide Civ.R. 56 evidence to rebut the City's properly supported motion.

A. The Eleventh District properly granted summary judgment in favor of the City and granted it an easement for public use of land that has been used as a public road for more than 100 years.

Beljon One's first proposition of law merely states that cities have a duty "to provide for the welfare and general good of its citizens" and to allow landowners their "legal rights of ownership in their lands." The magistrate, the trial court, and the appellate panel all found that the elements of prescriptive easement were met. In its First Proposition, Beljon One does not challenge this in any specific way.

Candidly, Beljon One's First Proposition of Law does not present a legal proposition for consideration. That is evident because Beljon One does not make a defined legal argument of any kind -- that is, it does not argue the court applied the wrong law, or misapplied existing case law, or the law as a broad matter should be different. Rather, Beljon One contends that general notions of "equity" (Memo. in Supp. of Juris. at 11) or the self-interested claim the decision was not "fair," compels the conclusion the lower courts made a mistake in applying the elements of prescriptive easement.

Setting aside that Beljon One's First Proposition presents no defined legal issue, the lower court's determination was factually and legally proper. Indeed, the only issue that Beljon One was challenging below was a narrow one involving only facts, not a legal issue. The law is long standing and established. The Eleventh District succinctly stated its conclusion after reviewing the record:

[I]n responding to the city's summary judgment motion, [Beljon One] failed to present any evidentiary materials that created a factual dispute as to any element of that claim. Therefore, since the City of Aurora was entitled to prevail on its prescriptive easement claim as a matter of law, the granting of summary judgment

was legally proper. The Beljon defendants' first two assignments of error are without merit.

(Opinion at ¶63.)

Beljon One's Second Proposition even more blatantly seeks to have this Court re-review the record, although provides no valid reason to do so. Claiming that the lower courts all made the same factual error, Beljon One argues that there are "substantial evidentiary materials" that the use of this roadway was permissive. (Memo. In Supp. Of Juris. at 11.) What Beljon One failed to mention is that these self-serving claims by Beljon One came decades after the prescriptive easement had been established, making it irrelevant to the issue at hand. (See Opinion at ¶56, noting "Pursuant to the uncontested averments in Courtney's affidavit, the city's prescriptive easement was fully established by 1921. As a result, the Beljon defendants' evidentiary items as to the inconsistent statements of city officials 60 or 70 years later were rendered irrelevant.") Even if Beljon One's contention was correct, that would still not elevate this case to one of great general or public interest suitable for review. As the four previous decision-makers held, the City's evidence adequately supported the prescriptive easement. Beljon One in the lower court failed to present any evidence to contest the City's evidence on whether there was a prescriptive easement. This case does not present an issue of public or great general interest for review.

IV. CONCLUSION

This Court must deny jurisdiction.

Respectfully submitted,


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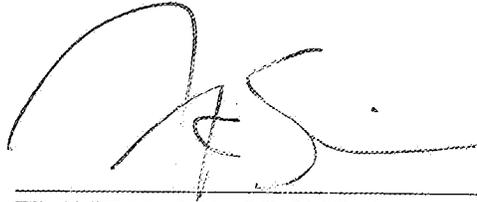
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CERTIFICATE OF SERVICE

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