

IN THE SUPREME COURT OF OHIO

CITY OF CONNEAUT)	CASE NO. 2015-1326
Plaintiff-Appellant/)	
Cross-Appellee)	
vs.)	On Appeal from the Ashtabula County
)	Court of Appeals, 11 th Appellate District
DARLENE F. BUCK, et al.)	CASE NO. 14-A-53
Defendants-Appellees/)	
Cross Appellants)	

**MEMORANDUM IN OPPOSITION OF JURISDICTION
OF THE CITY OF CONNEAUT**

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**EXPLANATION OF WHY THE ISSUES RAISED IN THIS APPEAL ARE NOT
OF PUBLIC OR GREAT GENERAL INTEREST**

The Ohio Constitution provides that the Ohio Supreme Court has discretionary jurisdiction over certain matters.

The Constitution states in relevant part that the Supreme Court has appellate jurisdiction “(e) In cases of public or great general interest, the supreme court may direct any court of appeals to certify its record to the supreme court, and may review and affirm, modify, or reverse the judgment of the court of appeals...” Ohio Const. Article IV, Section 2. The Supreme Court may also hear cases arising under the Ohio or United States Constitution that present substantial constitutional questions. Finally, the Ohio Supreme Court may hear cases where there have been conflicting opinions regarding the same issue from the appellate courts.

In deciding whether a case is of public or great general interest, the Court must decide whether the case actually presents a question of public or great general interest as opposed to a question of interest that rests solely with the parties involved in the case. Williamson v. Rubich, 171 Ohio St. 253, 168 N.E.2d 876 (1960).

The present case does not concern matters that are of public or great general interest. The Peaspanens ultimately appeal to this Court in hopes of obtaining a judgment for attorney’s fees that they expended at the trial court level. The Peaspanens seek attorney’s fees from the City of Conneaut pursuant to R.C. 2323.51 alleging that the City engaged in frivolous conduct by filing a declaratory action suit against them and other parties. However, the Eleventh District Court of Appeals properly concluded that the City did not engage in frivolous conduct and that the Peaspanens were not entitled to attorney’s fees.

The within action is being appealed by the Peaspanens solely as an attempt to collect attorney's fees from the City. In their memorandum in support of jurisdiction, the Peaspanens continuously refer to their personal financial hardship. The Peaspanens complain of the mortgage on their home, credit card bills and attorney's fees. However, these issues solely affect the Peaspanens, and do not constitute legal issues of public or great general interest.

This Court should also decline to accept jurisdiction over this case because it does not present any significant constitutional questions. The Peaspanens make generalized statements in their memorandum in support of jurisdiction referring to alleged violations of their due process rights, equal protection rights, and the Bill of Rights. However, no meaningful discussion of these constitutional rights is presented by the Peaspanens in their memorandum. Furthermore, it does not appear that the Peaspanens challenge the constitutionality of R.C. 2323.51.

In their memorandum the Peaspanens further allege the Eleventh District's holding is "in conflict" with the other appellate districts in the State of Ohio. The Peaspanens claim that the appellate court used the wrong standard of review in determining whether the City engaged in frivolous conduct under R.C. 2323.51. The Peaspanens claim that the appellate court incorrectly held that R.C. 2323.51 cases involve mixed questions of law and fact; and thus, a mixed standard of review.

However, research conducted on behalf of the City shows that quite the opposite is true. Ohio appellate districts including the first, second, fifth, eighth, tenth, eleventh, and twelfth all agree that R.C. 2323.51 will often require a mixed standard of review. See Riston v. Butler, 2002-Ohio-2308, ¶ 22, 149 Ohio App. 3d 390, 397, 777 N.E.2d

857, 863; Wiltberger v. Davis, 110 Ohio App. 3d 46, 51, 673 N.E.2d 628, 631 (1996); Daniels v. Daniels, 2015-Ohio-1674, ¶ 26; Namenyi v. Tomasello, 2014-Ohio-4509, ¶ 19; Dudley v. Dudley, 2011-Ohio-5870, ¶ 9, 196 Ohio App. 3d 671, 674, 964 N.E.2d 1119, 1122; Clemens v. Detail At Retail, Inc., 2006-Ohio-695, ¶ 14; Lozada v. Lozada, 2014-Ohio-5700, ¶ 13.

R.C. 2323.51 is well settled law in this State and the City is unaware of any drastic split amongst the Ohio appellate districts that would warrant this Court accepting jurisdiction over this matter.

The City of Conneaut respectfully requests that this Court decline to accept the within appeal because this case does not concern matters of public or great general interest, it does not present a significant constitutional question and the law at issue in this case is well settled in Ohio.

STATEMENT OF THE CASE

This case stems from an ongoing dispute between neighbors in the City of Conneaut, Ashtabula County, Ohio. The Conneaut Police Department received numerous calls and complaints between the neighbors; mainly the Peaspanens and the Muellers. The complaints resulted from the neighbors arguing over who owned a piece of land between their properties. The Peaspanens called the police asking that their neighbors be charged with trespassing. The Conneaut Police Department did not know what to do because the feuding neighbors each asserted ownership over this piece of property and demanded that the City pursue criminal charges for trespassing.

Initially, the City of Conneaut thought that this was merely a private, neighborly dispute. However, research showed that an official plat map recorded at the Ashtabula

County Recorder's Office indicated that the disputed property had been dedicated to the City at one point. However, the Peaspanens argued that they owed this property and that it was not a public street.

Based upon this information, the City, through its law department, filed a declaratory action to determine ownership over this disputed property. In their answer, the Peaspanens argued that the property was never accepted by the City and thus, they owned the property by way of adverse possession. Subsequent pleadings were filed as well by the parties.

Ultimately, the trial court granted the Peaspanens' motion for summary judgment and held that the Peaspanens had acquired the property through adverse possession. The Peaspanens subsequently filed a motion for attorney's fees against the City premised on R.C. 2323.51. They claimed that the City filed the declaratory action frivolously because the City knew that the property dispute was purely a private matter between neighbors. The trial court granted the motion for attorney's fees, claiming that the City failed to conduct proper research prior to filing the declaratory action and thus, the City acted frivolously.

The City then filed an appeal with the Eleventh District Court of Appeals.

The appellate court properly overturned the trial court's decision in part and held that the City did not act frivolously and thus, attorney's fees were not warranted pursuant to R.C. 2323.51. The appellate court noted that the record clearly indicates that the City filed the declaratory action based on an official plat map that showed that the street was dedicated to the City at one point. Additionally, the City filed the action in order to respond to the trespassing complaints being alleged by the neighbors.

The appellate court correctly noted that “here, a declaration of ownership, in light of the underlying private ownership dispute as well as the evidence that the street was dedicated to the City, is both reasonable and prudent in this case.” Conneaut v. Buck, 2015-Ohio-2593, ¶ 38. The appellate court ultimately held that the City did not act frivolously given the circumstances and that the Peaspanens were not entitled to attorney's fees pursuant to R.C. 2323.51.

The Peaspanens then appealed to this Ohio Supreme Court alleging two propositions of law.

Response to Proposition of Law No. 1

The Peaspanens claim that that appellate court improperly bifurcated its standard of review regarding mixed issues of law and fact in rendering its decision. According to the Peaspanens, the appellate court should have evaluated the case under the “abuse of discretion” standard. Furthermore, the Peaspanens allege that the court of appeals altered the findings of fact to reach its holding.

At the outset, it should be noted that the appellate court never altered any facts to reach its holding as the Peaspanens improperly suggest. In reading the appellate court’s opinion, it is clear that the court carefully considered the record as they cited to testimony that was given, evidence that was presented and to the parties’ pleadings. Therefore, the assertion that the appellate court altered factual findings is simply untrue.

As the court of appeals correctly held, “no single standard of review applies in R.C. 2323.51 cases. The inquiry necessarily must be one of mixed questions of fact and law.” Wiltberger v. Davis, 110 Ohio App. 3d 46, 51, 673 N.E.2d 628, 631 (1996). The criteria laid out in the statute defining “frivolous conduct” contains mixed questions

of law and fact. Therefore, it stands to reason that an appellate court's review of a claim under the statute would also involve a mixed standard of review.

The statute defines frivolous conduct as conduct that is malicious and aimed at harassing another, that is not warranted under existing law or that consists of allegations or factual contentions that lack evidentiary support and would not likely have evidentiary support after a reasonable opportunity for further investigation. R.C. 2323.51(A)(2).

Thus, as the appellate court properly noted, "the question of what constitutes frivolous conduct may be either a factual determination, e.g., whether a party engages in conduct to harass or maliciously injure another party, or a legal determination, e.g., whether a claim is warranted under existing law." Conneaut at ¶ 32; Curtis v. Hard Knox Energy, Inc., 2005-Ohio-6421, ¶ 15. The appellate court properly stated that factual questions would be reviewed under the abuse of discretion standard and legal questions would be reviewed de novo. Conneaut at ¶ 32.

In their proposition of law, the Peaspanans argue that the proper standard of review in R.C. 2323.51 cases is "abuse of discretion." In this case, the appellate court ultimately held that "the trial court abused its discretion when it found the City acted frivolously, pursuant to R.C. 2323.51, when it filed the underlying declaratory judgment action." Conneaut at ¶ 40.

It is clear from the language of the appellate court's holding that the court used the exact "abuse of discretion" standard that the Peaspanans argue for in proposition of law number one.

Therefore, proposition of law number one lacks merit because the appellate court applied the proper standard of review in deciding this case and reached the correct decision. Therefore, the Ohio Supreme Court should decline to accept jurisdiction of this appeal.

Response to Proposition of Law No. 2

In proposition of law number two, it appears that the Peaspanens claim that the appellate court improperly held that they were not “adversely affected” by the City filing the declaratory action.

Under R.C. 2323.51, “If the court determines that a party engaged in frivolous conduct, it must then determine whether the moving party was adversely affected.” Stone v. House of Day Funeral Serv., Inc., 140 Ohio App. 3d 713, 722, 748 N.E.2d 1200, 1206 (2000).

In the present case, the appellate court properly determined that the City did not engage in frivolous conduct. Therefore, it did not have to reach the issue of whether the Peaspanens were adversely affected.

However, at the end of its opinion, the appellate court went on to state that “assuming arguendo” that the City’s conduct was frivolous, the Peaspanens would still lose their appeal. The court reached this conclusion because it determined that the Peaspanens were not adversely affected by the City’s conduct because the Peaspanens received the relief that they sought, ownership of the property. Conneaut at ¶ 41. It is this statement that the Peaspanens take issue with.

However, this is technically not part of the appellate court's holding. The court merely stated that even if the City had acted frivolously, an award of attorney's fees would still not be warranted.

The court ultimately held that the City did not act frivolously; therefore, this "assuming arguendo" section of the court's holding is not appealable to this Court because it is not part of the appellate court's holding. The appellate court was merely acknowledging that the Peaspanens would not prevail even if the City had acted frivolously.

The appellate court correctly determined that the City did not act frivolously. It is for the foregoing reasons that the Ohio Supreme Court should decline to accept jurisdiction of this appeal.

CONCLUSION

This case originated when the Peaspanens called upon the City to enforce the law and prosecute their neighbors for trespassing. The City, in an attempt to address this issue, filed a declaratory action to determine who actually owned the property. In the end, the Peaspanens were determined to be the owners of the property by adverse possession. Despite receiving the outcome that they were seeking (ownership of the property), the Peaspanens now claim that the City acted frivolously and demand that their attorney's fees be paid for.

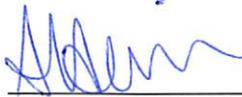
The City of Conneaut did not act frivolously in filing the declaratory action. They filed the suit based upon traces of evidence that the property had been dedicated to the City at one point. In addition, the City filed the action in response to the ongoing

neighbor dispute. Thus, the appellate court properly held that the City of Conneaut was “both reasonable and prudent in this case.” Conneaut at ¶ 38.

The Ohio Supreme Court should not accept jurisdiction in this case because this case does not involve matters of public and great general interest. Furthermore, this case does not present any substantial constitutional questions and the appellate districts have not rendered conflicting opinions regarding these issues.

WHEREFORE, the City of Conneaut respectfully requests that the Ohio Supreme Court decline to accept jurisdiction of this appeal.

Respectfully submitted,



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PROOF OF SERVICE

The undersigned hereby certifies that on the 10 day of September, 2015 a true and correct copy of the foregoing was served upon the following via regular US mail, postage prepaid:

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