

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Bruce Korenko, et al.

Court of Appeals No. E-06-029

Appellees

Trial Court No. 2004-CV-355

v.

Kelleys Island Park Development Co., et al.

DECISION AND JUDGMENT ENTRY

Appellants

Decided: May 4, 2007

* * * * *

William H. Smith for appellees.

D. Jeffery Rengel and Thomas R. Lucas, for appellants David Yeager.

Martin J. Holmes, Jr. for appellants Robert and Kathleen Keaton.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the March 24, 2006 judgment of the Erie County Court of Common Pleas, which denied the motions of Robert and Kathleen Keaton and David Yeager to intervene in this quiet title action. Finding that the parties had satisfied the requirements of Civ.R. 24(A)(2), we reverse the decision of the lower court. Appellants, Robert and Kathleen Keaton, assert the following assignments of error on appeal:

{¶ 2} "I. THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING APPELLANTS' MOTION TO INTERVENE WHICH SATISFIED ALL REQUIREMENTS OF CIVIL RULE 24.

{¶ 3} "II. THE TRIAL COURT IMPERMISSIBLY EXCEEDED THE SCOPE OF ITS AUTHORITY BY FAILING TO EXECUTE A MANDATE OF A PREVIOUS PROCEEDING IN THE CASE AS REQUIRED BY THE DOCTRINE OF THE 'LAW OF THE CASE'."

{¶ 4} Appellant, David Yeager, asserts the following single assignment of error on appeal:

{¶ 5} "I. THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING APPELLANTS' [SIC] MOTION TO INTERVENE WHICH SATISFIED ALL REQUIREMENTS OF CIVIL RULE 24."

{¶ 6} On June 7, 2004, appellees, Bruce and Leslie Korenko, filed a complaint against Kelleys Island Park Development Company and its unknown heirs and assigns and Jack Smith, Kenneth Ranallo, and Elliott Meckler, the last known president, secretary, and treasurer of the company. The Korenkos asserted a claim of adverse possession and sought to quiet title to a triangular-shaped parcel of land owned by Kelleys Island Park Development Company. Appellees own three parcels of property located at 0 Beach Road in the Village of Kelleys Island, Erie County, Ohio. These parcels of land are directly across the street from the triangular-shaped property at issue.

{¶ 7} Appellant David Yeager answered the complaint as an heir, successor, or assignee of Kelleys Island Park Development Company on September 2, 2004. Yeager

also asserted a counterclaim against appellees and asserted a cross-claim against all of the other defendants. Yeager asserted a claim of adverse possession and appurtenant easement by implication, necessity and/or proscriptio.

{¶ 8} Appellants Robert L. Keaton and Kathleen T. Keaton moved to intervene in the case on September 16, 2004, as third-party defendants. They own property fronting on Lake Shore Road and the property at issue abuts their property at the rear of their property. They use the property at issue for access to Beach Road. They further opined that their claim to the property at issue would most likely also be based upon a claim of adverse possession. Their motion was granted on November 13, 2004 by Judge Maschari. The Keatons then filed an answer and counterclaim against appellees for adverse possession of the property at issue.

{¶ 9} On November 16, 2004, the court granted appellees' motion for default judgment against the named defendants and awarded title to the property at issue to appellees. At the hearing, appellees argued that Yeager did not have standing to assert an interest in the property. Therefore, the court gave him permission to file a motion to intervene.

{¶ 10} On December 15, 2004, Yeager moved for leave to intervene in the action as a third-party defendant. Yeager asserted that he owns property along Lakeshore Drive, Kelleys Island, which abuts the property at issue at the rear of his property and provides access to Beach Road. Appellees opposed the motion on the grounds that Yeager's property is not part of the Kelleys Island Park Development Cottage Sites and, therefore,

they argued that Yeager never had a right to access Beach Road and he has other access to his property.

{¶ 11} Yeager's motion to intervene was granted by Judge Tone on January 18, 2005, and the order was journalized on April 19, 2005. A second order was issued by Judge Tone on January 26, 2005, but also journalized on April 19, 2005, indicating that the order granting the motion was issued in error. Without leave of court, Yeager filed an answer and counterclaim on February 4, 2005. Appellees moved to strike the answer and counterclaim.

{¶ 12} In an order journalized on March 24, 2006, Judge Tone indicated that his prior order entered on January 26, 2005, and journalized April 19, 2005, held that both prior motions to intervene had been erroneously granted. Addressing the merits of both motions, Judge Tone then found both motions not well-taken. As to the Keatons, the court held that they did not aver that they have no other reasonable access to their property and, therefore, cannot aver special injury unique from the general public. As to Yeager, the court also found that Yeager did not aver that he had no other reasonable access to his property. He also is not a part of the Kelleys Island Park Development Cottage Sites and, therefore, has no interest or legal right to access or use Beach Road. Yeager and the Keatons filed appeals from this order.

{¶ 13} The Keatons argued in their second assignment of error that the doctrine of the law of the case prevented the court from reconsidering the prior judge's granting of their motion to intervene and issuing a new order denying the motion. We address this assignment of error first.

{¶ 14} Generally, the doctrine of law of the case outlined in *Nolan v. Nolan* (1984), 11 Ohio St.3d 1 requires that the trial court must adhere to the mandate of the appellate court. However, this rule has also been extended "to encompass a lower court's adherence to its own prior rulings or to the rulings of another judge or court in the same case." *Poluse v. Youngstown* (1999), 135 Ohio App.3d 720, 725. Nonetheless, a trial court always has the inherent power to correct prior errors in or reconsider an interlocutory order entered in the same case even if the prior order was issued by a different judge. *State ex rel. Dannaher v. Crawford*, 78 Ohio St.3d 391, 395, 1997-Ohio-72.

{¶ 15} Therefore, we find the Keatons' second assignment of error not well-taken.

{¶ 16} In the Keatons' first assignment of error, they argue that the trial court abused its discretion when it denied them the right to intervene in this case. Appellant Yeager asserts in his sole assignment of error that the trial court erred by denying his motion to intervene.

{¶ 17} Since intervention as of right under Civ.R. 24(A) is a question of law, an appellate court reviews a trial court's ruling on the motion under a de novo standard of review. *Univ. Hosp. of Cleveland, Inc. v. Lynch* (2002), 96 Ohio St.3d 118, 2002-Ohio-3748, ¶ 44 - 47; *Bennett v. Butler* (June 30, 2000), 6th Dist. No. L-99-1151; and *In the Matter of Soley* (Mar. 3, 1995), 6th Dist. No. WD-94-41, 2. Review of the trial court's determination of the timeliness of the motion is based upon an abuse of discretion standard. *University Hospital*, supra. However, there was no question of timeliness in this case since the trial court specifically noted that it was assuming that the motions were timely filed.

{¶ 18} To intervene in a case as a matter of right, the movant must file a timely application and show, pursuant to Civ.R. 24(A)(2), that the proposed intervenor: 1) "claims an interest relating to the property or transaction that is the subject of the action;" 2) "disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest;" and 3) "the applicant's interest is [not] adequately represented by existing parties." Generally, Civ.R. 24(A) has been liberally construed to allow intervention. *State ex rel. LTV Steel Co. v. Gwin* (1992), 64 Ohio St.3d 245, 247.

{¶ 19} Civ.R. 24(C) also requires that the motion "shall be accompanied by a pleading, as defined in Civ.R. 7(A), setting forth the claim or defense for which intervention is sought." In this case, while the Keatons did not file a pleading setting forth their claim as required by Civ.R. 24(C), it is sufficiently clear from their motion and the attached affidavit of Robert Keaton, that they would assert a claim of adverse possession. Furthermore, after the motion to intervene was initially granted by the prior administration, the Keatons did file an answer and cross-claim asserting a claim of adverse possession. Appellee did not object to the lack of the required pleading.

{¶ 20} The claim of adverse possession does not involve proof that there is a lack of access to the property. *Grace v. Koch* (1998), 81 Ohio St.3d 577, syllabus. Therefore, based upon their claim of adverse possession, we find that the Keatons have demonstrated sufficient interest in the proceedings and a need to intervene because there is no other party to represent their interests. Thus, they have met the criteria of Civ.R. 24(A). The Keatons' first assignment of error is well-taken.

{¶ 21} The same conclusion must be reached with respect to appellant Yeager as well. Although Yeager did not attach a pleading to his motion to intervene and did not allege a right of adverse possession in his motion, he had filed an answer and cross-claim approximately three months earlier asserting a claim to the property by way of adverse possession. Therefore, at the time of the ruling on the motion to intervene, the trial court was aware of the nature of Yeager's claim. Yeager's sole assignment of error is well-taken.

{¶ 22} Having found that the trial court did commit error prejudicial to appellants, the judgment of the Erie Court of Common Pleas is reversed. Appellees are ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Erie County.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, P.J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.