

OHIO COURT OF APPEALS, NINTH DISTRICT

Sutton v. Sutton

2017-Ohio-5559 (Ohio Ct. App. 2017) · No. C.A. No. 28393 · Decided June 28, 2017

SUMMARY

The Ohio Ninth District Court of Appeals affirmed the denial of EnTitle, LLC's motion to intervene in litigation concerning a judgment lien and real property. The court held that the motion was properly denied because EnTitle failed to accompany it with a pleading as required by Ohio Civil Rule 24(C).

CASE DETAILS

COURT	Ohio Court of Appeals, Ninth District
WRITING FOR THE COURT	Donna J. Carr; Presiding Judge Hensal; Judge Teodosio
JURISDICTION	Ohio
DECIDED	June 28, 2017
DOCKET	C.A. No. 28393
DISPOSITION	affirmed
PROCEDURAL POSTURE	EnTitle, LLC appealed the Summit County Court of Common Pleas's denial of its motion to intervene as of right under Civ.R. 24(A).
STANDARD OF REVIEW	A trial court's decision to grant or deny a motion to intervene is reviewed for abuse of discretion. The court noted that one decision applied de novo review to denial of intervention as of right, but concluded that the result was the same under either standard.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion; precedential within the scope permitted by Ohio law.
PARTIES	EnTitle, LLC v. Rodd Sutton, Victoria Sutton, Rosemary Douglas

TOPICS

intervention civil procedure appellate procedure standard of review real estate

PRACTICE AREAS

Civil procedure Appellate procedure Real estate

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by denying EnTitle, LLC's motion to intervene under Civ.R. 24(A).
2. Whether a party seeking intervention must accompany its motion with a pleading setting forth the claim or defense for which intervention is sought under Civ.R. 24(C).

HOLDINGS

1. Civ.R. 24(C) requires a person seeking intervention to serve a motion stating the grounds for intervention and to accompany that motion with a pleading, as defined by Civ.R. 7(A), setting forth the claim or defense for which intervention is sought. Failure to file the required pleading is fatal to the motion to intervene.
2. The trial court properly denied EnTitle's motion to intervene because EnTitle failed to accompany its motion with a pleading as required by Civ.R. 24(C). The assignment of error was overruled.

KEY QUOTATIONS

“A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Civ.R. 5. The motion and any supporting memorandum shall state the grounds for intervention and shall be accompanied by a pleading, as defined in Civ.R. 7(A), setting forth the claim or defense for which intervention is sought.” (¶ 8)

“A party seeking intervention cannot prevail on a motion to intervene when the motion is not accompanied by a pleading.” (¶ 9)

FACTUAL BACKGROUND

Rodd Sutton obtained monetary judgments against his former wife, Victoria Douglas, and her mother, Rosemary Douglas, following claims including fraudulent conveyance involving property on Ghent Court in Akron, Ohio. Sutton sought to amend the judgment to place a lien on the property and pursue foreclosure, but the trial court held that request in abeyance during Rosemary Douglas's bankruptcy stay. EnTitle, LLC asserted that it was the property's current title holder and sought to intervene, attaching a memorandum and exhibits but no pleading.

PROCEDURAL HISTORY

Rodd Sutton sued his former wife, Victoria Douglas, and later added Rosemary Douglas as a defendant in a fraudulent-conveyance claim concerning real property. After Sutton obtained monetary judgments, he moved to amend the judgment to impose a lien on the property, but the trial court held the motion in abeyance because of Rosemary Douglas's bankruptcy. EnTitle, claiming to be the property's current title holder, moved to intervene but did not attach a pleading. The trial court denied intervention, and the Ninth District affirmed.

DISPOSITION

affirmed

CASES CITED

- *Kayatin v. Petro*, 9th Dist. Lorain No. 06CA008934, 2007-Ohio-334
- *In re M.N.*, 9th Dist. Wayne No. 07CA0088, 2008-Ohio-3049
- *Univ. of Akron v. Nemer*, 9th Dist. Summit No. 24494, 2009-Ohio-2681
- *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections*, 74 Ohio St. 3d 143, 144 (1995)
- *Summit Cty. Fiscal Officer v. Estate of Barnett*, 9th Dist. Summit No. 24456, 2009-Ohio-2456
- *State ex rel. Boston Hills Property Invests., LLC v. Boston Hts.*, 9th Dist. Summit No. 24205, 2008-Ohio-5329
- *Tatman v. Fairfield Cty. Bd. of Elections*, 102 Ohio St. 3d 425, 2004-Ohio-3701

OPINION

PER CURIAM.

[Cite as *Sutton v. Sutton*, 2017-Ohio-5559.] STATE OF OHIO) IN THE COURT OF APPEALS
)ss: NINTH JUDICIAL DISTRICT COUNTY OF SUMMIT) RODD SUTTON C.A. No. 28393
 Appellee v. APPEAL FROM JUDGMENT ENTERED IN THE VICTORIA SUTTON, et al.
 COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO Appellees CASE No. CV 2006-
 08-4953 and ENTITLE, LLC Appellant DECISION AND JOURNAL ENTRY Dated: June 28,
 2017 CARR, Judge. {¶1} Appellant, EnTitle L.C.C., appeals the judgment of the Summit County
 Court of Common Pleas.

This Court affirms I. {¶2} This case has a lengthy procedural history that dates back to 2006 when Rodd Sutton sued his ex-wife, Victoria Douglas (f.k.a. Victoria Sutton). Subsequent to the filing of the complaint, Ms. Douglas conveyed a parcel of real estate to her mother, Rosemary Douglas. Mr. Sutton amended his complaint to add a claim for fraudulent conveyance against Victoria and Rosemary Douglas.

After a jury trial, Mr. Sutton was awarded significant monetary judgments against both his ex-wife and her mother. In 2012, Mr. Sutton filed a motion to amend the 2010 2 judgment to order that a lien be placed on the property located at 3093 Ghent Ct., Akron, Ohio. Mr. Sutton asserted that an amendment to the judgment was necessary to allow him to pursue foreclosure against the property under the doctrine of *lis pendens* in order to execute the judgment.

The trial court subsequently filed an order stating that it could not rule on the motion because Rosemary Douglas filed a petition for bankruptcy in the U.S. Bankruptcy Court for the Middle District of Florida. Having determined that it would be inappropriate to rule on the motion to amend the judgment, the trial court stated that it would hold the motion in abeyance until the bankruptcy stay was lifted. {¶3} On August 29, 2016, EnTitle L.C.C., filed a motion to intervene in the action pursuant to Civ.R.

24(A). Therein, EnTitle argued that it was the current title holder on the Ghent Ct. property at issue. Though EnTitle attached a brief in support of its claim, as well as various exhibits, it did not

file a pleading along with its motion. Mr. Sutton promptly filed a memorandum in opposition to the motion.

The trial court issued an order denying the motion to intervene on September 12, 2016. {¶4} On appeal, EnTitle raises one assignment of error. II. ASSIGNMENT OF ERROR THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING THE APPELLANT ENTITLE, LLC'S MOTION TO INTERVENE. {¶5} In its sole assignment of error, EnTitle argues that the trial court abused its discretion in denying the motion to intervene.

This Court disagrees. {¶6} The decision to grant or deny a motion to intervene is within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. *Kayatin v. Petro*, 9th Dist. Lorain No. 06CA008934, 2007-Ohio-334, ¶ 9. But see, *In re M.N.*, 9th Dist. 3 Wayne No. 07CA0088, 2008-Ohio-3049, ¶ 5 (maintaining that the denial of a motion to intervene as of right should be reviewed de novo).

The result in this matter is the same under either standard of review. {¶7} “Civ.R. 24 provides for both intervention as of right and permissive intervention. Civ.R. 24(A), (B). Irrespective of the basis upon which a party seeks to intervene, the party must comply with the procedural requirements set forth in Civ.R. 24(C)[.]” *Univ. of Akron v. Nemer*, 9th Dist.

Summit No. 24494, 2009-Ohio-2681, ¶ 6. {¶8} Civ.R. 24(C) states: A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Civ.R. 5. The motion and any supporting memorandum shall state the grounds for intervention and shall be accompanied by a pleading, as defined in Civ.R. 7(A), setting forth the claim or defense for which intervention is sought.

The same procedure shall be followed when a statute of this state gives a right to intervene. Civ.R. 7(A) defines a pleading as “a complaint and an answer” and further specifies that no other pleading will be permitted. It is well settled that a party's failure to file a pleading in compliance with Civ.R. 24(C) is fatal to a motion to intervene. *Nemer* at ¶ 6, citing *State ex rel.*

Polo v. Cuyahoga Cty. Bd. of Elections, 74 Ohio St.3d 143, 144 (1995); *Summit Cty. Fiscal Officer v. Estate of Barnett*, 9th Summit Dist. No. 24456, 2009-Ohio-2456, ¶ 14; *State ex rel. Boston Hills Property Invests., LLC v. Boston Hts.*, 9th Dist. Summit No. 24205, 2008-Ohio-5329, ¶ 6. See also *Tatman v. Fairfield Cty. Bd. of Elections*, 102 Ohio St.3d 425, 2004-Ohio-3701, ¶ 11. {¶9} The trial court properly denied the motion to intervene in this case.

As noted above, EnTitle's motion contained a memorandum in support as well as numerous exhibits. Significantly, however, the motion to intervene was not accompanied by a pleading as required by Civ.R. 24(C). A party seeking intervention cannot prevail on a motion to intervene when the motion is not accompanied by a pleading. *Nemer* at ¶ 7 (holding that “the trial court should have 4 denied [the] motion based solely on the omission of a pleading[.]”).

Under these circumstances, the trial court properly denied the motion to intervene. {¶10} EnTitle's assignment of error is overruled III. {¶11} EnTitle's assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed. Judgment affirmed. There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27. Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run.

App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30. Costs taxed to Appellant. DONNA J. CARR FOR THE COURT 5 HENSAL, P. J. TEODOSIO, J. CONCUR. APPEARANCES: BRADLEY P. TOMAN, Attorney at Law, for Appellant. TIMOTHY H. HANNA, Attorney at Law, for Appellee.

LARRY D. SHENISE, Attorney at Law, for Appellees. JAMES M. CAMPBELL and JULIET K. FALCONE, Attorneys at Law, for Appellees.