

FILED
WOOD COUNTY
PROBATE COURT

2015 NOV -2 A 11: 29

PROBATE JUDGE
DAVID E. WOESSNER

**IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO
PROBATE DIVISION**

City of Perrysburg

*

Case No. 2015 9004A

Plaintiff

*

v.

Judge David E. Woessner

Roland R. Carter and
Sue Ann Carter

*

JUDGMENT ENTRY

*

Defendants

*

This matter is before the Court as a result of a pleading captioned Consolidated Motion for Partial Judgment on the Pleadings, Motion to Expedite, and Motion to Stay Pending Resolution. This pleading was filed on October 14, 2015 by Attorneys Andrew Mayle and Maurice Thompson on behalf of the defendant(s). On October 28, 2015, this Court received a responsive pleading filed by Attorneys Ted Riley and Kristin Wacha on behalf of the plaintiff(s).

The Court has reviewed the pending motion and the applicable law. The Court makes the following Decision and Orders.

DECISION

On August 10, 2015, eleven appropriation cases involving the same proposed taking and associated construction project were filed. These cases are filed as Wood

County Probate Court case numbers 2015 9004A, 2015 9005A, 2015 9006A, 2015 9007A, 2015 9008A, 2015 9009A, 2015 9011A, 2015 9012A, 20159014A, 20159015A, and 2015 9016A. The plaintiff in each of the original cases filed on August 10, 2015 is the City of Perrysburg represented by Attorneys Ted Riley and Kristin Wacha. On October 27, 2015, requests to amend case numbers 2015 JA 9015A and 2015 JA 9016A were filed. These requests were granted by order filed October 29, 2015. The plaintiffs in the amended complaints are the City of Perrysburg as well as Middleton Township, Ohio. Attorneys Riley and Wacha also represent both plaintiffs in the amended complaints filed in 2015 JA 9015A and 2015 JA 9016A.

After service of summons of the original August 10, 2015 complaints, answers were filed on behalf of the impacted defendant(s) in each of the eleven appropriation actions on September 18, 2015. Each of these answers were filed by Attorneys Andrew Mayle and Maurice Thompson who collectively represent all eleven impacted defendant(s).

On September 28, 2015, a pleading captioned Consolidated [sic] Motion for Partial Judgment on the Pleadings, Motion to Expedite, and Motion to Stay Pending Resolution (hereinafter "the Motion") was filed in case number 2015-9007A individually. Following a procedural order made by the Court, the same subject matter motion was filed on October 14, 2015 in all pending related appropriation matters – including the subject matter case. These motions were filed on behalf of the defendant(s) in these cases. A response in opposition to the pending motion was filed on behalf of the plaintiff(s) in each case on October 28, 2015.

The subject matter motion before the Court requests partial judgment on the pleadings on behalf of each of the defendant(s) in all eleven related cases as to one specific issue. Namely, the defendant(s) request an order declaring plaintiff's request to

utilize the “quick take” provisions under R.C. 163.06 as invalid. Counsel for the plaintiff(s) oppose this request.

In addition, in the same subject matter motion filed on October 14, 2015, counsel for named defendants Jerald and Phyllis Charles, trustees, in case number 2015 9015A, as well as defendant Mary Jo Rogers in case number 2015 9016A, specifically requested the original complaints in those cases be dismissed due to the failure of the original plaintiff to state a claim upon which relief can be granted. The request for dismissal of these two individual cases asserts the subject matter real estate is located in Middleton Township, Wood County, Ohio and is not located within the municipal jurisdiction of the original, named plaintiff. This specific relief was requested prior to the filing of amended complaints on October 29, 2015 which added Middleton Township, Wood County, Ohio as a named plaintiff.

For purposes of clarity, the Court will address the general legal standard for a request for judgment on the pleadings as well as each specific area of relief requested separately.

I. Judgment on the Pleadings Legal Standard

The defendants/property owners are before the Court requesting partial judgment on the pleadings pursuant to Civ. R. 12 (C). Civ. R. 12 (C) states in its entirety:

“(C) Motion for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.”

In interpreting Civ. R. 12 (C) it has been noted:

“The Supreme Court noted our standard of reviewing a judgment made pursuant to Civ. R. 12 (B) (6) and (C) is similar, but in the Civ. R. 12 (C) motion, the issue requires the resolution of questions of law. *Pontious* at 570, 664 N.E. 2d 931, citing *Peterson v. Teodosio* (1973), 34 Ohio St 2d 161 at 166, 297 N.E. 2d 113. The Supreme Court directed that pursuant to Civ. R. 12 (C), dismissal of the complaint is appropriate where the Court construes the material allegations in the complaint, and all the reasonable references to be drawn from it, in favor of the non-moving party, and yet finds the plaintiff could prove no set of facts in support of his claim which entitle him to relief, *Id.* Citing *Lin v. Gatehouse Construction Company* (1992), 84 Ohio App. 3d 96 at 99, 616 N.E. 2d 519. Thus, in sustaining a motion made pursuant to Civ. R. 12 (C), the Court must determine no material factual issues exist, and that the moving party is entitled to judgment as a matter of law. *Id.* Citing *Burnside* , *Id.* at 403.”

Hipkins v. State Farm Mutual Insurance Company
(Fifth District) 1998 WL 404223.

Thus, in the case at bar, with regard to the specific partial judgment on the pleadings being requested, if this Court, after construing the material allegations in the complaint, and all the reasonable inferences to be drawn from it, in favor of the plaintiff, finds the plaintiff could prove no set of facts in support of the underlying relief being requested, this Court may grant the defendants’ partial judgment on the pleadings.

II. Request for Partial Judgment on Pleadings as to Plaintiff's Ability to Utilize R.C. 163.06 "Quick Take" Authority

The defendant(s) are before the Court requesting that plaintiff(s) not be allowed to proceed under the "quick take" provisions of R.C. 163.06 as to all property sought to be appropriated. Each impacted defendant in these related cases suggests at least a portion of the plaintiff(s)' stated purposes associated with the subject matter appropriations fall outside the purposes for which "quick take" authority is authorized in R. C. 163.06.

R.C. 163.06 (A) and (B) provide for instances where immediate entry and possession of certain private property can be made for purposes of improvements and appropriation. R.C. 163.06 (A) and (B) state in relevant part:

"(A) A public agency, other than an agency appropriating property for the purposes described in division (B) of this section, that qualifies pursuant to Section 19 of Article I, Ohio Constitution, may deposit with the Court at the time of filing the petition the value of such property appropriated together with the damages, if any, to the residue, as determined by the public agency, and thereupon take possession of and enter upon the property appropriated. The right of possession upon deposit as provided in this division shall not extend to structures.

(B) A public agency appropriating property for the purpose of making or repairing roads which shall be open to the public, without charge, or for the purpose of implementing rail service under Chapter 4981, of the Revised Code, may deposit with the Court at the time of filing the petition the value of such property appropriated together with the damages, if any, to the residue, as determined by the public agency, and stated in an attached declaration of intention to obtain possession and thereupon take possession of and enter upon the property appropriated..."

The defendant/property owners allege certain stated purposes within the appropriation resolutions and documents -- purposes which include references to “other municipal purposes”, “pedestrian walkways and sidewalks”, and “public utilities” – fall outside the limitations for “quick take” authority set forth within R.C. 163.06.

In response to the requested relief, the plaintiff(s) assert two basic points. Initially, plaintiff(s) suggest that any sidewalks referenced, in fact, would occur within the easement approved for the ‘road widening’ project and thus, the entire scope of the project—regardless of how it is referenced—falls under the umbrella of a road widening project—and that “quick take” authority is thus warranted. Plaintiff(s) further assert this Court lacks the ability to review the question at hand. Plaintiff(s) cite the cases of *City of Toledo v Kim* (6th District) 2013 Ohio 5604 and *State ex rel Gordon v Rhodes* (1951) 156 Ohio St. 81 for the general proposition that judicial review of a municipality or township’s decision to appropriate land is limited as a matter of law and not appropriate here

Initially, the Court notes *City of Toledo v Kim*, supra and *State ex rel Gordon v Rhodes*, supra are not determinative of the specific issue at hand. *City of Toledo v Kim*, supra and *State ex rel Gordon v Rhodes*, supra were hearings held pursuant to R.C. 163.09 to review the necessity of the overall proposed appropriation or to review whether the overall proposed appropriation was for a valid public purpose. The issue currently before the Court in the subject matter cases is not whether the overall appropriations are necessary or serve a public interest. In fact, nothing in this Court’s decision herein will impact the plaintiff(s) ability to ultimately appropriate the property in question. Rather, the specific question at hand is whether plaintiff(s) have the specific

ability to take immediate possession of certain property under the “quick take” provisions of R.C. 163.06.

In discussing appropriation and eminent domain statutes such as R.C. 163.06, the Ohio Supreme Court has definitively declared that appropriation related statutes should be strictly construed and doubts or issues resolved in favor of property owners and that a heightened level of scrutiny should be applied when reviewing any situation involving the taking of private property. See *Norwood v. Horney* 2006 Ohio 3799 and *Pontiac Improvement Company v. Board of Commissioners* (1922) 104 O. S. 447. Other appellate Courts have followed this strict construction instruction noting, for instance, that “Due to the nature of eminent domain proceedings, the [statute] must be strictly construed.” See for example *Octa v. Octa Retail* (Twelfth District) 2008-Ohio-4505 at ¶23.

For purposes of the subject matter cases and motion, a plain reading of R.C. 163.06 and the case law interpreting statutory construction surrounding eminent domain proceedings makes it clear that the “quick take” option provided in R. C. 163.06 applies to appropriations “for the purpose of making or repairing roads which shall be open to the public.” In the case at bar and in the related ten other appropriation cases, plaintiff, the City of Perrysburg in case numbers 2015 9004A, 2015 9005A, 2015 9006A, 2015 9007A, 2015 9008A, 2015 9009A, 2015 9011A, 2015 9012A, 20159014A, and plaintiffs the City of Perrysburg and Middleton Township in case numbers 2015 9015A and 2015 9016A have enacted a resolution declaring an intent to appropriate property belonging to the defendants/property owners and to utilize the “quick take” provisions of R.C. 163.06. This resolution and accompanying documents provide in pertinent part that the proposed appropriations are for the stated purpose of “required improvements” to certain roadways and for “other municipal purposes” as well as references to “installing

pedestrian walkways and sidewalks” as well as “providing for public utilities”. This Court finds that if the legislature intended to allow the “quick take” procedures set forth in R.C. 163.06 to extend to other areas [such as the construction of sidewalks -- which are specifically addressed by statute elsewhere (see R.C. 729.01) or “other municipal purposes”], those other areas or specific statutes would have been referenced accordingly somewhere as falling within the “quick take” statute. They are not. The Court further finds that expanding the “quick take” immediate possession of private property provided for in R.C. 163.06 beyond the clearly stated purpose of “making or repairing roads” is not appropriate as a matter of law in appropriation/eminent domain cases such as those before the Court.

From a plain reading of the applicable statutes and noting the guidelines from the Ohio Supreme Court as to interpreting appropriation statutes, and after construing the material allegations in the complaint(s) and accompanying attachments and all the reasonable inferences to be drawn from them, in favor of the plaintiff, the Court finds the plaintiff can prove no set of facts to support its request to utilize the “quick take” provisions contained within R.C. 163.06 for purposes of “other municipal purposes”, “pedestrian walkways and sidewalks”, and “public utilities.” To determine otherwise would simply be to add language which does not exist in R.C. 163.06.

The Court finds the defendants’/property owners’ request for partial judgment on the pleadings pursuant to Civ. R. 12(C) as to plaintiff’s ability to use the “quick take” authority of R.C. 163.06 for purpose of “other municipal purposes”, “pedestrian walkways and sidewalks”, and “public utilities” well taken. As noted, this decision in no way addresses the plaintiff(s)’ ultimate ability to continue with its appropriation proceedings in these matters using non “quick take” appropriation/eminent domain procedures.

III. Request for Partial Judgment on the Pleadings as to Plaintiff's Complaints Against Defendants/Property Owners Jerald and Phyllis Charles, Trustees, in Case Number 2015 9015A as well as defendant Mary Jo Rogers in Case Number 2015 9016A

Defendants/property owners Jerald and Phyllis Charles, Trustees, in case number 2015 9015A as well as defendant/property owner Mary Jo Rogers in case number 2015 9016A also requested the original complaints against them be dismissed pursuant to Civ. R. 12(C). The basis for this request was the assertion the named plaintiff in the originally filed complaints lacked the constitutional or jurisdictional authority to appropriate private property located outside the municipal limits of plaintiff.

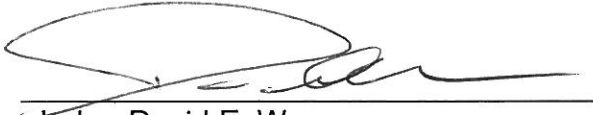
Subsequent to the motion filed on behalf of the defendants/property owners Jerald and Phyllis Charles, Trustees, in case number 2015 9015A as well as defendant/property owner Mary Jo Rogers in case number 2015 9016A, plaintiffs have filed an amended complaint listing Middleton Township, Ohio as an additional named plaintiff. Given this allowed amendment, the Court finds the specific relief requested in case numbers 2015 9015A and 2015 9016A not well taken or moot.

IT IS THEREFORE ORDERED the Motion for Partial Judgment on the Pleadings is granted in part. Plaintiff(s) are prohibited from proceeding under the "quick take" provision of R.C. 163.06 as to that portion of the proposed appropriation in this matter relating to "other municipal purposes", "pedestrian walkways and sidewalks", and "public utilities".

IT IS FURTHER ORDERED, given the amended complaints allowed to be filed, the request of defendants/property owners Jerald and Phyllis Charles, Trustees, in Case No. 2015 9015A as well as defendant/property owner Mary Jo Rogers in Case No. 2015 9016A for dismissal of the underlying actions is denied.

IT IS FURTHER ORDERED these cases shall be referred to mediation with the Wood County Common Pleas Court mediator for immediate mediation. A copy of this Judgment Entry shall be provided to the Wood County Common Pleas Court mediator. This mediation shall be expedited and shall be scheduled prior to the jury trial to be established.

IT IS FURTHER ORDERED a trial by jury to determine an amount of compensation owed to the defendant/property owners shall also be scheduled at the earliest available date.



Judge David E. Woessner

CERTIFICATE

This is to certify that a copy of the foregoing was mailed or delivered to the following:

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