

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Scott Van Fleet,	:	
	:	
Appellant	:	
	:	
v.	:	No. 1950 C.D. 2009
	:	SUBMITTED: March 12, 2010
Thomas Yerke	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: April 21, 2010

Scott Van Fleet appeals, *pro se*, from the order the Court of Common Pleas of Lackawanna County sustaining the preliminary objections of Thomas Yerke and dismissing his amended complaint. Van Fleet’s action, which sought a determination that Yerke was operating an illegal junkyard on his residential property, was dismissed for failure to state a claim upon which relief can be granted.

In his amended complaint, Van Fleet alleged that he and Yerke owned adjacent parcels of land, both over ten acres in size and zoned for residential use. Van Fleet further alleged that Yerke had a large number of inoperable automobiles on his property, which he was disassembling and selling as scrap. He alleged that this activity created an eyesore, was noisy and sometimes created smoke. According to Van Fleet, he attempted to resolve the problem by filing a service

request with the township zoning officer, William Wright, and by appearing before a meeting of the Board of Supervisors. However, Van Fleet alleges that neither Wright nor the Board took any meaningful action because of Yerke's influence as the Chairman of the Board of Supervisors.

Van Fleet asserted that Yerke's use of his property was incompatible with a residential use, and in violation of a number of local ordinances governing junkyard licensing, setbacks, fencing and the like. He requested that common pleas declare that Yerke was running an illegal junkyard. Van Fleet stated in his complaint that he planned to use that declaratory judgment in a future mandamus action against Wright, the zoning officer, to force him to take enforcement action against Yerke. However, after Yerke filed preliminary objections, common pleas dismissed the case, in an order stating that Van Fleet had failed to state a claim for which he was entitled to relief. Common pleas entered no opinion on the matter.

Generally, declaratory judgment is an appropriate remedy where a case presents antagonistic claims, indicating imminent and inevitable litigation. *Liberty Mut. Ins. Co. v. S.G.S. Co.*, 456 Pa. 94, 318 A.2d 906 (1974); *Independence Blue Cross v. Pa. Ins. Dept.*, 802 A.2d 715 (Pa. Cmwlth. 2002). However, declaratory relief is discretionary when it would not resolve the conflict at issue. 42 Pa. C.S. § 7537.

In this case, granting a declaratory judgment would not resolve the dispute, and there is an alternative proceeding which would. Even if common pleas granted declaratory judgment, Van Fleet admits that this would not resolve the controversy, as he plans a subsequent mandamus action against the zoning officer to force him to take enforcement action against Yerke. However, there is a much simpler way to resolve this dispute that involves neither a declaratory

judgment nor a mandamus action against a third party. Because the Municipalities Planning Code¹ (MPC) gives standing to aggrieved landowners who can show that they are substantially affected by an alleged zoning violation, Van Fleet can bring an enforcement action against Yerke directly.² While we express no opinion on the merits of Van Fleet’s claims, we note that the facts as pled by Van Fleet would appear to be sufficient to sustain a cause of action either under the MPC or under a nuisance theory. Because granting declaratory relief would not resolve the controversy, common pleas did not abuse its discretion in dismissing the complaint.

For all the foregoing reasons, we affirm.

BONNIE BRIGANCE LEADBETTER,
President Judge

¹ Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. 10101-11202

² “In case any . . . land is . . . used in violation of any ordinance enacted under this act . . . any aggrieved owner or tenant of real property who shows that his property or person will be substantially affected by the alleged violation . . . may institute any appropriate action or proceeding to prevent, restrain, correct or abate such . . . use constituting a violation.” MPC § 41, 53 P.S. § 10617

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No. 1950 C.D. 2009

ORDER

AND NOW, this 21st day of April, 2010, the order of the Court of Common Pleas of Lackawanna County in the above-captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge