

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher M. Lang, Executor :
of the Estate of Richard E. Lang :
 : No. 640 C.D. 2010
v. :
 : Argued: November 8, 2010
Robinson Township Zoning :
Hearing Board, Lamar Advertising :
Company and Robinson Township :
 :
Appeal of: Lamar Advertising Company :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: December 23, 2010

Lamar Advertising Company (Lamar) appeals from the March 16, 2010, order of the Court of Common Pleas of Allegheny County (trial court), which reversed the decision of the Robinson Township Board of Commissioners (Commissioners) approving Lamar's application for a conditional use to install a billboard.

Lamar proposed to erect a LED billboard at 5320 Steubenville Pike, Robinson Township, Pennsylvania, immediately adjacent to property owned by the

Estate of Richard E. Lang. The property is in the township's C-2 zoning district, where billboards are permitted as a conditional use. (Reproduced Record (R.R.) at 10a-14a.) The township's zoning ordinance contains numerous billboard regulations regarding location, size and height, construction methods, maintenance, and permits. (Id.)

On March 7, 2007, Lamar filed a conditional use application with the Commissioners to construct a free standing LED billboard with an active sign face of 227.4 square feet. Following a hearing, the Commissioners granted the application. Lang appealed the approval to the trial court, alleging that the billboard violated numerous provisions of the Township's zoning ordinance and did not satisfy the specific criteria for a conditional use. Specifically, Lang alleged that the proposed billboard violated ordinance provisions concerning setbacks, proximity to the property line of a church, sign size and height limitations, display lighting, and requirements to obtain agency approvals.

On November 27, 2007, the esteemed trial court remanded the matter to the Commissioners to identify deficiencies in Lamar's proposed plan.¹ (R.R. at 16a.) On June 9, 2008, the Commissioners again approved Lamar's conditional use; however, the Commissioners observed that the plan did not comply with several provisions of the zoning ordinance and concluded that Lamar needed to apply for variances.

Lang appealed the Commissioners' decision to the trial court. On September 10, 2008, the trial court determined that it would withhold its decision in order to give Lamar an opportunity to apply to the township's zoning hearing board

¹ Although the trial court remanded the matter, it appears that the appeal remained active on the trial court's docket.

(ZHB) for variances. On or about February 24, 2009, Lamar applied to the ZHB for the variances and ordinance interpretations necessary to permit installation of the billboard.

On April 23, 2009, following a public meeting, the ZHB approved all of the variances and ordinance interpretations requested by Lamar. (R.R. at 133a-34a.) Lang appealed the ZHB's decision to the trial court, challenging the variances and ordinance interpretations. (R.R. at 131a-32a.)

On June 12, 2009, the trial court made the prudent decision to consolidate the conditional use appeals and the ZHB appeal "into a single proceeding" and combined the conditional use records and the ZHB record into a single record. (R.R. at 40a-41a.) Following consolidation, the trial court entered two salient orders. On December 8, 2009, the trial court entered an order granting Lang's appeal from the ZHB decision and vacating the variances. (R.R. at 61a.) However, the parties jointly moved for reconsideration, which was granted, and the trial court vacated the December 8, 2009, order. (R.R. at 63a.) On March 16, 2010, the trial court filed an opinion and order that reversed the Commissioners' decision granting the conditional use. (R.R. at 68a.) The trial court concluded that Lamar did not meet as many as fourteen ordinance criteria regarding property lines, setbacks, the size of the billboard, and lighting, which are necessary for the grant of a conditional use. (R.R. at 66a-67a.) Lamar's appeal from the March 16th order ensued.

On appeal to this Court,² Lamar contends that the trial court erred by reversing the Commissioners' decision approving Lamar's conditional use

² Where the trial court takes no additional evidence, this Court's scope of review of a zoning appeal is limited to determining whether the zoning hearing board committed an error of law or abuse of discretion. Therres v. Zoning Hearing Board of the Borough of Rose Valley, 947 A.2d 226 (Pa. Cmwlth. 2008).

application to erect a billboard. However, because the trial court's March 16, 2010, order did not resolve all of the issues raised in the consolidated statutory appeals, we are unable to address the merits of Lamar's appeal.

The record reflects that the trial court consolidated three statutory appeals, two involving the application for a conditional use and the third involving the decision of the ZHB. The trial court ordered the appeals consolidated into a single proceeding and combined the records into a single record, which caused the statutory appeals to lose their separate identities and the conditional use, variance, and ordinance interpretation issues to merge into one proceeding. See Kincy v. Petro, ___ Pa. ___, 2 A.3d 490 (2010) (establishing the standard for complete consolidation under Pa. R.C.P. No. 213). Moreover, because the variance and ordinance interpretation issues involve criteria necessary to qualify for a conditional use, (R.R. at 134a), the conditional use issues and ZHB issues are intertwined.

However, the trial court's March 16, 2010, order did not address any of the variance and ordinance interpretation issues raised in the ZHB appeal. Although an order was filed on December 8, 2009, that decided these issues, the trial court subsequently vacated that order, leaving those questions unresolved and awaiting adjudication by the trial court. Because resolution of the variance and interpretation issues is essential to determining whether Lamar is entitled to a conditional use, the record before us is inadequate for purposes of meaningful appellate review.

Accordingly, we vacate the trial court's order and remand the case to the

trial court for further proceedings consistent with this opinion.³

PATRICIA A. McCULLOUGH, Judge

³Lamar contends that Lang waived his right to challenge the ZHB's decision because he failed to cross-appeal from the trial court's order. However, pursuant to Pa. R.A.P. 501, only an aggrieved party has the right to appeal. Where a party is successful in the trial court, that party is not aggrieved and, thus, has no standing to appeal. Building Industry Association of Lancaster County v. Manheim Township, 710 A.2d 141 (Pa. Cmwlt. 1998). Furthermore, even when a court rules against an appellee on an issue, a cross-appeal is not required so long as the underlying judgment is in favor of the appellee. Borough of Duncansville v. Beard, 919 A.2d 327 (Pa. Cmwlt. 2007); Pa. R.A.P. 511 (Official Note).

Here, because the trial court reversed the decision granting the conditional use, Lang received the relief he sought and was not aggrieved by the trial court's order. Therefore, Lang was not required to cross-appeal to preserve his right to challenge the decision of the ZHB.

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ORDER

AND NOW, this 23rd day of December, 2010, the March 16, 2010, order of the Court of Common Pleas of Allegheny County is hereby VACATED. This case is REMANDED for further proceedings consistent with the foregoing opinion.

Jurisdiction relinquished.

PATRICIA A. McCULLOUGH, Judge