IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joseph Pilchesky,	:	
Petitioner	:	
	:	
v.	:	
	:	
Edward Rendell, Governor	:	
State Senate President Pro Tempore,	:	
Joseph Scarnati, III	:	
House of Representatives Speaker of	:	
the House, Keith R. McCall,	:	
City of Scranton, University of	:	
Scranton, Inc. and Scranton	:	
Redevelopment Authority,	:	No. 858 M.D. 2010
Respondents	:	Submitted: July 8, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI FILED: August 4, 2011

Before this Court are the preliminary objections in the nature of a demurrer of former Governor Edward Rendell (Rendell); State Senate President Pro Tempore Joseph Scarnati, III (Senator Scarnati); former House of Representatives Speaker of the House Keith R. McCall (Representative McCall); the City of Scranton; the University of Scranton; and the Redevelopment Authority of the City of Scranton (collectively, Respondents) to yet another original

jurisdiction petition for review in the nature of a complaint for declaratory judgment filed *pro se* by Joseph Pilchesky (Pilchesky). For the reasons that follow, we sustain the preliminary objections of Respondents and dismiss the petition for review with prejudice.

The facts of this case are not in dispute and are explained more fully in our previous decisions, notably *Pilchesky v. Rendell*, 932 A.2d 287 (Pa. Cmwlth. 2007) (*Pilchesky I*) and *Vutnoski v. Redevelopment Authority of the City of Scranton*, 941 A.2d 54 (Pa. Cmwlth. 2008). For purposes of clarity, we note that this case centers around a 10.8 acre parcel of property located in Scranton, Pennsylvania, known as the South Side Complex (South Side). The City of Scranton obtained the property in 1961 as part of the Urban Renewal Plan of the Redevelopment Authority. The City of Scranton developed the property's recreational facilities through funds obtained from the federal government, through the Department of Housing and Urban Development, and the Commonwealth, through the Project 70 Land Acquisition and Borrowing Act (Project 70 Act).[1] The fact that the property was purchased and developed with Project 70 Act funds imposed certain restrictions on the property, as Section 20 of Project 70 Act states:

> No lands acquired with funds made available under this act shall be disposed of or used for purposes other than those prescribed in this act without the express approval of the General Assembly.

72 P.S. §3946.20(b).

[1] Act of June 22, 1964, P.L. 131, 72 P.S. §§3946.1 – 3946.22.

In December 2002, Scranton City Council passed an ordinance approving the transfer of the property from the City of Scranton to the Redevelopment Authority. However, the approval of the General Assembly was required because the property was developed with Project 70 funds. Therefore, Senate Bill 850 of 2003 was proposed which contemplated the release of Project 70 restrictions, the transfer of the property to the Redevelopment Authority, and the sale of the property from the Redevelopment Authority to the University of Scranton, a private university. Senate Bill 850 was signed by the State Senate on December 17, 2003; signed by the House of Representatives on December 18, 2003; and signed by Governor Rendell on December 23, 2003, becoming Act 52 of 2003.[2] The title of Act 52 reads as follows:

> AUTHORIZING THE CITY OF SCRANTON AND REDEVELOPMENT AUTHORITY OF THE CITY OF SCRANTON, LACKAWANNA COUNTY, TO TRANSFER AND CONVEY TO THE UNIVERSITY OF SCRANTON CERTAIN PROJECT 70 LANDS FREE OF RESTRICTIONS IMPOSED BY THE PROJECT 70 LAND ACQUISITION AND BORROWING ACT.

Section 1(A) of Act 52 states the following:

> (A) Authorizations. – Pursuant to the requirements of section 20(b) of the Act . . . known as the Project 70 Land Acquisition and Borrowing Act, the General Assembly hereby authorizes the release of Project 70 restrictions and transfer of the lands owned by the City of Scranton which are more particularly

[2] Hereinafter, both Senate Bill 850 and Act 52 of 2003 will be referred to as "Act 52."

> described in subsection (c) to the Redevelopment Authority of the City of Scranton and the sale of said lands by the Redevelopment Authority of the City of Scranton to the University of Scranton for a consideration of $1,150,000, which sum represents at least the fair market value of the property as determined by an appraisal.

Since the passage of Act 52, there have been no less than eight law suits filed in both the Court of Common Pleas of Lackawanna County and the Commonwealth Court, seven of which were filed by Pilchesky, seeking to invalidate Act 52 and prevent or unwind the conveyance of the subject property to the University of Scranton. In the present suit, Pilchesky's second amended petition pleads five separate counts:

- Count I alleges that Act 52 is unconstitutional because it violates the "one subject rule" of Article III, Section 3 of the Pennsylvania Constitution;

- Count II alleges that the General Assembly acted *ultra vires* in passing Act 52 because it contained more than one subject;

- Count III alleges that the passage of Act 52 was unconstitutional because Section 9(h) of the Pennsylvania Urban Redevelopment Law, Act of May 24, 1945, P.L. 991, *as amended*, 35 P.S. §1709(h), prohibited the Redevelopment Authority from purchasing South Side because it was not a blighted property and Act 52 directly conflicts with this existing legislation;

- Count IV alleges that the General Assembly acted *ultra vires* in passing Act 52 because Section 1709(h) of the Pennsylvania Urban Redevelopment Law prohibited the Redevelopment Authority from purchasing South Side

> because it was not a blighted property and the purchase was not necessary to the successful redevelopment of a redevelopment area; and
>
> • Count V alleges that the passage of Act 52 was unconstitutional because the Redevelopment Authority operated as an instrument of the City of Scranton in violation of Section 1 of the Pennsylvania Urban Redevelopment Law.

As a remedy, Pilchesky seeks a declaration from this Court that Act 52 is unconstitutional, that it be repealed, voided or otherwise invalidated, and that South Side be returned to the City of Scranton.

These claims and the named respondents in the present suit are merely a slightly different iteration of the claims advanced in *Pilchesky I*. In that case, Pilchesky's petition for review seeking declaratory judgment and injunctive relief included the following three counts:

> (1) a challenge to the constitutionality of Act 52 because it allegedly violates Art. 1, Section 27 of the Pennsylvania Constitution, pertaining to environmental rights (Count I); (2) a challenge that Act 52 is ultra vires by virtue of the alleged unconstitutionality of the Act under Art. 1, Section 27 and the common law doctrine set forth by the Pennsylvania Supreme Court in *Board of Trustees of Philadelphia Museums v. Trustees of the University of Pennsylvania*, 251 Pa. 115, 96 A. 123 (1915), referred to as the Public Trust Doctrine of 1915 (Count II); and (3) the passage of the City's ordinance authorizing the transfer is unconstitutional and ultra vires (Count III).

Pilchesky I, 932 A.2d at 288.

In its Memorandum of Law in Support of the Preliminary Objections, the House of Representatives argues that Pilchesky's claims are barred by the preclusionary doctrines of *res judicata* and collateral estoppel. We agree. While the two cases rely upon different Articles of the Pennsylvania Constitution, both cases allege that the enactment of Act 52 was unconstitutional and *ultra vires*. Also, while the two cases name different members of the Senate and House of Representatives as respondents, neither case relies upon any specific actions allegedly taken by the named members of the General Assembly. In *Pilchesky I*, we noted that Pilchesky alleged nothing more than the mere fact that certain members of the House of Representatives participated in the legislative process. We also noted that a member of the General Assembly's participation in the legislative process, without more, does not constitute a violation of his or her oath of office. Therefore, in the previous case we sustained the preliminary objections of the House of Representatives and various members of the General Assembly and dismissed Pilchesky's claims that Act 52 was unconstitutional and *ultra vires*.

The fact that Pilchesky claims violations of different Articles of the Pennsylvania Constitution in the present litigation and names different members of the Pennsylvania House and Senate in the present case does not change our analysis and does not breathe life into any of these long dead claims. The doctrine of *res judicata* is meant to prevent just this type of relitigation of controversies. Abuse of the court system, whether it is by seasoned attorneys or seemingly unknowing *pro se* litigants, cannot be tolerated. As the House of Representatives points out, "[a] party must raise all matters related to an issue at first opportunity or be forever barred from raising them again." *Winpenny v. Winpenny*, 643 A.2d 677, 679 (Pa. Super. 1994). In any one of the six previous law suits which Pilchesky brought surrounding Act 52 and the transfer of South Side to the University of

Scranton, he could and should have raised the issues asserted in the present litigation against the House of Representatives. Because he did not do so, the present claims against the House of Representatives, including the argument that Act 52 is unconstitutional and *ultra vires* because it violates the "single subject rule," are precluded and these claims are dismissed as to the House of Representatives.[3]

As for the remaining Commonwealth Respondents, Senator Scarnati and Representative McCall, we note that our decision in *Pilchesky I* held that the members of the State House and Senate were immune from suit under the Speech and Debate Clause of the Pennsylvania Constitution, Art. 2, Section 15.[4] The

[3] Even if we were to reach the merits of this argument, we would have found that Act 52 does not violate the single subject rule of Article III, Section 3. A litigant challenging the constitutionality of legislation bears an exceedingly heavy burden as a statute is presumed to be constitutional. "[A] statute will not be declared unconstitutional unless it *clearly, palpably* and *plainly* violates the Constitution." *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 583 Pa. 275, 292, 877 A.2d 383, 393 (2005) (emphasis in original). With respect to the single subject rule, our Supreme Court has stated that "hypothesizing reasonably broad topics . . . is appropriate to some degree, because it helps ensure that Article III does not become a license for the judiciary to 'exercise a pedantic tyranny' over the efforts of the Legislature," and that the single subject requirement is satisfied so long as "there is [a] single unifying subject to which all of the provisions of the act are germane." *City of Philadelphia v. Commonwealth*, 575 Pa. 542, 578-79, 838 A.2d 566, 588-89 (2003). It is clear that Act 52 involves one single, unifying subject – the transfer, sale and conveyance of South Side to the University.

[4] Article II, Section 15 of the Constitution of the Commonwealth of Pennsylvania provides:

> The members of the General Assembly shall in all cases, except treason, felony, violation of the oath of office, and breach or surety of the peace, be privileged from arrest during their attendance at the sessions for their respective Houses, and in going to and

(Footnote continued on next page…)

activity of passing Act 52 through the House and Senate falls within the legitimate sphere of legislative activities and is an integral part of the deliberative and communicative process. "The fact that the petition avers that Act 52 violates a provision of the Pennsylvania Constitution does not preclude the application of the Speech and Debate Clause." *Pilchesky I*, 932 A.2d at 289. Again, while Pilchesky may assert that individual members of the House and Senate violated their oath of office, he has failed to assert any facts to support this contention in his second amended petition. Therefore, we sustain the preliminary objections of Senator Scarnati and Representative McCall because Pilchesky has failed to state a claim for which relief may be granted, and we dismiss the Counts against these Commonwealth Respondents.

Turning now to the claims against Governor Rendell, as was the case in *Pilchesky I*, the current petition for review pleads only that Rendell was the Governor of the Commonwealth and that he signed Act 52 into law. Such averments are clearly insufficient to establish any liability on the part of the former governor. Because Pilchesky has failed to state a claim against former Governor Rendell, we will sustain Rendell's preliminary objection and dismiss the claims Pilchesky brought against him in the second amended petition. *See Pilchesky I*, 932 A.2d at 288-89.

(continued…)

> returning from the same; and for any speech or debate in either House they shall not be questioned in any other place.

Pa. Const. art. II, § 15.

As to the non-Commonwealth respondents, we note that Pilchesky is basically seeking a declaration from this Court that Act 52 is unconstitutional and, therefore, void. All of the alleged constitutional violations involve the actions of former Governor Rendell and the General Assembly surrounding the enactment of Act 52. The City of Scranton, the University of Scranton and the Redevelopment Authority have absolutely nothing to do with the enactment of Act 52 and whether or not it is constitutional. In the "Introduction" section of his second amended petition, which form of non-numbered paragraphs we note is procedurally improper under Pa. R.A.P. 1513(c),[5] Pilchesky alleges that the sale of South Side is "illegal" and that the Mayor of Scranton circumvented the City's bidding requirements and ensured the property would be bought by the University of Scranton through passage of Act 52.[6] Even assuming, *arguendo*, that all the facts alleged in Pilchesky's petition are true, the fact remains that Act 52 has been duly enacted and Pilchesky's constitutional arguments have all failed. As stated above, Pilchesky could and should have brought the present claims in one of his many previous law suits. For all of these reasons, we sustain the preliminary objections

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[5] Rule 1513(c) states that the form for a Petition for Review in an original jurisdiction action shall be as follows:

> Any Petition for Review shall be divided into consecutively numbered paragraphs. Each paragraph shall contain as nearly as possible, a single allegation of fact or other statement. When Petitioner seeks review of any order refusing to certify an interlocutory order for immediate appeal, numbered paragraphs need not be used.

Pa. R.A.P. 1513(c).

[6] *See Vutnoski v. Redevelopment Authority of the City of Scranton*, 941 A.2d 54 (Pa. Cmwlth. 2008).

of the City of Scranton, the University of Scranton and the Redevelopment Authority.

Accordingly, the preliminary objections of all of the Respondents are sustained, and Pilchesky's second amended petition for review is dismissed with prejudice.

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DAN PELLEGRINI, Judge

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	:	
v.	:	
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Edward Rendell, Governor	:	
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Redevelopment Authority,	:	
Respondents	:	No. 858 M.D. 2010

O R D E R

AND NOW, this 4th day of August, 2011, the preliminary objections of former Governor Edward Rendell; Senator Joseph Scarnati, III; the Pennsylvania House of Representatives on behalf of itself and any current or former Representative; the City of Scranton; the University of Scranton; and the Redevelopment Authority of the City of Scranton are sustained. Petitioner Joseph Pilchesky's second amended petition for review is hereby dismissed with prejudice.

DAN PELLEGRINI, Judge