

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Appeal of Harold Baird and :  
Angeline Baird From the Decision of :  
the Lower Providence Zoning Hearing :  
Board Dated January 8, 2010 :  
: :  
Lower Providence Township and :  
Pawlings Road Associates, LLC :  
: :  
Appeal of: Lower Providence : No. 981 C.D. 2010  
Township : Argued: February 7, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE JOHNNY J. BUTLER, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE PELLEGRINI

FILED: March 3, 2011

Lower Providence Township (Township) appeals from that portion of the order of the Court of Common Pleas of Montgomery County (trial court) denying its motion to intervene in an appeal by Harold Baird and Angeline Baird (Bairds) from a decision of the Lower Providence Zoning Hearing Board (Board) granting the zoning application of Pawlings Road Associates' (Applicant) and also granting Applicant's motion to quash the Township's notice of intervention.<sup>1</sup> For the reasons that follow, we quash the appeal.

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<sup>1</sup> The trial court issued one order dated April 27, 2010, at two different docket numbers: No. 2010-02677 (980 C.D. 2010) and No. 2010-02677 (981 C.D. 2010).

This case is factually identical to its companion case, *In Re: Appeal of Lower Providence Township from the Decision of the Lower Providence Township Zoning Hearing Board Dated January 8, 2010*, (No. 980 C.D. 2010, filed March 3, 2011). Procedurally, however, it is different. In the companion case, the Township filed an appeal from the Board's decision a) resolving the enforcement notice originally issued by the Township but then withdrawn by the Township by letter dated July 28, 2009; and b) granting the requested relief by Applicant for equitable relief to continue using its property as a non-conforming auto repair garage use. In this case, the adjacent neighbors of the Applicant, the Bairds, filed a timely land use appeal from that decision to the trial court. Applicant filed a timely notice of intervention. The Township also filed a timely notice of intervention. The Township subsequently filed an amended notice of intervention in support of the Bairds' appeal. Applicant then filed a motion to quash the Township's notice of intervention, and the Board filed a motion seeking to join the motion to quash the notice of intervention.

The trial court scheduled an argument on the motion to quash, and the Township filed a petition to supplement the record, answer and amended new matter. After reviewing the filings and hearing arguments, the trial court entered an order, the same order as in the companion case, providing that the petition to supplement the record was denied and the motion to quash the notice of intervention was granted in part and denied in part:

The Motions to Quash are **GRANTED IN PART** and **DENIED IN PART**. Insofar as the Township wishes to avail itself of the right to intervene it may do so, but is precluded from opposing the relief granted and/or the

Decision of the Zoning Hearing Board. The Township may intervene and support the relief granted and/or the Decision of the Zoning Hearing Board. **The township's separate appeal of the decision of the Zoning Hearing Board is QUASHED.**

(Trial court's April 27, 2010 order.) (Emphasis added in part.) The trial court explained that an order denying intervention did not dispose of all parties and claims, and that the Bairds' appeal remained pending and the Township still remained a party. We note that the Bairds have not filed an appeal with this Court from the trial court's decision as of this date. It is from the trial court's order that the Township has filed an appeal with this Court.

The Township contends that because it filed a timely intervention, the trial court's order precluding it from opposing the relief granted by the Board is a collateral order under Pa. R.A.P. 313(b), which allows review by this Court. The Township argues that the trial court's order is collateral because it precludes the Township from opposing the relief granted by the Board and is separate from the main cause of action. It did not resolve the appeal, but separately prohibited the Township from participating in the case in support of the Bairds' appeal.

Pa. R.A.P. 313(b) provides:

A collateral order is an order separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost.

The Board argues that the Township has not met any of the prongs of this test while Applicant argues that it has met the first prong but not the last two.<sup>2</sup> As to the first prong, we agree with the Board that the trial court's order is not separable from and collateral to the main cause of action because the main cause of action is the Board's decision granting Applicant's application based in part on the agreement between the Township and Applicant. The filing of a separate appeal by the Bairds based on the Board's decision relying on the agreement is not the main cause of action.

We also agree that the right involved is not too important to be denied review because the Township is not an aggrieved party from the Board's decision. It signed the agreement agreeing to the requested continued uses of the non-conforming duplex and the auto repair garage which were the subject of the application. The Township does not have a right to oppose the relief that is the subject of the Bairds' land use appeal before the trial court because it is non-existent and, therefore, is not too important to be denied review.<sup>3</sup> Finally, the

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<sup>2</sup> We note that an order denying a party the right to intervene is not appealable as a final order because it does not dispose of all claims or parties. *Watson v. City of Philadelphia*, 665 A.2d 1315 (Pa. Cmwlth. 1995). However, an order denying intervention may be appealable as a collateral order pursuant to Pa. R.A.P. 313(b) as long as all of the elements in the rule are met.

<sup>3</sup> Moreover, Pa. R.C.P. No. 2329(2) provides that an application for intervention may be refused if the interest of the petitioner is already adequately represented. Any issues complained of by the Township regarding the granting of the application will likely be presented by the Bairds. Additionally, Pa. R.C.P. No. 2327(4) provides that the right to intervene is not absolute ("At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules .... if (4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.") See also *Cogan v. County of Beaver*, 690 A.2d 763 (Pa. Cmwlth. 1997).

Township's claim will not be irreparably lost if review is postponed until final judgment by the trial court on the Bairds' appeal. After the Bairds' appeal is determined and if denied, at that time the Township would be able to appeal from a final judgment.

Because the Township does not meet the test for a collateral order and it is not entitled to appeal an order denying it the right to intervene because it is not a final appealable order, we need not address any of the issues raised by the Township.<sup>4</sup>

Accordingly, the appeal of the Township is quashed.

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DAN PELLEGRINI, JUDGE

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<sup>4</sup> While we are quashing Applicant's appeal, our decision in the companion case has an impact on this case because the Township can intervene only insofar as it may file its appeal in support of the decision of the Board.

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**ORDER**

AND NOW, this 3<sup>rd</sup> day of March, 2011, the Appeal of Lower Providence Township is quashed.

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DAN PELLEGRINI, JUDGE