

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mathew Grubel, Eric Tomlinson, :
Frances Byers, Carol M. Coccagna, :
Appellants :
: :
v. : :
: :
County Board of Elections, City and :
County of Philadelphia, City of : No. 99 C.D. 2010
Philadelphia : Submitted: November 24, 2010

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

Filed: January 5, 2011

Mathew Grubel, Eric Tomlinson, Frances Byers, and Carol M. Coccagna (collectively Appellants) appeal from an order of the Court of Common Pleas of Philadelphia County (trial court) dismissing their motion for class certification as moot. Because the trial court issued the order without a hearing or an explanatory opinion, we reverse and remand.

The facts as alleged in the Appellants' complaint are as follows. Appellants are all employed as Election Board Officers in various Ward Divisions located throughout the City of Philadelphia. On March 3, 2009, the Appellants,

individually and on behalf of all others similarly situated, filed an amended class action complaint with the trial court alleging that the County Board of Elections (Board) and the City of Philadelphia (City) owed them additional compensation for the work they performed on each Election Day. More specifically, they alleged that the Board determines the compensation rate for its Election Board Officers and that in doing so it is required to comply with the terms and provisions of the Philadelphia 21st Century Minimum Wage Standard Ordinance (Ordinance). As Election Board Officers, the Appellants fall within the Ordinance's definition of the term "employees" and, therefore, are entitled to compensation in the amount of 1.5 times the federal minimum wage for each hour worked in connection with an Election Day. Because the federal minimum wage at the time the complaint was filed was \$6.55 per hour and Election Board Officers were required to work at least 14 hours on each Election Day, Appellants claimed they should be compensated at the rate of at least \$137.55 per day. Reproduced Record (R.R.) at 8a. However, the Board and City compensate Election Board Officers at a set rate of either \$100 or \$95 per day, depending upon the individual's position, and these rates have not increased for more than fourteen years. *Id.* Appellants claimed that the Board and City's failure to compensate them at 1.5 times the federal minimum wage violates the Ordinance. They sought an award of back-pay for each class member, pre-judgment interest on the back-pay, reasonable attorneys' fees and costs, and an order requiring the Board and City to comply with the Ordinance in the future.

On April 1, 2009, the trial court issued a Case Management Order setting the discovery deadline as August 3, 2009, and stating that Appellants were to file a motion for class certification no later than November 2, 2009. The City filed

preliminary objections to the amended complaint on June 19, 2009, alleging the complaint should be dismissed in its entirety for lack of subject matter jurisdiction and legal insufficiency. In particular, the City argued that the provisions of the Ordinance relating to the required compensation for Election Workers was preempted by the Pennsylvania Election Code (Code), Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§2600 – 3591. Section 412.2 of the Code provides a range of compensation for Election Workers but specifically grants the Board the authority to determine such compensation. 25 P.S. §2682.2, *added by* Act of December 9, 2002, P.L. 1246. The trial court stayed the City’s preliminary objections pending resolution of this appeal.

On July 31, 2009, the trial court issued an order extending the discovery deadline to October 5, 2009, and stating “[a]ll other deadlines in the original Case Management Order remain in effect.” R.R. at 16a. Appellants filed their Motion for Class Certification on November 2, 2009, as required by the original case management order. The City contested the class certification, raising the same preemption argument it did in the preliminary objections. The trial court issued an order on November 19, 2009, denying Appellants’ motion to strike the City’s reply brief on its preliminary objections, granting Appellants leave to file a response to that brief, and stating that no further briefs regarding the preliminary objections were to be filed. On December 9, 2009, the trial court issued an order dismissing Appellants’ Motion for Class Certification as moot and referencing as support its order of November 19, 2009. Appellants filed a Motion for Reconsideration, which the trial court denied, and Appellants then filed an appeal. On July 13, 2010, the trial court issued an opinion in response to Appellants’ Statement of Errors Complained of on

Appeal stating that its December 9, 2009 order dismissing Appellants' Motion for Class Certification was entered in error because it was not accompanied by an opinion in support of the ruling and a pre-certification hearing was not held. The trial court requested that this Court remand the case so that the order could be rescinded and the outstanding issues could be resolved. Appellants filed a petition to remand the case to the trial court, which this Court denied, leaving the present appeal.

On appeal, Appellants argue¹ that the trial court erred in dismissing their Motion for Class Certification without an accompanying opinion explaining its ruling in violation of Rule 1710(a) of the Pennsylvania Rules of Civil Procedures, Pa. R.C.P. No. 1710(a). Appellants also argue that the trial court violated Rule 1707 by failing to conduct a pre-certification hearing. Pa. R.C.P. No. 1707. When determining whether a class should be certified, a trial court has broad discretion, and we will not disturb its ruling on appeal "unless we find the trial court failed to consider the requirements of the rules or abused its discretion in applying them." *Delaware County v. Mellon Financial Corporation*, 914 A.2d 469, 474 (Pa. Cmwlth. 2007) (quoting *Buynak v. Department of Transportation*, 833 A.2d 1159, 1163 (Pa. Cmwlth. 2003)). It is clear that the trial court failed to follow the rules concerning class action certification in this case.

Rule 1710(a) mandates that "[i]n certifying, refusing to certify or revoking a certification of a class action the court *shall* set forth in an opinion

¹ The City did not file a brief in this case.

accompanying the order the reasons for its decision on the matters specified in Rules 1702, 1708 and 1709, including findings of fact, conclusions of law and appropriate discussion.” Pa. R.C.P. No. 1710(a). (Emphasis added). The trial court’s order in this case was not accompanied by an opinion, nor did the order itself contain any findings of fact, conclusions of law, or discussion. The two sentence order simply stated that the Motion for Class Certification was dismissed as moot, which in effect was a refusal of Appellants’ request for class certification. The order referenced the trial court’s previous order dated November 19, 2009. However, this order only dealt with the City’s preliminary objections and subsequent briefing schedule. The trial court violated the clear mandate of Rule 1710(a) by failing to issue an accompanying opinion in this case.

Appellants also argue that the trial court violated Rule 1707 by issuing the order dismissing their Motion for Class Certification without first conducting a certification hearing. Rule 1707 provides as follows:

(a) Within thirty days after the pleadings are closed or within thirty days after the last required pleading was due, the plaintiff shall move that the action be certified as a class action. The court may extend the time for cause shown. If the plaintiff fails to move for certification, the court if so notified shall promptly set a date for a certification hearing.

(b) The court may postpone the hearing to a later date pending the disposition of other motions or to permit discovery with respect to the class action issues.

(c) The hearing shall be limited to the Class Action Allegations. In determining whether to certify the action as a class action the court shall consider all relevant testimony, depositions, admissions and other evidence.

Pa. R.C.P. No. 1707. While the Rule does not specifically state that a certification hearing *must* be held in every case prior to a court ruling on the issue of certification, this is implied by the continued reference to a certification hearing and Section (c)'s statement that a certification decision should be made based upon "all relevant testimony, depositions, admissions and other evidence." *Id.* In addition, the explanatory comment following the rule states "[a] hearing on certification of the action as a class action is *mandatory in all cases.*" (Emphasis added). While comments to the Rules of Civil Procedure are only advisory and serve to provide guidance to the courts when interpreting the rules, the guidance provided by this comment could not be more clear. We agree with Appellants' argument and the Pennsylvania Superior Court's interpretation of Rule 1707 that a hearing is required in all class actions to determine certification. *See Baldassari v. Suburban Cable TV Co., Inc.*, 808 A.2d 184 (Pa. Super. 2002); *Volpe v. Union Fidelity Life Insurance Co.*, 507 A.2d 1250 (Pa. Super. 1986).

Because the trial court violated Rule 1710(a) by failing to issue an accompanying opinion and Rule 1707 by failing to conduct a certification hearing before making a decision regarding Appellants' Motion for Class Certification, the order is vacated and the case is remanded for proceedings consistent with this

opinion. However, we would suggest that the trial court address the preliminary objections in this case before conducting a certification hearing, as per Rule 1707.²

DAN PELLEGRINI, JUDGE

² Rule 1707(a) states that a plaintiff shall file his or her motion for class certification “[w]ithin thirty days after the pleadings are closed or within thirty days after the last required pleading was due.” Pa. R.C.P. No. 1707(a). The Explanatory Comment to this rule makes clear that preliminary objections are to be addressed before a trial court rules on class certification, as it states, “[s]ince the certification hearing is not to be held until the pleading stage is concluded, attacks on the form of the complaint or demurrers to attack the substance must already have been filed and disposed of. The defendant will have already filed an answer on the merits.”

