IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 6, 2007 Session

JONATHAN D. REED v. TOWN OF LOUISVILLE

Direct Appeal from the Chancery Court for Blount County
No. 03-146 Hon. Telford E. Forgety, Jr., Chancellor

No. E2006-01637-COA-R3-CV - FILED MARCH 19, 2007

The Trial Court dismissed plaintiff's Declaratory Judgment Action on the grounds that all necessary parties weren't included. On appeal, we affirm.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Chancery Court affirmed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which D. MICHAEL SWINEY, J., and SHARON G. LEE, J., joined.

Jonathan D. Reed, Knoxville, Tennessee, *pro se*.

Reid A. Spaulding, Knoxville, Tennessee, for appellee.

OPINION

In this declaratory judgment action, the plaintiff sought a declaration that a cul-de-sac in the town of Louisville was a public road, and that the town had a duty to maintain the cul-de-sac. The Trial Court dismissed the action on the grounds that all necessary parties were not named as defendants. Plaintiff has appealed.

BACKGROUND

Reed owns a one third interest[1] in a parcel of real estate located at 3333 Bluff View Drive in Louisville, Tennessee (the "Reed Property"). "Bluff View Drive" refers to a road with both paved and unpaved sections. The paved section extends from Light Pink Road until it intersects with the unpaved section. The unpaved section is a gravel cul-de-sac (the "Cul-de-sac") extending from the paved portion of Bluff View Drive and terminating near the northeast boundary of the Reed Property. The Reed Property is not the only parcel adjoining the Cul-de-sac; Elizabeth Luther owns an adjoining parcel. The Cul-de-sac has been gravel since the Reed family first acquired the Property, and both the Reed family and the neighboring Luther family have maintained the gravel for at least ten years. The mailboxes for both the Reed Property and the Luther property are located on the paved portion of Bluff View Drive, not the Cul-de-sac. Neither Blount County nor the Town of Louisville has ever maintained the Cul-de-sac.

Reed submitted a written request to the Mayor of Louisville for maintenance of the Cul-de-sac, which the town denied.

The Complaint on this action was filed on September 11, 2003, and the defendant filed an Answer arguing the Cul-de-sac is a private driveway and only the paved Bluff View Drive is a public road. The motion asked, in the alternative, that the Complaint should be dismissed because all the necessary parties were not before the court.

The Chancery Court ruled that Reed would have 60 days to amend his Complaint to include (1) "those persons owning interests as tenants-in-common with Plaintiff in [the Property]," (2) "those persons and/or entitles possessing ownership interests of any kind in any and all tracts of real property abutting or underlying the [Cul-de-sac]," and (3) "any persons and/or entities owning any equitable or beneficial interests in any and all tracts of real property abutting or underlying the [Cul-de-sac]." Reed declined to amend his Complaint, and as a result the Trial Court entered an order dismissing the Complaint. Reed filed a timely Notice of Appeal.

Reed argues that the Trial Court erroneously dismissed his action because the Court required joinder of unnecessary parties. A decision to dismiss a declaratory action falls within the trial court's "very wide" discretion. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 193 (Tenn. 2000). Such a decision will not be overturned unless dismissal was arbitrary. *Id.*

> What is meant by saying that the trial court has exercised a proper discretion? We think that it means a sound discretion, exercised, not arbitrarily or wilfully, but with regard to what is right and equitable under the circumstances of the law, and directed by the Chancellor's reason and conscience to a just result.

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[1]The other owners of the Property are his brother, Lon Reed, and his mother, Wanda Reed.

S. Ry. Co. v. Atl. Coast Line R.R. Co., 352 S.W.2d 217, 219 (Tenn. 1961).

"When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration . . . ." T.C.A. § 29-14-107(a). Courts have discretion to determine who these necessary parties are. *Powers v. Vinsant*, 54 S.W.2d 938, 938 (Tenn. 1932); *Huntsville Util. Dist. v. Gen. Trust Co.*, 839 S.W.2d 397, 400 (Tenn. Ct. App. 1992). "'The non-joinder of necessary parties is fatal on the question of justiciability, which, in a suit for a declaratory judgment, is a necessary condition of judicial relief.'" *Huntsville Util. Dist.*, 839 S.W.2d at 400 (quoting *Wright v. Nashville Gas & Heating Co.*, 194 S.W.2d 459, 461 (Tenn. 1946)). In this case the determinative issue is whether the requested declaration would have affected these persons' interests as mentioned by the Trial Court. Reed asserts that the Cul-de-sac is part of a street system laid out within a recorded subdivision plat; therefore, the plat dedicated the Cul-de-sac to public use. Assuming *arguendo* the existence of such a dedication, the fee underlying the Cul-de-sac would remain in the dedicator or the abutting landowners. *State ex rel. Kessel v. Ashe*, 888 S.W.2d 430, 431 (Tenn. 1994). This fee would be subject to a "collective private easement" in the Cul-de-sac for the benefit of all abutting landowners. *Jacoway v. Palmer*, 753 S.W.2d 675, 677 (Tenn. Ct. App. 1987). If the Cul-de-sac were declared a public road as Reed requests, the underlying fee and the abutting landowners' private easement would be "burdened with the rights of the general public to use the land as a public road." *Id.* This declaration would affect any interests in the real property abutting or underlying the Cul-de-sac. Accordingly, T.C.A. § 29-14-107(a) requires that persons owning such interests "be made parties."

Additionally, issuing a declaratory judgment without adding these parties would defeat the stated purpose of the Declaratory Judgment Act, "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." T.C.A. § 29-14-113. If these parties are not added, the declaration could not prejudice their rights. T.C.A. § 29-14-107(a) ("no declaration shall prejudice the rights of persons not parties to the proceedings"). This raises the specter of recurring litigation on the same subject, and declaratory judgment may be refused where, if rendered, it would not terminate the uncertainty or controversy giving rise to the proceedings. *Commercial Cas. Ins. Co. v. Tri-State Transit Co. of La.*, 146 S.W.2d 135, 136 (Tenn. 1941).

Based on the foregoing, the Trial Court's dismissal of Reed's complaint was not arbitrary, but appropriate, and we affirm the Judgment of the Trial Court, dismissing the Complaint. The cost of the appeal is assessed to Jonathan D. Reed.

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HERSCHEL PICKENS FRANKS, P.J.