

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-22-00091-CV

In re Austin Housing Finance Corporation and The City of Austin

ORIGINAL PROCEEDING FROM TRAVIS COUNTY

MEMORANDUM OPINION

Relators Austin Housing Finance Corporation (AHFC) and the City of Austin (collectively, Relators) have petitioned for writ of mandamus seeking relief from a January 24, 2022 abatement order. That order abated the underlying lawsuit until AHFC joined all other lot owners, mortgage service providers, and the homeowners' association for the subdivision where the subject property is located. For the reasons explained below, we conditionally grant mandamus relief.

BACKGROUND

This mandamus proceeding arises out of an underlying declaratory judgment action filed by real parties in interest Marcela Patricia Buenrostro Del Real (one of the lot owners in the subdivision) and Friends of Brykerwoods LLC (collectively, the Plaintiffs), seeking to prevent the City of Austin and AHFC from constructing affordable single-family housing in the Brykerwoods Annex subdivision. AHFC purchased Lot 1 of Brykerwoods Annex located at 3000 Funston Street, Austin, Texas, (the Property), from the City of Austin.

After AHFC began construction on the Property, Plaintiffs sued to stop the construction. As pleaded in their Second Amended Petition, Plaintiffs sought, among other things, a declaratory judgment that a provision in the subdivision's 1947 plat applies to the Property, and therefore prohibits the erecting of any building on the Property because the Property is smaller than the minimum lot size requirements.¹ Relators filed an answer asserting special exceptions and defenses, including waiver and estoppel, but did not assert any counterclaims.

The trial court signed a temporary injunction on March 18, 2020, preventing AHFC from continuing construction on the Property during the pending suit. The trial date was continued many times until a setting of January 18, 2022. In the weeks before the setting, Plaintiffs filed an amended plea in abatement and motion for continuance, arguing that the proceedings should be abated because AHFC was asserting waiver and estoppel, which required AHFC to join the other lot owners in the subdivision (as well as any affected mortgage service providers and the homeowners' association) as necessary parties under the Uniform Declaratory Judgments Act. Plaintiffs submitted only the subdivision plat as evidence in support of its amended plea in abatement. After a hearing, the trial court issued a written order granting the abatement, finding that the other lot owners and mortgage service providers have a "vested interest" in the minimum lot size provision contained in the 1947 plat and suspending the lawsuit until AHFC adds the following additional parties. The order stated:

¹ The specific provision provides: "No residential structure shall be erected or placed on any building plot, which plot has an area of less than 5750 square ft or a width of less than 50 ft. at the front building setback line as shown on the recorded plat." The 1947 plat also contains a waiver provision: "Invalidation of any one of these covenants by judgment or court order shall in no wise [sic] affect any of the other provisions which shall remain in full force and effect."

IT IS, THEREFORE, ORDERED that this cause is suspended until the Homeowners Association of the Brykerwoods Annex and all lot owners in the Brykerwoods Annex subdivision are joined as parties by the Defendant Austin Housing Finance Corporation.

IT IS, THEREFORE, ORDERED that Defendant Austin Housing Finance Corporation shall also join all mortgage service providers who hold a security interest in any property and/or deed of trust for any lot in the Brykerwoods Annex identified in the attached Exhibit 1.

Relators now seek mandamus relief, contending that the trial court abused its discretion by requiring them to join those additional parties.

STANDARD OF REVIEW

Mandamus is an extraordinary remedy that requires Relators to show that the trial court clearly abused its discretion and that no adequate remedy by appeal exists. *See In re K & L Auto Crushers, LLC*, 627 S.W.3d 239, 247 (Tex. 2021) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36, 138 (Tex. 2004) (orig. proceeding). A trial court abuses its discretion when it acts “arbitrarily, capriciously, and without reference to guiding principles.” *In re Boyaki*, 587 S.W.3d 479, 483 (Tex. App.—El Paso 2019, orig. proceeding). A trial court has no discretion in determining what the law is or applying the law to the facts, and therefore the trial court abuses its discretion if it clearly fails to correctly analyze or apply the law. *Id.*

Whether a necessary party exists is an evidentiary issue, and therefore to establish entitlement to mandamus relief, Relators must show that the evidence before the trial court dictated only one possible outcome as a matter of law. *See In re Occidental W. Tex. Overthrust, Inc.*, 626 S.W.3d 395, 400 (Tex. App.—El Paso 2021, orig. proceeding). They were therefore required to show through “record evidence” that each of the alleged necessary parties had an actual, claimed interest—not just a potential interest—in the subject matter of the action. *See*

Crawford v. XTO Energy, Inc., 509 S.W.3d 906, 913 (Tex. 2017) (“Rule 39 does not require joinder of persons who potentially could claim an interest in the subject of the action; it requires joinder, in certain circumstances, of persons who actually claim such an interest.”). Similarly, a plea in abatement based on nonjoinder “should show definitely and specifically the nature and extent of the interest of such person who is claimed to be a necessary party,” and must “give the court definite allegations as to the parties and the interests claimed by them.” *In re Occidental*, 626 S.W.3d at 401 (quoting *Stanolind Oil & Gas Co. v. State*, 133 S.W.2d 767, 771 (Tex. 1939)).

Relators lack an adequate remedy by appeal. Generally, mandamus relief is available for the improper joinder of parties. *See In re Boyaki*, 587 S.W.3d at 484 (granting mandamus relief for improper joinder under Rule 39); *In re Corcoran*, 401 S.W.3d 136, 139–40 (Tex. App.—Houston [14th Dist.] 2011, orig. proceeding) (granting mandamus relief for improper joinder under Uniform Declaratory Judgments Act). Mandamus relief is also appropriate here because the order suspends the underlying lawsuit until additional parties are joined, leaving Relators without any other method for challenging the court’s action or presenting their defenses. *See In re Shulman*, 544 S.W.3d 861, 867 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding); *see also In re Prudential*, 148 S.W.3d at 136.

ABUSE OF DISCRETION

Relators contend that the trial court abused its discretion by abating the underlying proceeding until Relators joined three categories of parties: (1) other recorded lot owners in the subdivision, (2) any mortgage servicer with a security interest and/or deed of trust for each such lot owner, and (3) the homeowners’ association.

“When declaratory relief is sought, all persons who have or claim any interest that would be affected by the declaration must be made parties.” Tex. Civ. Prac. & Rem. Code § 37.006(a). Trial courts generally have broad discretion in joinder of parties, *see Royal Petro. Corp. v. Dennis*, 332 S.W.2d 313, 317 (Tex. 1960), but whether parties must be joined under subsection 37.006(a) should be determined using the analysis under Rule 39 of the Texas Rules of Civil Procedure, *see Twin Creeks Golf Grp. v. Sunset Ridge Owners Ass’n*, 537 S.W.3d 535, 547 (Tex. App.—Austin 2017, no pet.). Rule 39(a) provides for joinder of indispensable parties in mandatory terms, but “there is no arbitrary standard or precise formula for determining whether a particular person falls within its provision.” *In re Boyaki*, 587 S.W.3d at 483 (quoting *Longoria v. Exxon Mobil Corp.*, 255 S.W.3d 174, 180 (Tex. App.—San Antonio 2008, pet. denied)). Plaintiffs sought abatement before the trial court, and therefore had the burden to show that the parties they deemed to be necessary are, in fact, necessary under Rule 39. *In re Occidental*, 626 S.W.3d at 400.

The record before us does not show that any of the categories of parties identified in the abatement order qualify as necessary parties to the underlying litigation. The only evidence presented in support of the amended plea in abatement was a copy of the 1947 plat containing the disputed minimum lot size provision for the subdivision.² Plaintiffs contend that the document alone demonstrates other lot owners have “claimed certain contractual rights under their recorded deeds and dually [sic] recorded restrictive covenants.” At most, such evidence suggests that the other lot owners may potentially claim an interest in the subject of this action. *See Crawford*, 509 S.W.3d at 913. Nothing in the record establishes that those other lot owners

² We need not, and do not, address the applicability or enforceability of the disputed provision as to the Property or Relators.

have demanded recognition or otherwise asserted or established any right or privilege that would rise to the level of an actual claimed interest in the subject matter of the underlying action. *See In re Corcoran*, 401 S.W.3d at 139 (“An action for declaratory judgment that is a suit against a homeowner to enforce compliance with a deed restriction does not implicate the rights of other homeowners.”).

Citing our decision in *Sides v. Saliga*, No. 03-17-00732-CV, 2019 WL 2529551 (Tex. App.—Austin June 20, 2019, pet. denied) (mem. op.), Plaintiffs argue that Relators’ waiver defense requires the joinder of the other lot owners because Relators must prove that “all lot owners, Lots 1-21, have waived all of the deed restrictions to prove waiver.” That decision, however, concerned only the evidentiary hurdle a party must overcome to demonstrate that a nonwaiver clause is ineffective. *See id.* at *14 (“A nonwaiver clause will be held to be ineffective only if the party seeking to avoid the covenants can demonstrate ‘a complete abandonment of the entire set of restrictions, including the nonwaiver provision.’” (quoting *Vance v. Popkowski*, 534 S.W.3d 474, 479–80 (Tex. App.—Houston [1st Dist.] 2017, pet. denied))). That is, *Sides* holds that evidence regarding usage of other properties may be introduced to defeat the nonwaiver provision but has no requirement that the other lot owners also be included as parties to the lawsuit. *See id.* (“Complete abandonment is demonstrated when there is evidence of violations so pervasive that they have destroyed the fundamental character of the neighborhood.” (quoting *Vance*, 534 S.W.3d at 480)). And unlike other situations in which a party challenged the application of a restriction to an entire subdivision, *see, e.g., Dahl v. Hartman*, 14 S.W.3d 434, 436 (Tex. App.—Houston [14th Dist.] 2000, pet. denied) (seeking invalidation of deed restriction for all property owners in a community), here

the declaratory judgment action as pleaded is narrowly concerned with the applicability and enforceability of the provision as to only the Property.

Furthermore, nothing in the record establishes that either the mortgage service providers or the purported homeowners' association are necessary parties. Aside from unsupported passing references to the potential "security interest" of mortgage holders, the record is devoid of any evidence that any mortgage service provider exists for the other lots, let alone any evidence of an actual, claimed interest made by a provider. *See Crawford*, 509 S.W.3d at 913. Similarly, the disputed order requires joinder of the "Homeowners Association of the Brykerwoods Annex," but an affidavit establishes that the "subdivision does not have an HOA." Therefore, no such "party" exists to claim an actual interest in the subject matter of the underlying action. *See* Tex. R. Civ. P. 39(a).³

Accordingly, the record does not establish that joinder of those categories of nonparties was mandatory, and the trial court abused its discretion by ordering their joinder. *See In re Corcoran*, 401 S.W.3d at 140; *see also* Tex. R. Civ. P. 39(a).

CONCLUSION

We conditionally grant Relators' petition for writ of mandamus and direct the trial court to vacate its January 24, 2022 order granting the amended motion to abate and requiring Relators to join additional parties. We also dismiss as moot Relators' emergency motion for temporary relief. The writ will issue only if the trial court fails to comply.

³ Furthermore, even assuming such parties exist, the mandamus record does not establish how the absence of those parties would somehow prevent complete relief from being granted among the current parties. *See* Tex. R. Civ. P. 39(a); *see also* Tex. Civ. Prac. & Rem. Code § 37.006(a) ("A declaration does not prejudice the rights of a person not a party to the proceeding.").

Chari L. Kelly, Justice

Before Justices Goodwin, Baker, and Kelly

Filed: July 27, 2022