

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
TERRY CRABTREE, JUDGE

DIVISION II

CA 06-358

October 11, 2006

GERHARD LANGGUTH

APPELLANT

APPEAL FROM THE POPE COUNTY  
CIRCUIT COURT  
[NO. CV-2005-521]

V.

RAYE TURNER, Mayor

HONORABLE JOHN S. PATTERSON  
JUDGE

APPELLEE

AFFIRMED

Appellant filed suit in the Circuit Court of Pope County, Arkansas seeking to have an ordinance that was passed by the city council of the City of Russellville, Arkansas declared to be in violation of the Arkansas Constitution, state law, and city code. Ordinance No. 1866, about which he complains, rezones property from a residential zone to a planned unit development. In his complaint, appellant named appellee Raye Turner, the mayor of the City of Russellville, in her official capacity as the sole defendant. Appellee responded with a motion to dismiss. After a hearing the court granted appellee's motion to dismiss finding that appellant did not have standing to file suit, that he did not suffer any adverse impact from the rezoning of property by Ordinance No. 1866, and that he failed to name the necessary and essential parties to the suit. We affirm.

Because it is a threshold issue, we begin with the trial court's ruling that appellant does not have standing to file suit. Appellant asserts that standing is conferred upon him by Ark. Code Ann. § 16-111-104 (Repl. 2006) which provides:

Any person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

Although appellant does not have an ownership interest in the property that was rezoned by Ordinance No. 1866, he argues that because he has a long history of active participation in the affairs of the City of Russellville, is a taxpayer, owns both residential and commercial property in the city, and regularly attends city council and planning commission meetings, he qualifies as an "interested party" entitled to have the court determine the validity of the ordinance he challenges. Appellee counters that appellant has failed to show how his "rights, status or other legal relations" are affected by Ordinance No. 1866, and that being a taxpayer, voter, and property owner is not enough to give appellant standing to bring suit. Both parties cite *Summit Mall v. Lemond*, 355 Ark. 190, 132 S.W.3d 725 (2003), in support of their positions.

In *Summit Mall*, several land owners who lived in close proximity to the proposed Summit Mall site obtained an injunction enjoining the City of Little Rock from issuing a building permit to Summit Mall or taking other action with regard to City Ordinance No. 18, 456. The landowners lived in a neighboring subdivision, and they all testified that they

would be adversely affected by the development with respect to a decline in their property values, traffic congestion, air and noise pollution, and loss of green space. The City and Summit Mall raised several issues on appeal, one of them being that the landowners did not have standing to file the complaint below. The court held that “[a]n adverse impact, which is the general test for standing, appears to us to be the appropriate test for standing in this matter. *Id.* at 204. Because the landowners established adverse impact, the court declined to dismiss for lack of standing.

Standing was also an issue in *Dover v. City of Russellville*, 352 Ark. 299, 100 S.W.3d 689 (2003). In its discussion of standing, the court cited David Newbern, *Arkansas Civil Practice and Procedure* § 5-15, at 61-62 (2d ed.1993):

To be a proper plaintiff in an action, one must have an interest which has been adversely affected or rights which have been invaded. Courts will not allow suit by one who is a “stranger to the record” or for the purpose of vindicating an abstract principle of justice.

*Id.* at 304.

In the present matter, the trial court found that appellant “does not suffer any adverse impact from the rezoning of property by Ordinance No. 1866.” Appellant concedes that his property is approximately four miles away from the property that is the subject of Ordinance No. 1866, and that his injuries are common to the public. He asserts on appeal that the adverse impact he suffers is not physical, rather it is “the uncertainty caused by the appellee’s unchecked ability to interpret and re-interpret regulations to fit a current agenda.” We agree that appellant has not established that he has suffered an adverse impact; therefore, he is

without standing to file suit. Because we decide the case on standing, we need not address the remaining issues.

Affirmed.

HART and GLOVER, JJ., agree.