

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018CA1118

B. CHARLES GOODWIN AND CLAUDIA SELIGMAN

VERSUS

CITY OF MANDEVILLE AND STATE OF LOUISIANA

Judgment Rendered: May 31, 2019

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Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Docket No. 2017-11975

The Honorable August J. Hand, Judge Presiding

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BEFORE: WELCH, CHUTZ, AND LANIER, JJ.

DISPOSITION: AFFIRMED

Chutz, J. Concurs

LANIER, J.

In the instant case, plaintiffs challenge the trial court's judgment sustaining various exceptions pled by defendants in response to plaintiffs' petition for declaratory judgment. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

Plaintiffs, B. Charles Goodwin, Claudia Seligman, and Alvin Burstein, in their capacity as taxpaying residents of the City of Mandeville ("the City"), filed a petition for declaratory judgment against the City and the State of Louisiana, through the Office of State Lands ("State of Louisiana"). Pursuant to La. Code Civ. P. art. 1871, plaintiffs sought declaratory judgment as to several issues concerning a proposed development on the shores of Lake Pontchartrain known as the Port Marigny development.

The issues addressed by plaintiffs in their original petition and two subsequent amending and supplemental petitions were summarized by plaintiffs in their brief to this court as follows:

The first issue alleged for declaratory judgment concerns a portion of a former street and right of way, Kleber Street, and its relationship with the former Pre-Stressed Construction site on Lake Pontchartrain, which is sought and proposed for development by the Port Marigny Project. Kleber Street was a dedicated right of way that originally reached Lake Pontchartrain. On August 8, 1967, the City of Mandeville through an unrecorded action purported to relinquish the right of way. 1.4 acres of reclaimed land currently sits at what would be the former terminus of Kleber Street. Plaintiffs seek declaratory judgment against defendants to determine whether a donation of the right of way without compensation is Constitutional and whether the Office of State Lands should seek to provide public access to the waterfront land owned by the State.

The second issue alleged for declaratory judgment concerns a lease the City of Mandeville holds over 11.4 acres of reclaimed water bottoms owned by the State. The City of Mandeville pays the Office of State Lands a sum of \$100 per year to lease the acreage. Contained in the 11.4 acres is the 1.4 acres at the terminus of the Kleber Street right of way. Port Marigny has proposed the City donate its leasehold interest in the property to the Port Marigny interests. Plaintiffs seek declaratory judgment concerning whether such a donation is Constitutional, whether the Office of State Lands has an obligation to

oppose such a transfer, and whether the Office of State Lands has an obligation to re-establish access to the waterfront acreage owned by the State.^[1]

The final issue alleged for declaratory judgment concerns the coastal restoration of private land on the shore of Lake Pontchartrain. The City of Mandeville has already spent close to \$300,000 on a study of the feasibility of restoring the coastline owned by a private non-profit corporation, The Green Fund, Inc., which is controlled by the Mandeville City Attorney, Edward Deano and his family. It is estimated close to \$3 million would be spent to complete the project. Plaintiffs seek declaratory judgment as to whether such an expenditure of public funds on a project to improve private lands is prohibited by the Louisiana Constitution.

In response, the City filed exceptions raising the objections of no cause of action, no right of action, and lack of subject matter jurisdiction. The City asserted plaintiffs failed to state a right or cause of action against the City, arguing that there was no justiciable controversy between the parties and that plaintiffs were merely requesting answers to theoretical, moot questions. The City further argued that plaintiffs' suit was barred by the doctrine of sovereign immunity and, thus, subject matter jurisdiction was lacking.²

Following a hearing on March 7, 2018, the trial court issued a judgment on April 11, 2018, as follows:

IT IS ORDERED, ADJUDGED AND DECREED that the City's Declinatory Exception of Lack of Subject Matter Jurisdiction, the City's Peremptory Exception of No Cause of Action, and the City's Peremptory Exception of No Right of Action are GRANTED.

An appeal of the April 11, 2018 judgment by plaintiffs followed.

After the appeal was lodged, this court issued a rule to show cause as follows: "The April 11, 2018 judgment ... appears to grant the exceptions ... but lacks the appropriate decretal language disposing of and/or dismissing the claim(s)

¹ At oral argument before this court, counsel for plaintiffs acknowledged that their claims as to the second issue were not quite ripe and that they were "walking away from that" claim. Accordingly, we have excluded this issue from our review in this appeal.

² The State of Louisiana also filed several exceptions to the pleadings, raising the objections of lack of subject matter jurisdiction, prematurity, vagueness or ambiguity, no cause of action, and no right of action. However, on appeal, plaintiffs only challenge the trial court's judgment as it relates to the granting of the City's exceptions. Thus, the trial court's judgment as it relates to the State is final.

of the petitioner **IT IS HEREBY ORDERED** that the parties ... show cause ... whether the appeal should or should not be dismissed" Thereafter, on joint motion of the parties, and considering this court's show cause order, the trial court entered an "Amended Judgment on Exceptions" on September 13, 2018. The appellate record was supplemented with said judgment on January 4, 2019, which judgment provided, in pertinent part, as follows:

IT IS ORDERED, ADJUDGED AND DECREED that the exceptions of prematurity and vagueness/ambiguity, filed by the defendant, State of Louisiana, against the plaintiffs, B. Charles Goodwin, Claudia Seligman and Alvin Burstein, are GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the exceptions of lack of subject matter jurisdiction, no cause of action and no right of action, filed by the defendants, State of Louisiana and the City of Mandeville, against the plaintiffs, B. Charles Goodwin, Claudia Seligman and Alvin Burstein, are GRANTED.

....

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that claims of the plaintiffs, B. Charles Goodwin, Claudia Seligman and Alvin Burstein, in this declaratory judgment action are DISMISSED WITHOUT PREJUDICE. Pursuant to the provisions of La. C.C.P. art. 1915, this Amended Judgment on Exceptions, is designated a final judgment; the Court has determined there is no just reason for delay and may be immediately appealed.

Thereafter, another panel of this court issued an action maintaining the appeal, but reserved a final determination on whether to maintain the appeal to the merits panel. **Goodwin v. City of Mandeville**, 2018-1118 (La. App. 1 Cir. 1/16/19) (unpublished action). Based on our own review, we find the trial court's September 13, 2018 amended judgment corrected the defect noted in the show cause order. Accordingly, plaintiffs' appeal is maintained.

DISCUSSION

On appeal, plaintiffs argue the trial court erred in sustaining the City's exceptions and denying them an opportunity to fully present their case, which, plaintiffs contend, was "ripe for adjudication under a declaratory judgment." In the

alternative, plaintiffs argue that as taxpayers they have standing to bring this cause of action against the City as an action for an injunction, seeking to enjoin the City from illegally alienating its real property rights concerning the Kleber Street right of way and the lakefront property at issue, and an action for mandamus, seeking to compel the City to act lawfully.³

The City replies by arguing that plaintiffs have no legal interest in the lands discussed in the petition and, thus, have no right of action against the City. Moreover, the City maintains that there is no "justiciable controversy" between the parties, and as a result, plaintiffs have failed to state a cause of action against the City. Concerning plaintiffs' claim that they are bringing this action against the City as either an injunction or a writ of mandamus, the City asserts that plaintiffs have failed to follow the procedural requirements for either action under Louisiana law. The City further contends that because neither the State nor the City has waived sovereign immunity with regards to the issues raised in the plaintiffs' request for declaratory judgments, the trial court lacked subject matter jurisdiction to consider the matter.

We agree with the City that plaintiffs lacked standing to bring this action and that there was no justiciable controversy between the parties. Thus, we pretermit discussion of the issue of sovereign immunity as it relates to subject matter jurisdiction in this case.

The exception raising the objection of no right of action questions the plaintiff's standing or interest to bring suit. La. Code Civ. P. art. 927(6). A

³ Plaintiffs also challenge the constitutionality of La. R.S. 48:701. It is well settled in Louisiana law that a statute must first be questioned in the trial court, not the appellate courts, and the unconstitutionality of a statute must be specially pleaded and the grounds for the claim particularized. **Vallo v. Gayle Oil Co., Inc.**, 94-1238 (La. 11/30/94), 646 So.2d 859, 864-865. When the constitutionality of a statute is assailed in a declaratory judgment action, the attorney general must be served with a copy of the proceeding and he is entitled to be heard and/or, at his discretion, to represent or supervise the representation of the interests of the State in the proceeding. La. R.S. 49:257(B); La. Code Civ. P. art. 1880. Applying these legal precepts to the instant case, the issue of the constitutionality of La. R.S. 48:701 is not in the proper posture for this court's review.

plaintiff must have a "real and actual interest" in the action he asserts before the courts will entertain his suit. La. Code Civ. P. art. 681; **Ramsey River Rd. Prop. Owners Ass'n, Inc. v. Reeves**, 396 So.2d 873, 874 (La. 1981). The objection of no right of action tests whether the plaintiff, who seeks relief, is a person in whose favor the law extends a remedy. See Howard v. Administrators of Tulane Educational Fund, 2007-2224 (La. 7/1/08), 986 So.2d 47, 59.

A peremptory exception pleading the objection of no right of action tests whether the plaintiff has any interest in judicially enforcing the right asserted. La. Code Civ. P. art. 927(A)(6). **Louisiana State Bar Ass'n v. Carr and Associates, Inc.**, 2008-2114 (La. App. 1 Cir. 5/8/09), 15 So.3d 158, 165, writ denied, 2009-1627 (La. 10/30/09), 21 So.3d 292. The objection of no right of action assumes that the petition states a valid cause of action for some person and questions whether the plaintiff in the particular case is a member of the class that has a legal interest in the subject matter of the litigation. **Red Stick Studio Development, L.L.C. v. State ex rel. Dept. of Economic Development**, 2009-1349 (La. App. 1 Cir. 4/8/10), 37 So.3d 1029, 1033, writ denied, 2010-1501 (La. 10/1/10), 45 So.3d 1102. Whether a plaintiff has a right of action is ultimately a question of law; therefore, it is reviewed *de novo* on appeal. **Hill v. Jindal**, 2014-1757 (La. App. 1 Cir. 6/17/15), 175 So.3d 988, 1000, writ denied, 2015-1394 (La. 10/23/15), 179 So.3d 600. Based on our thorough review of the record herein, we find plaintiffs failed to assert any personal rights or ownership interests in the subject property. Thus, plaintiffs do not have standing to bring this action. The trial court's judgment sustaining defendants' exception raising the objection of no right of action was not in error.

The function of an exception raising the objection of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the pleading. **Everything on Wheels Subaru, Inc.**

v. Subaru South, Inc., 616 So.2d 1234, 1235 (La. 1993). No evidence may be introduced to support or controvert the objection that the petition fails to state a cause of action, and all well-pleaded allegations of fact are accepted by the court as true. **Copeland v. Treasure Chest Casino, L.L.C.**, 2001-1122 (La. App. 1 Cir. 6/21/02), 822 So.2d 68, 70. See also La. Code Civ. P. art. 931. Thus, the only issue at the trial of an exception raising the objection of no cause of action is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. **Copeland**, 822 So.2d at 70.

Louisiana Code of Civil Procedure art. 1871 sets forth the scope of a declaratory judgment:

Courts of record within their respective jurisdictions may declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for; and the existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The declaration shall have the force and effect of a final judgment or decree.

Louisiana Code of Civil Procedure art. 1872 designates who can bring an action for declaratory judgment:

A person interested under a deed, will, written contract or other writing 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.

The purpose of the declaratory judgment articles of the Louisiana Code of Civil Procedure "is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and they are to be liberally construed and administered." La. Code Civ. P. art. 1881; **Blanchard v. Blanchard**, 2012-0106 (La. App. 1 Cir. 12/31/12), 112 So.3d 243, 255, writ denied, 2013-0488 (La. 4/12/13), 111 So.3d 1013. A person is entitled to relief by

declaratory judgment when his rights are uncertain or disputed in an immediate and genuine situation, and the declaratory judgment will remove the uncertainty or terminate the dispute. **Williams v. City of Baton Rouge**, 2002-0339 (La. App. 1 Cir. 2/14/03), 848 So.2d 9, 13. We review a trial court's decision to grant or deny a declaratory judgment under the abuse of discretion standard of review. **Mai v. Floyd**, 2005-2301 (La. App. 1 Cir. 12/6/06), 951 So.2d 244, 245, writ denied, 2007-0581 (La. 5/4/07), 956 So.2d 619.

The filing of a petition for declaratory judgment does not automatically entitle a petitioner to declaratory judgment relief. **In re Melancon**, 2005-1702 (La. 7/10/06), 935 So.2d 661, 665. In **American Waste & Pollution Control Company v. St. Martin Parish Police Jury**, 627 So.2d 158 (La. 1993), the Louisiana Supreme Court discussed the use of declaratory judgment as follows:

Due to its nature, declaratory relief makes it possible to adjudicate a grievance at an earlier time than would otherwise be allowed. The purpose of the judgment is to settle and afford relief from uncertainty and insecurity ... before damages arise and the need for traditional remedies occurs. Like actions for conventional judgments, basic to the exercise of procedures for declaratory relief, the action must present a justiciable controversy.

American Waste & Pollution Control Company, 627 So.2d at 161 (citations omitted).

Louisiana Code of Civil Procedure art. 1876 states that a trial court may refuse to render a declaratory judgment or decree if such judgment or decree would not terminate the uncertainty or controversy giving rise to the proceeding. Moreover, there must exist a concrete, justiciable controversy framing the facts in order to avoid the rendering of an advisory opinion. **Peterson v. Louisiana Public Service Comm'n**, 94-2478 (La. App. 1 Cir. 10/6/95), 671 So.2d 460, 461.

In the context of a petition for declaratory judgment, a "justiciable controversy" connotes an existing actual and substantial dispute, as distinguished from one that is merely hypothetical or abstract, and a dispute that involves the

legal relations of parties with real adverse interests, upon which the judgment of the court may effectively operate through a decree of conclusive character. **Abbott v. Parker**, 259 La. 279, 249 So.2d 908, 918 (1971). The petitioner must have a legally protectable and tangible interest in the suit, and the dispute presented should be of sufficient immediacy and reality, in order to warrant the issuance of a declaratory judgment. *Id.*

A declaratory judgment cannot generally be maintained unless it involves some specific adversary question or controversy based on an existing state of facts. A court must refuse to entertain an action for a declaration of rights if the issue presented is academic, theoretical, or based upon a contingency that may or may not arise. **Tugwell v. Members of Board of Highways**, 228 La. 662, 679, 83 So.2d 893, 899 (1955).

In the instant case, plaintiffs pose questions regarding the ownership of Kleber Street, the use of Kleber Street, and the alleged donation of Kleber Street to a "private landowner." They further question the constitutionality of a proposed wetlands restoration project as it relates to property owned by the Green Fund, Inc. There is nothing in the pleadings that constitutes a particularized invasion of a legally protected interest, vis-à-vis plaintiffs, sufficient to maintain their petition for declaratory judgment. Because this case does not present a justiciable controversy, the trial court did not err in sustaining the exception raising the objections of no cause of action.⁴

⁴ As previously noted, plaintiffs in the instant case filed an original petition and two, subsequent amending and supplemental petitions. To allow plaintiffs an opportunity to further amend their petition in an attempt to state a cause of action would be a vain and useless act. *See* La. Code Civ. P. art. 934; **Alexander and Alexander, Inc. v. State, Div. Of Admin.**, 486 So.2d 95, 100 (La.1986); **Ourso v. Wal-Mart Stores, Inc.**, 2008-0780 (La. App. 1 Cir. 11/14/08), 998 So.2d 295, 301, writ denied, 2008-2885 (La. 2/6/09), 999 So.2d 785.

DECREE

For the above and foregoing reasons, we affirm the trial court's September 13, 2018 judgment and assess all costs associated with this appeal against plaintiffs-appellants, B. Charles Goodwin, Claudia Seligman, and Alvin Burstein.

APPEAL MAINTAINED; AFFIRMED.