

[Cite as *Bowman v. Middleburg Hts.*, 2009-Ohio-5831.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92690

TED BOWMAN

PLAINTIFF-APPELLANT

vs.

CITY OF MIDDLEBURG HEIGHTS

DEFENDANT-APPELLEE

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-616807

BEFORE: Boyle, J., Rocco, P.J., and Dyke, J.

RELEASED: November 5, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MARY J. BOYLE, J.:

{¶ 1} Plaintiff-appellant, Ted Bowman, appeals the trial court's decision granting summary judgment in favor of defendant-appellee, City of Middleburg Heights ("the City"). For the reasons discussed below, we dismiss for lack of a final appealable order.

{¶ 2} In February 2007, Bowman filed a complaint for declaratory judgment and damages, challenging Middleburg Heights Municipal Code Section 440.01(b)¹ ("Ordinance") as being unconstitutional and claiming that the City had infringed on his constitutional rights by enforcing the Ordinance against him. The impetus of the lawsuit was that Bowman had been convicted under the Ordinance for operating an overweight commercial vehicle in a "no truck" zone in Middleburg Heights. See *Middleburg Hts. v. Bowman*, 8th Dist. No. 86739, 2006-Ohio-5582.

{¶ 3} In his complaint, Bowman asserts seven counts, two of which challenge the Ordinance under federal law, and the remaining counts challenge the ordinance under the Ohio Constitution and state law. The City removed the case to federal court where the district court ultimately granted judgment in favor

¹The Ordinance prohibits the operation of a vehicle "exceeding a gross weight of five tons upon any street in the municipality other than a state route, except those local streets designated as truck routes and marked as such by appropriate traffic signs, and except when such operation is necessary to load or unload property, to go to or from the usual place of storage of such vehicle or to perform any other legitimate business or act other than passage through the municipality. Operators of vehicles so deviating from either a state route or a designated truck route within the municipality shall confine such deviation to that required in order to accomplish the purpose of the departure."

of the City on Bowman's two federal claims and remanded the remaining state claims. See *Bowman v. Middleburg Hts.* (N.D. Ohio 2007), No. 1:07-cv-00900. After remand, the City moved for summary judgment on the remaining state claims, arguing (1) that Bowman's claims attacking the Ordinance as unconstitutional were barred by the doctrine of res judicata, (2) that the Ordinance is valid and must be upheld under the Home Rule Amendment (Section 3, Article XVIII, Ohio Constitution), and (3) that Ohio law does not recognize a state claim for an alleged violation of the Ohio Constitution. In its reply brief to Bowman's brief in opposition, the City further argued that Bowman had no standing to pursue his state law claims.

{¶ 4} In December 2008, the trial court entered an order granting the City's motion for summary judgment. The court, however, did not address Bowman's claim for declaratory judgment in the first count of the complaint. The first count of the complaint specifically seeks a declaration that the Ordinance is void because it conflicts with state law and "is unreasonable, discriminatory, without real or substantial relation to its stated purpose and interferes with substantial rights of the traveling public."

{¶ 5} Under Ohio law, appellate courts have jurisdiction to review the final orders or judgments of the trial courts in their district. See Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2505.02. A final order or judgment is one that affects a substantial right and, in effect, determines the action. R.C.

2505.02. If an order is not final and appealable, then an appellate court has no jurisdiction to review the matter and it must be dismissed.

{¶ 6} “When a trial court enters a judgment in a declaratory judgment action, the order must declare all of the parties’ rights and obligations in order to constitute a final, appealable order.” *Dutch Maid Logistics, Inc. v. Acuity*, 8th Dist. No. 86600, 2006-Ohio-1077, ¶10, citing *Accent Group, Inc. v. Village of N. Randall*, 8th Dist. No. 83274, 2004-Ohio-1455; *Haberley v. Nationwide Mut. Fire Ins. Co.* (2001), 142 Ohio App.3d 312; see, also, *Darrow v. Zigan*, 4th Dist. Nos. 07CA25 and 07AP25, 2009-Ohio-2205. Indeed, “even if the [trial] court determines the plaintiff is wrong, * * * the court must declare the appropriate rights.” *Galloway v. Horkulic*, 7th Dist. No. 02JE52, 2003-Ohio-5145, ¶24. Simply put, “a trial court does not fulfill its function in a declaratory judgment action when it disposes of the issues by journalizing an entry merely sustaining or overruling a motion for summary judgment without setting forth any construction of the document [or ordinance] under consideration.” *Alea London Ltd. v. Skeeter’s 19th Hole, Inc.*, 11th Dist. No. 2007-G-2803, 2007-Ohio-6013, ¶4.

{¶ 7} Here, the trial court did not adequately address all of the parties’ rights and obligations with respect to the constitutionality of the Ordinance. See *Accent Group, Inc.*, supra (court dismissing the appeal as a non-final appealable order because trial court failed to address the parties’ rights with respect to the constitutionality of zoning ordinance being challenged). Accordingly, we find that the trial court’s judgment has failed to grant the relief requested and the appeal is

dismissed for lack of a final appealable order. Id., citing *Dome Energetic Corp. v. Olmsted Twp. Bd. of Zoning Appeals* (Jan. 31, 1985), 8th Dist. Nos. 48554 and 48795.

Appeal is dismissed.

It is ordered that appellee recover of appellant costs herein taxed.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, JUDGE

**KENNETH A. ROCCO, P.J., and
ANN DYKE, J., CONCUR**