[Cite as *Rabbinical College of Telshe, Inc. v. U.S. Bank*, 2010-Ohio-3603.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93643

RABBINICAL COLLEGE OF TELSHE, INC.

PLAINTIFF-APPELLEE

vs.

U.S. BANK, ET AL.

DEFENDANTS

[APPEAL BY RABBI ZALMEN GIFTER]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-695847

BEFORE: Stewart, J., McMonagle, P.J., and Cooney, J.

RELEASED AND JOURNALIZED: August 5, 2010

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MELODY J. STEWART, J.:

{¶ 1} This is an appeal from the judgment of the Cuyahoga County Court of Common Pleas denying appellant Rabbi Zalmen Gifter's motion to intervene and granting plaintiff-appellee Rabbinical College of Telshe, Inc. ("Telshe"), through its board of trustees ("the Board"), a permanent injunction against two of the banks that housed the college's accounts. Appellant assigns three errors challenging the trial court's denial of his motion to intervene, the grant of a permanent injunction, and the denial of his motions for reconsideration and relief from judgment. For the reasons stated below, we affirm.

{¶ 2} Telshe is a not-for-profit corporation incorporated in Ohio in 1941 to provide traditional Jewish scholarship and learning. Located in Wickliffe, Ohio, Telshe provides an Orthodox high school, a teachers' seminary, and training for the rabbinate. On June 15, 2009, Telshe, through its Board, filed a complaint seeking injunctive relief against U.S. Bank, Chase Bank, Key Corp, Amtrust Bank, and Huntington Bank after the banks refused to allow the Board to replace the names of the signatories on the college's accounts with newly appointed signatories. The complaint alleged that the persons named on the accounts were no longer authorized to act on behalf of the college and, as a result, there was no one with authority to act on the accounts. The complaint alleged immediate and irreparable harm from the

banks' refusal to allow the college to place on the accounts the names of those authorized by the Board to act on behalf of Telshe.

{¶ 3} The trial court granted Telshe's application for a temporary restraining order ("TRO") and ordered the banks to take action only upon the direction of the newly appointed signatories. A hearing on the matter was set for June 29, 2009. Prior to the hearing, the college voluntarily dismissed its claims against three of the defendant banks, leaving only Chase and U.S. Bank in the action.

{¶ 4} Appellant Gifter, a former member of the Board, filed a motion to intervene in the action and a motion to dissolve the TRO. The Board opposed intervention and supported the opposition with a copy of a document translated from the Hebrew language captioned "Agreement of the Members of the Board of the Telshe Yeshiva," dated April 24, 2007, and signed by the eight Rabbis, including appellant, who constituted the Board of the Rabbinical College at that time. By their signatures on the document, the individual members agreed, among other things, that "all matters of administration of the Yeshiva, whether in spiritual matters or in materialistic matters or in financial matters, shall be decided pursuant to the determination of a majority of Board members. An individual Board member has no power or authorization to do anything on Yeshiva matters on his own say without the consent of the members of the Board [to determine which

matters are in this category is subject to a decision by the members of the Board.]"

{¶ 5} The trial court denied appellant's motion to intervene.

{¶ 6} After the June 29, 2009 hearing on the temporary injunction, the parties agreed that there was no need for further proceedings and that a permanent, rather than preliminary, injunction was warranted. The court granted Telshe's application for a permanent injunction on June 30, 2009. Appellant's subsequent motion for reconsideration or for relief from judgment was denied. This appeal followed.

{¶ 7} In his first assignment of error, Gifter claims that the trial court erred in denying him intervention. Intervention in a civil action is regulated by Civ.R. 24, which provides in pertinent part:

{¶ 8} "(A) Intervention of right.

{¶ 9} "Upon timely application anyone shall be permitted to intervene in an action: * * * when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

{¶ 10} "(B) Permissive intervention.

{¶ 11} "Upon timely application anyone may be permitted to intervene in an action: * * * when an applicant's claim or defense and the main action have a question of law or fact in common. * * * In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

{¶ 12} "(C) Procedure.

{¶ 13} "A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Civ.R. 5. The motion and any supporting memorandum shall state the grounds for intervention and shall be accompanied by a pleading, as defined in Civ.R. 7(A), setting forth the claim or defense for which intervention is sought."

{¶ 14} The decision to grant or deny a motion to intervene is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *Cleveland v. State*, Cuyahoga App. No. 92735, 2009-Ohio-6106, citing *Univ. Hosps. of Cleveland, Inc. v. Lynch*, 96 Ohio St.3d 118, 2002-Ohio-3748, 772 N.E.2d 105, at ¶47; *In re Stapler* (1995), 107 Ohio App.3d 528, 531, 669 N.E.2d 77. "The term 'abuse of discretion' * * * implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140, quoting *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144.

{¶ 15} Gifter asserts that he has a right to intervene, pursuant to Civ.R. 24(A), or, in the alternative, should be permitted to intervene pursuant to Civ.R. 24(B). He argues that intervention is necessary to protect his right as the "Menahel" or head of the Rabbinical College. He claims that his position grants him all authority and control over the financial and religious affairs of the college. He alleges that his position as head of the college was decided under Jewish law and reflected in a 2005 arbitration decision of a Rabbinical court. Additionally, Gifter claims a right to intervene based upon his status as a party to a settlement agreement entered in a 2008 civil action, Cuyahoga County Common Pleas Court Case No. 672515, that he contends was voluntarily dismissed by Telshe and refiled as the instant action. As a result of the agreement, Gifter argues that the trial judge here has no jurisdiction to act and the matter must be returned to the original judge's docket.

{¶ 16} The Board opposed appellant's intervention and argues that the action was related, not refiled, and therefore properly before the court. It noted that the prior action was referenced in the complaint and a copy of the prior complaint was also attached. The Board acknowledges the agreement in the prior action, but argues that it was only a temporary, interim agreement in which the Board agreed to stay the action for 90 days so that the religious issues between the individual rabbis and appellant, who was not a party to the action, could be decided by a Rabbinical court. The Board

explained that under the interim agreement, two CPAs, unrelated to the conflict and mutually agreed upon by the disputing parties, were placed on the college's bank accounts temporarily and given authority to conduct the financial affairs of the college pending the resolution of the religious disputes. The trial court stayed all of the pending motions in that action, including appellant's motion to intervene, for 90 days pending a status report. The 90 days expired without the rabbis being able to agree on a Rabbinical court to hear the dispute.[1] The Board maintains that due to Gifter's delay in placing the matter before a Rabbinical court, the interim agreement expired and the action was subsequently dismissed pursuant to Civ.R. 41(A).

{¶ 17} After the dismissal, the Board rescinded the authority of the CPAs to act for the college. When the Board attempted to place the names of current Board members as signatories on the bank accounts, the banks refused to comply without a court order clarifying who had authority over the accounts. Therefore, the Board commenced this action to enjoin the banks from allowing any party, except the Board-appointed signatories, access to the college's accounts.

{¶ 18} After reviewing appellant's motion and the pleading accompanying it, we conclude the requirements of Civ.R. 24 have not been

[1]Under Jewish law, disputes between orthodox Jews are determined by a "Beth Din" or Rabbinical court, in a process similar to arbitration. The settlement agreement provided that both sides had to agree to the choice of a Beth Din to hear their dispute.

met in the instant case. Appellant sought to intervene in the action as a new party defendant. He accompanied his motion to intervene with an answer, in which he denied appellees' claims against the bank and raised certain defenses.

{¶ 19} One of the parties to the action, Chase Bank, raised the same defenses in its Civ.R. 12(B)(6) motion to dismiss that appellant sought to raise through intervention. The bank raised the issue of the earlier interim settlement agreement and, using the same language as appellant, argued that this case should be returned to the original judge's docket.

{¶ 20} Additionally, appellant argues that his intervention is necessary to protect the college's interests and the college's funds. However, The Rabbinical College of Telshe, Inc. is organized as a nonprofit corporation under Ohio law. Pursuant to Chapter 1702 of the Ohio Revised Code, the board of trustees of a nonprofit corporation has a fiduciary duty to act in the best interest of the corporation. Appellant has not raised a claim of breach of fiduciary duty. Therefore, to the extent appellant seeks to intervene to protect the financial interest of the college, those interests are deemed adequately protected by the Board.

{¶ 21} An "applicant's interest in an action must be one that is 'legally protectable.'" *State ex rel. Dispatch Printing Co. v. Columbus*, 90 Ohio St.3d 39, 40, 2000-Ohio-8, 734 N.E.2d 797. To the extent that appellant seeks to

intervene to assert his personal claim to complete authority over the school's administration, including its financial affairs, his pleading fails to set forth a claim to a legally protected interest. Appellant did not file a counterclaim or third-party complaint with his answer. He raised no claim against the Board or individual members of the Board for breach of the interim settlement agreement, or for enforcement of the alleged arbitration agreement. Therefore, while appellant argued for intervention based upon these agreements, he failed to assert any claims under those alleged agreements in his pleading.

{¶ 22} Because appellant failed to state a claim against the Board, and the defenses he sought to raise were raised in the action by an existing party, we find appellant has failed to demonstrate that the trial court acted in an unreasonable, arbitrary, or unconscionable manner when it denied his motion to intervene. See *Grogan v. T.W. Grogan Co.* (2001), 143 Ohio App.3d 548, 758 N.E.2d 702. Accordingly, appellant's first assignment of error is overruled.

{¶ 23} In his second assignment of error, appellant asserts that the trial court erred by issuing a permanent injunction against him after denying him intervention. Appellant relies on *Columbus Homes Ltd. v. S.A.R. Constr. Co.*, 10th Dist. No. 06AP-759, 2007-Ohio-1702. In that case, the trial court issued an order enjoining non-party business entities from transferring or

disposing of assets without approval of the court. The Tenth District reversed, holding that it was a violation of due process for the court to enter an order enjoining non-parties without giving them notice and an opportunity to be heard. Appellant argues that the trial court in this case violated his constitutional rights by entering an injunction against him without affording him an opportunity to be heard in the action.

{¶ 24} A trial court has discretion in framing an injunction order and the reviewing court should only interfere when there has been an abuse of discretion. *Superior Sav. Assn. v. Cleveland Council of Unemployed Workers* (1986), 27 Ohio App.3d 344, 501 N.E.2d 91.

{¶ 25} The injunction order at issue states in pertinent part:

{¶ 26} "Only Rabbi Ahron Levitansky, Rabbi Schlomo Eisenberger, Rabbi David Goldberg, and Rabbi Shalom Shapiro shall have any authority to take any action on any bank or financial institution account held in the name of or for the benefit of Telshe ('Accounts'). Any subsequent change with respect to the Accounts shall be made by the Telshe Board of Trustees and in accordance with the ordinary procedures and protocols of any respective bank or financial institution.

{¶ 27} "* * *

{¶ 28} "Absent any Order from the Court, Rabbi Zalmen Gifter shall have no authority to act on Telshe's behalf with respect to the Accounts."

{¶ 29} We disagree with appellant's claim that the trial court's order is an injunction against him personally. The trial court's order enjoins the banks from taking any action on the college's accounts without the authority of the Board and, additionally, states the names of those persons with present authority over the accounts. At the time the Board sought the injunction, appellant was no longer on the Board. He was no longer an authorized signer on the accounts. Therefore, unlike the trial court's order in *Columbus Homes Ltd.*, the court's order in the instant case does not enjoin appellant from taking any action he would otherwise be authorized to take. The court's order merely makes plain that appellant is not one of the persons with authority to take action on the college's bank accounts at this time. Appellant's name was included in the order only for the banks' clarification in light of letters they had received in the past from appellant asserting his authority over the college's accounts. Accordingly, the second assignment of error is overruled.

{¶ 30} In his final assignment of error, appellant asserts that the trial court erred in denying his motion for reconsideration and relief from judgment as moot. Appellant argues that Civ.R. 24 permits post-judgment intervention and, therefore, his motion for reconsideration was not rendered moot by the final judgment. Additionally, appellant argues that a

post-judgment intervenor may file a Civ.R. 60(B) motion for relief from judgment.

{¶ 31} The merits of post-judgment intervention have no application here. In the cases cited by appellant, intervention was raised for the first time after final judgment was issued, and was permitted upon a finding that the intervenors lacked alternative remedies to obtain the relief available to them as a party to the action. See *North Side Bank & Trust Co. v. Performance Home Buyers*, 181 Ohio App.3d 344, 2009-Ohio-1277, 908 N.E.2d 1044, citing, *Likover v. Cleveland* (1978), 60 Ohio App.2d 154, 396 N.E.2d 491; *Rokakis v. Martin*, 180 Ohio App.3d 696, 2009-Ohio-369, 906 N.E.2d 1200 (intervention permitted to assert mechanic's lien after final judgment).

{¶ 32} In this case, the issue of appellant's intervention was considered and rejected by the trial court prior to final judgment. As a result, appellant was not a party to the action when he filed his motion for relief from judgment. Civ.R. 60(B) states that "[o]n motion and upon such terms as are just, the court may relieve *a party or his legal representative* from a final judgment, order or proceeding * * *." (Emphasis added.) Courts have held that a person who is neither a party nor a legal representative of a party may not properly obtain relief from a judgment by way of Civ.R. 60(B), unless that person or entity first becomes a party through intervention under Civ.R. 24. *Nicholas v. State Farm Ins.* (June 9, 2000), 11th Dist. No. 99-T-0030, citing

Hardman v. Chiaramonte (1987), 39 Ohio App.3d 9, 10, 528 N.E.2d 1270; *Pliable Veneers, Inc. v. Omni Store Fixtures Corp.* (May 23, 1997), 6th Dist. No. L-96-145. Having failed to become a party through intervention, appellant lacked standing to seek relief pursuant to Civ.R. 60(B). Appellant's third assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant Rabbi Zalmen Gifter its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas 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.

MELODY J. STEWART, JUDGE

CHRISTINE T. McMONAGLE, P.J., and
COLLEEN CONWAY COONEY, J., CONCUR