[Cite as *State ex rel. Allen v. Southington Local School Dist. Bd. of Edn.*, 2015-Ohio-959.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

STATE OF OHIO ex rel. NOLDA RAY ALLEN,	:	**O P I N I O N**
Plaintiff-Appellant,	:	**CASE NO. 2014-T-0082**
- vs -	:	
BOARD OF EDUCATION OF THE SOUTHINGTON LOCAL SCHOOL DISTRICT, TRUMBULL COUNTY, OHIO, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2013 CV 01624.

Judgment: Affirmed.

Frank R. Bodor, 157 Porter Street, N.E., Warren, OH 44483 (For Plaintiff-Appellant).

Steven A. Friedman, Squire Sanders, 4900 Key Tower, 127 Public Square, Cleveland, OH 44114, and *Matthew L. Sagone,* Squire Sanders, 2000 Huntington Center, 41 South High Street, Columbus, OH 43215 (For Defendants-Appellees, Board of Education, Southington Local School District, Trumbull County, Ohio).

Daniel D. Eisenbrei and *James F. Mathews,* Baker, Dublikar, Beck, Wiley & Mathews, 400 South Main Street, North Canton, OH 44720, and *Mark S. Finamore,* 258 Seneca Avenue, N.E., Warren, OH 44481 (For Defendants-Appellees, Township of Southington, Trumbull County, Ohio, Board of Trustees).

DIANE V. GRENDELL, J.

{¶1} Plaintiff-appellant, Nolda Ray Allen, appeals from the Judgment Entry of the Trumbull County Court of Common Pleas, granting defendants-appellees, the Southington

Local School District Board of Education and the Southington Township Board of Trustees', Motion for Summary Judgment, and denying Allen's Motion for Summary Judgment, entering judgment against Allen on his claims for declaratory judgment and a mandatory injunction. The issues to be determined by this court are whether the Board of Education was permitted to sell real property, valued at over $10,000, to the Township for less than that amount under R.C. 3313.41(C), and whether selling the property for half of the amount of a party's costs in the survey and lot split of the property constitutes a gift. For the following reasons, we affirm the decision of the court below.

{¶2} On August 8, 2013, Allen, a resident and taxpayer of Southington Township, pursuant to R.C. 309.13, filed a Complaint for Declaratory Judgment and/or Mandatory Injunction against the Southington Board of Education and the Southington Township Trustees. Allen claimed that the Board of Education improperly disposed of public real estate by selling it at a value lower than permitted by R.C. 3313.41, and that the conveyance amounted to a gift. The Complaint requested declaratory judgment that the sale was void, as well as a mandatory injunction reconveying the real estate to the Southington School District.

{¶3} Pursuant to the attached January 9, 2012 Agreement of Purchase and Sale, the Board of Education agreed to sell the subject property, which is approximately 4.39 acres and located at 4432 State Route 305, Southington, Ohio, to the Township. The purchase price was $1,379.57, in addition to the payment of closing costs related to the sale. Pursuant to the Board of Education's interrogatory responses, the purchase amount was "agreed to between the parties as one-half of Southington's costs associated [with] the lot split and survey of the property." Further, the property was sold to the Township

because the school did not have an appropriate use for it or funds to upgrade the building located on the property, which would have otherwise been demolished.

{¶4} The property was transferred by a quitclaim deed on February 6, 2012, which was recorded on May 11, 2012. The deed stated that the conveyance "is upon the express condition that the Premises shall be used solely for Public Purposes."

{¶5} Subsequent to the sale of the property, the Township entered into an oil and gas lease of the property with BP American Production Company, for which it received $17,121 and a royalty.

{¶6} On September 6, 2013, the defendants filed a Motion to Dismiss, arguing that the Board of Education's action in selling the property was permissible under its discretion and R.C. 3313.41 contains no requirement that the property be sold for a certain amount. It was opposed by Allen on September 25, 2013, asserting that the defendants' interpretation of R.C. 3313.41 was incorrect and contending that the statute sets a $10,000 threshold requirement for the sale price of property by a school district.

{¶7} The trial court denied the Motion to Dismiss in a November 27, 2013 Judgment Entry, finding that the issues raised would be more appropriately addressed in summary judgment proceedings.

{¶8} The defendants filed Answers to the Complaint on December 11, 2013.

{¶9} On March 13, 2014, Allen filed a Motion for Summary Judgment arguing that, since the Township's payment of $1,379.57 constituted the amount of half of the fees of the surveyor and title company, the School District essentially gifted the property to the Township. Further, Allen reasserted the contention that the property should have been sold for at least $10,000.

{¶10} The defendants filed a Joint Cross-Motion for Summary Judgment on May 8, 2014, arguing that the plain language of R.C. 3313.41 did not require the property to be sold for $10,000. Allen filed a response, to which he attached an appraisal of the property, which valued the land, building, and the lease at $49,971.

{¶11} On August 21, 2014, the trial court issued a Judgment Entry, granting summary judgment in favor of the defendants, denying Allen's Motion for Summary Judgment, and dismissing the Complaint, since the sale and transfer of the property were "executed in accordance with the statutory authority vested in the Board of Education" and R.C. 3313.41(C). The court found that, although the value of the property was over $10,000, R.C. 3313.41 does not require the property to be sold for at least that amount and that the sale was not a gift.

{¶12} Allen timely appeals and raises the following assignment of error:

{¶13} "The trial court erred and abused its discretion in dismissing appellant's complaint and holding that the applicable statutes do not require the Board of Education to receive a minimum price of $10,000 when selling its real estate to a township."

{¶14} Pursuant to Civil Rule 56(C), summary judgment is proper when (1) the evidence shows "that there is no genuine issue as to any material fact" to be litigated, (2) "the moving party is entitled to judgment as a matter of law," and (3) "it appears from the evidence * * * that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence * * * construed most strongly in the party's favor."

{¶15} A trial court's decision to grant summary judgment is reviewed by an appellate court under a de novo standard of review. *Grafton v. Ohio Edison Co*., 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). "A de novo review requires the appellate court to

conduct an independent review of the evidence before the trial court without deference to the trial court's decision." (Citation omitted.) *Peer v. Sayers*, 11th Dist. Trumbull No. 2011-T-0014, 2011-Ohio-5439, ¶ 27.

{¶16} Allen argues that, pursuant to R.C. 3313.41(C), the Board of Education was permitted to sell the property to the Township only if both the "threshold value" of the real estate and the sale price exceeded $10,000.

{¶17} The statute at issue in this matter is R.C. 3313.41(C), which provides the following:

> If a board of education decides to dispose of real or personal property that it owns in its corporate capacity and that exceeds in value ten thousand dollars, it may sell the property to the adjutant general; to any subdivision or taxing authority as respectively defined in section 5705.01 of the Revised Code, township park district, * * *; to a wholly or partially tax-supported university, * * *; to a nonprofit institution of higher education * * *; to the governing authority of a chartered nonpublic school; or to the board of trustees of a school district library, upon such terms as are agreed upon.

{¶18} Here, there appears to be no dispute that the property's value exceeded $10,000, given that Allen submitted an appraisal valuing the property at $49,971. The argument, then, arises in Allen's claim that the foregoing statute also requires that the property be *sold* for more than $10,000, which did not occur in this case.

{¶19} The plain language of the statute simply does not contain such a requirement, nor does it lend itself to such an interpretation. Rather, the clear and unambiguous

language states that property with a value of over $10,000 may be sold to various public entities "upon such terms as are agreed upon." The property *value* is referenced in relation to the fact that the property may be sold to these entities and the *sale price* is not addressed. "[W]here the language of a statute is clear and unambiguous, it is the duty of the court to enforce the statute as written, making neither additions to the statute nor subtractions therefrom." (Citation omitted.) *Spencer v. Freight Handlers, Inc.*, 131 Ohio St.3d 316, 2012-Ohio-880, 964 N.E.2d 1030, ¶ 16. Since the property value exceeded $10,000, a sale upon agreed terms to the Township was permissible.

{¶20} Allen argues that this interpretation renders the $10,000 requirement in the statute meaningless. However, a review of the statute clearly indicates the purpose of the $10,000 requirement. As mandated by R.C. 3313.41(A), property that exceeds $10,000 in value shall be sold "at public auction," provided no exceptions, such as the sale to public entities contained in section (C), exist. Thus, the $10,000 value requirement restricts the manner in which the Board of Education can dispose of/sell its property.

{¶21} It logically follows, then, that the $10,000 amount contained in R.C. 3313.41 acts as a trigger to the applicability of the statute, since it "has no applicability to the disposal of property" valued under that amount. 1986 Ohio Atty.Gen.Ops. No. 1986-62. In other words, property worth less than $10,000 may be disposed of in methods not mandated by R.C. 3313.41, i.e., no auction or sale of property to specific entities in the absence of the auction would be required. This reading of the entire statute in context further supports a conclusion that the Board of Education was not required to sell the property for over $10,000. *See Spencer* at ¶ 16 ("to determine the legislative intent behind a statute, we must read the language in context and we must construe related sections together").

{¶22} While Allen notes the importance of the Board of Education acting to protect the interests of the school district and the students, the Board is permitted to act under the authority provided to it in the pertinent statutes. *See Cincinnati City School Dist. Bd. of Edn. v. Conners*, 132 Ohio St.3d 468, 2012-Ohio-2447, 974 N.E.2d 78, ¶ 9; R.C. 3313.17 ("The board of education of each school district shall be a body politic and corporate, and, as such, capable of * * * contracting and being contracted with, [and] acquiring, holding, possessing, and disposing of real and personal property * * *."). Here, the Board acted within its discretion to contract and dispose of real property, did not take action contrary to R.C. 3313.41, and there was no basis to invalidate the sale as outside of its authority.

{¶23} Allen also argues that the Board of Education did not sell the property to the Township as required under the statute, since the basis for the sale price warrants a conclusion that it was a gift. We find no support for such a holding.

{¶24} Pursuant to the Agreement of Purchase and Sale, the Township paid for the property in the amount of $1,379.57. The property was not merely given to the Township. While Allen takes issue with the basis for the specific amount of the payment, since it was comprised of a portion of the fees related to the survey and lot split, the reasons for the purchase price arrived upon by the parties do not turn a sale into a gift. Allen cites to no authority to support such a position.

{¶25} To constitute consideration, there must be a "bargained-for legal benefit and/or detriment." *Spoerke v. Abruzzo*, 11th Dist. Lake No. 2013-L-093, 2014-Ohio-1362, ¶ 29. In contrast, a gift is a "voluntary transfer of property to another made gratuitously and without consideration." *Guethlein v. Ohio State Liquor Control Commn.*, 10th Dist. Franklin Nos. 05AP-888, et al., 2006-Ohio-1525, ¶ 13, citing *Black's Law Dictionary* 688 (6 Ed.1990). The amount the parties agreed upon constituted consideration and thus, we find

no basis for the conclusion that it was a gift. The fact that Allen disagrees with the amount of the sale price does not render it a gift, since it was merely an exercise of the Board of Education's authority to sell the property "upon such terms as are agreed upon" by the parties.

{¶26} Finally, Allen argues that the quitclaim deed violates *Conners*, 132 Ohio St.3d 468, 2012-Ohio-2447, 974 N.E.2d 78, because, although it requires that the property is to be used for public purposes, it excludes education/school purposes.

{¶27} In *Conners*, the court held that a deed restriction preventing the use of property for school purposes was "unenforceable as against public policy." *Id.* at ¶ 24. In this case, however, the contract's enforcement is not at issue, nor was this raised in the complaint as grounds to void the contract. Further, *Conners* does not hold that the inclusion of such a clause would invalidate the entire contract or render the sale void. Thus, this argument has no bearing on Allen's contention that the sale should be voided and the property returned to the Board of Education, the relief requested in his Complaint.

{¶28} The sole assignment of error is without merit.

{¶29} For the foregoing reasons, the Judgment Entry of the Trumbull County Court of Common Pleas, granting summary judgment in favor of the appellees and entering judgment against Allen, is affirmed. Costs to be taxed against appellant.

CYNTHIA WESTCOTT RICE, J.,

COLLEEN MARY O'TOOLE, J.,

concur.