[Cite as *Montville v. Montville*, 2017-Ohio-7920.]

STATE OF OHIO))ss: COUNTY OF MEDINA)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
MONTVILLE LAKES CLUSTER HOMEOWNERS ASSOC. PHASE ONE Appellant v. MONTVILLE LAKES HOMEOWNERS ASSOC., INC. Appellee	C.A. No. 16CA0082-M APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF MEDINA, OHIO CASE No. 15CIV0230

DECISION AND JOURNAL ENTRY

Dated: September 29, 2017

HENSAL, Presiding Judge.

{¶1} Plaintiff-Appellant, Montville Lakes Cluster Homeowners Association, Phase I, appeals from the judgment of the Medina County Court of Common Pleas, granting summary judgment in favor of Defendant-Appellee, Montville Lakes Homeowners Association, Inc. This Court reverses and remands for further proceedings consistent with this decision.

I.

{¶2} This appeal involves a dispute as to whether the members of Montville Lakes Cluster Homeowners Association, Phase I ("Cluster HOA") are members of Montville Lakes Homeowners Association, Inc. ("MLHA") and, if so, the amount of annual assessments that the Cluster lot owners are required to pay.

{¶3} We will begin with a discussion of the underlying facts. In 1994, B & H Medina Phase I Limited Partnership ("Developer") began developing a large tract of land in Montville

Township. As part of the developing process, Developer established the underlying homeowners' associations, and recorded their respective declarations of restrictive covenants and conditions on the same day.

{¶4} Article II of the "Declaration of Restrictive Covenants, Conditions and Restrictions of Montville Lakes, Phase I, Sublot Parcels 1, 2, and 3" ("Original MLHA Declaration") identifies the properties subject thereto as "Montville Lakes, Phase I, Sublot Parcels 1, 2, and 3, consisting of not more than forty-nine (49) single residence parcels and the Open Spaces adjacent thereto * * * as is more particularly described in Exhibits 'A', 'B', and 'C'". "Combined Exhibits 'A', 'B' and 'C'" is a legal description that includes "Sublots 1 through 49 * * * as shown by the recorded plat in Volume 26, Page 72[.]" The legal description provides the following permanent parcel numbers: "Sublots Nos. 1-9: 031-11B-21-037 through 045" and "Sublots Nos. 10-49: 031-11B-27-001 through 040[.]"

{¶5} Article II of the "Declaration of Restrictive Covenants, Conditions and Restrictions of Montville Lakes Cluster Homes, Phase I, Blocks A and B" ("Original Cluster Declaration") identifies the properties subject thereto as "Montville Lakes Cluster Home, Phase I, Blocks A and B, consisting of not more than twenty-four (24) cluster parcels and the Cluster Common Areas adjacent thereto * * * as is more particularly described in Exhibits 'A' and 'B'." "Combined Exhibits 'A & B'" is a legal description that describes "Cluster Unit Block 'A'" and "Cluster Unit Block 'B'" as "Lots No. 84 and 89, as shown by the recorded plat in Volume 26, Page 72[.]" The legal description provides the following permanent parcel numbers: "Cluster Unit Block 'A': 031-11B-21-046" and "Cluster Unit Block 'B': 031-11B-21-047[.]" Although both legal descriptions refer to the same plat map (i.e., Volume 26, Page 72), there is no overlap

between the permanent parcel numbers identified in the Original MLHA Declaration and the permanent parcel numbers identified in the Original Cluster Declaration.

{¶6} As the parties acknowledge, each set of declarations refers to the other. For example, in its discussion of Class B voting members, the Original MLHA Declaration provides that "all owners of cluster lots * * * shall be entitled to one-half (1/2) vote for each cluster lot owned[,]" and the Original Cluster Declaration provides that "[e]very record owner of a fee simple title to any cluster lot shall, as a condition of ownership, be a Member of [MLHA.]"

{¶7} There is no dispute that the Cluster lot owners believed they were members of MLHA, that they paid annual assessments, and that they exercised voting rights. In 2011, however, the Cluster lot owners became aware that the Original MLHA Declaration did not include legal descriptions for the Cluster lots. Upon realizing this, the Cluster lot owners voted to terminate their membership in MLHA, and subsequently recorded an amended declaration, which removed references to MLHA. Thereafter, MLHA also recorded an amended declaration, which included legal descriptions for Cluster lots.

{¶8} Cluster HOA ultimately filed a declaratory judgment action, seeking a declaration that Cluster lot owners are not members of MLHA or, in the alternative, if they are members, a declaration that Cluster lot owners are required to pay annual assessments equal to their voting rights, that is, one-half of what MLHA charges its other lot owners, who receive a full vote. MLHA filed a counterclaim for declaratory judgment, seeking a declaration that: (1) the Cluster lot owners are members of MLHA; (2) Cluster HOA's amended declaration that removed references to MLHA is void; (3) MLHA must assess each Cluster lot owner the same proportionate assessment as all other members of MLHA; and (4) Cluster lot owners must pay their proportionate share of common assessments.

{¶9} Both parties moved for summary judgment and presented numerous legal arguments in support of their respective positions. In its motion, Cluster HOA asserted that, because the legal description attached to the Original MLHA Declaration did not include any Cluster lots, the Original MLHA Declaration is not within the Cluster lot owners' chain of title. As a result, it argued, Cluster lot owners are not subject to the Original MLHA Declaration. Cluster HOA further argued that any prior participation in MLHA was voluntary, and that it ceased when the Cluster lot owners voted to terminate their voluntary membership and recorded an amended declaration to that effect.

{¶10} In the alternative, Cluster HOA argued that, if the trial court determined that the Cluster lot owners are members of MLHA, then the court should declare that their annual assessments must equate to their vote, that is, one-half of the assessments that other MLHA members, who receive a full vote, pay. Cluster HOA argued that holding otherwise would render the Original MLHA Declaration unconscionable.

{¶11} In MLHA's motion for summary judgment, MLHA argued that numerous facts support its position that Cluster lot owners are members of MLHA, including: (1) the Original MLHA Declaration applies to the lots described in the plat map attached thereto, which includes Cluster lots; (2) the Original MLHA Declaration provides that Cluster lot owners are Class B voting members of MLHA; (3) the Original Cluster Declaration acknowledges that Cluster lot owners are Class B voting members of MLHA; (4) the Original Cluster Declaration provides that every Cluster lot owner shall, as a condition to ownership, be a member of MLHA; (5) MLHA's plat map contains a cross-reference to the Original Cluster Declaration; (6) MLHA recorded multiple plat maps indicating that Cluster lots are a part of the Montville Lakes Subdivision – Phase I, and, therefore, subject to the Original MLHA Declaration; (7) 22 Cluster lot deeds

contain specific statements indicating that Cluster lots are subject to the Original MLHA Declaration; (8) the remaining Cluster lot deeds all contain references to the restrictions contained in the Original Cluster Declaration and the related plat maps, which contain deed restrictions requiring membership in MLHA; and (9) Cluster lot owners acted in a manner consistent with being members of MLHA (e.g., they voted and paid annual assessments).

{¶12} In addition to arguing that the Cluster lots are subject to the Original MLHA Declaration, MLHA argued that Cluster HOA's 2011 amendment wherein it removed references to MLHA did not terminate the Cluster lot owners' membership in MLHA because: (1) the amendment did not change other documents within the Cluster lot owners' chain of title confirming their membership in MLHA; and (2) Cluster HOA has no authority to unilaterally terminate its membership in MLHA. In this regard, it argued that Cluster HOA cannot terminate its membership without amending the Original MLHA Declaration, which requires consent of 75% of the voting power of MLHA members, and without the consent of the Montville Township Trustees.

{¶13} Regarding annual assessments, MLHA argued that the Original MLHA Declaration requires it to assess both Cluster lot owners and owners of other lots within MLHA an equal share of common assessments. Regarding voting rights, MLHA argued that the Original MLHA Declaration, as well as the original and amended Cluster declarations, expressly provide that Cluster lot owners will receive one-half of a vote, which is lawful.

{¶14} The trial court granted MLHA's motion for summary judgment, finding, in part, that Cluster lot owners are members of MLHA. In reaching this conclusion, the trial court found that the Developer "clearly intended" the Cluster lots to be subject to the Original MLHA

Declaration, and that the Cluster lot owners' behavior until 2011 indicated that they "considered themselves" members of MLHA.

{¶15} In addition to finding that Cluster lot owners are members of MLHA, the trial court found that their 2011 amended declaration did not terminate their membership in MLHA because they did not obtain approval from 75% of the owners in MLHA, nor did they obtain approval from the township. It further found that Cluster lot owners are entitled to one-half of a vote, and that they are required to pay an equal share of the common assessments to MLHA. Cluster HOA now appeals, raising two assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

> THE TRIAL COURT ERRED IN FINDING THAT THE MEMBERS OF PLAINTIFF-APPELLANT CLUSTERS ARE ALSO MEMBERS OF DEFENDANT-APPELLEE PURPORTED MASTER ASSOCIATION.

{¶16} In its first assignment of error, Cluster HOA argues that the trial court erred when it held that Cluster HOA is a member of MLHA. In support of its assignment of error, Cluster HOA sets forth many of the same arguments presented in its motion for summary judgment. Similarly, MLHA's merit brief responds to Cluster HOA's merit brief with many of the same arguments set forth in its own motion for summary judgment. As explained below, however, we decline to address the merits of Cluster HOA's first assignment of error.

{¶17} As this Court has stated, our "role on appeal is to review the trial court's decision and determine whether it is supported by the record." *Allen v. Bennett*, 9th Dist. Summit Nos. 23570, 23573, 23576, 2007-Ohio-5411, ¶ 21. As a reviewing court, this Court "should not consider for the first time on appeal issues that the trial court did not decide." *Id.* "If this Court were to reach issues that had not been addressed by the trial court in the first instance,

it would be usurping the role of the trial court and exceeding its authority on appeal." *Id.* This applies regardless of the fact that this Court's review of an award of summary judgment is de novo. *Maurer v. Wayne Cty. Bd. of Cty. Commrs.*, 9th Dist. Wayne No. 14AP0039, 2015-Ohio-5318, ¶ 11 ("As we are a reviewing court, we will not consider the issues relevant to the motion for summary judgment in the first instance."). Furthermore, in summary-judgment cases, a trial court's failure to review the entire record, or its issuance of a "bare-bones" judgment entry, is "unfair to the parties, who are essentially forced to simply refile their summary judgment motions in the appellate court * * *." *Mourton v. Finn*, 9th Dist. Summit No. 26100, 2012-Ohio-3341, ¶ 9.

{¶18} Here, the trial court found that the Developer "clearly intended" the Cluster lots to be subject to the Original MLHA Declaration. The trial court further found that the Cluster lot owners' behavior until 2011 indicated that they "considered themselves" members of MLHA. The trial court's judgment entry, however, lacks any analysis as to numerous legal arguments raised in the parties' motions for summary judgment. For example, the judgment entry contains no mention of Cluster HOA's primary legal argument, that is, because the Original MLHA Declaration did not include legal descriptions for Cluster lots, Cluster lot owners are not subject to the Original MLHA Declaration, and, thus, any references in the Original Cluster Declaration to membership in MLHA is not legally binding on Cluster lot owners.

{¶19} Without guidance from the trial court regarding its legal analysis, the parties essentially refiled their summary-judgment motions on appeal, which puts this Court in the position of analyzing the legal arguments contained therein for the first time on appeal. Consistent with our precedent, we decline to do so. *Allen* at ¶ 21. "Because the trial court's judgment entry prevents this Court from conducting a meaningful review, we reverse its

judgment and remand the matter * * * so that the trial court can create an entry sufficient to permit appellate review." *MSRK, L.L.C. v. Twinsburg*, 9th Dist. Summit No. 24949, 2012-Ohio-2608, ¶ 10. Cluster HOA's first assignment of error is sustained on that basis.

ASSIGNMENT OF ERROR II

> THE TRIAL COURT ERRED IN FINDING THAT THE MEMBERS OF PLAINTIFF-APPELLANT HOMEOWNERS ASSOCIATION ARE ONLY ENTITLED TO ONE-HALF OF THE VOTE OF ALL OTHER MEMBERS OF DEFENDANT-APPELLEE HOMEOWNERS ASSOCIATION DESPITE BEING REQUIRED TO PAY THE SAME FULL ANNUAL FEE AS OTHER MEMBERS OF THE PURPORTED MASTER ASSOCIATION.

{¶20} In its second assignment of error, Cluster HOA argues that the trial court erred by finding that members of Cluster HOA are only entitled to one-half of a vote when they pay the same annual assessments as all other members of MLHA. Given this Court's disposition of the previous assignment of error, we decline to address the merits of Cluster HOA's second assignment of error.

III.

{¶21} Montville Lakes Cluster Homeowners Association, Phase I's first assignment of error is sustained. We decline to address the merits of Montville Lakes Cluster Homeowners Association, Phase I's second assignment of error. The judgment of the Medina County Court of Common Pleas is reversed, and the cause is remanded for further proceedings.

Judgment reversed
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

JENNIFER HENSAL
FOR THE COURT

CARR, J.
TEODOSIO, J.
CONCUR.

APPEARANCES:

STEVEN M. OTT, AMANDA A. BARRETO, and LINDSEY A. WRUBEL, Attorneys at Law, for Appellant.

ROBERT E. KMIECIK, GARRETT B. HUMES, and JOSEPH E. DIBAGGIO, Attorneys at Law, for Appellee.