

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

Bates Recycling, Inc.

Court of Appeals No. WD-11-007

Appellant

Trial Court No. 2010CV0777

v.

Raymond A. Huber, et al.

DECISION AND JUDGMENT

Appellees

Decided: October 28, 2011

* * * * *

John C. Filkins, for appellant.

Paul A. Dobson, Wood County Prosecuting Attorney, and
Linda F. Holmes and Mary Loeffler Mack, Assistant Prosecuting Attorneys,
for appellees.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the December 21, 2010, judgment of the Wood County Court of Common Pleas, which dismissed the complaint of appellant, Bates Recycling, Inc., for a preliminary and permanent injunction. Upon consideration of the assignments

of error, we affirm the decision of the lower court. Appellant asserts the following sole assignment of error on appeal:

{¶ 2} "THE TRIAL COURT ERRED WHEN IT DISMISSED APPELLANT'S COMPLAINT AND REQUEST FOR AN EQUITABLE INJUNCTION FOR THE APPELLANT ESTABLISHED CLAIMS UPON WHICH RELIEF CAN BE GRANTED."

{¶ 3} Appellant filed a complaint for injunctive relief against appellees, Wood County Engineer, Raymond A. Huber; Wood County Commissioners James F. Carter, Tim W. Brown, and Alvin L. Perkins; Portage Township Trustees Edwin Foos, David Housholder, and Dan Wickard; and Bloom Township Trustees Michael Barnhisel, Terry Hummel, and Thomas McGrain. Appellant, an Ohio corporation, is engaged in the business of metal recycling, with its principal place of business located at 12729 Jerry City Road, Cygnet, Ohio, which is located in Wood County. As part of his business operations, appellant transported metal to and from its business over the public roadways with semi-trucks, trailers, and load-bearing equipment. Appellant asserted that in order to gain ingress and egress to its property, its vehicles must use the driveway on Jerry City Road and travel to and from the east and cross both the Rocky Ford Creek Bridge and the Bull Creek Bridge. Appellant had no other viable means of ingress and egress because a railroad track to the west could not be crossed safely with the types of vehicles appellant uses.

{¶ 4} Until recently, appellant has always traveled on the eastern portion of Jerry City Road and crossed the bridges, both of which had a weight limit of 40 tons. On

August 10, 2010, the Wood County Engineer reduced the weight limit for the Bull Creek Bridge to 37 tons for 5-axle trailers. On October 1, 2010, the Wood County Engineer reduced the weight limit for the Rocky Ford Creek Bridge to 11 tons for 5-axle trailers. Because appellant's vehicles exceed 37 tons, appellant can no longer cross either bridge. Furthermore, appellant is no longer able to obtain bridge permits to exceed the weight limits as he had routinely done in the past.

{¶ 5} Appellant alleged in his complaint that as a result of the Wood County Engineer's decision, appellant is no longer able to conduct its business and the weight reductions have caused irreparable harm for which appellant has no remedy at law. Furthermore, appellant alleged that the action taken by the Wood County Engineer, with the approval and authorization of the Wood County Commissioners, Portage Township Trustees, and Bloom Township Trustees, was done contrary to law. Appellant sought a preliminary and permanent injunction, temporary restraining order, and compensatory damages.

{¶ 6} Appellees moved to dismiss the action for failure to state a claim upon which relief could be granted. The trial court dismissed the amended complaint on December 22, 2010, for failure to state a claim for relief. The court found that appellant had failed to set forth any statute that had been violated by the reduction of weight limit for the bridges and the court could not find any such violation. Furthermore, the trial court found that the doctrine of sovereign immunity set forth in R.C. Chapter 2744 barred any claim for monetary damages. Appellant sought an appeal from this decision to this appellate court.

{¶ 7} On appeal, appellant argues that it established by clear and convincing evidence that it was entitled to a preliminary injunction against appellees and, therefore, the trial court erred when it dismissed appellant's complaint. We disagree.

{¶ 8} We review a ruling on a Civ.R. 12(B)(6) motion to dismiss under a de novo standard of review. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶ 5. In our review, we must accept the factual allegations in the complaint as true and make all reasonable inferences in favor of the non-moving party. *Maitland v. Ford Motor Co.*, 103 Ohio St.3d 463, 2004-Ohio-5717, ¶ 11. The motion should be granted when it is beyond doubt from the complaint that the plaintiff cannot prove a set of facts entitling him to recover. *Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 2006-Ohio-2625, ¶11, citing *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242, syllabus.

{¶ 9} The duties to construct, maintain, and repair the bridges in this case fall upon the county engineer under the jurisdiction of the board of county commissioners. R.C. 5543.01(A)(1) and R.C. 5591.21. The county engineer must also inspect the bridges. R.C. 5543.20. The township trustees may inspect bridges within the township. R.C. 5543.20. The county engineer and commissioners alone are required by law to set the bridge weight restrictions for county bridges. R.C. 5577.071 and R.C. 5591.42.

{¶ 10} Appellant alleged that appellees acted contrary to statutory law, but never identified any law that the parties violated. Furthermore, upon examination of the statutes governing the powers of the county and township to build, inspect, repair, and control the use of bridges within the county and township, we cannot find any statute that

4.

prohibited the county engineer or county commissioners from reducing the weight limits of the bridges involved. Therefore, we find that appellant has failed to set forth a claim for granting an injunction against appellees for the harm caused to appellant by the change in the bridge weight limits. Appellant's sole assignment of error is not well-taken.

{¶ 11} Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay the court costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.