SLIP OPINION NO. 2023-OHIO-2332

MILL CREEK METROPOLITAN PARK DISTRICT BOARD OF COMMISSIONERS, APPELLANT, *v.* LESS ET AL., APPELLEES.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Mill Creek Metro. Park Dist. Bd. of Commrs. v. Less*, Slip Opinion No. 2023-Ohio-2332.]

Civil law—Eminent-domain procedure for appropriations—R.C. 163.09—A landowner in an appropriation proceeding does not have the right to an immediate appeal under R.C. 163.09(B)(3) from a trial court's denial of summary judgment when the landowner answers the appropriation petition denying the petitioner's authority to appropriate the property and denying the necessity of the appropriation and the trial court did not determine those issues in its summary-judgment ruling—Judgment vacated and cause remanded.

(No. 2022-0628—Submitted April 4, 2023—Decided July 11, 2023.)

APPEAL from the Court of Appeals for Mahoning County, Nos. 20MA0074 and 20MA0082, 2022-Ohio-1289.

STEWART, J.

{¶ 1} Appellant, Mill Creek Metropolitan Park District Board of Commissioners ("the Park District"), appeals the Seventh District Court of Appeals' determination that it failed to comply with R.C. 1545.11 when it initiated appropriation proceedings to take private property owned by appellee Diane Less.[1] The court of appeals, however, did not have jurisdiction to address the merits of this case, because the trial court's orders denying Less's motions for summary judgment were not final, appealable orders. We therefore vacate the court of appeals' judgment and remand this matter to the trial court for further proceedings.

Facts and Procedural History

{¶ 2} The Park District is a public entity that operates pursuant to R.C. Chapter 1545. In 1993, the Park District passed a resolution to create a bicycle path in Mahoning County. The bicycle path, which is known as the Mill Creek MetroParks Bikeway, is part of the Great Ohio Lake-to-River Greenway, which is intended to stretch over 100 miles from Lake Erie to the Ohio River. The bicycle path was designed to be constructed in phases. Phases I and II of the project involved the construction of 10.6 miles of the bicycle path in 2000 and 2001 on property that included abandoned railroad lines that Mill Creek had purchased from Conrail.

{¶ 3} In 2018, the Park District passed a resolution authorizing the commencement of Phase III of the project, which consists of the construction of 6.4 miles of bicycle path stretching across private property. The resolution authorized the Park District "to consummate and complete all acquisition transactions as may

1. Although this opinion refers to only one landowner by name, two cases, now consolidated, were brought against individuals and entities that the Park District believes may have an interest in the property sought for Phase III of the bikeway. Defendants in the two cases are Less; Laurel Pipe Line Co., L.P.; Belden & Blake Corp.; Ralph T. Meacham, CPA; Daniel R. Yemma; Green Valley Wood Products, L.L.C.; and Columbia Gas of Ohio, Inc. Less, however, is the only appellee who filed a merit brief in this court.

be necessary to acquire the real property contemplated for inclusion in Phase III of the project." The resolution also authorized the Park District to appropriate the property through eminent domain and initiate legal proceedings under R.C. Chapter 163 if the Park District could not reach an agreement with the landowners.

{¶ 4} The Park District initiated two appropriation proceedings in the Mahoning County Court of Common Pleas against individuals, including Less, and entities that may have an interest in the property along the Phase III route. Less filed an answer to the petition filed in each proceeding in which she, among other things, denied the necessity of the appropriation as well as the Park District's authority to appropriate the property. She later moved for summary judgment in each proceeding on the bases that the Park District did not have authority to take private property for the purpose of creating a bicycle path and did not comply with the statutory requirements for initiating appropriation proceedings. The trial court denied Less's motions for summary judgment.

{¶ 5} Less appealed to the Seventh District, raising two assignments of error: the trial court erred in denying her motions for summary judgment because (1) the Park District did not have a statutorily authorized reason or purpose for the appropriation by eminent domain as required by R.C. 1545.11 and (2) the Park District did not follow the requirements set forth in R.C. 163.04, 163.041, and 163.05 prior to and upon filing the petitions. 2022-Ohio-1289, 188 N.E.3d 641, ¶ 1. In a split decision, the Seventh District reversed the judgments of the trial court. *Id.* at ¶ 40. The Seventh District held that the Park District's resolutions failed to establish a statutorily authorized purpose for the taking of Less's property as required by R.C. 1545.11. 2022-Ohio-1289 at ¶ 37, 39. That holding, the court of appeals concluded, rendered Less's second assignment of error moot. *Id.* at ¶ 40. The Seventh District remanded the cases to the trial court with instructions to enter summary judgment in Less's favor. *Id.* at ¶ 39.

{¶ 6} The Park District appealed to this court, and we accepted the following two propositions of law for review:

> Proposition of Law No. 1: The appellate court has arbitrarily and unlawfully substituted itself for and eliminated the statutorily required necessity hearing to be held pursuant to R.C. 163.09(B)(1) at the trial court level.
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> Proposition of Law No. 2: The appellate court has arbitrarily and unlawfully restricted the scope of the property acquisition authority of all Ohio park boards operating pursuant to R.C. 1545.11.

See 167 Ohio St.3d 1516, 2022-Ohio-3214, 195 N.E.3d 145.

Analysis

{¶ 7} We begin our analysis by considering whether we have, and whether the court of appeals had, jurisdiction to decide this case on appeal. We must determine jurisdiction even if neither party raised this issue. *See MB West Chester, L.L.C. v. Butler Cty. Bd. of Revision*, 126 Ohio St.3d 430, 2010-Ohio-3781, 934 N.E.2d 928, ¶ 12. Thus, we first address whether the court of appeals had jurisdiction to hear Less's appeal of the trial court's orders denying her motions for summary judgment.

Final, appealable orders and R.C. Chapter 163

{¶ 8} Appellate jurisdiction of Ohio's courts of appeals is limited. Under Article IV, Section 3(B)(2) of the Ohio Constitution, courts of appeals have jurisdiction "to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district." A final order is one that "dispos[es] of the whole case or some separate and distinct branch thereof." *Lantsberry v. Tilley Lamp Co.*, 27 Ohio St.2d 303, 306, 272 N.E.2d 127

(1971). Generally, an order "that leaves issues unresolved and contemplates further action is not a final, appealable order." *VIL Laser Sys., L.L.C. v. Shiloh Industries, Inc.*, 119 Ohio St.3d 354, 2008-Ohio-3920, 894 N.E.2d 303, ¶ 8. "[W]ithout a final order, an appellate court has no jurisdiction." *Stewart v. Solutions Community Counseling & Recovery Ctrs., Inc.*, 168 Ohio St.3d 96, 2022-Ohio-2522, 195 N.E.3d 1035, ¶ 4, citing *Supportive Solutions, L.L.C. v. Electronic Classroom of Tomorrow*, 137 Ohio St.3d 23, 2013-Ohio-2410, 997 N.E.2d 490, ¶ 10. Consequently, if a trial court's order is not final and appealable, the appellate court must dismiss the appeal because it lacks jurisdiction.

{¶ 9} The appropriation proceedings in this case are governed by R.C. Chapter 163, which provides a "uniform eminent domain procedure for all appropriations sought by public and private agencies." *Weir v. Wiseman*, 2 Ohio St.3d 92, 93-94, 443 N.E.2d 152 (1982). "Following filing of the petition for appropriation, and notice to the affected landowners, R.C. 163.08 establishes the right of the property owner to contest the appropriation," *Weir* at 94, and R.C. 163.09 sets forth the procedure by which the property owner may contest the appropriation. Specifically, the trial court must hold a hearing pursuant to R.C. 163.09 to determine the petitioner's right to make the appropriation and the necessity of the appropriation when (1) an answer is filed specifically denying the right to make the appropriation or the necessity for the appropriation, (2) the answer alleges sufficient facts in support of the denial, and (3) the appropriation is not sought in time of war or other public exigency and is not made for the purpose of making or repairing public roads. *Weir* at paragraph one of the syllabus; *see also* R.C. 163.09(B)(1).

{¶ 10} Here, the trial court did not conduct a hearing as required by R.C. 163.09(B)(1) in either of the appropriation proceedings initiated by the Park District. This is so in spite of the fact that Less, in her answers to the petitions, denied the Park District's authority to appropriate the properties as well as the

necessity of the appropriations. Less moved for summary judgment in each case, which the trial court denied on the basis that Less did not meet her burden of showing the absence of genuine issues of material fact relating to the Park District's claims.

The trial court's orders denying Less's motions for summary judgment are not final, appealable orders

{¶ 11} Generally, the denial of a motion for summary judgment is not a final, appealable order. *See, e.g.*, *State ex rel. Overmeyer v. Walinski*, 8 Ohio St.2d 23, 23-24, 222 N.E.2d 312 (1966). However, R.C. 2505.02(B)(7) provides that an order in an appropriation proceeding may be appealed under R.C. 163.09(B)(3). And R.C. 163.09(B)(3) states:

> An owner has a right to an immediate appeal if the order of the court is in favor of the agency in any of the matters the owner denied in the answer, unless the agency is appropriating property in time of war or other public exigency imperatively requiring its immediate seizure, for the purpose of making or repairing roads which shall be open to the public without charge, for the purpose of implementing rail service under Chapter 4981. of the Revised Code, or under section 307.08, 504.19, 6101.181, 6115.221, 6117.39, or 6119.11 of the Revised Code or by a public utility owned and operated by a municipal corporation as the result of a public exigency.

In this case, the Seventh District ruled that the trial court's orders denying Less's motions for summary judgment were final and appealable because they were "clearly in favor of the agency (Park District) and therefore the requirements of

R.C. 163.09(B)(3) [had] been met." 2022-Ohio-1289, 188 N.E.3d 641, at ¶ 13. We disagree.

{¶ 12} An order denying summary judgment is not the type of order contemplated by R.C. 163.09(B)(3), because the denial of summary judgment is not a ruling "in favor of the agency in any of the matters the owner denied in the answer"; to the contrary, it is a ruling that demonstrates that there are genuine issues of material fact and therefore the moving party is not entitled to judgment as a matter of law, *see Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). In other words, the denial of summary judgment merely leads to further proceedings in the trial court. *See Balson v. Dodds*, 62 Ohio St.2d 287, 405 N.E.2d 293 (1980), paragraph one of the syllabus ("A trial court's denial of a motion for summary judgment is reviewable on appeal by the movant from a subsequent adverse final judgment").

{¶ 13} Because Less filed an answer in each appropriation proceeding challenging, among other things, the Park District's authority to appropriate her property and the necessity of the appropriation, both matters should have proceeded to a hearing. As outlined in R.C. 163.09(B)(1), the trial court is required to hold a hearing when a landowner contests any matters related to the agency's "right to make the appropriation, the inability of the parties to agree, or the necessity for the appropriation." If the trial court rules in favor of the agency at the hearing, the case may then proceed to a jury trial to determine compensation unless the landowner exercises his or her right under R.C. 163.09(B)(3) to immediately appeal the trial court's decision. R.C. 163.09 does not, however, give the landowner the right to an immediate appeal from the trial court's order denying his or her summary-judgment motion. That order is not final and appealable.

{¶ 14} We conclude that the Seventh District did not have jurisdiction to hear the merits of this case, and neither do we. The Park District filed petitions to initiate appropriation proceedings in which, pursuant to R.C. 163.05, it laid out its

authority to appropriate the properties as well as the necessity for the appropriations. Less denied both those things in her answers to the petitions. At that point, R.C. 163.09(B)(1) requires the trial court to hold a hearing in each case on the matters that Less denied in her answers. The court did not do so. Moreover, the court did not issue orders "in favor of the agency in any of the matters the owner denied in the answer[s]." R.C. 163.09(B)(3). The trial court's denial of Less's summary-judgment motions—in favor of the Park District—simply meant that there remained genuine issues of material fact that precluded the resolution of those issues at the summary-judgment stage. Because the trial court's denials of summary judgment did not determine the issues that the landowner denied in her answers, those denials are not immediately appealable under R.C. 163.09(B)(3). Less, therefore, has no right to an immediate appeal in either appropriation proceeding.

Conclusion

{¶ 15} For the foregoing reasons, we hold that the Seventh District Court of Appeals erred in determining that the trial court's orders denying Less's motions for summary judgment were final, appealable orders under R.C. 2505.02(B)(7) and 163.09(B)(3). We therefore vacate the court of appeals' judgment and remand this matter to the trial court for further proceedings.

Judgment vacated
and cause remanded.

KENNEDY, C.J., and FISCHER, DEWINE, DONNELLY, BRUNNER, and DETERS, JJ., concur.

Roth, Blair, Roberts, Strasfeld & Lodge, James E. Roberts, and Elizabeth H. Farbman, for appellant.

Carl G. James, for appellee Diane M. Less.

The Hamlin Inn and Fritz Byers, urging reversal for amicus curiae Ohio Parks and Recreation Association.

Ohio Farm Bureau Federation, Inc., Chad A. Endsley, and Leah F. Curtis, urging affirmance for amici curiae Ohio Farm Bureau Federation, Inc., and Mahoning County Farm Bureau.
