

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christine Rock and	:
David Ingegneri,	:
Appellants	:
	:
v.	:
	:
Bryan Siegfried, Barbara	:
Bruns-Siegfried, The Greene	:
Township Board of Supervisors	: No. 1060 C.D. 2012
and Greene Township	: Submitted: December 12, 2012

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE COVEY

FILED: January 2, 2013

Christine Rock and David Ingegneri (Appellants) appeal from the Pike County Common Pleas Court's (trial court) May 7, 2012 order sustaining Bryan Siegfried and Barbara Bruns-Siegfried's (Siegfrieds), and Greene Township (Township) and the Township's Board of Supervisors' (Board) preliminary objections to Appellants' Declaratory Judgment action. The sole issue before this Court is whether a trial court has subject matter jurisdiction over a declaratory judgment action. We affirm.

The Siegfrieds sought waivers from Sections 603.10.B and 603.14 of the Township's Subdivision and Land Development Ordinance (SALDO) on the Final Minor Subdivision Plan, which the Board had previously approved at its September 3, 2008 meeting. At the October 28, 2010 meeting, the Board granted the waivers

requested by the Siegfrieds. Appellants own the land adjacent to the Siegfrieds. Appellants filed a Declaratory Judgment action on June 20, 2011 challenging the Board's October 28, 2010 decision. The Complaint alleges that the Siegfrieds did not comply with the SALDO's requirements to notify adjoining property owners and, thus, the Board's approval was void *ab initio*. The Complaint further asserts that the Board's granting of waiver requests was in violation of the Pennsylvania Municipalities Planning Code (MPC)¹ and the SALDO. Appellants seek review of that decision, and a determination by this Court that the waiver requests granted by the Board are void *ab initio*. The Siegfrieds filed Preliminary Objections on November 23, 2011 averring lack of subject matter jurisdiction and insufficiency of the Complaint. The Township and the Board filed Preliminary Objections on December 2, 2011 which also challenged subject matter jurisdiction. The trial court held a hearing on January 23, 2012. On May 7, 2012, the trial court sustained the Siegfrieds', and the Township and the Board's preliminary objections. Appellants appealed to this Court.²

Appellants argue that because they are not appealing the merits, but rather, are seeking a determination that the approval and waiver grants are void *ab initio*, the trial court has subject matter jurisdiction. We disagree.

Section 7541(c)(3) of the Declaratory Judgments Act (Act), 42 Pa.C.S. § 7541(c)(3), provides that relief is not available under the Act with respect to any “[p]roceeding involving an appeal from an order of a tribunal.”

The trial court and the Township rely on *Iannarone v. Township of Springbrook*, 441 A.2d 810 (Pa. Cmwlth. 1982), to support the proposition that

¹ Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. §§ 10101–11202.

² “Our standard of review of an order of the trial court sustaining preliminary objections is limited to a determination of whether the trial court committed an error of law or abused its discretion.” *Bradley v. O’Donoghue*, 823 A.2d 1038, 1040 (Pa. Cmwlth. 2003).

Appellants inappropriately filed a declaratory judgment action rather than filing an appeal under the MPC from the Township waiver grants. Appellants contend that *Iannarone* is distinguishable from the instant matter because the appellant in that case had a separate land use matter pending before the township, and the appellant failed to state with specificity the constitutional grounds on which he was relying to challenge the validity of the ordinance. However, in *Iannarone*, this Court specifically relied on the fact that the board of supervisors was a tribunal under the Act as its basis to deny the declaratory action. *Id.*

Appellants further aver that the holding in *Luke v. Cataldi*, 593 Pa. 461, 932 A.2d 45 (2007), supports their interpretation of *Iannarone* because the *Luke* Court held that a mandamus action was the appropriate vehicle to raise a void *ab initio* challenge. *Id.* The Pennsylvania General Assembly, however, amended the MPC after the *Luke* decision to address procedural challenges to land use decisions, and the void *ab initio* doctrine. Section 1002.1-A of the MPC,³ 53 P.S. § 11002.1-A, now provides in relevant part:

(a) This section shall apply to all appeals challenging the validity of a land use decision on the basis of a defect in procedures prescribed by statute or ordinance.

(b) . . . [A]ll appeals challenging the validity of a decision solely on the basis of a defect in procedure shall be filed within the time period provided in section 11002-A(a)^[4] unless a party establishes each of the following:

(1) That the person filing the appeal had insufficient actual or constructive notice of the decision to permit filing an

³ Added by Section 5 of the Act of July 4, 2008, P.L. 319.

⁴ Section 1002-A(a) of the MPC provides: “All appeals from all land use decisions rendered pursuant to Article IX shall be taken to the court of common pleas of the judicial district wherein the land is located and shall be filed within 30 days after entry of the decision” Added by Section 101 of the Act of December 21, 1988, P.L. 1329, 53 P.S § 11002-A(a).

appeal within the time period provided in section 1002-A(a). . . .

(2) That because of the insufficient actual or constructive notice of the decision, the application of the time limitation in section 1002-A(a) would result in an impermissible deprivation of constitutional rights.

(c) Appeals under this section shall only be permitted by an aggrieved person who can establish that reliance on the validity of the challenged decision resulted or could result in a use of property that directly affects such person's substantive property rights.

(d) No decision challenged in an appeal pursuant to this section shall be deemed void from inception except as follows:

(1) In the case of an appeal brought within the time period provided in section 1002-A(a), the party alleging the defect must meet the burden of proving that there was a failure to strictly comply with procedure.

(Emphasis added). Because Appellants did not bring this action within the prescribed 30 days,⁵ they cannot obtain a ruling that the approval and waiver grants are void *ab initio*. Given that fact, Appellants' entire premise for the declaratory judgment action must fail. Accordingly, the trial court did not have subject matter jurisdiction to hear the matter and properly sustained the preliminary objections.

For all of the above reasons, the trial court's order is affirmed.

ANNE E. COVEY, Judge

⁵ Appellants do not contend that they fall within any of the stated exceptions.

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Township Board of Supervisors	: No. 1060 C.D. 2012
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ORDER

AND NOW, this 2nd day of January, 2013, the Pike County Common Pleas Court's May 7, 2012 order is affirmed.

ANNE E. COVEY, Judge