IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Stillwater Lakes Civic Association, Inc.	:	
v.	:	No. 2656 C.D. 2010 Submitted: June 6, 2011
David Nieves, Lydia Nieves a/k/a Lydia Carrion and Michael Glassic	:	
Appeal of: Michael Glassic	:	

BEFORE: HONORABLE ROBERT SIMPSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge (P)
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: August 31, 2011

Michael Glassic[1] appeals the order of the Court of Common Pleas of Monroe County (trial court) granting the summary judgment motion of Stillwater Lakes Civic Association (Association) and granting the Association permanent injunctive relief. We affirm.

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[1] It should be noted that the appellate brief filed by Glassic in this Court does not contain a Statement of Jurisdiction, the Order or Other Determination in Question, or a Summary of Argument as required by Pa.R.A.P. 2111(a)(1), (2), (6), 2114, 2115, and 2118. As a result, Glassic's appellate brief could be suppressed, and the instant appeal could be quashed or dismissed, pursuant to the provisions of Pa.R.A.P. 2101. Nevertheless, this Court may proceed to dispose of this appeal as the foregoing enumerated defects in Glassic's appellate brief do not preclude effective appellate review. Hatter v. Landsberg, 563 A.2d 146 (Pa. Super. 1989), petition for allowance of appeal denied, 525 Pa. 626, 578 A.2d 414 (1990).

Glassic owns two units in the Stillwater Lakes Estates, a planned residential community organized under the Uniform Planned Community Act[2], that is located in Coolbaugh Township, Monroe County. The Association is a non-profit corporation that manages and administers the common facilities in the development. As a property owner, Glassic is a member of the Association.

On August 7, 2008, Glassic first recorded a meeting of the Association's Board of Directors (Board) without permission. On October 4, 2008, Glassic again videotaped the Board's meeting over the Board's objection. On October 18, 2008, the Board passed a resolution prohibiting the recording and disruption of Board meetings. On November 15, 2008, Glassic again recorded a Board meeting.

On December 17, 2008, the Association filed a complaint in the trial court seeking to preliminarily and permanently enjoin Glassic from video and/or audio recording future Board meetings, and to compel him to delete the prior recordings. On January 28, 2009, Glassic filed preliminary objections to the complaint. By order dated April 20, 2009, the trial court dismissed Glassic's preliminary objections, and directed Glassic to file a responsive pleading within 20 days.

On May 19, 2009, Glassic filed an answer with new matter to the Association's complaint. On June 5, 2009, the Association filed preliminary objections to Glassic's answer. By order dated July 6, 2009, the trial court sustained in part the Association's preliminary objections.[3,4] Glassic was deposed on March 10, 2010. See Reproduced Record (RR) at 201-463.

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[2] 68 Pa.C.S. §§ 5101-5114.

[3] More specifically, in its order, the trial court stated that "[a]ny references in the Answer

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On June 4, 2010, the Association filed a motion for summary judgment in which it alleged, inter alia, that there were no issues of material fact, and that it was entitled to summary judgment, due to admissions made by Glassic during his deposition. See RR at 61-62. On July 2, 2010, Glassic filed a memorandum in opposition to the motion for summary judgment to which he appended some documents that were given to the Association at the deposition. See id. at 33-34.

On August 3, 2010, the trial court issued an order granting the Association's motion for summary judgment. Glassic then filed the instant appeal of the trial court's order.[5,6]

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with New Matter regarding either the Bylaws not having been amended or the Bylaws providing Association members with the right to record Board or Membership meetings are stricken with prejudice…." RR at 68. The trial court also directed Glassic to "[a]ttach copies of all referenced writings to his Answer with New Matter and amend Paragraphs 29 and 33 in the Answer to specify how the relevant writings are contrary to the assertions in the Complaint." Id. at 69.

[4] On August 5, 2009, Glassic appealed the trial court's order to the Pennsylvania Superior Court. However, by per curiam order dated November 6, 2009, the Superior Court quashed Glassic's appeal.

[5] Glassic initially appealed the trial court's order to the Pennsylvania Superior Court. However, by per curiam order dated November 8, 2010, the Superior Court transferred the appeal to this Court.

[6] This Court's scope of review of the grant of a motion for summary judgment is limited to determining whether the trial court abused its discretion or committed an error of law. Rieger v. Altoona Area School District, 768 A.2d 912 (Pa. Cmwlth. 2001). Summary judgment is properly granted where there is no genuine issue of material fact as to a necessary element of the cause of action and the moving party has clearly established entitlement to judgment as a matter of law. Pa.R.C.P. No. 1035.2(1); Dunkle v. Middleburg Municipal Authority, 842 A.2d 477 (Pa. Cmwlth.), petition for allowance of appeal denied, 580 Pa. 708, 860 A.2d 491 (2004). The record must be viewed in a light most favorable to the opposing party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Id. The entry of summary judgment may only be granted in cases where the right is clear and free from doubt. Rieger.

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In this appeal, Glassic claims: (1) the trial court erred in granting the Association's summary judgment motion because the Association failed to first serve him with a cease and desist letter as required by Article III, Section V of its By-Laws[7]; (2) the trial court erred in granting the Association permanent injunctive

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In addition, when reviewing the grant or denial of a final or permanent injunction, our review is limited to determining whether the trial court committed an error of law. Buffalo Township v. Jones, 571 Pa. 637, 813 A.2d 659 (2002). In order to establish a claim for a permanent injunction, a party must establish a clear right to relief. Id. Unlike a claim for a preliminary injunction, the party need not establish irreparable harm or immediate relief. Id. A trial court may issue a final injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at law. Id.

[7] Article III, Section V of the Association's By-Laws provides, in pertinent part:

> **Section V. Hearing Procedure**
>
> [T]he Board may impose a fine, suspend voting, and/or curtail rights of a member or other occupant of property within the Association for violations of the Community Documents provided that the following procedure is followed:
>
> (1) Demand Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying:
>
> (a) the alleged violation;
>
> (b) the action required to abate the violation; and
>
> (c) a time period of not less than ten (10) day[s], during which the violation must be abated without further sanction if any violation is a continuing one, or a statement that any further violation will not be tolerated.
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> (2) Notice At any time within twelve (12) months of any demand, if the violation continues past the period allowed in the demand for abatement without penalty or if the same rule is subsequently violated, the Board or its delegate shall serve the violator with written notice of a hearing to be held by the Grievance Committee in executive session….

RR at 168-169.

relief because the Association failed to demonstrate that he had violated any provision of a cease and desist letter as required by Article III, Section V of the Association's By-Laws; (3) the trial court erred in granting the Association permanent injunctive relief because there is nothing in the record demonstrating that he violated any covenant or by-law of the Association supporting such relief; (4) the trial court erred in granting the Association permanent injunctive relief because other unit owners continued to record Board meetings and no suit was commenced against the other unit owners; (5) the trial court erred by granting the Association permanent injunctive relief because the Association had imposed and then vacated a fine for his conduct; (6) the trial court erred in determining that there was no genuine issue of material fact; (7) the trial court erred in granting the Association permanent injunctive relief because the Association failed to demonstrate that it was "forced" to commence the instant action as required by Article VI, Section F of its By-Laws[8]; and (8) the trial court erred in sustaining the Association's preliminary objections to his Answer and New Matter thereby striking any references to either the Association's By-Laws not having been amended or providing Association members the right to record Board or membership meetings.

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[8] Article VI, Section F of the Association's By-Laws provides, in pertinent part:

> [I]n the event the Association and/or its subsidiaries is forced to commence any action against any member as a result of the member's failure to adhere to the Community Documents, … the member shall be responsible for reimbursing the Association and/or its subsidiaries for all costs incumbent with the action, including attorney fees.

RR at 176.

With regard to the claims of error raised by Glassic in this appeal, we conclude that the trial court thoroughly and correctly analyzed these issues and this matter was ably disposed of in the comprehensive and well-reasoned opinion of the Honorable Linda Wallach Miller. Accordingly, we affirm[9] on the basis of her

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[9] Moreover, the trial court's order in this case would be affirmed even if Glassic's claims were addressed on the merits by this Court. See Feldman v. Lafayette Green Condominium Association, 806 A.2d 497, 502 fn. 3 (Pa. Cmwlth. 2002) ("[W]e may affirm an order for any reason, regardless of the trial court's rationale, so long as the basis for our decision is clear on the record. *Pennsylvania State Police v. Paulshock*, 789 A.2d 309 (Pa. Cmwlth. 2001).").

It is well settled that a trial court may only consider evidence that is in the certified record when disposing of a motion for summary judgment. Scopel v. Donegal Mutual Insurance Co., 698 A.2d 602 (Pa. Super. 1997). It is equally well settled that an appellate court is limited to considering only those facts that have been duly certified in the record on appeal. City of Pittsburgh Commission on Human Relations v. DeFelice, 782 A.2d 586 (Pa. Cmwlth. 2001). For purposes of appellate review, that which is not part of the certified record does not exist. Id.

In addition, as this Court has previously noted, "[i]t is the responsibility of the appellant to supply this Court with a complete record for purposes of review. The failure by an appellant to insure that the original record certified for appeal contains sufficient information to conduct a proper review constitutes waiver of the issue(s) sought to be examined." Salameh v. Spossey, 731 A.2d 649, 658 (Pa. Cmwlth.), petition for allowance of appeal denied, 561 Pa. 663, 747 A.2d 903 (1999) (citation omitted). See also Smith v. Smith, 637 A.2d 622, 623-624 (Pa. Super. 1993), petition for allowance of appeal denied, 539 Pa. 680, 652 A.2d 1325 (1994) ("[I]t is the responsibility of the Appellant to supply this Court with a ***complete*** record for purposes of review...[and] a failure by an Appellant to insure that the original record certified for appeal contains sufficient information to conduct a proper review constitutes a waiver of the issue(s) sought to be examined.") (emphasis in original and citations omitted); Boyle v. Steiman, 631 A.2d 1025, 1030-1031 (Pa. Super. 1993), petition for allowance of appeal denied, 538 Pa. 663, 649 A.2d 666 (1994) ("[W]e note that it is the duty of the appellant to supply this Court with a record which is sufficient to permit a meaningful appellate review. A failure by the appellant to insure that the original record certified for appeal contains sufficient information to conduct a meaningful appellate review constitutes a waiver of the issue sought to be reviewed....") (citations omitted).

In support of his allegations of error in this appeal, Glassic relies upon a number of documents in the reproduced record that are not part of the certified record of this appeal. See Brief of Appellant at 8, 9, 10, 11, 12, 17. Although Glassic brought these documents to the deposition conducted on March 10, 2010, they were never entered as exhibits. See RR at 202. Rather, Glassic appended these documents to his Memorandum in Opposition to the Association's motion for

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opinion in Stillwater Lakes Civic Association, Inc. v. David Nieves, Lydia Nieves a/k/a Lydia Carrion and Michael Glassic, (No. 12198 CV 2008, August 3, 2010).

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summary judgment. See RR at 33, 179-180, 183, 184-185, 187-196, 198-199.

Merely appending these documents to his memorandum did not make these documents part of the certified record. Scopel; Kerns v. Methodist Hospital, 574 A.2d 1068 (Pa. Super. 1990); Zepp v. Nationwide Insurance Co., 434 A.2d 112 (Pa. Super. 1981). As a result, Glassic has waived, for purposes of appeal, his claims regarding the purported error of the trial court.

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O R D E R

AND NOW, this 31st day of August, 2011, the order of the Court of Common Pleas of Monroe County, dated August 3, 2010 at No. 12198 CV 2008, is AFFIRMED.

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JAMES R. KELLEY, Senior Judge