[Cite as *Steinen v. Ohio Div. of Wildlife*, 2015-Ohio-2975.]

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

Gilbert D. Steinen, Jr., et al.	Court of Appeals No. E-14-129
Appellants	Trial Court No. 2012 CV 0367
v.	
State of Ohio, Division of Wildlife, et al.	**DECISION AND JUDGMENT**
Appellees	Decided: July 24, 2015

* * * * *

D.Jeffery Rengel and Thomas Lucas for appellants.

Michael Dewine, Ohio Attorney General, and Gerald E. Dailey and Daniel J. Martin, Assistant Attorneys General, for appellee, Ohio Department of Natural Resources, Division of Wildlife.

Linda C. Ashar, for appellees, Erie MetroParks, et al.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} This is an appeal from the judgment of the Erie County Court of Common Pleas, granting summary judgment in favor of defendants-appellees, Erie MetroParks,

Amy Bowman-Moore, James (Don) Miears, Randy Glovinsky, Kurt Landefeld, and the state of Ohio, Division of Wildlife.[1] For the reasons that follow, we affirm.

A. Facts and Procedural Background

{¶ 2} The background facts are not in dispute. In March 2004, appellants, Gilbert Steinen, Jr., and the Joseph Steinen Wildlife Trust (collectively "Steinen"), sold real property to the Trust for Public Land for $2,250,000. The land consisted of parcels "A", "B", and "C", and was dedicated as "The Joseph Steinen Wildlife Area." Pursuant to a Use Agreement executed at the same time, Steinen retained a life interest in parcel B to use as his homestead, and other interests in parcels A and C. Contemporaneously with that sale, the Trust for Public Land transferred title to the property to Erie MetroParks. In November 2004, the Trust for Public Land then entered into an "East Sandusky Bay Nature Preserve MetroPark Hunting and Management Agreement" with Erie MetroParks and the state of Ohio, Department of Natural Resources ("ODNR")[2] regarding the Joseph Steinen Wildlife Area. The Trust for Public Land also conveyed to ODNR a "Deed of Conservation Easement with the State of Ohio, Department of Natural Resources." In 2006, the East Sandusky Bay Nature Preserve MetroPark Hunting and Management Agreement was replaced by the "Erie MetroParks and ODNR Division of Wildlife

[1] Amy Bowman-Moore is the Executive Director of Erie MetroParks. Don Miears, Randy Glovinsky, and Kurt Landefeld are Board Members.

[2] Appellee, the state of Ohio, Division of Wildlife, is a subsection of ODNR, and is responsible for the oversight of the Joseph Steinen Wildlife Area.

Steinen Wildlife Area Hunting and Management Plan." In 2009, the Deed of Conservation Easement was replaced with one granted by Erie MetroParks to ODNR.

{¶ 3} In 2008, a dispute arose between Steinen and Erie MetroParks regarding Steinen's use of the property, and the safety of the hunting practices being allowed on the land. As a result, Steinen filed an action for declaratory judgment in the Erie County Court of Common Pleas. Attached to his complaint were the agreement of sale between the Trust for Public Land and Erie MetroParks, the Use Agreement, the deed transferring the property from the Trust for Public Land to Erie MetroParks, the East Sandusky Bay Nature Preserve MetroPark Hunting and Management Agreement, and the Deed of Conservation Easement granted by the Trust for Public Land. This litigation resulted in a November 29, 2010 declaratory judgment, entered pursuant to the parties' stipulation, which defined the rights of the parties under the life estate and Use Agreement relative to parcels A, B, and C.

{¶ 4} Almost immediately after the entry of the judgment, Steinen denounced the judgment, claiming that it was not entered with his consent, that his attorney was not representing his interests, and that the trial judge colluded with the attorneys to enter the judgment. However, Steinen did not appeal the judgment, nor did he file a malpractice action against his attorney. Instead, Steinen sought to invalidate the judgment by reaching a separate agreement with Erie MetroParks.

{¶ 5} Steinen, under the threat of continued legal action, requested a series of meetings with Erie MetroParks Commissioner, and then Executive Director, Kurt

Landefeld. The parties held several meetings in August 2011. After each meeting, Steinen requested that Landefeld sign the notes of the meeting, acknowledging the contents of the discussion that took place. On August 26, 2011, the parties met again, after which Landefeld signed the handwritten document that is at issue in the present matter. The top of the handwritten document states, "Let it be known that Kurt Landefeld and Gilbert Steinen agree:." The document then contains a list of 25 items relative to the parties' relationship and responsibilities with respect to the property:

1. That EMP will honor all commitments made to Gil to obtain his properties,

2. That Jon Granville's letter of Sept. 14, 2001 is a commitment,

3. That the two documents in which the [Trust for Public Land] declares that they own the Steinen properties are invalid,

4. That feed for the wildlife will be provided as outlined in the plan dated June 27, 2011,

5. That all funds received from the Barnes' lease will be placed in a checking account and supervised by the advisory committee,

6. That Gil will enjoy the hunting rights as intended by the Use Agreement and shown in the draft dated March 23, 2011,

7. That the parking lot located on the 100 acres shall be modified to provide more safety,

8. That the [West Huron Youth Club] will replace the foundation under the Joe Steinen barn,

9. That a five acre pond will be built at the north end of the 100 acres,

10. That there will be cooperation in developing a trail system from the Visitors Center to Sandusky and to the East,

11. That there will be cooperation in getting a Visitor Center,

12. That except for training there will be no trapping on the Joe Steinen Wildlife Area,

13. That Linda will return as chairperson of the AC,

14. That we will notify the members selected for the AC,

15. That the bat houses will be moved from the barn,

16. That the rusty roof will be coated,

17. That oil based paint will be used on the barns,

18. That the Logo will be saved forever,

19. That all trails will be widened and made safe,

20. That fields will not be burnt after March 15th,

21. That we will cooperate in getting the railroad crossing regraded,

22. That Gil will meet with the [Ohio Department of Wildlife] to get their view of the future,

23. That Kurt and Gil will meet with the Barnes's about the future,

24. That the [West Huron Youth Club] will have their sign in conjunction with EMP sign,

25. That the [West Huron Youth Club] can hunt the Galloway farms.

Subsequently, in October 2011, Steinen created a document updating the progress on the terms of the August 26, 2011 document. Landefeld signed the October 2011 document, and noted, "Gil - We reviewed & I am working to fulfill our agreement."

{¶ 6} Once again, a dispute arose between the parties, and on May 18, 2012, Steinen filed the present action against appellees. In his second amended complaint, Steinen brought four causes of action against ODNR, only two of which are on appeal. Steinen additionally brought five causes of action against Erie MetroParks, two of which were also against Landefeld individually. Only four of those causes of action are on appeal. [3]

{¶ 7} In Counts One and Two against ODNR, Steinen sought a declaratory judgment that the East Sandusky Bay Nature Preserve MetroPark Hunting and Management Agreement, and the Deed of Conservation Easement granted by the Trust for Public Land were invalid and not binding interests upon the parcels because they were entered into after the Trust for Public Land had transferred ownership of the property to Erie MetroParks.

[3] Erie MetroParks also filed a counterclaim for injunctive relief against Steinen. The trial court granted summary judgment in Erie MetroParks favor on this claim, but Steinen has not raised the issue on appeal.

{¶ 8} Against Erie MetroParks, in Count Three, Steinen sought a declaratory judgment that the August 26, 2011 document was a binding agreement. In Count Six, Steinen alleged that Erie MetroParks breached that contract. Count Seven alleged that if Landefeld did not have authority to bind Erie MetroParks under the August 26, 2011 document, then Landefeld was personally liable in contract. Finally, in Count Eight, Steinen alleged that if Landefeld had no authority to bind Erie MetroParks, then Landefeld was personally liable for fraud.

{¶ 9} The parties each moved for summary judgment. The trial court granted appellees' motions for summary judgment, and denied Steinen's motion for summary judgment.

B. Assignments of Error

{¶ 10} Steinen has timely appealed the trial court's judgments, raising four assignments of error for our review:

> I. THE TRIAL COURT ERRED IN FAILING TO PROPERLY APPLY A SUMMARY JUDGMENT STANDARD.
>
> II. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF ERIE METROPARKS ON COUNTS THREE AND SIX OF APPELLANTS' SECOND AMENDED COMPLAINT

III. THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT IN FAVOR OF APPELLEE LANDEFELD ON COUNTS SEVEN AND EIGHT OF APPELLANTS' SECOND AMENDED COMPLAINT.

IV. THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT IN FAVOR OF APPELLEE ODNR ON COUNTS ONE AND TWO OF APPELLANTS' SECOND AMENDED COMPLAINT.

II. Analysis

A. Summary Judgment Standard

{¶ 11} We review summary judgment decisions de novo, applying the same standard as the trial court. *Lorain Natl. Bank v. Saratoga Apts.*, 61 Ohio App.3d 127, 129, 572 N.E.2d 198 (9th Dist.1989). Applying Civ.R. 56(C), summary judgment is appropriate where (1) there is no genuine issue as to any material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion, and viewing the evidence in the light most favorable to the non-moving party, that conclusion is adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978).

{¶ 12} In his first assignment of error, Steinen argues that the trial court applied the wrong standard by resolving disputed material facts to determine that appellees were entitled to judgment as a matter of law. Then, in his remaining three assignments of

error, Steinen addresses each of his six counts in particular, arguing why the trial court erred in granting summary judgment. Before turning to his three remaining assignments of error, we initially find that Steinen's first assignment of error is without merit. Because we review summary judgment decisions de novo, giving no deference to the trial court's decision, any error by the trial court in reaching its decision is informative, but is not a separate ground for reversal. Instead, we must independently determine whether summary judgment is appropriate based on the record before us. Therefore, Steinen's first assignment of error is not well-taken. Any argument raised by Steinen in his first assignment of error that is germane to a particular count will be considered with the assignment of error pertaining to that count.

B. The August 26, 2011 Document

{¶ 13} In his second assignment of error, Steinen contends that the August 26, 2011 document is a binding contract on Erie MetroParks, and that the trial court erred in granting summary judgment on Counts Three and Six to appellees. Steinen asserts that whether the August 26, 2011 document is a contract raises four issues: (1) whether the document, on its face, meets the elements of a contract, (2) whether Landefeld had actual or apparent authority from Erie MetroParks to sign the document, (3) whether Erie MetroParks is equitably estopped from denying that the document is a binding contract by partial performance and agency principles, and (4) how the document's terms should be interpreted if it is a contract. Further, Steinen contends that genuine issues of material

facts exist relative to determining the presence of the foundational elements of a contract and whether Landefeld had actual or apparent authority to bind Erie MetroParks.

{¶ 14} We will first examine whether the document itself constitutes an enforceable contract. "A contract is generally defined as a promise, or a set of promises, actionable upon breach. Essential elements of a contract include an offer, acceptance, contractual capacity, consideration (the bargained for legal benefit and/or detriment), a manifestation of mutual assent and legality of object and of consideration." *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, 770 N.E.2d 58, ¶ 16. "In order to declare the existence of a contract, both parties to the contract must consent to its terms * * *; there must be a meeting of the minds of both parties * * *; and the contract must be definite and certain." (Internal citations omitted.) *Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations*, 61 Ohio St.3d 366, 369, 575 N.E.2d 134 (1991). "The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy." *Mr. Mark Corp. v. Rush, Inc.*, 11 Ohio App.3d 167, 169, 464 N.E.2d 586 (8th Dist.1983), quoting Restatement of the Law 2d, Contracts, Section 33, 92 (1981).

{¶ 15} Here, the terms of the August 26, 2011 document are not definite or certain. With the exception of obligating the West Huron Youth Club to replace the foundation under the barn, the document does not specify which party is responsible for which promises. Further, to the extent that it is assumed that Erie MetroParks is responsible for performing the promises, then the document creates no obligation on the

part of Steinen. Thus, the agreement lacks consideration. *See Williams v. Ormsby*, 131 Ohio St.3d 427, 2012-Ohio-690, 966 N.E.2d 255, ¶ 17, quoting *Carlisle v. T & R Excavating, Inc.*, 123 Ohio App.3d 277, 283, 704 N.E.2d 39 (9th Dist.1997) ("Gratuitous promises are not enforceable as contracts, because there is no consideration."). Therefore, we hold that the August 26, 2011 document does not constitute a contract as a matter of law.

{¶ 16} In addition, even if the terms of the document were definite and certain, we hold that no contract was formed because Erie MetroParks did not assent to it. The Erie MetroParks bylaws state,

> No contract, agreement, deed, option or other document or action creating any written obligation, contractual relation form, in or to the Board shall be accepted or received on behalf of the Board, except with the approval and authorization of the Board, as provided for within these By-Laws or by other official acts of the Board, and pursuant to Sections 307.86 and 307.91 of the Ohio Revised Code.

Thus, Erie MetroParks concludes that Landefeld could not have bound Erie MetroParks to a contract absent formal Board approval, which indisputably did not occur in this case. Indeed, Ohio courts have recognized that "in Ohio, political subdivisions cannot be bound by contract unless the agreement is in writing and formally ratified through proper channels." *Schmitt v. Educational Serv. Ctr. of Cuyahoga Cty.*, 2012-Ohio-2208, 970 N.E.2d 1187, ¶ 18 (8th Dist.). Therefore, we agree with Erie MetroParks that Landefeld

did not have actual authority to create a contract with Steinen, and that Erie MetroParks did not accept the terms of the August 26, 2011 document as established in the Erie MetroParks bylaws.

{¶ 17} Moreover, we do not find that Steinen has set forth any facts from which we could conclude that Landefeld had apparent authority to bind Erie MetroParks. Regarding apparent authority in the agency context, the Ohio Supreme Court has stated,

> [I]n order for a principal to be bound by the acts of his agent under the theory of apparent agency, evidence must affirmatively show: "* * * (1) [t]hat the principal held the agent out to the public as possessing sufficient authority to embrace the particular act in question, or knowingly permitted him to act as having such authority, and (2) that the person dealing with the agent knew of the facts and acting in good faith had reason to believe and did believe that the agent possessed the necessary authority. The apparent power of an agent is to be determined by the act of the principal and not by the acts of the agent; a principal is responsible for the acts of an agent within his apparent authority only where the principal himself by his acts or conduct has clothed the agent with the appearance of the authority and not where the agent's own conduct has created the apparent authority." *Master Consolidated Corp. v. BancOhio Natl. Bank*,

61 Ohio St.3d 570, 576-577, 575 N.E.2d 817 (1991), quoting *Logsdon v. Main-Nottingham Inv. Co.*, 103 Ohio App. 233, 241-242, 141 N.E.2d 216 (2d Dist.1956).

{¶ 18} Here, Steinen does not set forth any evidence demonstrating that Erie MetroParks held Landefeld out as having authority to enter into a contract regarding the items set forth in the August 26, 2011 document. Steinen argues that Landefeld was the Executive Director and Board Chairman at the time the August 26, 2011 document was signed, and that the Executive Director, by virtue of the position, is authorized to enter into contracts on behalf of Erie MetroParks. However, as testified to by the current Executive Director, Amy Bowman-Moore, the authority to enter into contracts without specific board approval is limited to routine and small expenses, and even in those situations the authority to make purchases has been approved by the Board through its bylaws:

> The Director shall comply with the budgetary directives adopted by the Board and is therefore authorized to implement administrative procedures consistent therewith. The Director or his or her designee is authorized to purchase materials, supplies and equipment used in the normal course of operation of the park district without prior Board approval, providing the cost of each item does not individually meet or exceed fifteen thousand dollars ($15,000).

{¶ 19} Instead of producing evidence showing that Erie MetroParks affirmatively held Landefeld out as having authority to enter into an agreement with Steinen, Steinen argues that Erie MetroParks does not always follow its own bylaws regarding contracts. Specifically, Steinen points to a Board meeting where a discussion was held regarding the necessity to formalize a contract with the Bay Area Soccer League to reflect and validate the parties' ongoing arrangement involving a permit. This evidence, though, is entirely irrelevant, and in no way establishes that Erie MetroParks held Landefeld out as having authority to contract with Steinen and that Steinen was aware and had a good faith reason to believe that Landefeld had such authority. Therefore, we hold that no genuine issue of material fact exists that Landefeld did not have actual or apparent authority to bind Erie MetroParks, and thus no mutuality of assent to the terms of the August 26, 2011 document existed.

{¶ 20} Steinen next argues that Erie MetroParks should nonetheless be held to the terms of the contract under a theory of equitable or promissory estoppel, or estoppel by partial performance. This argument also fails. "[A]s a general rule, the principle of estoppel does not apply against a state or its agencies in the exercise of a governmental function." *Hortman v. Miamisburg*, 110 Ohio St.3d 194, 2006-Ohio-4251, 852 N.E.2d 716, ¶ 25. Citing R.C. 2744.09(A), Steinen attempts to argue that "civil actions seeking recovery of damages for *contractual liability* are an exception to 'governmental functions.'" (Emphasis sic.) However, R.C. 2744.09(A) does not state that contracts are not a governmental function; instead, it simply states that civil actions seeking damages

for contractual liability are exempted from the provisions of R.C. Chapter 2744, which deals with political subdivision tort liability. In addition, it is evident that the subject at issue here—management of the Joseph Steinen Wildlife Area by Erie MetroParks—is a governmental function. Therefore, we find no merit to Steinen's estoppel arguments.

{¶ 21} Accordingly, because the terms of the August 26, 2011 document lack definiteness and certainty, because Landefeld did not have actual or apparent authority to bind Erie MetroParks to those terms, and because principles of estoppel do not apply against a state agency in the exercise of a government function, we hold that the August 26, 2011 document is not an enforceable contract against Erie MetroParks. Steinen's second assignment of error is not well-taken.

C. Landefeld's Liability

{¶ 22} In his third assignment of error, Steinen argues that if Landefeld lacked authority to enter into the contract on behalf of Erie MetroParks, then he is personally liable under the contract. Alternatively, Steinen argues that Landefeld is liable for fraud for failing to disclose the extent of his authority.

{¶ 23} Regarding the former theory, "It is well-settled in the law of agency that an agent who discloses neither the existence of the agency nor the identity of the principal is personally liable in his or her contractual dealings with third parties." *Dunn v. Westlake*, 61 Ohio St.3d 102, 106, 573 N.E.2d 84 (1991). "The reason for this rule is simple. The third party who deals with an agent while unaware of the existence of the principal and the agency relationship intends to deal with the agent, and relies upon the agent's ability

to perform." *Id.* Here, Steinen acknowledges that Landefeld was only meeting him in his capacity as a board member and executive director of Erie MetroParks. Furthermore, Steinen could not have relied on Landefeld's personal ability to perform as Steinen has admitted that Landefeld had no personal purpose or reason to perform any item or obligation set forth in the August 26, 2011 document apart from his position with Erie MetroParks. Therefore, we hold that Steinen was aware of the agency relationship; thus, Landefeld is not personally liable under the August 26, 2011 document.

{¶ 24} Turning to the latter theory, the elements of a claim of fraud require:

> (a) a representation or, where there is a duty to disclose, concealment of a fact,
>
> (b) which is material to the transaction at hand,
>
> (c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred,
>
> (d) with the intent of misleading another into relying upon it,
>
> (e) justifiable reliance upon the representation or concealment, and
>
> (f) a resulting injury proximately caused by the reliance. *Cohen v. Lamko, Inc.*, 10 Ohio St.3d 167, 169, 462 N.E.2d 407 (1984).

{¶ 25} Here, Steinen has failed to identify any false representation made by Landefeld. Instead, Steinen appears to argue that he assumed that Landefeld had authority to bind Erie MetroParks by virtue of his position as Chairman of the Board, and

interim Executive Director, and no one told him otherwise. However, the failure to dispel Steinen's assumption does not constitute a representation, nor does Steinen identify any duty to affirmatively disclose the fact that Landefeld did not have authority to unilaterally bind Erie MetroParks. In addition, even if Steinen had successfully identified a false representation, Steinen has not demonstrated any reliance or resulting injury. Steinen alleges that, in reliance on the August 26, 2011 document, he performed his obligations as set forth in that document, and that he forwent challenging the November 29, 2010 judgment decree. However, Steinen does not identify what obligations he performed or how he was injured by performing those obligations. We also note that Steinen examined his options, and elected to forgo challenging the November 29, 2010 judgment and instead negotiate with Erie MetroParks, prior to reaching any purported agreement with Landefeld. Therefore, we hold that Steinen's claim for fraud fails as a matter of law.

{¶ 26} Accordingly, finding no merit to Steinen's claims against Landefeld for personal liability under the contract or fraud, Steinen's third assignment of error is not well-taken.

D. The 2004 Management Agreement and Conservation Easement

{¶ 27} In his final assignment of error, Steinen argues that the trial court erred in determining that res judicata barred his claims for a judgment declaring that the East

Sandusky Bay Nature Preserve MetroPark Hunting and Management Agreement, and the Deed of Conservation Easement granted by the Trust for Public Land were invalid.

{¶ 28} In *State ex rel. Coles v. Granville*, 116 Ohio St.3d 231, 2007-Ohio-6057, 877 N.E.2d 968, ¶ 36-37, the Ohio Supreme Court stated,

> In general, res judicata bars all claims that were or *might have been* litigated in the first lawsuit. * * *
>
> Unlike other judgments, however, "a declaratory judgment determines only what it actually decides and does not preclude other claims that might have been advanced." * * * Consequently, "[f]or a previous declaratory judgment, res judicata precludes only claims that were *actually decided*." (Emphasis sic.) (Internal citations omitted.).

{¶ 29} In support of his assignment of error, Steinen argues that the issue of the validity and binding nature of the 2004 documents was not actually decided by the November 29, 2010 judgment. Thus, he concludes that his present action is not barred by res judicata. However, Steinen's present action and his 2008 action both sought the same thing: a declaration of his rights in the property. To that end, the trial court's November 29, 2010 decision in the 2008 action was "a complete declaration of the rights of the parties, that arose from the documents filed herein." The same documents that Steinen is attempting to invalidate were attached to his complaint in the 2008 action. Therefore, we hold that the issue of Steinen's rights to his property under the terms of the 2004

documents has already been litigated and decided in the November 29, 2010 judgment entry. Accordingly, res judicata bars his current attempt to declare those documents invalid.[4]

{¶ 30} Appellant's fourth assignment of error is not well-taken.

III. Conclusion

For the foregoing reasons, the judgment of the Erie County Court of Common Pleas is affirmed. Appellants are ordered to pay the 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.

Arlene Singer, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE

[4] We find it curious that the parties are contesting the validity of the 2004 documents when the parties have acknowledged that those documents have been replaced and are no longer in effect.