[Cite as *Klocker v. Zeiger*, 2009-Ohio-3102.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92044

THOMAS G. KLOCKER

PLAINTIFF-APPELLANT

vs.

ROBERT ZEIGER, ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
DISMISSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-637240

BEFORE: McMonagle, J., Gallagher, P.J., and Kilbane, J.

RELEASED: June 25, 2009

JOURNALIZED:

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CHRISTINE T. McMONAGLE, J.:

{¶ 1} Plaintiff-appellant, Thomas G. Klocker, appeals from the judgment of the common pleas court that granted summary judgment in favor of defendants-appellees, Robert Zeiger, Thomas Friel, Allan Bobey, and the Clifton Lagoon Trust (the "Trustees"). We dismiss for lack of a final appealable order.

I

{¶ 2} This case involves a dispute over a strip of property (the "Strip") in the Clifton Lagoon development in Lakewood, Ohio. Zeiger, Friel, and Bobey own the Strip, along with other common area property in the development, as Trustees of the Clifton Lagoon Trust. The Strip runs in front of and abuts a series of sublots on which private homes, including one owned by Klocker, are located. The fronts of the homes face Beach Road and the Rocky River. The area of the Strip in front of each home is used as a driveway for the homes.

{¶ 3} The real property owned by Klocker was granted to his predecessor in title, Franklin Schneider, by deed recorded on January 12, 1920. The grantor of the deed was The Clifton Park Land Company. Along with granting the residential sublot, the deed conveyed "*the right to pass over and across other lands of the grantor* adjacent to the lot hereby conveyed [i.e., the Strip]; also the right to use in common with others, the lagoon or basin constructed herein, and the passage or cut therefrom to Rocky River; *but the use of the land hereby conveyed and of said roads and ways, and of said lagoon or basin shall be subject*

to such rules and regulations as may from time to time be established by said Company; its successors and assigns." (Emphasis added.)

{¶ 4} By deed recorded April 20, 1920, The Clifton Park Land Company conveyed title to certain common area property within the Clifton Lagoon development, including the Strip, to the Trustees' predecessors in interest. The Trustees hold the property "in trust, for the sole use and benefit [of] all the owners of sublots or part of lots, in the Clifton Park allotment ***."

{¶ 5} In 1996, the Trustees apparently decided that a certain style of red interlocking driveway pavers would be utilized on the Strip. The city of Lakewood Board of Building Standards approved the Trustees' application for a variance and use of the red interlocking driveway pavers on the Strip by motion dated July 9, 1996.

{¶ 6} Klocker purchased his property at 908 Beach Road on May 15, 2003. Despite representations by Klocker, his wife, and their architect to the Trustees and the city of Lakewood that they would utilize the red pavers, Klocker installed nonconforming yellow pavers on the Strip of property in front of his home owned by the Trustees. The Trustees subsequently removed the non-conforming pavers without notice to Klocker.

{¶ 7} Klocker filed suit in September 2007. The complaint contained ten counts: (1) adverse possession, (2) easement by prescription, (3) easement by necessity, (4) fraud, (5) breach of fiduciary duty and waste, (6) unlawful

conspiracy and intentional infliction of emotional distress, (7) declaratory judgment, (8) accounting, (9) conversion of appellant's property (the pavers), and (10) estoppel.

{¶ 8} Klocker subsequently filed a motion for a temporary restraining order, seeking to compel the Trustees to permit him to install the yellow pavers on the Strip despite the Trustees' objections. The trial court denied the motion. The court also denied Klocker's motion for a preliminary injunction.

{¶ 9} Klocker then filed a motion for partial summary judgment on his declaratory judgment claim, and the Trustees filed a motion for summary judgment on all ten counts of Klocker's complaint. The court granted the Trustees' motion, ruling that "[t]he court hereby grants summary judgment in favor of Defendants. The Strip of property at issue is owned by the Trustees and the Plaintiff wishes to place nonconforming pavers on Defendants' property. Plaintiff only has a limited right to pass over this property. Trustees are ordered to return the nonconforming pavers to Plaintiff immediately. This is a final appealable order."

{¶ 10} Klocker appealed from this order, but then filed a motion to dismiss the appeal for lack of a final appealable order.

II

{¶ 11} In his motion to dismiss, Klocker argues that the trial court's order is not final because it resolved only his declaratory judgment and conversion

claims and did not render judgment on his eight remaining claims. Klocker further contends that the order is not final because the court's ruling on the declaratory judgment claim does not adequately construe the documents at issue, and its ruling in his favor on the conversion claim did not address his request for damages. Klocker asks us to dismiss and remand for trial.

{¶ 12} Klocker's assertions that the trial court order did not resolve all ten claims and that it resolved the conversion claim in his favor are incorrect. In their motion, the Trustees moved for summary judgment on all of Klocker's claims, and the trial court's order clearly stated that it "grant[ed] summary judgment in favor of Defendants." Thus, the order resolved all of Klocker's claims in favor of the Trustees. Further, the court's order that the Trustees return certain pavers to Klocker did not indicate that summary judgment was rendered for Klocker on his conversion claim, especially because he never moved for summary judgment on that claim. As there is no language in the court's order indicating that summary judgment was rendered for Klocker on the conversion claim, there was no damage issue to resolve on the claim.

{¶ 13} We agree, however, with Klocker's assertion that the trial court's judgment on the declaratory judgment claim is not sufficient to make its ruling a final appealable order. It is well settled that "when a trial court enters a judgment in a declaratory judgment action, the order must declare all of the parties' rights and obligations in order to constitute a final, appealable order."

Stiggers v. Erie Ins. Group, 8th Dist. No. 85418, 2005-Ohio-3434. Further, "[a]s a general rule, a trial court does not fulfill its function in a declaratory judgment action when it fails to construe the documents at issue. Hence the entry of a judgment in favor of one party or the other, without further explanation, is jurisdictionally insufficient; it does not qualify as a final order." *Highland Bus. Park, LLC v. Grubb & Ellis Co.*, 8th Dist. No. 85225, 2005-Ohio-3139. See, also, *Am. Family Ins. Co. v. Johnson*, 8th Dist. No. 90062, 2008-Ohio-2181.

{¶ 14} The trial court failed to fulfill its function regarding the declaratory judgment claim because it did not construe the documents at issue in the case and advise the parties of their rights and obligations under those documents and the pertinent law. Although the court attempted to set forth some reasoning in its entry, it is undisputed that the Strip is owned by the Trustees and that Klocker has a limited right to pass over the property. The issue in the case is whether the Trustees, under the deeds at issue, have the authority to impose a "rule and regulation" that requires Klocker to install red driveway pavers on the Strip of property in front of his home owned by the Trustees, and further, if they have such authority, whether such rule was ever properly promulgated. The trial court's order does not construe the documents to resolve this issue.

{¶ 15} Accordingly, we dismiss this appeal for lack of a final appealable order. Despite Klocker's request that we dismiss and remand for trial, our dismissal does not require a trial of this matter.

Dismissed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

CHRISTINE T. McMONAGLE, JUDGE

SEAN C. GALLAGHER, P.J., and
MARY EILEEN KILBENE, J., CONCUR