

[Cite as *Thompson v. Argent Mtge. Co., L.L.C.*, 2010-Ohio-4499.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94613

CHERYL THOMPSON, PASTOR

PLAINTIFF-APPELLANT

VS.

ARGENT MORTGAGE CO., LLC, ET AL.

DEFENDANTS-APPELLEES

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Common Pleas Court
Case No. CV-700989

BEFORE: Boyle, J., Kilbane, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: September 23, 2010

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MARY J. BOYLE, J.:

{¶ 1} Plaintiff-appellant, Cheryl Thompson, appeals from a judgment dismissing her complaint. She raises eight assignments of error for our review. In seven of these assigned errors, she contends that the trial court erred when it dismissed her complaint for various asserted reasons. In her final assignment of error, she maintains that the trial court's staff was unfair to her. Finding no merit to her appeal, we affirm.

Procedural History

{¶ 2} In August 2009, Thompson brought a complaint against several mortgage companies and property owners in her community, alleging that defendants caused or failed to prevent "blighted conditions" in her community. She claimed that "[t]he Defendants[]" property is a nuisance to Plaintiff in that it contains/maintains perpetual danger and health code violations." Thompson further asserted that by failing to "upkeep, secure and maintain their property," defendants violated her civil rights by causing damage to her community.

{¶ 3} Through several separate motions, defendants moved to dismiss Thompson's complaint under Civ.R. 12(B), alleging, inter alia, that Thompson

lacked standing to bring the complaint and that she failed to state a claim upon which relief could be granted.

{¶ 4} The trial court granted the motions and dismissed Thompson's complaint, finding that she lacked standing to bring a public nuisance action against defendants. It is from this judgment that Thompson appealed.

Standard of Review

{¶ 5} In *State ex rel. N. Ohio Chapter of Associated Builders & Contr., Inc. v. Barberton City School Bd. of Edn.*, 9th Dist. No. 24898, 2010-Ohio-1826, the court aptly set forth the following regarding the issue of standing, as well as our standard of review:

{¶ 6} “The issue of standing is a threshold test that, once met, permits a court to determine the merits of the questions presented.’ *Hicks v. Meadows*, 9th Dist. No. 21245, 2003-Ohio-1473, ¶7. ‘A person has standing to sue only if he or she can demonstrate injury in fact, which requires showing that he or she has suffered or will suffer a specific, judicially redressible injury as a result of the challenged action.’ *Fair Hous. Advocates Assn., Inc. v. Chance*, 9th Dist. No. 07CA0016, 2008-Ohio-2603, ¶5. ‘Lack of standing challenges the capacity of a party to bring an action, not the subject matter jurisdiction of the court.’ *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 77, 1998-Ohio-275, 701 N.E.2d 1002.

Accordingly, a motion to dismiss for lack of standing is properly brought pursuant to Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted. *Brown v. Columbus City Schools Bd. of Edn.*, 10th Dist. No.

08AP-1067, 2009-Ohio-3230, ¶4. *** Because standing presents this court with a question of law, we review the matter de novo. *Zagrans v. Elek*, 9th Dist. No. 08CA009472, 2009-Ohio-2942, ¶7.”

{¶ 7} Thompson argues in her first seven assignments of error that the trial court erred when it dismissed her complaint for lack of standing because the defendants’ actions “violate the very elements put in place to protect [her] both as an individual with legal personal rights of enjoyment and as a member of the public in [her] community.” She further argues that her “constitutional rights to the pursuit of happiness has been and is interrupted by nuisance and blighted properties” of the defendants.

{¶ 8} This court must accept as true all material allegations of the complaint and make all reasonable inferences in favor of Thompson. *Maitland v. Ford Motor Co.*, 103 Ohio St.3d 463, 465, 2004-Ohio-5717, 816 N.E.2d 1061, ¶11. “[A]s long as there is a set of facts, consistent with the plaintiff’s complaint, which would allow the plaintiff to recover, the court may not grant a defendant’s motion to dismiss.” *York v. Ohio State Hwy. Patrol* (1991), 60 Ohio St.3d 143, 145, 573 N.E.2d 1063.

{¶ 9} After reviewing Thompson’s complaint, we find no error on the part of the trial court.

Standing to Bring a Public Nuisance Action

{¶ 10} In *Temple v. Fence One, Inc.*, 8th Dist. No. 85703,

2005-Ohio-6628, this court explained public and private nuisance law:

{¶ 11} “Under Ohio law, nuisance is defined as the wrongful invasion of a legal right or interest. *Taylor v. Cincinnati* (1944), 143 Ohio St. 426, 436, 55 N.E.2d 724. ‘Nuisance’ describes two separate fields of tort liability: public and private nuisance. *Brown v. Scioto Cty. Board of Commrs.* (1993), 87 Ohio App.3d 704, 712, 622 N.E.2d 1153.

{¶ 12} “A ‘public nuisance’ is ‘an unreasonable interference with a right common to the general public.’ *Id.* ‘Unreasonable interference’ includes:

{¶ 13} “‘Those acts that significantly interfere with public health, safety, peace, comfort, or convenience, conduct that is contrary to a statute, ordinance, or regulation, or conduct that is of a continuing nature or one which has produced a permanent or long-lasting effect upon the public right, an effect of which the actor is aware or should be aware.’ Restatement of the Law 2d, Torts (1965), Section 821(B)(1).

{¶ 14} “A public nuisance ‘does not afford a basis for recovery of damages in tort unless there is particular harm to the plaintiff that is of a different kind than that suffered by the public in general.’ *Brown*, *supra*, at 714. Thus, to recover under a claim of public nuisance, [a plaintiff] must establish 1) an interference with a public right; and 2) that she suffered an injury distinct from that suffered by the public at large. *Miller v. W. Carrollton* (1993), 91 Ohio App.3d 291, 295-296, 632 N.E.2d 582.” *Temple* at ¶34-37.

{¶ 15} “While a private nuisance action is maintainable by a private

citizen, the general rule is that a private individual lacks standing to maintain a private action for a public nuisance. Prosser, *Private Action for Public Nuisance* (1966), 52 Va.L.Rev. 997, 999.” *Miller*, 91 Ohio App.3d at 295.

{¶ 16} “While authorities are in disagreement as to what constitutes a special injury, the majority view regards the special injury as an injury suffered by the plaintiff which is different in kind rather than degree from that suffered by other members of the public exercising the same public right. Prosser, *supra*, fn. 6, Section 88 at 587. See, also, 72 Ohio Jurisprudence 3d (1987), at 441, 442; and *Clabaugh v. Harris* (1971), 27 Ohio Misc. 153, 56 O.O.2d 407, 273 N.E.2d 923.” *Miller* at 295-296.

{¶ 17} We agree with the trial court that Thompson brought a public nuisance action and further, that she did not allege any injuries distinct from the injuries suffered by the public. Throughout her complaint, she claims defendants failed to “prevent blighted conditions in [her] community”; that the blighted properties “maintain[ed] perpetual danger and health code violations”; that the defendants caused “habitation/resort for violence and danger; for thieves, robbery, drug activity, prostitution, kidnapping, molestation/rape and murder/execution, to include pollutants, stray and wild animals, rodents and pest[s]”; that defendants “have systematically and/or premeditatedly evoked diminishing capacity in Plaintiff’s community (ward) and therefore inducing panic (ORC 2917.31) (creating the scenario of intimidation, vulnerability, desperation, assaults, vandalism, theft, arson, and incited violence.” These concerns, while

serious, are not ones that plague Thompson any more than they do the community in which she lives.

{¶ 18} As for Thompson's argument that the trial court's staff "formed an atmosphere in the case of intimidation and unfairness" toward her, we find no error. There is no evidence in the record before this court of any intimidation or unfairness toward Thompson.

{¶ 19} Thompson's eight assignments of error are overruled.

Judgment affirmed.

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.

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR