[Cite as *Gautam v. Sansai Environmental Technologies, L.L.C.*, 2011-Ohio-223.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95459

NICK GAUTAM

PLAINTIFF-APPELLEE

vs.

SANSAI ENVIRONMENTAL TECHNOLOGIES, L.L.C.

DEFENDANT

WORM DIGEST, INC.

INTERVENOR-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cleveland Municipal Court
Case No. CVG-015993

BEFORE: Rocco, J., Sweeney, P.J., and Jones, J.

RELEASED AND JOURNALIZED: January 20, 2011

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KENNETH A. ROCCO, J.:

{¶ 1} In this appeal brought on the accelerated calendar pursuant to App.R. 11.1 and Loc.App.R. 11.1, appellant, proposed intervenor Worm Digest, Inc., appeals from the decision of the Cleveland Municipal Court that denied appellant's motion to intervene in this action.[1] The underlying action is one for forcible entry and detainer brought by plaintiff-appellee Nick Gautam, the receiver appointed by the Cuyahoga County Court of Common Pleas for the leased property, against defendant-tenant Sansai Environmental Technologies, L.L.C.[2] The municipal court denied appellant's motion to intervene as untimely.

{¶ 2} The purpose of an accelerated appeal is to allow the appellate court to render a brief and conclusory opinion. *Crawford v. Eastland Shopping Mall Assn.* (1983), 11 Ohio App.3d 158, 463 N.E.2d 655; App.R. 11.1(E).

{¶ 3} Appellant presents one assignment of error. It argues the municipal

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[1] According to appellant's motion, it is a "non-profit corporation" with a "mission" to promote and disseminate information about earthworms and composting, and owns "vermiculture and vermicompost" on the premises that is the subject of the action.

[2] Sansai asserted in the municipal court that it engaged in the "commercial worm farm" business, and that the worms "converted environmental waste into organic fertilizer."

court abused its discretion in denying its motion to intervene.

{¶ 4} As an threshold matter, this court must consider whether the municipal court's order denying appellant's motion to intervene constitutes a final order for purposes of appellate review. *Gehm v. Timberline Post & Frame*, 112 Ohio St.3d 514, 2007-Ohio-607, 861 N.E.2d 519. This court determines that it has jurisdiction to entertain this appeal.

{¶ 5} In *Gehm*, the supreme court examined whether the denial of a motion to intervene met the requirements set forth in R.C. 2505.02(A)(3). The court stated at ¶24 as follows: "The first requirement * * * is that the order denying the motion to intervene be a 'provisional remedy.' R.C. 2505.02(A)(3) defines 'provisional remedy' as 'a proceeding ancillary to an action, including, but not limited to, a proceeding *for a preliminary injunction*, attachment, discovery of privileged matter, [or] suppression of evidence.'" (Emphasis added.)

{¶ 6} The decision in *Gehm* went on to state at ¶29-30: "As a motion to intervene is a right recognized by Civ.R. 24, intervention constitutes a substantial right under R.C. 2505.02(A)(1).

{¶ 7} "The next question is whether the denial of the motion to intervene is a final, appealable order because it 'in effect determines the action and prevents a judgment.' R.C. 2505.02(B)(1)."

{¶ 8} In this case, unlike the situation presented in *Gehm*, appellant sought to institute an "order enjoining Plaintiff from excluding [Appellant] from possession

of [the] Premises." This request for injunctive relief related directly to the action in forcible entry and detainer.

{¶ 9} In addition, the municipal court's order had the effect of determining the action as to appellant, because it prevented appellant, which claimed to be another leaseholder, from asserting a possessory interest in the property. As the Ohio Supreme Court more recently declared in *Southside Community Dev. Corp. v. Levin*, 116 Ohio St.3d 1209, 2007-Ohio-6665, 878 N.E.2d 1048, ¶6, "We have held that denials of intervention in special proceedings may be immediately appealed when a decision in the pending matter 'would have a considerable effect on the property rights' of the proposed intervenors. *Morris v. Investment Life Ins. Co.* (1966), 6 Ohio St.2d 185, 187, 35 O.O.2d 304, 217 N.E.2d 202."

{¶ 10} Thus, since the municipal court's order meets the requirements of R.C. 2505.02, appellant's assignment of error will be addressed. Cf., *Schmidt v. A T & T, Inc.*, Cuyahoga App. No. 94856, 2010-Ohio-5491. A review of the record, however, does not support a conclusion the municipal court abused its discretion when it denied appellant's motion to intervene.

{¶ 11} Civ.R. 24(A) governs intervention of right and states in pertinent part:

{¶ 12} "Upon *timely* application anyone shall be permitted to intervene in an action: * * * (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's

ability to protect that interest, *unless the applicant's interest is adequately represented by existing parties.*" (Emphasis added.)

{¶ 13} A trial court's decision on the timeliness of a motion to intervene will not be reversed absent an abuse of discretion. *Morris.* Whether a Civ.R. 24 motion to intervene is "timely" depends on the facts of the case. The court may consider several factors in determining timeliness, such as: 1) the point to which the suit had progressed; 2) the purpose for which intervention is sought; 3) the length of time preceding the application during which the proposed intervenor knew or reasonably should have known of its interest in the case; 4) the prejudice to the original parties due to the proposed intervenor's failure after it knew or reasonably should have known of its interest in the case to apply promptly for intervention; and 5) the existence of unusual circumstances militating against or in favor of intervention. *State ex rel. First New Shiloh Baptist Church v. Meagher*, 82 Ohio St.3d 501, 503, 1998-Ohio-192, 696 N.E.2d 1058, quoting *Triax Company v. TRW, Inc.* (C.A.6, 1984), 724 F.2d 1224, 1228.

{¶ 14} The record in this case supports the municipal court's decision. Gautam filed the action in forcible entry and detainer against Sansai on July 28, 2009. Sansai expended prodigious efforts to prevent its eviction, arguing eviction "would lead to the death of several hundreds of thousands of worms in which Sansai and the property owner had invested millions of dollars." Appellant filed its motion to intervene nearly a year later, on June 10, 2010. By this time, each of

Sansai's attempts to prevent its eviction had been thwarted.

{¶ 15} The record also reflects that Gautam's complaint in this case was accompanied by a copy of the lease agreement, together with a map of the portion of the premises leased by Sansai. Appellant's motion to intervene was accompanied by evidence that demonstrated appellant utilized approximately 1,000 square feet inside those same premises.

{¶ 16} Moreover, appellant attached to its motion to intervene the affidavit of its manager. She made the following pertinent admissions: appellant owned "certain property" at the premises including "earthworms and vermiculture," Gautam neither accepted nor requested rent payments from appellant beginning in January 2009, and, most importantly, appellant was aware of the eviction action against Sansai.

{¶ 17} In addition, the record reflects that the municipal court requested Gautam in early 2010 to "submit a plan to enforce the [court's] judgment of possession" in his favor. The court conducted a hearing on its request on February 18, 2010, at which the interested parties and their counsel were present; appellant, too, took part in this proceeding. Subsequently, an "agreed entry" was prepared for and adopted by the municipal court.

{¶ 18} The court placed the agreed entry on its journal in late March, permitting Sansai 30 days to remove its "compost, worm castings and worms" from the premises. Sansai failed to comply. On May 12, 2010, both Sansai and

appellant were locked out of the premises. In late May 2009, Sansai sought relief from the "agreed entry" that granted possession of the premises to Gautam.[3]

{¶ 19} On June 10, 2010, appellant filed its motion to intervene. By this time, the action had been pending for over a year. Appellant's representative had taken part in the negotiations that resulted in the "agreed entry." Nevertheless, appellant's manager failed to explain in her affidavit the reason appellant had not previously sought to intervene, failed to present any evidence that appellant's property was separate from that of Sansai, acknowledged appellant had not paid rent since January 2009, and admitted that appellant had not had access to the premises for nearly a month by the time it filed its motion.

{¶ 20} The municipal court reviewed all of the circumstances before denying appellant's motion. Based upon the record, this court cannot find the municipal court abused its discretion. *Visconsi Royalton, Ltd. v. Strongsville*, Cuyahoga App. No. 90670, 2008-Ohio-4862.

{¶ 21} Appellant's assignment of error, accordingly, is overruled.

The municipal court's order is affirmed.

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

The court finds there were reasonable grounds for this appeal.

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[3]The municipal court denied Sansai's motion on June 16, 2010.

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.

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KENNETH A. ROCCO, JUDGE

JAMES J. SWEENEY, P.J., and
LARRY A. JONES, J., CONCUR