[Cite as *State ex rel. Helms v. Council of Summit Cty.*, 2010-Ohio-1962.]

STATE OF OHIO))ss: COUNTY OF SUMMIT)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
STATE, ex rel. JOEL HELMS Appellant v. COUNCIL OF THE COUNTY OF SUMMIT, et al. Appellees	C.A. No. 24728 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CV 2007-10-7564

DECISION AND JOURNAL ENTRY

Dated: May 5, 2010

CARR, Judge.

{¶1} Appellant, Joel Helms, appeals the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} In May 2006, the City of Green, through city council and the mayor, passed two resolutions allowing the city to enter into contracts with Kenmore Construction Co., Inc. for a sewer project. Thereafter, Helms filed referendum petitions with the Board of Elections in an attempt to have the pending sewer project placed on the ballot. He was unsuccessful due to insufficient signatures on the petitions.

{¶3} In the spring of 2006, Summit County also adopted a resolution authorizing the county executive to execute all necessary documents to allow the county to participate in the design and property acquisition of the sewer project. The City of Green and Summit County entered into such a contract regarding the sewer project.

{¶4} In September 2006, Helms filed a complaint against the City of Green and Kenmore Construction Co., Inc. for declaratory judgment, injunctive relief, and mandamus in an effort to have the sewer project placed on the ballot. The City and Kenmore Construction prevailed on their respective motions for summary judgment. Helms appealed to this Court, raising five issues for review, including the argument that the sewer project contract between the city and the county was void because it was not authorized by either resolution or ordinance of the City of Green as required by R.C. 6117.04(A). On June 13, 2007, this Court rejected all of Helms' arguments and affirmed the trial court's judgment. *State ex rel. Helms v. City of Green*, 9th Dist. No. 23534, 2007-Ohio-2889. ("*Helms I*")

{¶5} On October 29, 2007, Helms filed a complaint against the Summit County Council and Executive "to restrain a misapplication of county funds and the completion of an illegal contract." Helms complained that the county was proceeding with the acquisition and/or construction of a sanitary or drainage facility arising out of the sewer project in the City of Green "without having been first authorized by an ordinance or resolution of Green City Council, [in] violation of R.C. []6117.04(A)."

{¶6} Respondents-appellants, Summit County Council and the Summit County Executive, filed a motion to dismiss the complaint pursuant to Civ.R. 12(B)(6). Helms responded in opposition. Before the trial court ruled on the motion to dismiss, Helms submitted a proposed judgment entry restraining the respondents from expending county funds unless and until Green City Council authorized them to do so by ordinance or resolution. Helms' attorney approved the proposed judgment entry, but the assistant county prosecutor did not. Instead, Helms' attorney merely wrote on the proposed judgment entry that the document had been

submitted for opposing counsel's approval but not returned. The trial court judge signed the judgment entry and it was filed on May 27, 2008.

{¶7} On September 29, 2008, the respondents filed a motion for relief from judgment pursuant to Civ.R. 60(B) on the basis of mistake, inadvertence, or misrepresentation because they had not approved the proposed judgment entry. The respondents also argued that neither Summit County Council nor the Summit County Executive is sui juris and, therefore, neither is a proper party to a lawsuit. Helms opposed the motion for relief from judgment. The trial court granted the motion, vacated the May 27, 2008 judgment, and reinstated the matter to the court's docket.

{¶8} On October 30, 2008, Helms moved for leave to file an amended complaint, adding the County of Summit as a party-respondent. The trial court granted leave to amend the complaint. The respondents (collectively "Summit County") filed an answer to the amended complaint, asserting numerous affirmative defenses, including estoppel and res judicata.

{¶9} The trial court further denied Summit County's motion to dismiss pursuant to Civ.R. 12(B)(6), finding the motion was more properly a motion for summary judgment as it alleged facts outside the pleadings. The trial court then set a schedule for the filing of motions for summary judgment and responses. Summit County filed a motion for summary judgment, arguing in part that collateral estoppel precluded Helms from re-litigating the issue of any violation of R.C. 6117.04. Helms responded in opposition. Helms also filed a motion for summary judgment, Summit County responded, and Helms replied. On April 8, 2009, the trial court denied Helms' motion for summary judgment and granted Summit County's motion for summary judgment based on the doctrine of collateral estoppel. Helms filed a timely appeal, raising one assignment of error.

II.

ASSIGNMENT OF ERROR

"THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO RESPONDENT-APPELLEES AND DENYING RELATOR-APPELLANT'S SUMMARY JUDGMENT MOTION."

{¶10} Helms argues that the trial court erred by granting summary judgment in favor of Summit County. This Court disagrees.

{¶11} This Court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105. This Court applies the same standard as the trial court, viewing the facts in the case in the light most favorable to the non-moving party and resolving any doubt in favor of the non-moving party. *Viock v. Stowe-Woodward Co.* (1983), 13 Ohio App.3d 7, 12.

{¶12} Pursuant to Civ.R. 56(C), summary judgment is proper if:

> "(1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party." *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327.

{¶13} To prevail on a motion for summary judgment, the party moving for summary judgment must be able to point to evidentiary materials that show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. Once a moving party satisfies its burden of supporting its motion for summary judgment with sufficient and acceptable evidence pursuant to Civ.R. 56(C), Civ.R. 56(E) provides that the non-moving party may not rest upon the mere allegations or denials of the moving party's pleadings. Rather, the non-moving party has a reciprocal burden of responding by setting forth specific facts, demonstrating that a "genuine

triable issue" exists to be litigated for trial. *State ex rel. Zimmerman v. Tompkins* (1996), 75 Ohio St.3d 447, 449.

{¶14} Helms alleged in his complaint that the sewer project contract between Summit County and the City of Green was illegal because the city had not authorized by ordinance or resolution the county's acquisition, construction, maintenance, and/or operation of a sanitary or drainage facility for a county sewer district in violation of R.C. 6117.04(A). R.C. 6117.04(A) requires that a county's acquisition, construction, maintenance, and operation of sanitary or drainage facilities for a county sewer district within the territory of a municipality must first be authorized by ordinance or resolution of the legislative authority of the municipality. Because this Court has already determined this issue, its further litigation is barred by the doctrine of collateral estoppel.

{¶15} Collateral estoppel, or issue preclusion, "'precludes the relitigation, in a second action, of an issue that had been actually and necessarily litigated and determined in a prior action that was based on a different cause of action.'" *State ex rel. Nickoli v. Erie MetroParks*, 124 Ohio St.3d 449, 2010-Ohio-606, at ¶21, quoting *Ft. Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd.* (1998), 81 Ohio St.3d 392, 395. The Ohio Supreme Court has further held:

> "'Collateral estoppel applies when the fact or issue (1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom collateral estoppel is asserted was a party in privity with a party to the prior action.'" *State ex rel. Davis v. Pub. Emps. Retirement Bd.*, 120 Ohio St.3d 386, 2008-Ohio-6254, at ¶28, quoting *Thompson v. Wing* (1994), 70 Ohio St.3d 176, 183.

In order to comply with due process requirements, the party asserting collateral estoppel must prove that "the identical issue was actually litigated, directly determined, and essential to the judgment in the prior action." *Goodson v. McDonough Power Equipment, Inc.* (1983), 2 Ohio St.3d 193, 201, citing *Norwood v. McDonald* (1943), 142 Ohio St. 299.

{¶16} In *Helms I*, Helms argued that the sewer project resolutions were subject to referendum review based on Section 8.5 of the City's charter, which states, in pertinent part:

> "When a function of the City is proposed to be performed for the first time subsequent to the adoption of this Charter by officers and employees of the City *rather than pursuant to contracts with other governments*, persons, or firms, *** then Council shall place the question of whether such function shall be performed by officers and employees of the City *rather than by contract* upon the ballot of the next general, primary, or regular Municipal election to be held with the City. *** This provision shall not preclude Council from contracting with other governmental or private entities to provide such services on a fee basis." (Emphasis added.)

{¶17} In support, he argued that Section 8.5 was applicable "because, while the [sewer project] was to eventually be owned and operated by the County, the County [c]ontract was void as it was not authorized by City council via ordinance or resolution as required by R.C. []6117.04(A)." *Helms I* at ¶19. This Court first concluded that, pursuant to GCO 1250.01(a), Summit County owns and operates all of the City of Green's sewer facilities and equipment. Id. at ¶4. We further concluded that it was the intent of the legislative authority in the City of Green for Summit County to own all the municipality's sewage systems pursuant to GCO 1250.01(a) since the enactment of the City Charter in 1992. Id. at ¶14. Accordingly, we necessarily recognized the existence of the contract between the city and the county and concluded that GCO 1250.01(a) constituted the requisite ordinance by the city which conferred authority to the county for the on-going acquisition, construction, maintenance, and operation of all municipal sanitary or drainage facilities pursuant to R.C. 6117.04(A). *Helms I* at ¶21. This is the identical issue for which Helms seeks determination in the instant case.

{¶18} Helms raised the issue of the validity of Summit County's contract within the context of R.C. 6117.04(A) in *Helms I*. That issue was directly determined by a court of competent jurisdiction as an essential part of the judgment in the prior case. Finally, Helms was

the same party who raised the issue in both the prior and instant cases. The doctrine of collateral estoppel is, therefore, applicable to this case. Accordingly, the trial court did not err by granting summary in favor of Summit County on the grounds of collateral estoppel. Helms' sole assignment of error is overruled.

III.

{¶19} Helms' assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

MOORE, J.
BELFANCE, P. J.
CONCUR

APPEARANCES:

MICHAEL D. ROSSI, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and CORINA STAEHLE GAFFNEY, Assistant Prosecuting Attorney, for Appellees.