

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Ohio Ambulance and Medical Transportation Association et al.,	:	
	:	
Plaintiffs-Appellees,	:	
	:	No. 10AP-650
v.	:	(C.P.C. No. 09CVH-07-11498)
	:	
Douglas E. Lumpkin, Director, Department of Job and Family Services,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee,	:	
	:	
(Ohio Academy of Nursing Homes,	:	
	:	
Defendant-Appellant).	:	

D E C I S I O N

Rendered on April 7, 2011

Benesch, Friedlander, Coplan & Aronoff LLP, and Ronald L. House, Jr., for plaintiffs-appellees, Ohio Ambulance and Medical Transportation Association and Luther Bradley.

Michael DeWine, Attorney General, and *Charity Robl*, for appellees Douglas E. Lumpkin, Director, Department of Job and Family Services.

Chester, Willcox & Saxbe LLP, Geoffrey E. Webster, Sarah Daggett Morrison and Joseph C. Pickens, for appellant Ohio Academy of Nursing Homes.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} The Ohio Academy of Nursing Homes, Inc. ("OANH") is appealing from a ruling of the Franklin County Court of Common Pleas which denied it status as an intervener in litigation between the Ohio Ambulance and Medical Transportation Association and the Ohio Department of Job and Family Services ("ODJFS"). OANH assigns two errors for our consideration:

First Assignment of Error

The trial court abused its discretion by granting Appellee Ohio Department of Job and Family Services' ("ODJFS") October 14, 2009 Motion for Reconsideration of Decision Granting Intervention to The Ohio Academy of Nursing Homes, Inc. ("OANH"). In support of its motion, ODJFS presented no new evidence to the trial court that was not already available to the parties.

Second Assignment of Error

The trial court abused its discretion by denying Appellant OANH's September 30, 2009 Motion for Intervention. OANH met all of the standards necessary for intervention, including timeliness.

{¶2} The Ohio Ambulance and Medical Transportation Association filed its complaint on July 31, 2009 in an effort to block ODJFS from implementing recently passed legislation which changed how members of the transportation association were paid for providing services to persons receiving Medicaid. The transportation association amended their complaint about one week later and followed this with a motion seeking a restraining order to enjoin ODJFS from implementing the legislation insofar as it related to denied reimbursement to transportation providers.

{¶3} A judge of the Franklin County Court of Common Pleas granted a restraining order to last for two weeks. OANH was aware of the litigation, which affected

the size of payments nursing homes would receive, as well as the timing of such payments. However, OANH took no action to intervene in the litigation initially.

{¶4} The trial court extended the restraining order for an additional two weeks until September 15, 2009, and set the case for a preliminary injunction hearing on September 15, 2009. OANH still did not attempt to intervene.

{¶5} The transportation association and ODJFS were able to reach an agreement on a settlement prior to the September 15, 2009 hearing date, so no hearing proceeded. Over two weeks later, OANH finally moved to intervene.

{¶6} The trial court judge signed entries both dismissing the lawsuit and allowing OANH to intervene on the same day. Then on reconsideration, the trial court judge overruled OANH's motion to intervene. This appeal then was pursued.

{¶7} As acknowledged by OANH in its briefs, we are guided by an abuse of discretion standard in addressing the merits of this appeal. If the trial court did not abuse its discretion when it allowed the litigation to conclude without OANH's involvement, then the judgment of the trial court must be affirmed.

{¶8} Civ.R. 24 governs intervention in pending civil litigations. Civ.R. 24(A), which addresses intervention of right, requires that an application to intervene must be "timely." Civ.R. 24(B), which addresses permissive intervention, has the same requirement. Civ.R. 24(C) requires that the application for intervention shall be made via a motion and that the motion be accompanied by a pleading as defined by Civ.R. 7(A).

{¶9} When it finally filed its motion to intervene, OANH did not accompany the motion with a pleading. However, we do not resolve this appeal on that basis. Instead,

we overrule both assignments of error based upon the fact that the trial court was well within its discretion to find that OANH's motion to intervene was not timely.

{¶10} The restraining orders which blocked nursing homes affiliates with OANH from receiving the funds authorized by the recently enacted legislation had been in place for over four weeks when the motion to intervene was finally filed. The lawsuit itself had been settled for over two weeks and the settlement agreement called for dismissal of the lawsuit between the transportation association and ODJFS.

{¶11} The assignments of error are overruled. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BRYANT, P.J., and CONNOR, J., concur.
