[Cite as *BTE Properties, L.L.C. v. Parkman Twp.*, 2026-Ohio-4537.]

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY

BTE PROPERTIES, L.L.C., et al.,

Plaintiffs,

- vs -

TOWNSHIP OF PARKMAN, OHIO, et al.,

Defendants,

- and -

A.L.L., INC.,

Intervenor/Plaintiff-Appellant,

- vs -

BTE PROPERTIES, L.L.C., et al.,

Defendants-Appellees.

CASE NO. 2026-G-0009

Civil Appeal from the Court of Common Pleas

Trial Court No. 2024 M 000268

OPINION AND JUDGMENT ENTRY

Decided: November 16, 2026
Judgment: Affirmed

Matthew S. Flemming and *W. Andrew Hoffman, III*, Hoffman & Flemming, L.L.C., 24100 Chagrin Boulevard, Suite 280, Cleveland, OH 44122, *James M. Gillette*, 106 Moffet Avenue, Chardon, OH 44024, and *Joseph H. Weiss, Jr.*, 8228 Mayfield Road, Suite 6B-1, Chesterland, OH 44026 (For BTE Properties, L.L.C.).

Douglas M. Eppler, Brennan Manna & Diamond, L.L.C., 200 Public Square, Suite 1850, Cleveland, OH 44114 (For ABC Development, L.L.C.).

Laura A. Hauser, Hauser Law, L.L.C., 3391 Bradford Road, Cleveland Heights, OH 44118 and *Amber N. Ashba*, Ashba Law, L.L.C., 8472 East Washington Street, #215, Bainbridge, OH 44023 (For A.L.L., Inc.).

JOHN J. EKLUND, J.

{¶1} Appellant, A.L.L., Inc. ("ALL"), appeals the judgment of the Geauga County Court of Common Pleas granting summary judgment in favor of Appellees, BTE Properties, L.L.C. and ABC Development L.L.C. ("ABC"), and dismissing ALL as plaintiff-intervenor.

{¶2} ALL has raised one assignment of error arguing the trial court erred when it determined ALL did not have standing to intervene in the litigation because it did not own property that directly abuts the property at issue.

{¶3} Having reviewed the record and the applicable caselaw, we find Appellant's assignment of error is without merit. ALL was not entitled to intervene because another party involved adequately protected any interest ALL asserted.

{¶4} Therefore, we affirm the judgment of the Geauga County Court of Common Pleas.

Substantive and Procedural History

{¶5} On June 7, 1843, Simon and Nancy Perkins transferred 2.63 acres of land located at the intersection of Nelson Road and U.S. 422 to Parkman Township. The deed was recorded on June 8, 1857, and stated in relevant part:

> To all people to whom these presents shall come greeting: Know you, that, we Simon and Nancy Perkins his wife of Warren Trumbull County Ohio, in consideration of Ten Cents, received to our full satisfaction of the inhabitants of the Township of Parkman, Geauga County Ohio, and also in consideration of our desire to promote the prosperity of the inhabitants of said Township of Parkman do hereby, remise, release, and forever quit claim unto the Trustees of the Township of Parkman a tract of land in Parkman, aforesaid . . . . To have and to hold to them the said Trustees and to their successors in office by whatever name at anytime hereafter be called forever, in Trust, and for the purpose that said Trustees and their

> successors in office shall hold said land for the inhabitants of said township, and all other the good it is out of the State of Ohio, to use as a public square or commons, unencumbered by any buildings or structure whatever except the railing of a public walk.

{¶6} Since that time, the Perkins parcel was used as a community park. A bandstand was erected in 1887, and a gazebo now stands in the same place. The parcel also has benches and walkways.

{¶7} BTE sought to purchase a 0.2596-acre portion of the Perkins parcel ("Small Parcel") in order to access a nearby landlocked property accessible only via a driveway that had existed on that portion of the Small Parcel for an indeterminate period.

{¶8} On January 22, 2018, Parkman conveyed the Small Parcel to BTE. The 2018 deed stated:

> Premises herein conveyed are subject to easements, restrictions and reservations of record, and taxes and assessments, if any.
>
> Subject to the restriction found in a deed recorded June 18, 1857 . . . "said Trustees and their successors in office shall hold said land for the inhabitants of said Townships to use as a public square or commons unencumbered by any building or structure whatsoever except railing of a public walk."

{¶9} The deed also contained a stamp stating, "Division is a sale or exchange between adjoining lot owners and does not create additional building sites. The parcel described herein shall not be used as a separate building site." BTE shareholder John Yoder admitted knowledge of the use restriction contained in the 2018 deed.

{¶10} BTE consolidated nearby properties to generate a 2.6298-acre commercial lot, which contained the Small Parcel.

{¶11} On December 12, 2023, ABC entered into a Purchase Agreement with BTE whereby ABC agreed to purchase land containing the Small Parcel. However, the deed

restriction created an exception to title. In recognition of the deed restriction, on March 1, 2024, BTE and ABC entered into an amended purchase agreement making the purchase of the land contingent on the exception to title.

{¶12} On April 16, 2024, BTE and ABC filed a Complaint to Quiet Title in the Geauga County Court of Common Pleas seeking a judgment declaring the 1843 use restriction as invalid and unenforceable. The Complaint named Parkman, care of the Parkman Township Trustees, and the unknown heirs of Simon and Nancy Perkins as defendants.

{¶13} On May 22, 2024, ALL filed a Motion to Intervene pursuant to Civ.R. 24. ALL asserted that it owned neighboring property with a significant interest in enforcing the use restriction requiring the Perkins parcel to remain unencumbered by any building and for it to be maintained as a public square or commons. ALL's property is located directly across the street to the north of the Perkins parcel.

{¶14} ABC filed a Brief in Opposition to ALL's Motion to Intervene, and ALL filed a Reply. BTE did not file an opposition.

{¶15} On June 12, 2024, the trial court granted ALL's Motion to Intervene and ordered the Intervenor Complaint attached to ALL's Motion to Intervene to be filed with the Clerk of Courts.

{¶16} On June 12, 2024, ALL's Intervenor Complaint was filed. The Intervenor Complaint sought an injunction prohibiting violation of the use restriction and a declaratory judgment that the use restriction remained valid.

{¶17} On July 3, 2024, Parkman filed its Answer.

{¶18} After this, all parties filed Answers to ALL's Intervenor Complaint and discovery commenced.

{¶19} Parkman and ALL each filed a Motion for Summary Judgment. BTE and ABC filed a joint Motion for Summary Judgment.

{¶20} On February 17, 2026, the trial court issued a Judgment Entry finding that ALL did not have standing to appear as an Intervenor because it did "not own property that directly abuts or touches the property at issue in this case." In that respect, it was no different from every other non-adjacent landowner.

{¶21} The Judgment Entry also granted summary judgment in favor of Parkman, denied BTE and ABC's Motion for Summary Judgment and declared that the use restriction contained in the 2018 deed was valid, runs with the land, and was enforceable against BTE, ABC, and all subsequent transferees with actual or constructive knowledge of the restriction.

{¶22} ALL timely appealed raising one assignment of error.

Assignment of Error and Analysis

{¶23} Appellant's sole assignment of error states: "The trial court erred in granting the Motion for Summary Judgment filed by Appellees BTE and ABC on the issue of A.L.L.'s intervention in the litigation when it found that A.L.L. does not have a direct interest to assert for standing to intervene in the litigation because it does not own property that directly abuts or touches the property at issue in this case."

{¶24} We review a trial court's grant of summary judgment de novo. *Hapgood v. Conrad*, 2002-Ohio-3363, ¶ 13 (11th Dist.). "We review the trial court's decision independently and without deference, pursuant to the standards in Civ.R. 56(C)." *Allen v. 5125 Peno, L.L.C.*, 2017-Ohio-8941, ¶ 6 (11th Dist.).

{¶25} Summary judgment is appropriate when (1) no genuine issue as to any material fact exists; (2) the party moving for summary judgment is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach only one conclusion, and it is adverse to the nonmoving party. *Holliman v. Allstate Ins. Co*. *Corp.*, 1999-Ohio-116, ¶ 6. The initial burden is on the moving party to set forth specific facts demonstrating that no issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Dresher v. Burt*, 1996-Ohio-107, ¶ 18. If the movant meets this burden, the burden shifts to the nonmoving party to establish that a genuine issue of material fact exists for trial. *Id.*

{¶26} Typically, we review the granting or denial of a motion to intervene for an abuse of discretion. *Clemente v. Clemente*, 2008-Ohio-6773, ¶ 18 (11th Dist.). In this case, the trial court initially granted ALL's Motion to Intervene. However, the trial court granted summary judgment in favor of BTE on the issue of ALL's standing. Given this procedural posture, our standard of review is de novo.

{¶27} ALL argues that the trial court erred by dismissing its Intervenor Complaint for lack of standing. ALL contends that because it is a neighboring property holder, it would benefit from the enforcement of the deed restriction designed to maintain the Small Parcel as a public square or commons free from any building or structure.

{¶28} On appeal, ALL has asserted it was entitled to intervene in this case as a matter of right pursuant to Civ.R. 24(A).

{¶29} The trial court's Judgment Entry dismissed ALL's Intervenor Complaint because ALL did not own property that directly abutted or touched BTE's property. However, we decide this case on a narrower, and simpler, legal issue.

{¶30} Civ.R. 24(A) provides:

> Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of this state confers an unconditional right to intervene; or (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.

{¶31} "To be entitled to intervene as of right, pursuant to Civ.R. 24(A), the applicant must demonstrate: (1) the application is timely; (2) an interest in the property or transaction that is the subject of the suit; (3) the disposition of the action may impair or impede his ability to protect that interest; and (4) the existing parties do not adequately protect that interest." *Clemente* 2008-Ohio-6773, at ¶ 21 (11th Dist.).

{¶32} At the time that ALL filed its Motion to Intervene, Parkman had not filed an Answer to BTE's Complaint to Quiet Title. Therefore, ALL was able to maintain that no existing party adequately protected its claimed interest in enforcing the use restriction in the 2018 deed. However, Parkman filed its Answer shortly after this and fully sought to enforce the conditions set forth in the 2018 deed. Parkman sought, and ultimately obtained, a judgment in its favor enforcing the use restriction and fully vindicating any potential interest ALL asserted as an intervening party.

{¶33} In its brief, ALL argues that it timely filed its Motion to Intervene shortly after litigation commenced. ALL notes that it filed its Motion to Intervene "more than 30 days after it appeared that the Complaint was served on Defendant Parkman Township" but that Parkman had not yet responded in opposition. ALL continues: "*At that time*, there was no party advocating for the enforcement of the 1843 Use Restriction by opposing the Complaint." (Emphasis added.)

{¶34} The key point here is that at the time ALL filed its Motion to Intervene, it could fairly assert that no existing party adequately protected its claimed interests. After all, Parkman had not moved, pled, or otherwise responded to the Complaint, so its defense of the claim was unknowable. However, that changed as the litigation developed. After Parkman filed its Answer and demonstrated its commitment to enforcing the use restriction in the 2018 deed, ALL could no longer claim its interests were not adequately protected by the existing parties. Indeed, ALL makes no argument to this effect.

{¶35} To be clear, all we decide today is that on the facts of this case, summary judgment was proper as to ALL's Motion to Intervene because its interests were adequately protected by the Township. Because ALL cannot satisfy this requirement for intervention, we decline to review the remaining factors. Thus, despite finding that the dismissal of ALL's Intervenor Complaint was proper pursuant to Civ.R. 24, we do so for different reasons from those stated by the trial court. We nevertheless affirm the trial court's Judgment Entry because "if the judgment being reviewed on appeal is right for any reason, it is the duty of the appellate court to affirm it." *Geneva v. Fende*, 2009-Ohio-6380, ¶ 33 (11th Dist.). "This so because reviewing courts affirm and reverse judgments, not the reasons for the judgments." *Id.*

{¶36} Based on our de novo review, we find no error in the trial court granting summary judgment in favor of Appellees.

{¶37} Accordingly, Appellant's assignment of error is without merit.

{¶38} For the foregoing reasons, the judgment of the Geauga County Court of Common Pleas is affirmed.

MATT LYNCH, P.J.,

SCOTT LYNCH, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this court, Appellant's assignment of error is without merit. It is the judgment and order of this court that the judgment of the Geauga County Court of Common Pleas is affirmed.

Costs to be taxed against Appellant.

JUDGE JOHN J. EKLUND

PRESIDING JUDGE MATT LYNCH,
concurs

JUDGE SCOTT LYNCH,
concurs

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY

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