[Cite as *State ex rel. Yost v. E.I. du Pont de Nemours & Co.*, 2025-Ohio-4521.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

STATE OF OHIO, ex rel. DAVE YOST, ATTORNEY GENERAL OF OHIO,	:	
	:	Case No. 24CA1
Plaintiff-Appellee,	:	
v.	:	
	:	DECISION AND JUDGMENT
E.I. DU PONT DE NEMOURS, And COMPANY, et al.,	:	ENTRY
	:	
Defendants-Appellees.	:	

APPEARANCES:

D. David Altman and Justin Newman, AltmanNewman, LPA, Cincinnati, Ohio, and Adam J. Schwendeman, Thiesen Brock, LPA, Marietta, Ohio, for appellant Little Hocking Water Association.

Dave Yost, Ohio Attorney General, Columbus, Ohio, W.B. Markovits and Terence R. Coates, Markovits, Stock & DeMarco, LLC, Cincinnati, Ohio, Robert A. Bilott, Taft Stettinius & Hollister LLP, Cincinnati, Ohio, William J. Jackson* and *John D.S. Gilmour, Kelley Drye & Warren LLP, Houston, Texas, and Melissa E. Byroade,* Kelley Drye & Warren LLP, Washington, D.C., Special Counsel for appellee State of Ohio.

Damond R. Mace and Nathan Leber, Squire Patton Boggs (US) LLP, Cleveland, Ohio, Kathryn M. Brown, Squire Patton Boggs (US) LLP, Columbus, Ohio, and Colter Paulson, Squire Patton Boggs (US) LLP, Cincinnati, Ohio, for defendants-appellants E.I. Du Pont De NeMours and Co., and The Chemours Co.

*Motions for Admission Pro Hac Vice were pending at time briefs were filed and all three of these attorneys were subsequently admitted.

Smith, P.J.

{¶1} Little Hocking Water Association, "LHWA," appeals the "Order Denying Defendants' Motion to Dismiss and Little Hocking Water Assn's Motion to Intervene," entered June 4, 2019 in the Washington County Court of Common Pleas. For the reasons which follow, we find no merit to the arguments asserted within LHWA's four assignments of error. Accordingly, the assignments of error are overruled. The judgment of the trial court is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

{¶2} The June 4, 2024 entry, subject of this appeal, addresses LHWA's motion to intervene as follows:

> Little Hocking Water Assn. moves the Court to intervene in this case arguably to shed light on the issues and to be of assistance to the State of Ohio. Neither party supports Little Hocking's entry into the fray. Secondly, Little Hocking and Defendants have previously done battle. *See Little Hocking Water Ass'n' v. DuPont,* Case No. 2:09CV1081, 210 WL 3447632 (S.D. Ohio, Aug. 30, 2010.) In order to satisfy the elements necessary for intervention as per Civil Rule 24, Little Hocking must demonstrate that it has a legal interest that is direct, substantial and protectable. This Court does not believe it has done do [sic]. It's [sic] Motion to Intervene is denied.

{¶3} The facts leading to LHWA's motion to intervene are gleaned from a prior decision of this Court regarding the same June 4, 2019 entry. *See State of Ohio, ex rel. Michael DeWine, Attorney General of Ohio v. E.I.*

Du Pont De Nemours and Co., et al, 2020-Ohio-197, ¶¶ 2-4 (4th Dist.). Therein, we dismissed the appeal for lack of a final appealable order.

{¶4} On February 8, 2018, the State of Ohio filed a complaint against DuPont asserting it had contaminated Ohio's natural resources with perfluorooctanoic acid, "PFOA,"- a toxic substance. The State contended that PFOA has been found in the Ohio River as well as in Ohio groundwater, surface water, soils, and biota. The State asserted that DuPont knew of the danger of the PFOA contamination via aerial emissions and discharges into the Ohio River from its Washington Works Plant located near Parkersburg, West Virginia, but continued to release PFOA at the plant and to dispose of PFOA-containing waste at several Ohio landfills.

{¶5} As set forth at paragraph eight of the complaint, the State sought to "recover all past and future costs to investigate, remediate, and restore lands and waters of the State contaminated by PFOA…and [i]n its own right and in its capacity as trustee for the public,…to abate the public nuisance created by DuPont's PFOA, and seeks damages for injuries to Ohio resulting from the contamination." The complaint included counts of: (1) negligence; (2) public nuisance; (3) statutory nuisance; (4) trespass; and (5) punitive damages. In its prayer for relief, the State sought: (1) an award of compensatory damages; (2) damages for injury to Ohio natural resources,

including the economic impact to the State and its residents; (3) any other damages, including punitive or exemplary damages, as permitted by law; (4) present and future costs to clean up PFOA contamination and to abate the nuisance created by the presence of PFOA in Ohio's natural resources and public trust property; (5) a declaration of DuPont's duty to indemnify Ohio for all expenditures of money the State is legally obligated to undertake in connection with PFOA contamination in Ohio; (6) restitution damages for the profits DuPont obtained; (7) pre and post-judgment interest; (8) costs and attorneys' fees; and (9) such other relief as the court may deem just and proper.

{¶6} On October 12, 2018, Little Hocking filed a motion to intervene as a plaintiff to assert declaratory and injunctive claims. Specifically, Little Hocking sought to ensure that no relief granted in the action would adversely affect DuPont's obligations under the Ohio EPA permit and under a confidential settlement the parties had reached to resolve a federal lawsuit Little Hocking had filed against DuPont for contaminating its wellfields. Little Hocking also did not want any remedial actions taken that would affect Little Hocking's rights, property, or business without its input and/or authorization. Finally, Little Hocking sought the costs of litigation including attorneys' fees. Both the State and DuPont opposed the motion to intervene.

{¶7} However, on June 4, 2019, the trial court issued its previously referenced, previously appealed-from order denying Defendants' motion to dismiss and Little Hocking's motion to intervene. Little Hocking immediately appealed the order. For reasons discussed in *E.I. DuPont* above, on January 16, 2020, this Court issued its decision finding that the challenged order was not final and appealable. *E.I. DuPont* at ¶ 18. Consequently, we dismissed the appeal.

{¶8} At this point, the following facts are gleaned from this Court's own February 21, 2024 Judgment Entry beginning at Paragraphs 6-16, which resolved various unrelated motions, including an initial motion to dismiss the current appeal filed by the parties to the underlying case. In July 2020, LHWA filed a motion seeking leave to participate in the case as an amicus curiae. The State opposed the motion, arguing it was a repeat of LWHA's failed attempt to intervene as a party.

{¶9} The trial court denied LWHA's motion for leave to appear amicus curiae. However, the trial court allowed for the possibility that LHWA might refile its motion for leave to participate as amicus curiae later if certain circumstances occurred. The trial court's order stated as follows:

> If the parties settle upon a remediation or settlement plan or the Court considers a remediation plan, the Little Hocking will be permitted to enter this case as an Amicus and provide its input, but not to present or question

> witnesses, file motions, make arguments or otherwise participate in the framing of the issues presented by plaintiff's complaint and Defendants' Answers thereto. Order, October 6, 2020.

The trial court placed the responsibility on the parties to notify LHWA of a triggering event that would allow LHWA to file a motion for amicus status- "the parties shall provide notice to Little Hocking in the event that a trigger for its entry into the case arises and then Little Hocking can refile its Motion for Amicus Status."

{¶10} In December 2023, after nearly six years of litigation, the parties (i.e., the State of Ohio and the Du Pont defendants) reached a settlement that resolved all claims. The parties jointly submitted a consent judgment to the trial court, entered December 7, 2023. However, on January 2, 2024, LHWA filed a Notice of Violation of Court Order and Motion to Reopen and State Effect of Consent Judgment to Allow Court-Ordered Process. LHWA requested the trial court stay the consent judgment. LHWA argued that the consent judgment hindered its ability to secure cleanup, did not protect its rights under a 2016 settlement agreement LHWA previously reached with the Du Pont defendants, and needed further clarification concerning the rights of end-users of contaminated water supplies.

{¶11} The State opposed the notice of violation, motion, and stay request, arguing that (1) the consent judgment was not a triggering event concerning LHWA's ability to refile its motion to appear as amicus curiae; (2) the consent judgment did not contain plans or provision involving LHWA, its water sources, property, or residents; and (3) the consent judgment did not affect private contract rights LHWA negotiated with the Du Pont defendants in its 2016 settlement agreement. However, the State agreed not to oppose LHWA's participation as amicus curiae solely for the purpose of filing an amicus brief. To that end, the State submitted a proposed order, which the trial court signed and entered on January 8, 2024. The order allowed nonparty LHWA to participate solely for the purpose of filing an amicus brief. The parties to the case would be given an opportunity to respond. The other relief LHWA sought (a stay and clarifications to the consent judgment) was ordered "held in abeyance pending further order of the Court."

{¶12} LHWA timely brought the current appeal, attaching the December 7, 2023 Consent Judgment to its notice of appeal and docketing statement. In this Court's February 21, 2024 judgment entry resolving various motions, this Court found that LHWA does have standing to appeal

the June 4, 2019 order denying its motion to intervene. However, this Court also found as follows:

> Little Hocking does not have standing to appeal the consent judgment. Little Hocking is limited solely to the intervention issue. "It is well settled that 'an appeal from the denial of a motion to intervene is limited solely to the issue of intervention.' " *State ex rel. Sawicki v. Lucas Cty. Court of Common Pleas,* 2009-Ohio-1523, ¶ 18, quoting *State ex rel. Montgomery v. Columbus,* 2003-Ohio-2658, ¶ 33 (10th Dist.); *RELD & G Enterprises, Inc. v. Eldanaf,* 2024-Ohio-245, ¶ 14 (8th Dist.). As a nonparty, Little Hocking lacks standing to challenge the trial court's consent judgment. *State ex rel. Montgomery* at ¶ 33…[A]t this state of the appeal, Little Hocking is not required to identify its assignments of error and it is not required to attach the June 4, 2019 order to the notice of appeal. The only order that must be attached is the final judgment resolving the case- here the December 7, 2023 consent judgment. *See Mtge. Electronic Registration Sys. V. Mullins*, 2005-Ohio-2303, ¶ 21 (4th Dist.).

We found that because LHWA had standing to appeal the June 4, 2019 order denying its motion to intervene, the State's motion to dismiss the appeal would be denied.

ASSIGNMENTS OF ERROR

I. THE TRIAL COURT'S DENIAL OF INTERVENTION OF RIGHT TO LHWA WAS AN ABUSE OF DISCRETION WHERE LHWA'S LEGALLY PROTECTABLE INTERESTS IN: (A) USING ITS GROUNDWATER; (B) PREVENTING PFAS CONTAMINATION FROM REACHING ITS WELLFIELD; AND (C) CONTINUING TO PROVIDE POTABLE DRINKING WATER TO 12,000 WATER USERS

WERE THREATENED TO BE IRRETRIEVABLY IMPAIRED BY DISPOSITION OF THE STATE'S CASE.

II. THE TRIAL COURT ABUSED ITS DISCRETION IN HOLDING THAT LHWA'S PROTECTABLE INTERESTS WERE TOO REMOTE FOR INTERVENTION OF RIGHT IN THIS CASE WHERE LITTLE HOCKING'S ABILITY TO PROTECT THOSE INTERESTS COULD BE IRREPARABLY HARMED AT ANY POINT IN THE CASE IF THE PARTIES RESOLVED THE CASE WITHOUT INVOLVEMENT OF LHWA.

III. THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO REACH LHWA'S REQUEST FOR PERMISSIVE INTERVENTION WHERE THERE WAS SUBSTANTIAL FACTUAL AND LEGAL OVERLAP BETWEEN LHWA'S INTERVENTION COMPLAINT AND THE STATE'S CASE.

IV. THE TRIAL COURT ABUSED ITS DISCRETION IN CONCLUDING THAT AMICUS RIGHTS THAT WERE TRIGGERED BY NOTICE FROM THE EXISTING PARTIES WOULD BE AN ADEQUATE SUBSTITUTE TO INTERVENTION TO PROTECT LHWA'S INTERESTS WHERE THE RECORD SHOWS THAT THE PARTIES HAD NO INTEREST IN PROTECTING OR ABILITY TO PROTECT LHWA'S INTERESTS.

Standard of Review

{¶13} When reviewing a trial court's decision on a motion to intervene, we must apply an abuse of discretion standard of review. *See State v. Washington County Board of Commissioners,* 2021-Ohio-1970, ¶ 8 (4th Dist.) (Citations omitted.) *See also Thomas v. Cook Drilling Co.,* 79 Ohio St.3d 547, 549 (1997). An abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *In re Jane Doe 1*, 57 Ohio St.3d 135 (1991); *Blakemore v. Blakemore*, 5 Ohio St.3d 217 (1983). When applying the abuse of discretion standard, a reviewing court is not free to merely substitute its judgment for that of the trial court. *In re Jane Doe 1*; *Berk v. Matthews*, 53 Ohio St.3d 161 (1990). As noted in *Washington County Board of Commissioners, supra,* at ¶ 9, and *In re C.M.*, 2017-Ohio-9037, at fn2, "[t]he Supreme Court of Ohio has…clarified that the abuse-of-discretion standard governs both Civ.R. 24(A) and (B) decisions." *In re C.M., supra*, citing *State ex rel. Merrill v. Ohio Dept. of Nat. Resources,* 2011-Ohio-4612, ¶ 41. Although Civ.R. 24 should be construed liberally in favor of granting intervention, we cannot reverse unless the trial court's decision was unreasonable, arbitrary, or unconscionable. *Crozier v. Pike Creek Conservancy LLC,* 2023-Ohio-4297, at ¶ 46 (citations omitted.) Furthermore, " '[I]n intervention context, it is the trial judge who is best able

to determine whether, for example, a proposed intervenor's interests are being adequately represented by an existing party pursuant to Rule 24(A)(2).' " *West Virginia Rivers Coalition, Inc. v. Chemours Company FC, LLC,* No. 2:24-cv-00701, 2025 WL 1690146 *2, (S.D.W.Va. June 16, 2025), quoting *Suart v. Huff,* 706 F.3d 345, 350 (4th Cir.2014).[1]

Legal Principles

{¶12} Civ.R. 24 governs both Intervention of Right and Permissive Intervention. Intervention of right is set forth as follows:

> (A) Intervention of Right. 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.

{¶13} This Court has summarized as follows with respect to intervention of right:

> In order to be entitled to an intervention of right, a movant must meet four criteria: (1) the application must be timely; (2) the movant must claim an interest relating to the property or transaction which is the subject of the action;

[1] The Ohio Rules of Civil Procedure are modeled after the Federal Rules of Civil Procedure, which were adopted in 1938 and have been amended several times. *See Hope Academy v. White Hat Management, LLC*, 2022-Ohio-178, at fn. 6 (10th Dist.), citing *Stammco, L.L.C. v. United Tel. Co. of Ohio*, 2013-Ohio-3019, at ¶ 18.

> (3) the movant must show that the disposition of the action may, as a practical matter, impair or impede the movant's ability to protect that interest; and (4) the existing parties do not adequately represent the movant's interest. *Southern Ohio Coal Co. v. Kidney*, 100 Ohio App.3d 661 (4th Dist.1991). (Citations omitted.)

See Washington County Board of Commissioners, supra, at ¶ 10 and *Johnson v. Adullam Ministries/Pastor Forte,* 2000 WL 343791, at *4 (4th Dist.). Civil Rule 24 must be construed liberally to allow intervention. *See Washington Board of Commissioners,* at ¶ 13, citing *State ex rel. Merrill, supra,* at ¶ 41. However, all conditions of Civ. R. 24(A)(2) must be met in order to establish a right to intervene. *See State ex rel. Montgomery v. City of Columbus,* 2003-Ohio-2658, at ¶ 11 (10th Dist.). Furthermore, " '[b]ecause the Ohio Rules of Civil Procedure are modeled after the Federal Rules of Civil Procedure, federal law interpreting the federal rule is appropriate and persuasive authority in interpreting a similar Ohio rule.' " *Desai v. CareSource,* 2024-Ohio-3028, ¶ 24, (2d Dist.), quoting *Felix v. Ganley Chevrolet, Inc.,* 2015-Ohio-3430, ¶ 24. We observe that the language of FRCP 24, Intervention, although not written "word-for-word," is substantially similar to Ohio's Civ.R. 24.

Analysis

{¶14} We begin with joint consideration of LHWA's first, second, and third assignments of error. Under the first assignment of error, LHWA argues that the trial court's denial of intervention was an abuse of discretion because LHWA's legally protectable interests in using groundwater, preventing contamination to wellfields, and providing potable drinking water to its 12,000 users were threatened to be irretrievably impaired by disposition of the State's case without LHWA's intervention. Under the second assignment of error, LHWA argues that the trial court abused its discretion in holding that LHWA's protectable interests were too remote for intervention of right. LHWA also asserts that the trial court abused its discretion in failing to address the request for permissive intervention under Civ.R. 24(B).

{¶15} Generally, LHWA asserts that it fully demonstrated each element needed for Civ.R. 24(A)(2) intervention of right. LHWA asserts that: (1) LHWA has legally protectable property, business, and environmental interests, subject of the action between the State of Ohio and DuPont; (2) LHWA's ability to protect those interests may be practically impaired if intervention were denied; (3) the existing parties do not adequately represent LHWA's interests; and, (4) the request for intervention was timely. For the reasons which follow, we disagree with LHWA and find

that the trial court did not abuse its discretion in denying the motion to intervene.

Timeliness

{¶16} We first consider whether LHWA's motion to intervene was made upon timely application. Civ.R. 24. The determination of whether a motion to intervene is timely depends upon the facts and circumstances of each case. *See Montgomery, supra* at ¶ 15, citing *State ex rel. First New Shiloh Baptist Church v. Meagher*, 82 Ohio St.3d 501, 503 (1998). In this case, the State of Ohio filed its complaint in Washington County on February 8, 2018. LHWA filed its motion to intervene on October 12, 2018. Within the current appeal, neither of the parties to the underlying litigation have argued that LHWA's motion was untimely. Given that this litigation was only resolved by a consent judgment in December 2023, we find LHWA's motion was timely filed.

Interest in Subject Matter

{¶17} As discussed, Civ.R. 24(A)(2) requires that the proposed intervenor claim an interest relating to the property or transaction which is the subject of the action. In the proposed complaint, LHWA alleged:

> 20. Little Hocking has legally protectable property interests in the 45 acres of wellfields it owns and from which it operates its business…

> 21. In addition, Little Hocking, as the owner of the wellfields, has a legally protected property interest in the groundwater beneath its property. As a public water supplier in Ohio, the groundwater beneath Little Hocking's property is an essential business resource since Little Hocking is in the business of providing water to approximately 12,000 people in Ohio…Further, as owner of the PFOA contaminated property, Little Hocking has legally protected property interests in any remediation activities that may take place on or near its property.
>
> 22. Defendants also have certain treatment obligations that arise under federal consent orders and an Ohio EPA permit that apply directly to Little Hocking's GAC plant. These obligations…are protectable legal interests of Little Hocking.

{¶18} Groundwater rights are knowable and protectible. *See McNamara v. Rittman,* 107 Ohio St.3d 243, ¶ 34 (2005). Recently, LHWA met with success on its motion to intervene in a federal case in West Virginia. *See West Virginia Rivers Coalition, Inc., v. The Chemours Company FC, LLC, supra*.[2] In finding that LHWA had an interest in the subject matter, the federal district court observed:

> Though LHWA and [the Coalition] share a similar interest in protecting the Ohio River and other waters that may be contaminated by Defendant, LHWA also has an

[2]West Virginia Rivers Coalition, Inc., "the Coalition," is a 501(c)(3) non-profit organization and a statewide affiliate of the National Wildlife Federation, founded by paddlers and whitewater enthusiasts over 30 years ago. It is the only statewide organization focused on promoting the overall health of West Virginia's waters and their downstream benefits. The coalition advocates for river protection and enhancement as set forth in its original mission "to seek the conservation and restoration of West Virginia's exceptional rivers and streams. Among its other priorities, the organization focuses on policy development and advocacy; industrial development oversight; safe drinking water for West Virginians; public lands protection; and climate action. *See* West Virginia Rivers website at https://wvrivers.org/about, accessed July 31, 2025.

> independent interest in protecting its Wellfield. The Wellfield is used by LHWA to provide drinking water to its customers. LHWA has an independent interest in protecting the soil and underlying groundwater in its Wellfield as well as any business, operation, and structures of LHWA. These interests clearly reach beyond a generalized preference that Defendant be enjoined from violating its Permit. In fact, LHWA's engagement in vigorous litigation within the last ten years against Chemours' predecessor, DuPont, over PFOA (C8) released from the same facility at issue here only supports LHWA's intervention in this matter.

Id. at *5.

{¶19} The parties appear to concede that LHWA has an interest relating to subject matter of the underlying litigation. Thus, we also agree with the West Virginia court's conclusion, and find that LHWA has demonstrated this factor.

Impaired Ability to Protect Interests

{¶20} LHWA must also demonstrate that its ability to protect its interests would be impaired without its intervention. In Little Hocking's proposed complaint as intervenor, Little Hocking acknowledges:

> 16. In 2009, Little Hocking filed federal litigation against DuPont before the federal district court for the Southern District of Ohio…Prior to that, Little Hocking filed an action in state court. The federal litigation resulted in DuPont being found liable for contaminating Little Hocking's wellfields…
>
> 17. The federal and state litigation were resolved via a confidential settlement in 2016.

> * * *
>
> 22. Defendants also have certain treatment obligations that arise under federal consent orders and an Ohio EPA permit that apply directly to Little Hocking's GAC plant.[3] These obligations, which benefit Little Hocking, are protectable legal interests of Little Hocking.
>
> * * *
>
> 24. The remediation sought by Ohio of the significant amounts of PFOA in and around Little Hocking's property, and the litigation positions that Defendants will likely take, *may affect,* unless Little Hocking is allowed to participate as a party, the operation of Little Hocking's current treatment system, as well as related contractual, business, and property interests…(Emphasis added.)

{¶21} Also in Little Hocking's proposed complaint, the following relief is requested:

> Issue declaratory and injunctive relief providing that (i) no relief granted in or arising from this action will adversely affect Defendant's obligations to provide GAC treatment to Little Hocking as required by consent orders and the Ohio EPA permit (ii) no remedial activities, which *may have any effect* on Little Hocking's rights, property, or business, will be undertaken as a result of this action without Little Hocking's input and/or authorization. (Emphasis added.)

[3] In 2007, DuPont completed construction of a granular activated carbon filtration ("GAC") facility to treat Little Hocking's water that it distributes to its customers. *See Little Hocking Water Ass'n, Inc. v. E.I. DuPont* , 90 F Supp3d 746, 750 (2015). Under an Administrative Order on Consent, ("AOC"), DuPont must maintain the GAC pursuant to EPA guidelines.

{¶22} In this case, both the trial court and this Court, previously, have concluded that LHWA has failed to demonstrate that its ability to protect its interest would be impaired without its intervention. In our prior decision, *State ex rel. DeWine v. E.I. DuPont de Nemours and Co.,* 2020-Ohio-197, finding no final appealable order existed, we made these findings of note:

> LHWA "can protect and litigate its claims in another case…" *Id*. at ¶ 11. We further found that "Little Hocking can protect those terms [of the confidential settlement agreement] through an enforcement action in federal court…Finally, we found that "Little Hocking participated in a previous action that allowed it to address its property interests and can continue to enforce the confidential settlement agreement." *Id* at ¶ 17.

And, as set forth above in the appealed-from judgment entry, the trial court found: "Little Hocking and Defendants have previously done battle. *See Little Hocking Water Ass'n v. DuPont,* Case No. 2:09CV1081, 210 WL 3447632 (S.D. Ohio, Aug. 30, 2010)."

{¶23} LHWA's proposed complaint acknowledges the prior finding of liability of DuPont and the prior settlement agreement with DuPont in 2016. Similarly, we conclude that LHWA is unable to establish this factor. *See also Cleveland v. State*, 2009-Ohio-6106, (8th Dist.) (affirming denial of application for intervention by appellants National Rifle Association ("NRA") and Ohioans for Concealed Carry ("OCC") where appellate court found that "the NRA and OCC may still maintain their own actions

concerning their alleged interests…" *id*. at ¶ 9 and therefore concluded that the disposition of the underlying action would not impair or impede the organizations' ability to protect their interest. *Id*. at ¶ 10).[4]

Adequacy of Representation by Named Party

{¶24} LHWA has claimed that the State would not adequately protect its interest because LHWA has the goal of protecting its private interests and the terms of its 2016 confidential settlement agreement. However, for the reasons which follow, we are also unable to find that LHWA's interests are not adequately represented by the State of Ohio.

{¶25} In *Fairview General Hosp. v. Fletcher,* 69 Ohio App.3d 827 (10th Dist. 1990), a competitor hospital sought to intervene in a declaratory judgment action. The Court of Appeals affirmed the judgment of the trial court which denied intervention. In *Fairview*, the adequacy of representation factor was discussed at length. The appellate court observed:

> The burden of proving inadequacy of representation is on the party seeking intervention, although this burden is a minimal one. *See Trbovich v. United Mine Workers of America,* 404 U.S. 528 (1972). The most important factor to consider is the relation of the proposed intervenor's interest to that of the representative. 7A C. Wright &

[4] We are mindful that "the failure to meet any one of the elements will result in denial of the motion." *State v. Hawrylak,* 2016-Ohio-250, at ¶ 25 (3d Dist.), citing *Deutsche Bank Natl. Trust Co. v. Hill,* 2015-Ohio-1575, at ¶ 25 (5th Dist.). We would be within our discretion to summarily conclude the analysis. However, due to the seriousness of the underlying litigation and in the interest of rendering an all-encompassing decision, we continue to analysis of the final factor of Civ.R. 24(A)(2). *See also Clarke v. Warren Cnty. Commr's,* 2000 WL 1336684, fn. 2 (12th Dist.).

> Miller, Federal Practice and Procedure (1972), Section 1909, at 524.

Fairview, 69 Ohio App.3d 827, 835.

{¶26} Yet, *Fairview* also observed:

> "Representation is generally considered adequate if no collusion is shown between the representative and an opposing party if the representative does not represent an interest adverse to the proposed intervenor and if the representative has been diligent in prosecuting the litigation. *Olden v. Hagerstown Cash Register, Inc*., 619 F.2d 271, 274-75 (3d Cir.1980) (Per curiam) (Additional federal citations omitted).

{¶27} In the proposed complaint for intervention, LHWA alleges that its contractual interests, property rights, legal rights, or corporate interests are not adequately represented, and that the State does not purport to directly represent LHWA's interest. The *Fairview* court commented that a party charged by law with representing the interests of the absent party will usually be deemed adequate to represent the proposed intervenor. *Id*. at 835. In reaching its conclusion, the *Fairview* court reasoned:

> By statute, the ODH "shall have supervision of all matters relating to the preservation of the life and health of the people * * *." R.C. 3701.13. The Director, representing ODH, is therefore responsible for maintaining quality and cost-effective health care throughout Ohio, including the area served by University. Thus, to the extent University argues a right to intervene to protect the quality of the health care available in the Cleveland area, that interest is adequately represented by ODH. As discussed above, University's economic interests which it seeks to protect

> are speculative, insufficient and there would be other appropriate remedies to protect its economic interests should the need arise. University has failed to show its interest will not be adequately represented by the Director of ODH. Although University may have a possible economic interest produced by the results of litigation, both parties share identical positions on the primary issue involved in the litigation…

{¶28} In *State ex rel. Montgomery v. City of Columbus,* 2003-Ohio-2658 (10th Dist.), the appellate court also considered an appeal of a denial of intervention. There, the State of Ohio sued the City of Columbus alleging environmental violations arising from illegal overflow of sewage into state waters. As in the underlying matter herein, an environmental group moved to intervene. In resolving this factor against intervention, the appellate court noted that " '[w]here the party seeking to intervene has the same ultimate goal as a party already in the suit, courts have applied a presumption of adequate representation, and to overcome that presumption, applicants ordinarily must demonstrate adversity of interest, collusion, or nonfeasance.' " *Montgomery,* at ¶ 23, quoting *Clarke v. Warren Cty. Commrs*., 2000 WL 1336684, *3 (12th Dist.). Moreover, an agency of the government that is charged by law with representing the interests of the proposed intervenor will usually be deemed adequate to represent the intervenor's interest. *See Montgomery*, ¶ 26.

{¶29} In this case, the State's complaint was brought by and through the Ohio Attorney General, the chief legal officer of the State of Ohio. R.C. 6111.09(A) grants to the Attorney General of Ohio the authority to represent the public interest in enforcing the water pollution laws set for in R.C. Chapter 6111 and the authority to commence a civil suit to enforce the water pollution laws. The State holds natural resources within its political boundaries, including air, lands, and water of Ohio, in trust for the benefit of its citizens.

{¶30} The State of Ohio works to safeguard the health, safety, and welfare of the citizens of Ohio and owes a duty to its citizens to protect and preserve natural resources located within its boundaries. As *parens patriae*,[5] the State may sue to protect its interest in the health and well-being – both physical and economic – of its residents. The State of Ohio also has a significant property interest in the lands and waters of Ohio and a sovereign interest in protecting the quality of those lands and waters. The contamination of lands and waters of the State by PFOA constitutes an injury to Ohio. Ohio has sought damages for this injury in its capacity as

[5] "Parens patriae," literally "parent of the country," refers traditionally to the role of the state as sovereign and guardian of persons…It is a concept of standing utilized to protect those quasi-sovereign interest such as health, comfort and welfare of the people, interstate water rights, general economy of the state, etc. *See* Black's Law Dictionary, Abridged Sixth Edition.

parens patriae. These correlate with LHWA's property, business, and environmental interests.

{¶31} We conclude that LHWA and the State of Ohio share the same goals: protection of the health and well-being, physical and economic, of its residents; and protection of the quality of its waters and lands. We further note that LHWA has not shown adversity of interest, collusion, or nonfeasance on the part of the State of Ohio. LHWA must also produce something more than speculation as to the alleged inadequate representation of the existing parties. *See Montgomery* at ¶ 23. Similar to the outcome in *Montgomery*, we see no reason why the Attorney General would not adequately represent LHWA's interest.

{¶32} Our resolution of this element differs from that recently made by the federal court in *West Virginia Rivers, supra.* There, the district court also discussed the burden of demonstrating inadequate representation under Fed.R. 24, ultimately concluding:

> As noted above, both LHWA and [the Coalition] seek to protect the waterways contaminated by the Defendant's unpermitted and illegal discharge. Though plaintiff raised the argument that irreparable harm will befall LHWA's Wellfield, that does not mean that [the Coalition]will put forth the same arguments that LHWA would in protecting its interests—including its business, operation, and structures. LHWA also has information relating to the Washington Works from a prior years-long litigation with DuPont that [the Coalition] does not have. [ECF No. 84,

> at 16]. The scientific and technical issues that have arisen at the Wellfield from Defendant's alleged unpermitted discharge are unique to LHWA and would not be adequately represented by [the Coalition].

Id. at *6.

{¶33} In our view, the fact that the federal suit in West Virginia has been brought by West Virginia Rivers Coalition, Inc., an advocacy group, may somewhat distinguish LHWA's position seeking intervention. While a review of the Coalition's website reflects its growth over 30+ years, i.e., adding members, receiving grants and other substantial funding, and working with similar organizations, it is still, at its core, a citizens' group. Therefore, the district court's finding that LHWA's intervention would provide "information relating to the Washington Works from a prior years-long litigation with DuPont" is well-reasoned. By contrast, in our view, the Ohio Attorney General is endowed with vast resources and its own history of years-long litigation with DuPont and other companies. The State of Ohio, through its attorney general, is well situated to provide adequate representation of LHWA's interests. *See generally Plant v. Upper Valley Medical Center, Inc.,* 1996 WL 185341, at*4 (2d Dist.) (observing that "matter might be inadequately investigated by individual citizens who have at their disposal fewer resources than those possessed by the Attorney General's office").

{¶34} For the foregoing reasons, LHWA' s first and second assignments of error are without merit and are hereby overruled.

{¶35 } LHWA also requested permissive intervention. Under the third assignment of error, LHWA argues that the trial court abused its discretion by failing to analyze "common questions of law and fact and other aspects of permissive intervention." The pertinent section, Civ.R. 24(B)(2), "Permissive intervention," provides that:

> Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of this state confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. * * * In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

{¶36} In exercising its discretion over a motion for permissive intervention, a court "shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." *Nigh Law Group LLC v. Pond Family Medical Center, Inc.,* 2022-Ohio-2036, ¶ 18 (10th Dist.). Civ.R. 24 (B). "We have held that 'a different standard applies depending upon whether [a] proposed intervenor has a right to intervene or may only do so permissively.' " *Nigh Law Group LLC, supra,* quoting *HER, Inc. ex rel. Stonebridge Corp. v. Parenteau,* 2003-

Ohio-4370, ¶14 (10th Dist.). In cases of permissive intervention, greater consideration may be given to undue delay or prejudice in adjudicating the rights of the original parties. *Nigh Law Group LLC,* citing *Likover v. Cleveland,* 60 Ohio App.2d 154, 159 (8th Dist.). In response, the parties do not contest that common questions exist in the underlying matter.

{¶37} As stated earlier in this opinion, we find LHWA's motion for intervention timely. Furthermore, we fail to see how intervention, had it been granted in 2019, would have unduly delayed or prejudiced the adjudication of the rights of the original parties.

{¶38} However, precisely because there are common questions in the underlying matter, the State is also able to adequately represent LHWA's interests. And because LHWA has already reached a confidential agreement with DuPont years ago, LHWA has a route to enforcement. Simply because the trial court did not relate these factors specifically to Civ.R. 24(B)(2) does not mean that the trial court did not engage in a full analysis of LHWA's arguments for permissive intervention.

{¶39} A trial judge is presumed to know the applicable law and apply it accordingly. *State v. Thacker,* 2005-Ohio-1057 at ¶ 19 citing *State v. Eley,* 77 Ohio St.3d 174, 180-181 (1996) (abrogated by *State v. Wesson,* 137 Ohio St.3d 309 (2013)). Furthermore, Civ.R. 24 does not require the trial court to

make findings of fact or conclusions of law. *See Miller v. Miller*, 2019-Ohio-1886, at ¶ 16 (8th Dist.), citing *Rimmer v. Citifinancial*, 2018-Ohio-2845, ¶ 18 (8th Dist.). "In the absence of such language, we presume the trial court issued its judgment upon thorough consideration of Civ.R. 24 and the relevant facts supporting the [appellant's motion] to intervene." *Id*. Based on the foregoing, we cannot say that the trial court failed to thoroughly consider LHWA's motion for permissive intervention or otherwise abused its discretion in denying permissive intervention to LHWA. Accordingly, the third assignment of error is also overruled.

{¶40} Under the final assignment of error, LHWA asserts that the trial court erred in concluding that amicus rights that relied on notification by the existing parties would adequately protect LHWA's interests. The court docket in this case reflects that the trial court denied LHWA's motion for amicus status on October 16, 2020. However, on January 8, 2024, the court granted LHWA amicus status.

{¶41} The appearance of amicus curiae is permitted for the purpose of assisting the court on matters of law about which the court is doubtful. *See Parma v. Malinowski*, 2014-Ohio-1076, ¶ 21 (8th Dist.); *Pepper Pike v. Hirschauer,* 1990 WL 6976, *5 (8th Dist.1990), citing *Columbus v. Tullos*, 1 Ohio App.2d 107 (10th Dist.1964). But "amicus curiae have no right to

become a party to an action and may not, therefore, interject issues and claims not raised by the parties." *Id*. The decision to permit an application to file an amicus brief is entirely a matter of judicial discretion. *See State v. Ioannidis*, 1987 WL 13130, *15 (3d Dist.); *Matthews v. Ingleside Hospital*, 21 Ohio Misc. 116 (1969).

{¶43} Given our analysis above, we have already addressed the issue of adequate protection of LHWA's interests. Moreover, to the extent that the fourth assignment of error asserts a separate argument, we decline to address it. It is well settled that an appeal from the denial of a motion to intervene is limited solely to the issue of intervention. *See Woods Cove III LLC v. Straight,* 2018-Ohio-2906, at ¶ 24, citing *Montgomery, supra*, at ¶ 33. Consequently, the fourth assignment of error is also without merit and is hereby overruled.

{¶44} Having found no merit to any of appellant's assignments of error, the judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Common Pleas 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.

Hess, J. and Wilkin, J. concur in Judgment and Opinion.

For the Court,

_____
Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.