

[Cite as *North Valley Bancshares, Inc. v. Raines*, 2009-Ohio-5772.]

COURT OF APPEALS  
MUSKINGUM COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

NORTH VALLEY BANCSHARES, INC., ET  
AL.

Plaintiffs-Appellees

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. W. Scott Gwin, J.

Hon. Patricia A. Delaney, J.

-vs-

CARL RAINES

Defendant/Third-Party Plaintiff-Appellee

-vs-

Case No. CT20090028

JAMES W. RANSBOTTOM, ET AL.

Third-Party Defendants-Appellees

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JOHN B. REARDON, SUPERINTENDENT  
OF FINANCIAL INSTITUTIONS OF OHIO

Proposed Intervenor-Appellant

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas, Case  
No. CC20080354

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

October 30, 2009

APPEARANCES:

For Plaintiffs-Appellees

For Proposed Intervenor-Appellant

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*Gwin, J.*

{¶1} In April of 2008, plaintiff-appellees, North Valley Bancshares, Inc. and North Valley Bank, filed a complaint against defendant-appellee, Carl Raines, the bank's former president and chief executive officer, alleging breach of fiduciary duties. Raines filed a third-party complaint against the bank's directors, and counterclaimed appellees.

{¶2} In November of 2008, the trial court approved an agreed confidentiality order between the parties for the handling of confidential documents and information to be used for litigation. A dispute arose over the production of some documents. The trial court ordered the documents be produced for an in camera inspection.

{¶3} On May 1, 2009, appellant, John Reardon, Ohio Superintendent of Financial Institutions, filed a motion to intervene in the litigation for the limited purpose of protecting privileged bank examination information, to ensure that the confidentiality order would not interfere with any examination of North Valley Bank, and to enforce R.C. 1121.18. On May 21, 2009, the trial court denied the motion without comment.

{¶4} Appellant appealed the matter to this court. Plaintiffs-appellees North Valley Bancshares, Inc. and North Valley Bank do not oppose appellant's intervention, and assert his participation may well benefit all the parties. Defendant-appellee Carl Raines opposes appellant's intervention, and argues the trial court can adequately ensure any privileged information will be protected. Appellee Raines characterizes appellant's proposed intervention as a request to "patrol" the discovery process, and asserts he has never sought disclosure of any privileged information.

{¶5} Appellant assigns two errors to the trial court:

I

{¶6} "THE TRIAL COURT ERRED IN DENYING THE SUPERINTENDENT'S LIMITED MOTION TO INTERVENE AS OF RIGHT.

II

{¶7} "THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING THE SUPERINTENDENT'S ALTERNATIVE MOTION TO PERMISSIBLY INTERVENE."

{¶8} This case comes to us on the accelerated calendar. App. R. 11.1, which governs accelerated calendar cases, provides the following at subsection (E):

{¶9} **"(E) Determination and judgment on appeal**

{¶10} "The appeal will be determined as provided by App. R. 11.1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form.

{¶11} "The decision may be by judgment entry in which case it will not be published in any form."

{¶12} One of the important purposes of accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Assn.* (1983), 11 Ohio App.3d 158.

{¶13} This appeal shall be considered in accordance with the aforementioned rule.

I & II

Appellant claims the trial court erred in denying his motion to intervene. We agree.

{¶14} Civ.R. 24 governs intervention and states the following:

**{¶15} "(A) Intervention of right**

{¶16} "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.

**{¶17} "(B) Permissive intervention**

{¶18} "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. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. 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."

{¶19} To the extent appellant's motion to intervene was based on subsection (A), this court's standard of review is de novo. To the extent his motion sought permissive intervention under subsection (B), our standard of review is abuse of discretion. In order to find an abuse of discretion, we must determine the trial court's

decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983) 5 Ohio St.3d 217.

{¶20} The first issue is whether or not the denial of a motion to intervene is a final appealable order. The question is whether the matter is a "provisional remedy" as defined in R.C. 2505.02(A)(3):

{¶21} "(A) As used in this section:

{¶22} "(3) 'Provisional remedy' means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division (A)(3) of section 2307.93 of the Revised Code."

{¶23} Subsection (B)(4) further provides the following:

{¶24} "(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

{¶25} "(4) An order that grants or denies a provisional remedy and to which both of the following apply:

{¶26} "(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

{¶27} "(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action."

{¶28} In *Gehm v. Timberline Post & Frame*, 112 Ohio St.3d 514, 2007-Ohio-607, ¶36, the Supreme Court of Ohio found the denial of a motion to intervene is not per se a final appealable order. "There is no authority to support the general proposition that a motion to intervene always constitutes a final, appealable order."

{¶29} There is no doubt that appellant qualifies under R.C. 2505.02(B)(4)(a). The issue is whether appellant qualifies under subsection (B)(4)(b).

{¶30} In his motion to intervene filed May 1, 2009, appellant cites to R.C. 1121.18 as the statutory authority bootstrapping his right to intervention:

{¶31} "Accordingly, the Superintendent seeks to intervene for the limited purposes of (1) preventing disclosure of any document or information subject to the bank examination privilege under R.C. 1121.18 and; (2) ensuring that the confidentiality order is not applied in any way that interferes with the Division's ability to further enforce R.C. 1121.18 and/or examine North Valley and any successor financial institution.

{¶32} "The Superintendent has a right to intervene under Civil Rule 24(A) because (1) his motion is timely, (2) he has a compelling interest under statute (R.C. 1121.18) to protect both his property and any privileged information from disclosure, (3) the parties will not adequately represent his interest, and (4) his ability to protect his interest will be impaired if he is not permitted to intervene.

{¶33} "Alternatively, even if this Court finds that the Superintendent does not have a right to intervene under Civil Rule 24(A), this Court should nevertheless permit him to intervene under Civil Rule 24(B) because he is the state governmental officer charged with administering the state privilege and non-disclosure requirements of R.C. 1121.18. Permitting the Superintendent to intervene so that he may protect his property

and any privileged information from disclosure will not unduly delay or prejudice the rights of the original parties to this action."

{¶34} In the same motion, appellant further qualified the need for intervention and explained his role during the litigation:

{¶35} "Once intervention is granted, the Superintendent will file a memorandum in opposition to Defendant Raines's pending motions to compel disclosure and/or production of any information subject to the bank examination privilege and will seek a protective order with respect to material protected by the bank examination privilege. If necessary, the Superintendent will also seek a protective order to prohibit further use of and disclosure of any privileged material that may have already been produced in violation of R.C. 1121.18. The Superintendent will also request the Court clarify the application of the confidentiality order between the current parties to the litigation with regard to providing information to the Superintendent in the source of carrying out his statutory duties."

{¶36} We find the denial of appellant's right to intervene qualifies under R.C. 2505.02(B)(4)(b), and the matter appealed from is a final appealable order.

{¶37} The gravamen of this appeal is whether the outcome of the discovery process involving appellees would, as a practical matter, impair or impede appellant's ability to protect his interests.

{¶38} Appellant argues he is best suited to ensure the confidentiality of bank documents in light of the trial court's confidentiality order. Appellant seeks to ensure none of the mandates of R.C. 1121.10 and R.C. 1121.11 are violated, and he argues the other parties to the litigation cannot adequately do so. Their interests, he maintains,

are distinct from his. Appellant argues his participation in the litigation would not prejudice the other parties' interests.

{¶39} Appellant argues R.C. 1121.18 "absolutely prohibits production of bank examination information and reports."

{¶40} R.C. 1121.18 states in pertinent part:

{¶41} "(A) Information leading to, arising from, or obtained in the course of the examination of a bank or any examination conducted pursuant to the authority of section 1121.10 or 1121.11 of the Revised Code is privileged and confidential. No person, including any person to whom the information is disclosed under the authority of this section, shall disclose information leading to, arising from, or obtained in the course of an examination, except as specifically provided in this section.

{¶42} "(C)(1) Information leading to, arising from, or obtained in the course of an examination of a bank or other person pursuant to section 1121.10 or 1121.11 of the Revised Code shall not be discoverable from any source, and shall not be introduced into evidence, except in the following circumstances:

{¶43} "(a) In connection with criminal proceedings;

{¶44} "(b) When, in the opinion of the superintendent, it is appropriate with regard to enforcement actions taken and decisions made by the superintendent under the authority of Chapters 1101. to 1127. of the Revised Code regarding a bank, trust company, or other person;

{¶45} "(c) When litigation has been initiated by the superintendent in furtherance of the powers, duties, and obligations imposed upon the superintendent by Chapters 1101. to 1127. of the Revised Code;

{¶46} "(d) When authorized by agreements between the superintendent and financial institution regulatory authorities of this and other states, the United States, and other countries authorized by section 1121.11 of the Revised Code;

{¶47} "(e) When and in the manner authorized in section 1181.25 of the Revised Code.

{¶48} "(2) The discovery of information leading to, arising from, or obtained in the course of an examination pursuant to division (C)(1)(b), (c), or (d) of this section shall be limited to information that directly relates to the bank, trust company, regulated person, or other person who is the subject of the enforcement action, decision, or litigation.

{¶49} "(D) A report of an examination conducted pursuant to section 1121.10 or 1121.11 of the Revised Code is the property of the division of financial institutions. Under no circumstances may the bank or other person examined, its directors, officers, employees, agents, regulated persons, or contractors, or any person having knowledge or possession of a report of examination, or any of its contents, disclose or make public in any manner the report of examination or its contents. The authority provided in division (B)(4) of this section for use of examination information to assist in conducting the business of the bank or other person examined in a safe and sound manner and in compliance with law shall not be construed to authorize disclosure of a report of examination or any of its contents in conducting business with the examined bank's or person's customers, creditors, or shareholders, or with other persons.

{¶50} "(E) Whoever violates this section shall be removed from office, shall be liable, with the violator's bond in damages to the person injured by the disclosure of information, and is guilty of a felony of the fourth degree."

{¶51} R.C. 1121.18(D) provides the reports of bank examinations are the Division's property.

{¶52} We find appellant has demonstrated he has a right to intervene as a matter of law pursuant to Civ. R. 24(A)(2) because he claims a statutory interest relating to the property or transaction that is the subject of the action, and he is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest. We find his interest is not adequately represented by existing parties, who have different objectives in pursuing the litigation.

{¶53} The first assignment of error is sustained.

{¶54} Alternatively, appellant argues permissive intervention is proper under Civ.R. 24(B). Because we find appellant has a right to intervene under Civ. R. 24(A), we overrule this assignment of error as moot.

{¶55} For the foregoing reasons, the judgment of the Court of Common Pleas of Muskingum County, Ohio is reversed and remanded to the court for further proceedings according to law and consistent with this opinion.

By Gwin, J.

Delaney, J. concurs

Farmer, P.J. dissents.

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HON. W. SCOTT GWIN

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HON. SHEILA G. FARMER

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HON. PATRICIA A. DELANEY

*Farmer, P.J., dissents*

{¶56} I respectfully dissent from the majority's opinion that appellant qualifies under Civ.R. 24(A)(2) given the mandates of R.C. 1121.18.

{¶57} The role that appellant argues he should assume is to second guess the trial court's ability to receive documents under seal and the trial court's right to conduct an in camera inspection of unredacted and redacted items. Even if appellant is given the right to intervene, the trial court is still vested with the right to determine what is discoverable. Intervention will not eliminate the trial court's decision-making process on discovery issues.

{¶58} I find as to the nature of the complaint and third-party complaint, appellant has no interest. Appellant seeks the role of judge or to be an amicus in the matter. Appellant has equitable remedies if it believes R.C. 1121.18 is about to be violated.

{¶59} As for permissive intervention under Civ.R. 24(B), I find appellant's arguments that he is merely seeking to protect privileged information from disclosure and to protect the trial court's confidentiality order to be non-persuasive. It is the trial court's duty to ensure that the confidentiality order is obeyed. There is no need for an intervening "police officer."

{¶60} I would find the trial court did not err in denying intervention.

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HON. SHEILA G. FARMER

FIFTH APPELLATE DISTRICT

NORTH VALLEY BANCSHARES, INC.,	:	
ET AL.	:	
	:	
Plaintiffs-Appellees	:	
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-vs-	:	
	:	
CARL RAINES	:	
	:	
Defendant/Third-Party Plaintiff-Appellee	:	
	:	
-vs-	:	
	:	JUDGMENT ENTRY
JAMES W. RANSBOTTOM, ET AL.	:	
	:	
Third-Party Defendants-Appellees	:	
_____	:	
	:	
JOHN B. REARDON, SUPERINTENDENT	:	
OF FINANCIAL INSTITUTIONS OF OHIO	:	
	:	
Proposed Intervenor-Appellant	:	CASE NO. CT20090028

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Muskingum County, Ohio is reversed and remanded to the court for further proceedings according to law and consistent with this opinion. Costs to defendant appellee Raines.

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HON. W. SCOTT GWIN

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HON. SHEILA G. FARMER

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HON. PATRICIA A. DELANEY