[Cite as *Youngstown Cent. Area Community Improvement Corp. v. Youngstown*, 2023-Ohio-2427.]

IN THE COURT OF APPEALS OF OHIO
SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

Youngstown Central Area Community Improvement Corp.

Appellee

v.

City of Youngstown, et al.

Appellant

Court of Appeals No. 22 MA 00088

Trial Court No. 2021 CV 777

DECISION AND JUDGMENT

July 13, 2023

* * * * *

John A. McNally, IV, for appellee.

Adam V. Buente, for appellant.

* * * * *

ZMUDA, J.

I. Introduction

{¶ 1} Appellant, the City of Youngstown (the "City"), appeals the judgment of the Mahoning County Court of Common Pleas, granting summary judgment in favor of appellee, Youngstown Central Community Improvement Corporation, and ordering the City to prepare and execute a deed transferring certain property to appellee within 30 days of its order.

A. Facts and Procedural Background

{¶ 2} This appeal stems from a property dispute between appellee and the City dating back to 1998. On April 1, 1998, the Youngstown City Council passed Ordinance Nos. 98-147, 98-148, 98-149, and 98-150. Collectively, these ordinances authorized the City to vacate a 100-foot-wide strip of land previously used as a walkway between West Commerce Street and West Wood Street, and to deed that land to appellee. Further, the ordinances authorized the City's Board of Control ("BOC") to assign a lease for City Lot 369 and transfer the lot to appellee.[1] The walkway and City Lot 369 were to be transferred to appellee to be used as parking for the "Ohio Center Project," which ultimately culminated in the construction of the George Voinovich Building and the Mahoning County Children Services Building.

{¶ 3} On July 9, 1998, the BOC held a meeting at which it executed a warranty deed transferring the walkway property (identified as "Parcel No. 1") and City Lot 369 (identified as "Parcel No. 2"). An employee of the law firm representing appellee at the time filed the warranty deed with the Mahoning County Auditor's office and the Mahoning County Recorder's office five days later. However, at some point between the BOC's execution of the warranty deed and the filing of the deed, an unknown person

[1] The BOC is a three-member entity comprised of the City's mayor, law director, and finance director.

crossed out the conveyance language reflecting transfer of the walkway property to appellee.

{¶ 4} Thereafter, on August 13, 1998, the City recorded Ordinance No. 98-148, which authorized the transfer of the walkway to appellee, with the Mahoning County Recorder's office. Notwithstanding the alterations made to the original warranty deed, the City did not prepare and record another deed transferring the walkway property.

{¶ 5} In light of the foregoing, appellee filed a declaratory judgment action against appellants on May 13, 2021. In its complaint, appellee sought a declaration from the trial court finding that appellants

> already approved a Warranty Deed approving the transfer of the vacated 100-foot-wide strip formerly dedicated as walkway to [appellee], and that the [BOC] must be ordered to prepare and file with the Mahoning County Auditor and Mahoning County Recorder any required deed and other necessary documents to transfer the [walkway property] from the City of Youngstown to [appellee] as contemplated by the passage of Ordinance Nos. 98-147 and 98-148.

{¶ 6} In response to appellee's complaint, the City filed its answer, in which it generally denied any responsibility to transfer the walkway property to appellee. The matter then proceeded through discovery.

{¶ 7} On March 4, 2022, appellee filed its motion for summary judgment. In its motion, appellee asserted that the record evidence demonstrated that the City passed, and subsequently recorded, Ordinance Nos. 98-147 and 98-148, which vacated the walkway property and authorized the transfer of the walkway property to appellee. Further, appellee argued that the BOC approved and executed a deed transferring the walkway property to appellee in 1998, and thus no further action was required to permit the transfer of the walkway property under Ohio law. Since no subsequent action was taken to rescind the BOC's approval of the transfer, appellee argued that it was entitled to declaratory relief as a matter of law. Additionally, appellee asked the court to order the BOC to prepare and file a deed and any other documents necessary with the Mahoning County Auditor and Mahoning County Recorder to effectuate the transfer of the walkway property to appellee.

{¶ 8} In support of its motion, appellee attached, inter alia, copies of Ordinance Nos. 98-147, 98-148, 98-149, and 98-150, as well as a copy of the July 9, 1998 warranty deed on which the conveyance language pertaining to the walkway property was crossed out. Appellee also attached affidavits from its former legal counsel, Edwin Romero, and the City's former law director, Robert Bush.

{¶ 9} Romero served as appellee's legal counsel during its development of the Ohio Center Project in 1998. According to his affidavit, Romero was present at the

July 9, 1998 BOC meeting during which the BOC executed the warranty deed purporting to transfer the walkway property and City Lot 369 to appellee. Romero stated that he notarized the signatures of each of the BOC members, and he indicated that "the 'cross-out' marks through Parcel 1 on the Warranty Deed were not present" when he notarized the signatures. Additionally, Romero stated that he was unaware of "how or by whom the Warranty Deed was marked up to reference the deletion of Parcel No. 1 at or prior to the time of recording."

{¶ 10} Nonetheless, Romero agreed that the redaction of Parcel No. 1 from the conveyance language in the deed was proper, because the ordinance vacating the walkway property (Ordinance No. 98-147) was not recorded until August 13, 1998, nearly one month after the warranty deed was recorded. According to Romero, a publicly dedicated walkway could not lawfully be transferred to a corporate entity unless it was first vacated and no longer needed for public purposes. Consequently, Romero opined that "a subsequently approved deed transferring Parcel No. 1 * * * should have been filed or the unredacted Warranty Deed approved by the [BOC] on July 9, 1998 and filed on July 14, 1998 should have become effective by operation of law." Moreover, Romero stated that no action has been taken since 1998 to rescind the authorizing ordinances or the BOC approval of the transfer of the walkway property to appellee.

{¶ 11} Bush served as the City's law director from 1998 to 2003. In his affidavit, he indicated that he worked with Romero on the Ohio Center Project. Bush confirmed

that the BOC met on July 9, 1998, to "consider certain items for approval, including a Warranty Deed for the transfer of City-owned properties referenced in Ordinance Nos. 98-148 and 98-150." Bush was a member of the BOC at the time. He stated in his affidavit that the BOC approved the warranty deed transferring the walkway property and City Lot 369 to appellee at the meeting. Further, Bush corroborated Romero's statement that the warranty deed was not altered and the language transferring the walkway property was not crossed out at the time of the BOC's approval and execution of the deed.

{¶ 12} On March 25, 2022, the City filed its memorandum in opposition to appellee's motion for summary judgment and a cross-motion for summary judgment. According to the City, appellee was not entitled to declaratory relief, because the record demonstrated that the City, not appellee, was the true owner of the walkway property. The City argued that it remained the owner of the walkway property notwithstanding the actions of City Council and the BOC in 1998, because "(a) the recorded deed regarding [the walkway property] has the [walkway property] expressly crossed off; (b) no recorded deed has transferred the [walkway property] from the City of Youngstown to [appellee]; and(c) no City Board of Control record indicates the lawful transfer of the [walkway property] to [appellee]."

{¶ 13} On April 5, 2022, appellee filed its reply, in which it reiterated the arguments it advanced in its motion for summary judgment.

{¶ 14} Upon consideration of the parties' arguments, the trial court issued its decision on the competing motions for summary judgment on July 11, 2022. In its decision, the trial court found that the facts were undisputed and that appellee was entitled to judgment as a matter of law.

{¶ 15} Specifically, the court determined that the BOC's authorization of the transfer of the walkway property was valid upon the BOC's execution of the unredacted warranty deed on July 14, 1998. No further action from the BOC was necessary to effectuate the transfer at that time, and thus the trial court found that a new deed should have been prepared following the recording of Ordinance Nos. 98-147 and 98-148. In addition, the trial court noted that the record established that the failure to transfer the walkway property was merely an "oversight." Consequently, the trial court granted appellee's motion for summary judgment, denied the City's motion for summary judgment, and ordered the City to prepare and execute a new deed transferring the walkway property to appellee within 30 days of its decision.

{¶ 16} On August 10, 2022, the City filed its timely notice of appeal.

B. Assignments of Error

{¶ 17} On appeal, appellants assign the following errors for our review:

> A. The Trial court erred as a matter of law in finding that "no additional Board of Control authority is necessary" to effectuate the transfer of the disputed parcel.

B. The trial court erred as a matter of law by considering evidence extrinsic to the only deed recorded at the Mahoning County Recorder's office.

C. The trial court erred as a matter of law by ordering the executive branch of a city government to carry out the purported intent of its legislative branch based upon affidavits and evidence from 20+ years ago.

II. Analysis

{¶ 18} In the City's assignments of error, it argues that the trial court erroneously granted summary judgment in favor of appellee. It urges this court to "reverse the Trial Court's granting of Appellee's Motion for Summary Judgment and enter judgment in favor of the City because no deed has ever been executed or recorded transferring the Disputed Parcel to Appellee." Because the City's assignments of error are interrelated, we will address them simultaneously.

{¶ 19} We review the grant or denial of a motion for summary judgment de novo, applying the same standard as the trial court. *Lorain Natl. Bank v. Saratoga Apts*., 61 Ohio App.3d 127, 129, 572 N.E.2d 198 (9th Dist.1989); *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Under Civ.R. 56(C), summary judgment is appropriate where (1) no genuine issue as to any material fact exists; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and viewing the evidence most strongly in favor of the nonmoving party, that

conclusion is adverse to the nonmoving party. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978).

{¶ 20} The City identifies three alleged errors committed by the trial court in its decision granting appellee's motion for summary judgment and denying the City's motion for summary judgment. First, the City argues that the trial court erred in finding that no further action from the BOC was necessary to effectuate the transfer of the walkway property to appellee. Second, the City contends that the recorded warranty deed with the walkway property conveyance language crossed out was clear and unambiguous, and therefore the trial court erred in considering extrinsic evidence. Third, the City makes a separation of powers argument rooted in its city charter, challenging the trial court's authority to order the City's executive branch, the BOC, to carry out the intent of the City's legislative branch, the Youngstown City Council.

{¶ 21} Upon consideration, we find none of the City's arguments availing. For reasons more fully explained below, we find that the uncontested evidence introduced by appellee in support of its motion for summary judgment establishes that ownership of the walkway property was properly transferred to appellee in 1998 upon delivery of the unredacted warranty deed to appellee and appellee's acceptance of that deed. The unknown events that culminated in the crossing out of the conveyance language related to the walkway property took place *after* ownership of the property was transferred from the

City to appellee, and thus have no impact on the question of whether appellee is the owner of the property as against the City.

{¶ 22} "Where one of the parties is a municipal corporation, contract formation or execution may only be done in a manner provided for and authorized by law. * * * Furthermore, contracts, agreements, and/or obligations of a municipality must be made and entered into in the manner provided for by statute or ordinance and cannot be entered into otherwise." *RDR Developers v. City of Youngstown*, 7th Dist. Mahoning No. 98 CA 50, 1999 WL 1029507, *1 (Nov. 9, 1999), citing *Wellston v. Morgan*, 65 Ohio St. 219, 62 N.E.127 (1901).

{¶ 23} The parties agree on the procedural requirements that applied to the transfer of the walkway property in 1998. The transfer of the property arose under R.C. 723.04. The version of R.C. 723.04 in effect in 1998 provided:

> The legislative authority of a municipal corporation, on petition by a person owning a lot in the municipal corporation praying that a street or alley in the immediate vicinity of such lot be vacated or narrowed, or the name thereof changed, upon hearing, and upon being satisfied that there is good cause for such change of name, vacation, or narrowing, that it will not be detrimental to the general interest, and that it should be made, may, by ordinance, declare such street or alley vacated, narrowed, or the name thereof changed. The legislative authority may include in one ordinance

the change of name, vacation, or narrowing of more than one street, avenue, or alley.[2]

{¶ 24} On April 1, 1998, the City's legislative authority, the Youngstown City Council, unanimously passed Ordinance No. 98-147, which vacated the walkway property pursuant to its authority under R.C. 723.04. In the ordinance, the Youngstown City Council directed the City's Commissioner of Engineering to prepare a plat reflecting the vacation of the walkway property, and instructed its clerk to "cause said plat or plats to be recorded in the office of Recorder of Mahoning County." The ordinance did not specify whether recording of the plat needed to occur prior to transfer of the walkway property to appellee. Further, the ordinance provided that it "shall take effect and be in force from and after the earliest period allowed by law."

{¶ 25} Contemporaneous with its passage of Ordinance No. 98-147, the Youngstown City Council unanimously passed Ordinance No. 98-148, which authorized the BOC to deed the walkway property to appellee for use as parking for the Ohio Center Project. The ordinance was enacted as an emergency measure that was to "take effect and be in force immediately upon its passage and approval by the Mayor." The City's mayor approved the ordinance on April 2, 1998. Thus, as of April 2, 1998, all legislative

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[2] In 2014, R.C. 723.04 was amended to include an additional sentence at the end, which reads: "The original ordinance or a certified copy thereof shall be recorded in the official records of the county recorder."

authority necessary to effectuate the transfer of the walkway property to appellee had been granted.

{¶ 26} Nonetheless, the City's charter does not vest authority to contract for the transfer property like the walkway property in the legislative body alone. Instead, Section 110 of the City's charter sets forth the requirements for contracting with the City, and provides:

> For the purpose of executing contracts and agreements on behalf of the City, there is hereby created a Board of Control, consisting of the Mayor, the Director of Law and Director of Finance, of which the Mayor shall be Chairman and the Director of Finance the Secretary. It shall be the duty of the Board of Control to keep a Journal of all its proceedings as well as a copy of all contracts authorized by it.

Therefore, further action on the part of the BOC was necessary in order to finalize the transfer of the walkway property.

{¶ 27} Following the Youngstown City Council's passage of Ordinance Nos. 98-147 and 98-148, the BOC met on July 9, 1998. At the meeting, the BOC authorized the transfer of the walkway property to appellee and executed a deed with language to effectuate the same. While such language was eventually crossed out prior to recording, appellee introduced uncontested evidence that established the BOC executed the deed before it was altered. Romero and Bush, each of whom were present at the BOC

meeting, testified to this fact. Appellee accepted the deed, and its legal counsel took the deed to the recorder's office five days later to record it. The mysterious alteration of the deed took place sometime between appellee's acceptance of the executed deed and its subsequent recording of the deed.

{¶ 28} "It is fundamental that, in order for a deed to be operative as a transfer of ownership of land or an interest or any estate therein, there must be a delivery of the instrument. It is the delivery that gives the instrument force and effect." *Kniebbe v. Wade*, 161 Ohio St. 294, 297, 118 N.E.2d 833 (1954). Additionally, the grantee must accept delivery of the deed in order for the transfer to be complete. *Id.*

{¶ 29} Here, appellee accepted delivery of the deed on July 9, 1998. At the time, all necessary authority from the City's legislative and executive branches had been granted. Further, the evidence in the record shows that, at the time of acceptance, the language transferring the walkway property was not crossed out on the deed. The City has not introduced any evidence to contest appellee's evidence or offer an alternative version of the events. Since the deed that was executed by the BOC and accepted by appellee included language conveying the walkway property to appellee, we find that ownership of the walkway property was transferred to appellee on July 9, 1998.

{¶ 30} The events that transpired after July 9, 1998, including the alteration of the deed, its recording, and the subsequent recording of Ordinance No. 98-147, are ancillary to the question of whether appellee is entitled to a declaration that it is the rightful owner

of the walkway property. The legal title to the walkway property transferred to appellee, notwithstanding the alterations subsequently made to the deed after acceptance and prior to recording. "[A] deed does not have to be recorded to pass title. Whether or not recorded, a deed in Ohio passes title upon its proper execution and delivery, so far as the grantor is able to convey it." *Wayne Bldg. & Loan of Wooster v. Yarborough*, 11 Ohio St.2d 195, 212, 228 N.E.2d 841 (1967); *see also In re Estate of Dinsio*, 159 Ohio App.3d 98, 2004-Ohio-6036, 823 N.E.2d 43, ¶ 18 (7th Dist.) ("A deed does not have to be recorded to pass title."); *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, 923 N.E.2d 1144, ¶ 21 ("Legal title to real property transfers from the seller to the buyer with the delivery and acceptance of an executed deed."). Moreover, in Ohio, the "failure or success of recording an instrument has no effect on its validity as between the parties to that instrument." *Bank One, N.A. v. Dillon*, 9th Dist. Lorain No. 04CA008571, 2005-Ohio-1950, ¶ 9. Indeed, the recording statutes are designed to protect bona fide purchasers for value, not parties to a transaction. *Bank of New York Mellon Trust Co, N.A., v. Loudermilk*, 5th Dist. Fairfield No. 2012-CA-30, 2013-Ohio-2296, ¶ 30, citing *Yarborough* at 213.

{¶ 31} In sum, we find that the trial court properly found that the BOC transferred ownership of the walkway property to appellee in this case. As stated above, appellee became the owner of the walkway property as soon as it accepted delivery of the deed that was executed by the BOC. The subsequent alteration of the deed does not alter this

fact. *Dukes v. Spangler*, 35 Ohio St. 119, 126 (1878) ("The general rule undoubtedly is, that when the instrument conveying an estate has taken effect, its destruction by the parties will be ineffectual, even if they intended thereby to revest the estate in the grantor."). Moreover, the City's argument that the BOC never approved of the transfer of ownership is entirely unsupported in the record. The record demonstrates not only that all parties intended to transfer the walkway property to appellee in 1998, but also that the City has taken no action to rescind the authority previously granted from the Youngstown City Council and the BOC since such authority was granted in 1998.

{¶ 32} In addition, we find no error in the trial court's order directing the City to prepare a clean deed reflecting its transfer of the walkway property to appellee. Absent the recording of such a deed, the chain of title reflected in the official records of the Mahoning County Recorder's office will not reflect the transfer of the walkway property to appellee. This puts appellee in a precarious position with respect to any subsequent bona fide purchasers for value, against whom appellee would be defenseless.

{¶ 33} Finally, we reject the City's separation of powers argument, in which the City contends that the trial court's holding "effectively obliterates the separation of powers set forth in the City's Charter" by "ordering the City's executive branch (i.e. its Board of Control) to be bound by the purported intent of its legislature from almost 25 years ago." In making its argument, the City fails to recognize that the trial court's decision merely orders the BOC to act in a manner consistent with its own prior actions.

{¶ 34} As already noted, appellee accepted delivery of the deed on July 9, 1998, after all necessary authority from the City's legislative *and* executive branches had been granted. The deed that was previously executed by the BOC and accepted by appellee transferred ownership of the walkway property to appellee on July 9, 1998, and thus we find that the coordinate branches of the city government acted only in the capacities in which they were authorized to act under the city charter. Consequently, there is no separation of powers issue in this case. The trial court's order directed the appropriate branches to perform actions that were within their charter powers to perform in order to complete the task that they endeavored to complete many years ago.

{¶ 35} In light of the foregoing, we find that appellee was entitled to summary judgment in its declaratory judgment action against the City. Accordingly, we find the City's assignments of error not well-taken.

III. Conclusion

{¶ 36} In light of the foregoing, the judgment of the Mahoning County Court of Common Pleas is affirmed. The costs of this appeal are assessed to the City under App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Christine E. Mayle, J.

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JUDGE

Gene A. Zmuda, J.

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JUDGE

Myron C. Duhart, P.J.
CONCUR.

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JUDGE

Judges Thomas J. Osowik, Gene A. Zmuda, and Myron C. Duhart, Sixth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio