STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

FILED
December 7, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Keith William DeBlasio,
Plaintiff Below, Petitioner

vs.) No. 11-1152 (Morgan County 11-C-8)

Virginia L. Stone, Estel Donald Lambert Jr.,
Vincent James DiMattina Jr., Cheryl Ann Lambert,
George McVey Jr., and Ronald Dale Roush
Defendants Below, Respondents

and

Keith William DeBlasio,
Plaintiff Below, Petitioner

vs.) No. 11-1153 (Morgan County 10-C-128)

Cold Spring Forest Homeowners Association, Inc.,
Defendant Below, Respondent

MEMORANDUM DECISION

Petitioner Keith William DeBlasio, *pro se*, appeals the May 19, 2011 order of the Circuit Court of Morgan County dismissing his civil actions against the homeowners' association of the subdivision where he lives, and against the homeowners' association's individual members and its attorney, because of a lack of standing. Petitioner also appeals the circuit court's September 30, 2011 order granting the homeowners' association's motion for sanctions and attorney's fees and costs against him in the amount of $5,276.25. Respondents Cold Spring Forest Home Owners Association, Inc., Virginia L. Stone, Estel Donald Lambert Jr., Vincent James DiMattina Jr., Cheryl Ann Lambert, and George McVey Jr., by George McVey Jr. and Joanna L-S Robinson, their attorneys, filed a response to which petitioner filed a reply brief.[1]

[1] Respondent Ronald Dale Roush, *pro se*, filed no response.

The Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Petitioner filed separate civil actions against the homeowner's association of the subdivision where he lives[2] and against the homeowners' association's individual members and its attorney. Petitioner alleged a failure to maintain association records and a failure to allow him to review the records. In the civil action against the homeowners' association's individual members and its attorney, petitioner alleged the following: (1) failure to conduct business as a legal entity; (2) failure to file required articles and by-laws; (3) failure to maintain association records; (4) failure to allow him to review the records; (5) failure to conduct required annual meeting; (6) misappropriation of funds; and (7) property damage as a result of Mr. Lambert's snow plowing.

The homeowners' association and the individual defendants represented by Mr. McVey (collectively "homeowners' association") filed a motion to dismiss in both actions. The circuit court considered the motion in both cases at a joint hearing on March 25, 2011.[3] Counsel for the homeowners' association argued that petitioner did not have standing because he was not an owner of a lot within the subdivision at the times alleged in the complaints. In response to the circuit court's question of whether he admitted to not owning an interest from 2003 to July of 2010,[4] petitioner answered, "I would say that I was not on the deed."

The circuit court ruled from the bench as follows:

> . . . [A]fter listening very clearly to the representations of each side, the Court feels that a fundamental fact in this case is that [petitioner] was possessed of no ownership interest in the subdivision in question through the period of 2003 through 2010.

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[2] Petitioner is a long-time resident of the subdivision. He first had an ownership interest in a lot within the subdivision from 2001 to 2003.

[3] Petitioner objects to the fact that the circuit court heard the two cases together. At the beginning of the March 25, 2011 hearing, the circuit court noted that the two cases were being called together because they "seem[ed] to involve similar parties and interests." Under Syllabus Point One, in part, *Holland v. Joyce*, 155 W.Va. 535, 185 S.E.2d 505 (1971), "the action of a trial court in consolidating civil actions for a joint hearing or trial will not be reversed in the absence of a clear showing of abuse of . . . discretion." Because both of petitioner's cases involve the operation of the homeowners' association, this Court concludes that the circuit court did not abuse its discretion in holding a joint hearing in the two cases.

[4] According to the notes of the judge's law clerk, the circuit court "thoroughly examined" petitioner.

> And a reading of complaints in this case are alleging misconduct or injury or improprieties conducted were during the period of his non-ownership and the Court feels that under the law that [petitioner] lacks legal standing to maintain either of those lawsuits, that he beside[s] having no ownership interest that he cannot establish any injury in fact or an invasion of a legally protected interest that he can under the case of *Fin[d]ley versus State Farm Mutual Auto[mobile Insurance Co.*, 213 W.Va. 80 576 S.E.2d 807 (2002),] that the elements of standing[[5]] are all–he can make none of those elements of standing and therefore the Court finds that defendant's motion to dismiss these actions is well-grounded and meritorious and should be awarded. And the Court would herein today this day declare that these two cases are dismissed.

In its written order dismissing the civil actions, the circuit court found that "the Plaintiff lacks legal standing to maintain either civil action before this Court" and that "the Plaintiff cannot establish an injury in fact of a legally protected interest."[6]

Also at the March 25, 2011 hearing, petitioner raised the issue of Mr. McVey and his law firm's representation of the homeowners' association when one of his claims was that the law firm had mishandled funds and that Mr. McVey's law firm had a conflict of interest with the pro se defendant, Mr. Roush. However, Mr. Roush stated that he was "not aware of any conflict" and indicated that when he was secretary/treasurer of the homeowners' association—2003 through 2006—he kept the records according to the guidelines and standards of the American Institute of Certified Public Accountants.[7] When counsel for the homeowners' association stated that Mr. Roush wanted join in its motion to dismiss, Mr. Roush did not object.

Petitioner re-raised Mr. McVey's law firm's alleged conflict of interest at the August 24, 2011 hearing on the homeowners' association's motion for sanctions and attorney's fees and costs.

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[5] Under Syllabus Point Five, *Findley v. State Farm Mutual Automobile Insurance Co.*, 213 W.Va. 80, 576 S.E.2d 807 (2002), the elements of standing are the following: "First, the party attempting to establish standing must have suffered an 'injury-in-fact'—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent and not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct forming the basis of the lawsuit. Third, it must be likely that the injury will be redressed through a favorable decision of the court."

[6] From July 2, 2010, petitioner has had a diminutive fee simple interest in two lots within the subdivision. Counsel for the homeowners' association conceded petitioner could file a civil action alleging future misconduct, stating, "If he wanted to file a new suit we have no ability to make an argument of standing [because] he does have that diminus [sic] interest."

[7] Mr. Roush indicated that he is a certified public accountant in both West Virginia and Maryland.

Counsel for the homeowners' association[8] argued that petitioner had no standing to object to the law firm's representation of any of the defendants and that at the previous hearing, Mr. Roush advised that he did not object to the firm's representation of the homeowners' association.[9] The circuit court ruled as follows:

> Well, this issue has I think been sounded before but is reiterated and renewed by the recent pleadings by [petitioner] with reference to his motion to conflict out [Mr. McVey's law firm].
>
> Having now considered both sides of this argument and the renewed motion, the Court is persuaded that especially given the outcome of the underlying litigation in this case, and in the Court's ruling after the evidence was put forward, is that [petitioner] would lack standing to make such an objection and that those who might assert it in the context of this litigation have not done so. Therefore, we would note [petitioner]'s objection but would overrule the objection.

The circuit court reiterated its overruling of petitioner's objection in its written order granting the homeowners' association's motion.

On the homeowners' association's motion for sanctions, attorney's fees, and costs,[10] the circuit court heard the parties' arguments and questioned the association's counsel concerning fees and costs, the law firm's regular hourly rate, and whether the fees and costs included the hearing on the motion. The fee affidavit showed $4,675 in attorney's fees and $201.25 in costs. Counsel stated that the firm would charge an additional $400 for the representation at the hearing but no additional costs. The circuit court ruled from the bench as follows:

> [Petitioner], although he is a *pro se* litigant and is representing himself, has a very agile intelligence and is perfectly capable representing himself in a lawyer-like manner and does a very good job of seeing and raising issues and of arguing matters before the Court in a highly workmanlike and competent fashion. So

[8] At both of the relevant hearings, Mr. McVey was not the attorney who argued on the homeowners' association's behalf.

[9] Mr. Roush did not appear for the August 24, 2011, hearing.

[10] Petitioner indicates that the homeowners' association's motion was untimely. The circuit court's May 19, 2011, order gave the homeowner's association ten days of the entry of the order to file the motion. Under the standards for the computation of time set forth in Rule 6 of the West Virginia Rules of Civil Procedure, this Court finds that the homeowners' association timely filed its motion on June 3, 2011.

> we feel that perhaps more so than any other pro se case we can remember, this matter has been pretty fully laid before the Court.
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> * * *
>
> But, the Court, this Court, stands by its ruling that he did not have standing to raise the issue and as such that issues as raised and litigated did constitute and do constitute a vexatious, wanton, oppressive litigation which when asserted against a very small homeowner's association with a very small minimal annual income is burdensome in the extreme and as such the Court finds that your motion for sanctions in the form of attorney's fees . . . is well taken.
>
> The Court would note the objection of [petitioner] in this case and grant attorney's fees in favor of the Defendants . . . in the amount of $5,276.25.[11]

In its written order granting attorney's fees and costs, the circuit court reiterated that petitioner is a capable *pro se* litigator and that the homeowners' association is "an Association with minimal annual income."[12] The circuit court found that the homeowners' association "has borne the burden of attorneys' fees and costs in the defense of the instant cases."

Petitioner appeals both the circuit court's dismissal of his civil actions due to a lack of standing and its order granting attorney's fees and costs. By an order entered October 26, 2011, this Court consolidated petitioner's two cases "for briefing, consideration and decision."

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[11] Petitioner argues that the circuit court was without jurisdiction to grant the homeowners' association its attorney's fees and costs because the court's May 19, 2011 order dismissing his civil actions constituted a final order and he had already filed his notice of appeal. As discussed in footnote ten, however, the order gave the homeowners' association ten days of the entry of the order to file its motion for sanctions and attorney's fees. Therefore, the issue remained with the circuit court until the court ruled on the motion. *See* Syl. Pt. 3, in part, *James M.B. v. Carolyn M.*, 193 W.Va. 289, 456 S.E.2d 16 (1995) (A case is final "only when it . . . leaves nothing to be done by execution what has been determined."). When petitioner filed a subsequent notice of appeal regarding the circuit court's order granting attorney's fees, this Court noted the filing and ordered that petitioner could either amend his previously filed briefs or file "a supplemental brief regarding the issues raised in the lower court's subsequent order by December 13, 2011." At the time petitioner filed his notice of appeal regarding the circuit court's order granting attorney's fees, Mr. DeBlasio's appeal in neither case had been perfected because "no appendices have been filed."

[12] In response to a question from the circuit court, petitioner answered at the March 25, 2011 hearing that the assessment fee for road maintenance was $100 per year. At the same hearing, Mr. Roush indicated that during the period when he was the secretary/treasurer of the homeowners' association, its annual income was $800 and that he thought the current annual income was $900.

PETITIONER'S OBJECTION TO MR. MCVEY AND HIS LAW FIRM'S REPRESENTATION OF THE HOMEOWNERS' ASSOCIATION

Petitioner argues that Mr. McVey and his law firm had a conflict of interest in representing the homeowners' association. The homeowners' association argues that petitioner had no standing to object to Mr. McVey's representation of the association and that the circuit court specifically found that any party who would have standing to make such an objection did not do so. In Syllabus Point One, *Garlow v. Zakaib*, 186 W.Va. 457, 413 S.E.2d 112 (1991), this Court held as follows:

> A circuit court, upon motion of a party, by its inherent power to do what is reasonably necessary for the administration of justice, may disqualify a lawyer from a case because the lawyer's representation in the case presents a conflict of interest where the conflict is such as clearly to call in question the fair or efficient administration of justice. *Such motion should be viewed with extreme caution because of the interference with the lawyer-client relationship.*

(Emphasis added.). After careful consideration, this Court concludes that the circuit court did not err in overruling Mr. DeBlasio's objection to the homeowners' association's legal representation.

CIRCUIT COURT'S DISMISSAL OF PETITIONER'S CIVIL ACTIONS DUE TO A LACK OF STANDING

Petitioner argues that the circuit court's order dismissing his civil actions should be construed as an order granting summary judgment because the court considered matters outside of the pleadings. *See Shaffer v. Charleston Area Medical Center, Inc.*, 199 W.Va. 428, 433, 467 S.E.2d 12, 17 (1997) (stating that a court order granting a motion to dismiss shall be construed as an order granting summary judgment under Rule 56 when "the circuit court receive[s] evidence outside the pleading . . . ."). The homeowners' association asserts that petitioner does not support his argument by specific references to the record showing where the circuit court considered matters outside the pleadings. The homeowners' association states that the circuit court did not rely "heavily" on matters not contained in the pleadings. After careful consideration and review of the record, this Court construes that the circuit court's order as granting the defendants summary judgment in the two actions.

"A circuit court's entry of summary judgment is reviewed *de novo*." *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 58, 459 S.E.2d 329, 335 (1995). Rule 56 of the West Virginia Rules of Civil Procedure provides in pertinent part that summary judgment shall be granted when it is shown that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), W.V.R.C.P. In arguing that the circuit court should be affirmed, the homeowners' association asserts that petitioner could not satisfy the requirements for standing set forth in *Findley*, supra.

Petitioner admitted to not owning an interest in a lot within the subdivision from 2003 to July of 2010. In its ruling from the bench, the circuit court found that a reading of the complaints

revealed that they alleged misconduct "during the period of [petitioner's] non-ownership." Petitioner disagrees with the finding that all of the misconduct alleged related to the period of his non-ownership. For example, petitioner asserts that the homeowners' association failed to hold a special meeting when he demanded such a meeting two days after acquiring an interest in two lots on July 2, 2010. With a lapse of only two days, it is questionable whether petitioner would have had anything else to discuss other than the misconduct he alleges occurred during the period of his non-ownership. "[S]elf-serving assertions without factual support in the record will not defeat a motion for summary judgment." *Williams*, 194 W.Va. at 61 n. 14, 459 S.E.2d at 338 n. 14. Therefore, after careful consideration, this Court concludes that the circuit court's grant of summary judgment to the defendants, because of a lack of standing, in each of petitioner's two actions should be affirmed.

CIRCUIT COURT'S AWARDING OF ATTORNEY'S FEES AND COSTS

The circuit court granted the homeowners' association's motion for sanctions and attorney's fees and costs against petitioner in the amount of $5,276.25. "A court may order payment by an attorney to a prevailing party reasonable attorney fees and costs incurred as the result of his or her vexatious, wanton, or oppressive assertion of a claim . . . that cannot be supported by a good faith argument for the application, extension, modification, or reversal of existing law." Syllabus, *Daily Gazette Co., Inc. v. Canady*, 175 W.Va. 249, 332 S.E.2d 262 (1985). In concluding that petitioner's actions were vexatious, the circuit court found that the homeowners' association had a very small annual income. The circuit court further found that petitioner was more able than most pro se litigants to perform in a "lawyer-like manner."

Petitioner asserts that he made a valid and colorable argument in both fact and law that he had standing at all times mentioned in his complaints. Petitioner argues that the circuit court's written order was not prepared and submitted in accordance of Rule 24.01 of the West Virginia Trial Court Rules and that he also should have been allowed twenty-one days to withdraw or correct his complaints, citing Rule 11(c)(1) of the West Virginia Rules of Civil Procedure. In response, the homeowners' association argues that the oppressive nature of petitioner's continued arguments and filings caused it to expend significant attorney's fees and costs to defend against actions in which petitioner had no standing. The homeowners' association asserts that the circuit court provided petitioner with the opportunity to respond to its motion for sanctions and attorney's fees and costs both in writing and through oral argument. After careful consideration of the parties' arguments, this Court concludes that the circuit court did not err in awarding the homeowners' association its attorney's fees and costs in the amount of $5,276.25.

For the foregoing reasons, we find no error in the decisions of the Circuit Court of Morgan County. The circuit court's May 19, 2011 order dismissing petitioner's civil actions for a lack of standing, and the circuit court's September 30, 2011 order awarding attorney's fees and costs, are affirmed.

Affirmed.

ISSUED: December 7, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh