

STATE OF MICHIGAN
COURT OF APPEALS

ST. NICHOLAS GREEK ORTHODOX CHURCH
OF DETROIT,

UNPUBLISHED
June 9, 2005

Plaintiff-Appellee,

v

No. 252705
Oakland Circuit Court
LC No. 2003-050555-CZ

RICHARD PERNAL,

Defendant-Appellee,

and

WHITE CHAPEL MEMORIAL ASSOCIATION
PARK PERPETUAL CARE TRUST,

Petitioner-Appellant.

Before: Neff, P.J., and Owens and Fort Hood, JJ.

PER CURIAM.

Petitioner White Chapel Association Park Perpetual Care Trust (“White Chapel”) appeals by leave granted from the trial court’s order denying intervention into this litigation. We reverse and remand for proceedings consistent with this opinion.

Defendant Richard Pernal offered real property for sale by letter dated June 3, 2003. Although this letter did not delineate to whom the offer was extended, the letter was sent to plaintiff church as well as petitioner White Chapel. By letter dated the next day, plaintiff church purportedly accepted the offer of sale. However, a purchase agreement was returned with the acceptance letter, and the purchase agreement contained conditions and terms not presented in the original offer.¹ Petitioner also received the offer letter from defendant Pernal and submitted a

¹ The validity of the offer and acceptance between plaintiff church and defendant was presented in docket no. 252968. We will not address the validity of that transaction in this appeal; any information is purely for background purposes.

response on June 10, 2003. This letter altered the terms of the original offer by changing the purchase price. On June 10, 2003, defendant Pernal sent a letter to both parties indicating that he intended to abide by the terms of the original offer that provided that the offer would remain open for a two week period before a decision would be rendered. On June 17, 2003, plaintiff church filed suit against defendant Pernal seeking specific performance of its acceptance on June 4, 2003.

Petitioner filed a motion to intervene in the litigation. The trial court denied the motion, stating as follows:

I'm not going to allow an intervening [sic] because you want to file a separate lawsuit and move for a joinder or something like that, but I'm not going to let you intervene because I'm not sure you have standing.

As a very practical matter, I thought the analysis in comparing the two circumstances as to who has an agreement and who has a promise to enter into an agreement is, was well done in connection with this. And where did I see that? Oh, yeah, there it is, page four. You know, you have an executed real estate purchase agreement² accepting the terms and offer and you have one where you have no offer.

So I'm not going to let you intervene. They're not part of the same facts and circumstances and gums up this case. You want to file your own lawsuit, be my guest. Okay? Thank you.

A trial court's decision on a motion to intervene is reviewed for an abuse of discretion. *Vestevich v West Bloomfield Twp*, 245 Mich App 759, 761; 630 NW2d 646 (2001). Intervention is defined in the civil law as "an action by which a third party becomes party in a suit pending between others." *Ferndale School District v Royal Oak Twp*, 293 Mich 1, 12; 291 NW 199 (1940). "The rule for intervention should be liberally construed to allow intervention where the applicant's interests may be inadequately represented." *Neal v Neal*, 219 Mich App 490, 492; 557 NW2d 133 (1996). However, intervention may be improper where it will have the effect of delaying the action or producing a multifariousness of parties and causes of action. *Id.* at 493. MCR 2.209 governs intervention and provides:

(A) Intervention of Right. On timely application a person has a right to intervene in an action:

(1) when a Michigan statute or court rule confers an unconditional right to intervene;

(2) by stipulation of all the parties; or

² Our review of the documentation filed in this case reveals that defendant Pernal, the seller, did not sign the real estate purchase agreement.

(3) when the applicant claims an interest relating to the property or transaction which is the subject of the action and 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.

(B) Permissive Intervention. On timely application a person may intervene in an action

(1) when a Michigan statute or court rule 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.

(C) Procedure. A person seeking to intervene must apply to the court by motion and give notice in writing to all parties under MCR 2.107. The motion must

(1) state the grounds for intervention, and

(2) be accompanied by a pleading stating the claim or defense for which intervention is sought.

Although the court rule itself does not contain a standing requirement, case law provides that a petitioner must also demonstrate standing to intervene in litigation. "Although [petitioners] have a basis to intervene as of right, they must also demonstrate that they have standing to assert their claims." *Karrip v Cannon Twp*, 115 Mich App 726, 732; 321 NW2d 690 (1982).

In *Oliver v State Police Dep't*, 160 Mich App 107, 109; 408 NW2d 436 (1987), the minor's mother attempted to intervene on her son's behalf in the cause of action seeking recovery for injury to the minor's father. The minor's father filed a civil lawsuit against his employer alleging civil rights violations. Two other lawsuits were consolidated with the initial lawsuit. When the mother learned of an impending settlement in the consolidated lawsuit, she filed petitions for appointment as next friend of the minor and a petition for the minor's intervention to raise claims based on loss of parental society and companionship.

On appeal, we held that three elements were required for intervention: (1) a timely request; (2) a showing that representation of the applicant's interest by existing parties is or may be inadequate; and (3) a disposition of the action that may, as a practical matter, impair or impede the applicant's ability to protect his interests. *Id.* at 113. The *Oliver* Court concluded that the application by the minor was timely, and representation in the litigation may be inadequate because the minor's father never attempted to represent the minor's interests. However, we further held that intervention as of right was properly denied because it was not established that disposition would impair the minor's ability to protect his own interests. *Id.* at

115-116. Because the minor had the ability to prosecute his own claim, the trial court properly denied the motion. *Id.* at 116.

Based on the reasons enunciated on the record, the trial court's decision to deny the motion to intervene constituted an abuse of discretion. *Vestevich, supra*. The criteria for intervention as of right involve a timely request, a showing that representation may be inadequate, and a disposition that may impair or impede the applicant's ability to protect his interests. *Oliver, supra*; MCR 2.209(A)(3). Rather, the trial court examined the potential outcome of the litigation³ instead of applying the three part test for intervention. Moreover, the trial court did not examine whether permissive intervention was appropriate under the circumstances. Accordingly, we reverse the trial court's order denying intervention and remand for the trial court to determine whether intervention is proper when considering the appropriate factors or whether permissive intervention, MCR 2.209(B), is appropriate.⁴

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Donald S. Owens
/s/ Karen M. Fort Hood

³ Again, the trial court concluded that a real estate purchase agreement had been executed. However, we have no record evidence that defendant Pernal signed the purchase agreement.

⁴ Although we do not have record evidence, petitioner alleges that it filed its own lawsuit based on the trial court's instructions, and the litigation was assigned to a different trial judge. The second trial judge purportedly granted a motion to intervene filed by plaintiff church in that action. However, the trial judge, in this case, granted summary disposition before any hearing on consolidation of the actions could occur. We note that our instructions to the trial court regarding intervention may be moot. That is, the parties may not need to pursue intervention or consolidation in light of our disposition in docket no. 252968. Thus, the parties should review and advise the trial court regarding the need for further proceedings.