IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
April 3, 2003 Session

CARLENE MALONE, ET AL. v. THE CITY OF KNOXVILLE

Appeal from the Chancery Court for Knox County
No. 1489434 John F. Weaver, Chancellor

FILED MAY 5, 2003

No. E 2002-00734-COA-R3-CV

In this appeal from the Chancery Court for Knox County the Plaintiffs/Appellants, Carlene Malone and Nick Pavlis, contend that the Trial Court erred in dismissing their suit against the Defendant/Appellee, the City of Knoxville, upon grounds that they lacked proper standing to bring suit against the City. We affirm the ruling of the Trial Court and the cause is remanded for collection of costs below.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Cause Remanded

HOUSTON M. GODDARD, P.J., delivered the opinion of the court, in which HERSCHEL P. FRANKS and D. MICHAEL SWINEY, JJ., joined.

Gregory P. Isaacs, Knoxville, Tennessee, for the Appellants, Carlene Malone and Nick Pavlis

Michael S. Kelley and Hillary B. Jones, Knoxville, Tennessee, for the Appellee, the City of Knoxville

OPINION

On October 23, 2000, the Appellants, both of whom were, at the time[1], members of the Knoxville City Council and the Knoxville Beer Board, filed a verified petition for declaratory action and injunction. The petition requests a declaratory judgment pursuant to T.C.A. 29-14-103 which provides as follows:

> Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status or other legal relations are

[1] Appellant Carlene Malone is no longer a member of the Knoxville City Council, her term having expired on December 16, 2001.

> affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obatin a declaration of rights, status or other legal relations thereunder.

The petition names the Appellee, the City of Knoxville, (hereinafter "the City") as Respondent. The subject of the petition is Emergency Ordinance 12-c(12c) (hereinafter "the ordinance") which was introduced by the Mayor of Knoxville on September 5, 2000, and adopted by the City Council despite the dissent of the Appellants. The petition asserts that the ordinance amends "Chapter Four of the Knoxville City Code , so as to provide for a Hearing Officer to conduct hearings associated with suspension/revocation of beer permits and further, to establish a process by which hearings are conducted." The petition contends that under relevant state law the Knoxville Beer Board is the only legal entity that may issue and revoke or suspend a beer license and that that authority may not be delegated. The petition also asserts that the ordinance violates the right to due process under both the United States Constitution and the Constitution of the State of Tennessee.

On December 13, 2001, the City filed a motion to dismiss the petition upon grounds that the Appellants lacked standing and failed to join all necessary parties. On February 22, 2002, the Trial Court entered its order and memorandum opinion granting the City's motion to dismiss upon a finding that the Appellants lacked standing to bring their action. Thereafter, the Appellants filed notice of appeal.

The sole issue addressed in this appeal is restated as follows:

Did the Trial Court err in granting the City's motion to dismiss the Appellants' petition upon grounds that the Appellants lacked proper standing?

Our review of a trial court's grant of a motion to dismiss is recited by the Supreme Court of this state in *Doe v. Sundquist,* 2 S.W.3d 919 (Tenn. 1999) as follows at page 922:

> A Rule 12.02(6) motion tests the legal sufficiency of the plaintiff's complaint and not the strength of the plaintiff's evidence. *Riggs v. Burson*, 941 S.W.2d 44, 47 (Tenn. 1997). In ruling on such a motion, courts must construe the complaint in favor of the plaintiff, accept the allegations of fact as true, and deny the motion unless it appears that the plaintiff can establish no facts supporting the claim that would warrant relief. When the trial court's grant of a Rule 12.02(6) motion to dismiss is appealed, we must take the factual allegations contained in the complaint as true and review the lower court's legal conclusions *de novo* without a presumption of correctness. *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997).

While factual allegations in the complaint must be taken as true, inferences drawn from those facts and legal conclusions set forth in the complaint need not be taken as true. *Riggs v. Burson*, 941 S.W.2d 44 (Tenn. 1997).

The Appellants assert two grounds upon which they contend that they have proper standing to file suit contesting the constitutionality and validity of the ordinance in question. First, the Appellants argue that they have standing under the requirements of the oath of office they took as members of the city council because, they assert, these oaths require that they "support the Constitution and Laws of the United States, the Constitution and Laws of the State of Tennessee, and the Charter and Ordinances of the City of Knoxville". Second, the Appellants contend that Tennessee case law supports a finding that they have standing "because of their unique status as Knoxville City Council Members."

In the recent case of *Marceaux v. Sundquist*, an unreported of this Court filed in Nashville on December 31, 2002, we reiterated the law with respect to the matter of standing as follows at page 4:

> Courts employ the doctrine of standing to determine whether a claimant is "properly situated to prosecute the action." *Knierim v. Leatherwood*, 542 S.W.2d 806, 808 (Tenn.1976). In order to establish standing, a party must demonstrate three essential elements. *Metropolitan Air Research Testing Auth., Inc. v. Metropolitan Gov't of Nashville and Davidson County*, 842 S.W.2d 611, 615 (Tenn. Ct. App. 1992); *Lujan v. Defenders of Wildlife*, [504 U.S. 555 (1992)]. First, the party must demonstrate that it has suffered an injury which is "distinct and palpable," *Metropolitan Air Research Testing Auth., Inc.*, 842 S.W.2d at 615, and not conjectural or hypothetical. *Lujan*, 504 U.S. at 560. Second, the party must establish a causal connection between that injury and the conduct of which he complains. *Metropolitan Air Research Testing Auth., Inc.*, 842 S.W.2d at 615. Third, it must be likely that a favorable decision will redress that injury. *Id.* These elements are indispensable to the plaintiff's case, and must be supported by the same degree of evidence at each stage of litigation as other matters on which plaintiff bears the burden of proof. *Lujan* , 504 U.S. at 560. The party, and not the merits of the case, is the major focus of a determination of standing. *Metropolitan Air Research Testing Auth., Inc.*[, 842 S.W.2d at 615].

In *Parks v. Alexander*, 608 S.W.2d 881, 885 (Tenn. Ct. App. 1980) we quoted with approval the following language from Am.Jur.2nd Constitutional Law § 188 (1979) at page noted as follows with regard to the rights of a party seeking to question the validity of a law:

> Even though a statute is unconstitutional, only those who have a right to raise a question of its unconstitutionality may invoke the aid of the courts to have it judicially set aside, and the constitutionality of a legislative act is open to attack only by those persons whose rights are affected thereby. Before a law can be

> assailed by any person on the ground that it is unconstitutional, he must show that he has an interest in the question in that the enforcement of the law would be an infringement on his rights. Assailants must therefore show the applicability of the statute to them and that they are thereby injuriously affected.

In support of their argument that they have standing in this matter as members of the city council and of the beer board the Appellants rely on *Peeler v. Luther*, 135 S.W.2d 926 (Tenn. 1940).

In *Peeler* the plaintiff was a county official acting as Chairman of the County Highway Commission. The Tennessee Supreme Court found that he had standing to sue for recovery of funds that had been illegally diverted by his predecessor. The Court noted that the plaintiff in *Peeler* was "more than a private citizen and taxpayer" and the Appellants argue this language "seemingly elevates the status of the county official in *Peeler*, giving him the necessary standing to bring suit in his official capacity." However, reading this language in the context of the case as a whole we are compelled to conclude that it was not merely the plaintiff's position as a county official that authorized him to prosecute the lawsuit for recovery of the funds, but rather his singular position as highway commissioner. By virtue of his employment as highway commissioner the plaintiff in *Peeler* was specifically vested with the supervision of those funds he was seeking to recover and he was specifically given the power to employ attorneys in that regard by the act which created the board of highway commissioners. Under these circumstances the Court queried as follows at page 929 in concluding that the plaintiff did have standing:

> Being thus vested with " general supervision of these funds," and empowered to employ attorneys whenever necessary in the discharge of their duties, is it not reasonable to assume that this Board may, through its Chairman, take such legal action as may become "necessary" to protect, conserve and recover such of these funds as may be illegally diverted or abstracted?

The Appellants assert that they "have a special interest in ensuring that the law is followed by maintaining a Beer Board that is responsible for the issuance and revocation and/or suspension of beer permits in Knoxville, as well as providing for an appeals process for such revocations and/or suspensions in accordance with the Due Process Clause." However, this assertion of interest does not derive from such specificity of authority as was possessed by the plaintiff in *Peeler*. The duties to uphold state law and the state and federal constitutions which the Appellants assert arise from their oath of office and the Appellants' status as members of the city council and beer board are, in our opinion, too general to give them standing in this case. As noted by the Trial Court in the instant matter, "[w]hile the court in the *Peeler* case emphasized that the plaintiff was a county official in addition to being a private citizen, the court did not give any reason to believe that such 'public official' status constituted an exception in itself to the general rule prohibiting a public wrong suit absent a special interest or injury."

In determining whether a party has standing to pursue legal action the court is required "to decide whether the party has a sufficiently personal stake in the outcome of the controversy to

warrant the exercise of the court's power on its behalf." *MARTA v. Metro. Gov. of Nashville*, 842 S.W.2d 611 (Tenn. Ct. App. 1992). The Appellants do not assert that they hold a beer permit nor have they asserted any injury as a result of the revocation/suspension of a beer permit or as a result of any other action related to the sale of beer. Therefore, we do not find that the Appellants have "a sufficiently personal stake" in the adoption of the ordinance to accord them standing in this case.

The Appellants contend that under the authority of *Jefferson County v. City of Morristown*, an unreported opinion of this Court filed in Knoxville on October 13, 1999, a plaintiff challenging the constitutionality and applicability of an ordinance is not required to show special interest as an aggrieved party when the relief sought is declaratory judgment. Specifically, the Appellants argue that they are not required to be aggrieved owners of beer permits to pursue an action for declaratory judgment in this case.

In *Jefferson County* the defendant City of Morristown annexed 250 acres located in Jefferson County in the course of developing an industrial park. The plaintiff, Jefferson County, filed a declaratory judgment action in which it challenged the validity of Morristown's annexation ordinances and "questioned the constitutionality and applicability "of T.C.A. 6-58-108(e), a recently enacted statute that the County contended was controlling on the issue of the annexations. The trial court found that Jefferson County lacked standing. This Court disagreed. However, our decision does not support the Appellants contention that they "are not required to have any special interest as aggrieved parties when challenging the 'constitutionality and applicability' of the ordinance when the relief sought is one for Declaratory Judgment."

In *Jefferson County* the trial court's determination that the plaintiff lacked standing was based upon the court's erroneous finding that the plaintiff's lawsuit was a *quo warranto* action. T.C.A. 6-51-103(a)(1)(A) allowed an "aggrieved owner of property" to challenge annexation proceedings in a *quo warranto* action; however, T.C.A 6-58-108 provided that in order for a county to qualify as an "aggrieved owner" it was required to adopt a resolution disapproving the annexation ordinance within sixty days of its final passage and to receive a petition from a majority of property owners within the annexed territory requesting that the county represent their interests. The trial court reasoned that, because Jefferson County did not meet the statutory prerequisites for qualification as an aggrieved property owner and did not otherwise own property within the annexed territory, it lacked standing to challenge Morristown's annexations. While we agreed that Jefferson County lacked standing to pursue a *quo warranto* action, we disagreed that the action filed by Jefferson County *was*, in fact, a *quo warranto* action. Instead, we found that Jefferson County's lawsuit constituted an action for declaratory judgment and, therefore, "the County did not have to be an "aggrieved owner" of property in order to mount a challenge to the constitutionality and applicability of T.C.A. 6-58-108(e)." Jefferson County was not required to establish its identity as an aggrieved property owner as provided by the statutes governing the filing of a *quo warranto* action because it was not filing a *quo warranto* action. However, the County was not relieved of the requirement that it demonstrate a special interest even though it was not required to establish itself as an aggrieved property owner under the aforementioned statutes. This is evident from our statement at page 4 of that case:

> We find that Jefferson County did have standing in a declaratory judgment action to challenge the validity of Morristown's annexations. Jefferson County clearly had an interest in the annexations at issue because the annexations occurred with respect to property within the boundaries of Jefferson County.

In *Coleman v. Henry,* 201 S.W.2d 686 (Tenn. 1947), the plaintiff filed suit for a declaratory judgment as to the legal requirements imposed upon a campaign manager with respect to the filing of financial statements on behalf of political candidates he managed. The Tennessee Supreme Court found that, in view of the fact that the plaintiff had filed his complaint as a "citizen, taxpayer and qualified voter", he had "no such special interest in the matters upon which a declaration [was] sought as entitled him to a declaration." The Court further noted that "the general rule is that a party having only such interest as the public generally has, can not maintain an action for a Declaratory Judgment." The Appellants' argument that they are not required to demonstrate a special interest in order to pursue an action for declaratory judgment is without merit.

For the foregoing reasons the judgment of the Trial Court is affirmed and the cause remanded for collection of costs below. Costs of appeal are adjudged against Carlene Malone and Nick Pavlis.

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HOUSTON M. GODDARD, PRESIDING JUDGE