



Ravenna Twp. Bd. of Trustees v. Ravenna

2024-Ohio-892 (2024) | Cited 0 times | Ohio Court of Appeals | March 11, 2024

IN THE COURT OF APPEALS OF OHIO ELEVENTH APPELLATE DISTRICT PORTAGE COUNTY

BOARD OF TRUSTEES FOR RAVENNA TOWNSHIP, PORTAGE COUNTY, OHIO,

Plaintiff-Appellant,

- vs -

CITY OF RAVENNA, PORTAGE COUNTY, OHIO,

Defendant-Appellee. CASE NO. 2023-P-0042

Civil Appeal from the Court of Common Pleas

Trial Court No. 2021 CV 00325

O P I N I O N

Decided: March 11, 2024 Judgment: Reversed and remanded

Chad E. Murdock, P.O. Box 334, Rootstown, OH 44272 (For Plaintiff-Appellant).

Frank J. Cimino, City of Ravenna Law Director, 250 South Chestnut Street, Suite 18, Ravenna, OH 44266 (For Defendant-Appellee).

ROBERT J. PATTON, J.

{¶1} Plaintiff-Appellant, the Board of Trustees of Ravenna Township

, appeals the decision of the Portage County Court of Common Pleas, which

granted Defendant-Appellee s, For the following reason, we reverse and remand.

{¶2} Factually, in 1993, the



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request to secede from Ravenna Township through Resolution 1993-660. The

Commissioners also formed Tappen Township. Apart from the City and the newly-created Tappen Township, the Township remained the same. *Ravenna Twp. Trustees v. City of*

Ravenna, 117 Ohio App.3d 152, 153, 690 N.E.2d 49 (11th Dist.1997).

{¶3} Due to a series of annexations, a portion of the Township which included

Maple Grove Cemetery became surrounded by the City. In 1994, the Township filed a

declaratory judgment action seeking a declaration that the City owned Maple Grove

Cemetery and was responsible for care and maintenance in accordance with R.C. 759.08.

The trial court agreed and concluded that Maple Grove Cemetery was owned by the City.

This Court affirmed that decision on January 2, 1997. *Id.* at 52.

{¶4} On January 1, 1997, the Township and the City entered into an agreement

to form a union cemetery pursuant to R.C. 759.27 . The Agreement was to

in perpetuity unless such term is modified by the parties in accordance with this

The Agreement also contained a termination clause which provided that the

Agreement could be terminated by agreement of the Parties * * This Agreement

has remained in place since 1997.

{¶5} According to the Township, in 2017, another public cemetery, Grandview

Cemetery was transferred to the Township. Due to the Township acquiring

a second public cemetery, the Township sent a letter to the City requesting the

consent to withdraw from the Agreement pursuant to R.C. 759.39 on June 5, 2020. The

Township claims the City did not respond to the letter.



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{¶6} On June 3, 2021, the Township filed a Complaint against the City seeking

declaratory judgment. itment to the Maple Grove

Agreement, based at least in part on a mistaken belief that it needed a public cemetery,

(a) has become frustrated or (b) is against public policy such that [the] Agreement no Specifically, the Township sought a declaration that the Township has the

right to cancel or at least phaseout of the * * * Agreement * * *, or in the alternative, that

the Township may limit its contribution under the * * * Agreement to an amount the

[Township] in light of its other financial

obligations * * *.

{¶7} On March 31, 2023, the City filed a motion for summary judgment. The City

claims that pursuant to R.C. 759.39, the Agreement cannot be altered or terminated

unless the City consents. The Township opposed the motion on May 10, 2023. On May

at pursuant

to O.R.C. Section 759.39, there can be no modification of the contract relating to the

dissolution of the union cemetery without the consent of the City. The City does not

{¶8} The Township appeals and he

trial court committed prejudicial error in granting the City's motion for summary judgment

because under the circumstance of the Grandview Cemetery, the Township is entitled to

equitable relief from the Agreement. (T.d.29)

{¶9} McFadden v. Discerni, 2023-Ohio-

1086, 212 N.E.3d 412, ¶ 12 (11th Dist.), citing Grafton v. Ohio Edison Co., 77 Ohio St.3d



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conduct an independent review of the evidence before the trial court without deference to

Id., quoting *Peer v. Sayers*, 11th Dist. Trumbull No. 2011-T- 0014, 2011-Ohio-5439, ¶ 27. court reviews a trial court's

summary judgment decision de novo, we will not consider issues raised in summary

judgment proceedings that the trial court failed to rule on. *Tree of Life Church v. Agnew*,

7th Dist. Belmont No. 12 BE 42, 2014-Ohio-878, ¶ 27, citing *Conny Farms, Ltd. v. Ball*

Resources, Inc., 7th Dist. Columbiana No. 09 CO 36, 2011-Ohio-5472, ¶ 15.

{¶10} The union cemetery was formed pursuant to R.C. 759.27, et seq. in 1997

and continues to the present date. These statutes authorize the formation of the union

cemetery and outlines the procedure for the control and management of the cemetery,

the funding obligations, as well as a mechanism to withdraw from a union cemetery. R.C.

759. 39 states:

A municipal corporation or township united with other municipal corporations or townships in the establishment or control of a union cemetery, or both, may, by a resolution of the legislative authority of the municipal corporation or of the board of township trustees and with the consent of the legislative authorities of the remaining municipal corporations and the boards of the remaining townships, withdraw from the management and control of such cemetery and relinquish interest therein. Thereupon the cemetery shall be under the management and control of the remaining municipal corporations and townships. (Emphasis added).

{¶11} The Agreement further provides that the Agreement can be terminated

by agreement of the Parties* * The Township does not contest that the statute provides

a means to withdraw from a union cemetery. However, the Township asserts that it should

be permitted to withdraw from the union cemetery on other grounds. Specifically, the

Township alleges that the purpose of the Agreement has become frustrated when the



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Township acquired Grandview, and that the financial obligations related to the maintenance of Grandview, in addition to the financial obligations under the Agreement, Township has estimated this financial crisis could occur as early as 2026. In addition to these claims, the Township further asserts that the Agreement is against public policy.

The Township also argues that the Agreement, which is written in perpetuity, should not be considered binding because it requires future Township Boards to adhere to the terms of the Agreement, as negotiated by a past board, without meaningful recourse.

{¶12} The City disagrees and claims that pursuant to R.C. 759.39, the Agreement cannot be altered or terminated unless the City consents. The trial court agreed and withdraw from the contract because of the lack of consent from the City. The trial court did not address frustration of purpose, mistake of fact, public policy, or any other argument raised by the Township in its decision granting summary judgment in favor of the City. In other words, the trial court determined that the statute foreclosed the applicability of any other contract law principle.

{¶13} the common law and are not to be presumed to have intended a repeal of the settled rule of the common law unless the language employed clearly expresses or imports such Frantz v. Maher, 106 Ohio App. 465, 471-72, 155 N.E.2d 471, (2nd Dist.1957), citing State ex rel. Morris v. Sullivan, 81 Ohio St. 79, 90 N.E. 146, (1909). If the General Assembly intends to abrogate common- manifested by express language. Id. here is no repeal of the common law by mere implication. Id. {¶14} does not prohibit the application of other common law contract principles. Because the



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trial court did not address whether alternative methods exist for the termination, rescission, or modification of the contract as raised by appellant, this court is unable to order granting summary judgment in favor of the City must be reversed.

{¶15} For the reasons stated above, the judgment of the Portage County Court of Common Pleas is hereby reversed and the matter is remanded to the trial court for further proceedings consistent with this opinion.

EUGENE A. LUCCI, P.J.,

MATT LYNCH, J.,

concur.

