2012 IL App (3d) 110178-U

Order filed April 10, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

OAK RUN PROPERTY OWNERS ASSOCIATION, an Illinois Not-for-Profit Organization, Plaintiff and Counterdefendant-Appellee v. MONICA J. SADLER, Defendant and Counterplaintiff-Appellant v. (Robert Brenkman, Dale E. Sundberg, Merle G. Huff, A. Dean Dearing, James L. Kuntz, Gene Shrader, Sharon Huebner, Tom Sacco, Donald P. Loveall, Don Pritchard, Roger Miller, Dave Thompson, Doug Frakes Counterdefendants-Appellees).	)	Appeal from the Circuit Court of the 9th Judicial Circuit, Knox County, Illinois, Appeal No. 3-11-0178 Circuit No. 98-MR-37 Honorable Gregory K. McClintock, Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not err in ruling, as a matter of law, that Oak Run's "General Rule 8" was valid under Illinois law. (2) The trial court properly denied further inspection rights to SADLER. (3) The trial court did not err in granting summary judgment to Oak Run by ruling that the association's document control procedure was valid under Illinois law.

¶ 2 Defendant and counterplaintiff, Monica J. Sadler, appeals from the trial court's decision denying her request to inspect the corporate records of the Oak Run Property Owners Association (Oak Run). On appeal, Sadler claims that (1) Oak Run's General Rule 8, denying members the right to copy the membership list, is invalid under Illinois law, (2) the trial court erred in denying Sadler's request to further inspect the association's records, and (3) the trial court erred in granting summary judgment in Oak Run's favor regarding the legitimacy of its document control policy. We affirm.

¶ 3 Oak Run is a not-for-profit corporation that was created to administer the restrictive covenants recorded against the lots in several subdivisions, including the Forest Ridge subdivision. Sadler owns several properties in Forest Ridge.

¶ 4 In January 1997, Sadler's neighbor received permission from Oak Run to resubdivide his lot and construct a second house on the new lot. Sadler asked to see Oak Run's records regarding the property owner's request and approval. Sadler requested access to the "Bylaws, Restrictions, and Articles of Incorporation." She also requested a copy of the 1997 annual assessment roster, which consisted of a list of members and the status of their annual assessment payments. Oak Run refused to allow Sadler to copy the list.

¶ 5 In June of 1997, Sadler filed an action against the adjacent landowner and Oak Run alleging that the plat subdivision violated restrictive covenants. She also sought a temporary restraining order prohibiting her neighbor from building on the subdivided plat. The trial court determined that the

restrictive covenants did not prohibit subdivision of the original lot, and the appellate court affirmed. See *Sadler v. Creekmur*, 354 Ill. App. 3d 1029 (2004).

¶ 6 Between June of 1997 and May of 1998, Sadler made numerous requests to inspect Oak Run documents pursuant to the association's "Rule 8." Rule 8 provided that the list of members would be made available for inspection by any member during normal business hours. The rule further provided that the list could not be copied or duplicated. However, if any member wished to produce a membership mailing, it could do so by "petitioning the board for permission, stating the purpose of the proposed mailing, and requesting that labels be prepared."

¶ 7 In response to Sadler's requests, Oak Run informed Sadler that certain documents would be made available but indicated that some documents were subject to claims of attorney-client privilege or confidentiality.

¶ 8 In May of 1998, due to the continued requests of Sadler, Oak Run developed a corporate resolution called the "Document Control Procedure." This procedure required members to complete and submit specific forms stating the records sought and the purpose for which they were requested. In conjunction with the development of the document control procedure, Oak Run's board removed the "no copying or duplicating" language from Rule 8.

¶ 9 The next week, Oak Run filed a declaratory judgment action, seeking a declaration that the document control procedure complied with state law and that Oak Run had the right to assert its attorney-client privilege in response to document requests made by members.

¶ 10 Sadler filed a counter-claim challenging the validity of the document control procedure. She also claimed that she had been and was continuing to be denied the right to inspect corporate documents in violation of the Not-for-Profit Corporation Act (Act) (805 ILCS 105/107.75(a) (West

1998)) and Oak Run's governing documents.

¶ 11 Following discovery, Oak Run filed a motion for partial summary judgment. Sadler filed a cross-motion for summary judgment, claiming that the document control procedure was illegal and unenforceable. The trial court found that the document control procedure provided a reasonable method of review and access to the association's records and granted Oak Run's motions. In its opinion letter, the trial court found that there was "no just reason for delaying the appeal of the decision pursuant to Supreme Court Rule 304." Sadler's motion to reconsider was denied. Her subsequent motion to vacate was also denied.

¶ 12 Nine years later, the trial court conducted a bench trial on Sadler's remaining claims. At trial, Sadler claimed that (1) Oak Run's rule, which prohibited members from copying the membership list, violated section 107.75 of the Act and (2) Oak Run's refusal to allow her to copy association records violated Oak Run's governing documents.

¶ 13 The trial evidence relevant to this appeal relates to the documents Sadler was denied between January 23, 1997, and May 13, 1998. According to the testimony at trial, Sadler first proposed a special mailing on January 23, 1997. She provided no context for the proposal. On July 16, 1997, Sadler gave Oak Run notification that she wanted a mailing pursuant to Rule 8 and attached a proposed text for the mailing. At an August board meeting, Oak Run approved Sadler's mailing and agreed that it could be further amended. Sadler later informed the board that she was amending her text, but never submitted an amended version.

¶ 14 On October 15, 1997, Oak Run's attorney, John Robertson, wrote to Sadler's attorney to confirm that Sadler had requested a copy of the membership list. Robertson stated that, under Rule 8, the list could not be copied but that Sadler could inspect the list.

¶ 15 Oak Run's former President, Dean Dearing, testified that he believed that requiring disclosure of the proposed text for a membership mailing was a reasonable method to determine whether the mailing was for a proper purpose. Robertson testified that Rule 8 was modified in May of 1998 to allow copying because the document control procedure, which was approved at the same time, required a member to state in writing the purpose for requesting the list.

¶ 16 The trial court found that Sadler's inspection rights from January 1997, through May 13, 1998, included the right to copy documents. The court held that Oak Run's actions in responding to some of Sadler requests violated section 107.75(a) of the Act. However, the court declined to order additional inspections of corporate documents because the court was "unable to specifically determine what requests were made by Monica Sadler that were not responded to." As to Sadler's second claim, the court ruled that Oak Run violated provisions of the Forest Ridge Declaration and the Oak Run Bylaws by failing to allow copying of the 1998 assessment roster and ordered the association to produce the 1998 list.

¶ 17 *I. Rule 8 and Mootness*

¶ 18 Sadler argues that Oak Run's Rule 8 is invalid under Illinois law. Specifically, she claims that the rule's denial of the right to copy the membership list violates the Act and Oak Run's governing documents. Oak Run contends that because the prohibition against copying in Rule 8 was removed more than 13 years ago, the issue is moot.

¶ 19 Courts will generally not decide moot questions, render advisory opinions, or consider issues where the results will not be affected regardless of how the court decides the issues. *In re Alfred H.H.*, 233 Ill. 2d 345 (2009). There are three exceptions to the mootness doctrine. *In re Daryll C.*, 401 Ill. App. 3d 748 (2010). The public interest exception applies where (1) the question is one of

a public nature; (2) there is a need for an authoritative determination for future guidance of public officers; and (3) there is a likelihood that the question would recur. *In re Robin C.*, 395 Ill. App. 3d 958 (2009). The "capable of repetition yet evading review" exception requires the complaining party to show that (1) the challenged action is too short in its duration to be fully litigated prior to its cessation and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action again. *In re Barbara H.*, 183 Ill. 2d 482 (1998). The collateral consequences exception applies where a party has suffered or is threatened with an actual injury traceable to the defendant and is likely to be redressed by a favorable judicial determination. *Daryll C.*, 401 Ill. App. 3d at 752.

¶ 20 An issue is moot if the parties' interest and rights are no longer in controversy and the resolution of the issue will have no practical effect. *Adkins Energy, LLC v. Delta-T Corp.*, 347 Ill. App. 3d 373 (2004). An action will be dismissed as moot once the plaintiff has secured what was originally sought. *Duncan Publishing, Inc. v. City of Chicago*, 304 Ill. App. 3d 778 (1999).

¶ 21 Under Illinois law, corporations have the power to adopt by-laws not inconsistent with the constitution and state and federal laws. *Allen v. The Chicago Undertakers' Ass'n*, 232 Ill. 458 (1908). Section 107.75(a) of the Illinois Not-for-Profit Corporation Act provides that:

> "[a]ny voting member shall have the right to examine, in person or by agent at any reasonable time or times, the corporation's books and records of account and minutes, and to make extracts therefrom, but only for a proper purpose." 805 ILCS 105/107.75(a) (West 1998).

¶ 22 In creating the association's rules and bylaws, Oak Run adopted Rule 8, which stated:

> "The membership list of the Oak Run Property Owners Association is kept

> on file at the Association Office for the purpose of conducting Association Business. The list is made available for inspection by any member of the association during normal working hours. The list may not be copied or duplicated in any form, however, any member desiring to produce a mailing to the Association members may do so by petitioning the Board for permission, stating the purpose of the proposed mailing and requesting that labels be prepared by the Administrative Assistant."

The rule in its original form did not allow members to copy the membership list. However, in May of 1998, Oak Run amended Rule 8 and deleted the following language: "The list may not be copied or duplicated in any form, however." Since that time, members have been permitted to copy the membership list for a "proper purpose" in accordance with section 107.75(a) and the association's document control procedure. Thus, Sadler's claim that Rule 8 violates section 107.75(a) is moot.

¶ 23 Although there are exceptions to the mootness doctrine, none apply to the issue on appeal. The question does not involve a public issue; there is no expectation that Sadler will be subject to the pre-1998 rule; and she received a favorable judicial determination that allows her access to and the right to copy the membership list.

¶ 24 Moreover, the evidence at trial does not indicate that Rule 8 was used to deprive Sadler of her right to communicate with the association's membership. The trial court made a factual finding that Sadler made no further requests for a mailing under Rule 8 after Oak Run had approved her proposed mailing in August 1997.

¶ 25 In this case, Sadler seeks an advisory opinion regarding a provision of Oak Run's rules and bylaws that has not existed for more than a decade. The issue is moot, and we decline to apply a speculative analysis.

¶ 26 *II. Denial of Further Inspection*

¶ 27 Sadler argues that the trial court erred in refusing to order further inspection of certain documents, including attorney fee payment records and the cash receipts journal. She claims that further inspection is supported by the record and that the court's decision was against the manifest weight of the evidence.

¶ 28 An association member has the burden of establishing a proper purpose to inspect corporate records and documents. *Meyer v. Board of Managers of Harbor House Condominium Ass'n*, 221 Ill. App. 3d 742 (1991). A proper purpose is shown when a shareholder has an honest motive, acts in good faith, and does not proceed for speculative reasons. *Weigel v. O'Connor*, 57 Ill. App. 3d 1017 (1978). The purpose must be lawful in character and not contrary to the interests of the association. *Meyer*, 221 Ill. App. 3d at 748. A member's right to inspect a corporation's books and records must be balanced against the need of the corporation depending on the facts of each case. *Id.* at 748.

¶ 29 We will not disturb the trial court's findings of fact unless they are against the manifest weight of the evidence. *Southwest Bank of St. Louis v. Poulokefalos*, 401 Ill. App. 3d 884 (2010). The reviewing court gives great deference to the trial court's findings because, as the trier of fact, the trial court is in a superior position to observe the witnesses while testifying, to judge their credibility and to determine the weight their testimony should receive. *International Capital Corp. v. Moyer*, 347 Ill. App. 3d 116 (2004). A finding is against the manifest weight of the evidence only if the opposite conclusion is apparent or if the finding appears to be arbitrary, unreasonable or not based on the evidence. *Southwest Bank*, 401 Ill. App. 3d at 890; *Moyer*, 347 Ill. App. 3d at 122.

¶ 30 Here, Sadler has not established that the trial court's findings were against the manifest

weight of the evidence. At the conclusion of trial, the court held that Oak Run's actions in responding to some of Sadler's requests "violated 805 ILCS 105/107.75(a)." However, the court found that it was "unable to specifically determine what requests were made by Monica Sadler that were not responded to." For this reason, the court declined to order compliance with any past requests and denied any further relief, other than production of the 1998 assessment roster.

¶ 31 The record supports the court's order. It reflects that the only documents sought to be inspected or copied prior to June 27, 1997, were the "Bylaws, Restrictions, and Articles of Incorporation." Between June 27, 1997, and September 18, 1997, Salder was provided opportunities to inspect records and copy various documents. After September 18, 1997, Oak Run denied some of Sadler's requests and refused to allow inspection, pending review by the association's attorney. However, at trial, Sadler failed to establish which records she requested that she was not allowed to inspect. The evidence was affected by the passage of time and Sadler's failure to keep records of what inspection requests she made, what copies were provided, and what requests were allegedly denied. In addition, during her testimony, Sadler had to refresh her recollection by referencing documents that were not offered into evidence. Thus, based on the record before it, the trial court's refusal to order compliance with any past request to inspect was not arbitrary or unreasonable.

¶ 32 *III. Validity of the Document Control Procedure*

¶ 33 Sadler claims the trial court erred in ruling that Oak Run's document control procedure is valid under Illinois law in the summary judgment order entered in December of 2000.

¶ 34 We lack jurisdiction over this issue. Supreme Court Rule 304(a) provides that the trial court may make "an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). The time for filing a notice of appeal from

a Rule 304(a) order is governed by Supreme Court Rule 303(a). Ill. S. Ct. R. 303(a) (eff. May 30, 2008). Notice of appeal must be filed "within 30 days after entry of the order disposing of the last pending post-judgment motion directed against the judgment or order." Ill. S. Ct. R. 303(a) (eff. May 30, 2008).

¶ 35 On December 8, 2000, the trial judge ruled that the document control procedure adopted by Oak Run was valid and made the express finding in his written judgment that there was "no just reason for delaying the appeal" pursuant to Rule 304(a). On January 4, 2001, Sadler filed a motion to reconsider, which was denied. She then moved to vacate the January 12 order, and that motion was denied on June 14, 2001. Under Rule 303(a), the last date by which Sadler could have appealed the 2000 summary judgment order was 30 days after the entry of the order denying her motion to vacate on June 14, 2001. See Ill. S. Ct. R. 303(a) (eff. May 30, 2008). Sadler did not file a notice of appeal within the time specified, and she did not include the issue in her subsequent counterclaim. Accordingly, we do not have jurisdiction over this issue. See *Corsi v. Corsi*, 302 Ill. App. 3d 519 (1998); *Weber v. Northern Illinois Gas Co.*, 10 Ill. App. 3d 625 (1973).

¶ 36 CONCLUSION

¶ 37 The judgment of the circuit court of Knox County is affirmed.

¶ 38 Affirmed.