

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION -- LAW**

DAVID KELLER,

Plaintiff

v.

ROY L. PAYNE,

Defendant

NO. 23-0550

David Keller
Roy L. Payne

Pro Se
Pro Se

FILED
2024 AUG 26 PM 3:51
CARBON COUNTY
PROthonotary

MEMORANDUM OPINION

Nanovic, P.J. – August 26, 2024

Whether the equitable and beneficial owner of real estate is a necessary and indispensable party to an action seeking possession of the property brought by the record owner against a third party is the issue we address herein.

FACTUAL AND PROCEDURAL BACKGROUND

On September 24, 2021, Mazzella Enterprises purchased 5315 Quakake Road, Weatherly, Carbon County, Pennsylvania (the "Property") for \$7,947.00 at an upset tax sale. The Property consists of slightly less than two acres improved with a single-family dwelling and an attached one-and-a-half car garage. (N.T., 3/8/24, pp. 27-28, 31). The record owner of the Property at the time of the tax sale were the Estates of Ralph S. Payne and Loretta Payne. Ralph Payne predeceased his wife, who died testate on April 15, 2019, leaving the Property which is the subject of these proceedings to their son, Roy

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L. Payne, who was living in the home with his mother at the time of her death and continues to reside there to the present time. (N.T., 3/8/24, pp. 19-21; Ex. P-3). Loretta Payne's Will, which bequeaths her entire estate, including the Property, to her son, Roy L. Payne, was probated on April 24, 2019. (N.T., 3/8/24, pp. 21-23; Ex. P-3). On that same date, Letters Testamentary were granted to Roy L. Payne (hereinafter "Payne"). (Ex. P-3).

By deed dated April 3, 2023, Mazzella Enterprises conveyed the Property to David Keller ("Keller") for a stated consideration of \$1.00. (Ex. P-2). The recital in this deed contains the following statement: "This deed is being issued pursuant to a Straw Party [A]greement whereas the Mazzella Enterprises shall retain the beneficiary interest in the [P]roperty." (N.T., 3/8/24, p.11; Ex. P-2).

Also on April 3, 2023, Keller filed a Complaint in Ejectment against Payne. The Complaint contains three counts each seeking possession of the Property: Count I seeks to evict Payne for his failure to enter a lease agreement and claims, *inter alia*, damages measured by an alleged fair rental value of \$900.00 a month under a lease which was never entered; Count II is for trespass; and Count III in ejectment. Counts II and III likewise request damages resulting from Payne's possession and occupation of the Property. A non-jury trial was held in this matter on March 8, 2024.

At the time of trial, the court questioned Keller about the provision in his deed referring to a Straw Party Agreement pursuant to which Mazzella Enterprises retained the beneficiary interest in the Property. A copy of that Agreement was admitted as Keller's

Exhibit 6 and provides, in its entirety, excluding only the statutory acknowledgment, as follows:

STRAW PARTY AGREEMENT

Regarding: Pin: 127-46-A18
5315 QUAKAKE ROAD, WEATHERLY, PA 18255

Sale: Monroe County Upset Tax Sale
Of September 14, 2016

This agreement is made between David Keller acting as "agent" or "straw party" for Mazzella Enterprises, and or assigns, hereinafter referred to as "Investors", or "beneficiaries", being the equitable owners of the property mentioned above. David Keller is to hold the Investors interest in the property in his name for the benefit of the Investors. David Keller shall receive a commission in the amount of \$1.00 for him holding the property in his name.

By: /s/ David Keller
David Keller

Mazzella Enterprises
By: /s/ Joseph Mazzella
Joseph Mazzella

(Ex. P-6).

Based on the foregoing, the court questioned whether Mazzella Enterprises was an indispensable party to these proceedings and, if so, that the court was without jurisdiction to make a valid and enforceable decision. (N.T., 3/8/24, pp. 13, 15-16, 37). Briefs were requested from the parties on this issue. (N.T., 3/8/24, p.37). Keller lodged his brief on March 15, 2024. Payne failed to file a brief. Thereafter, by Order dated May 6, 2024, we determined that Mazzella Enterprises was an indispensable party and, in accordance with Pa.R.C.P. 1032(b), directed Keller to file an amended complaint within twenty days joining Mazzella Enterprises as a party plaintiff, failing which the Complaint

would be deemed dismissed.¹ Cf. Pa.R.C.P. 2227.² Keller elected not to file an amended complaint and instead, on June 4, 2024, filed his Notice of Appeal.

In accordance with our Order dated June 7, 2024, directing Keller to file a concise statement of the errors complained of on appeal, Keller timely filed this statement on June 14, 2024. In essence, Keller contends that Mazzella Enterprises is not an indispensable party and that the court erred in dismissing his Complaint.

DISCUSSION

A party is indispensable

when his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights. If no redress is sought against a party, and its rights would not be prejudiced by any decision in the case, it is not indispensable with respect to the litigation. We have consistently held that a trial court must weigh the following considerations in determining if a party is indispensable to a particular litigation:

1. Do absent parties have a right or an interest related to the claim?
2. If so, what is the nature of that right or interest?
3. Is that right or interest essential to the merits of the issue?
4. Can justice be afforded without violating the due process rights of absent parties?

In determining whether a party is indispensable, the basic inquiry

¹ The May 6, 2024, Order incorrectly initially states that Keller is to file an amended complaint within thirty days and later correctly states twenty days, which is what we advised Keller at the time of trial and which we believe Keller correctly understood. (N.T., 3/8/24, pp. 15-16, 37).

² Rule 2227 provides:

Rule 2227. Compulsory Joinder

(a) Persons having only a joint interest in the subject matter of an action must be joined on the same side as plaintiffs or defendants.

(b) If a person who must be joined as a plaintiff refuses to join, he or she shall, in a proper case, be made a defendant or an involuntary plaintiff when the substantive law permits such involuntary joinder.

Pa.R.C.P. 2227.

remains whether justice can be done in the absence of a third party.

Guiser v. Sieber, 237 A.3d 496, 505 (Pa.Super. 2020) (citing and quoting Northern Forests II, Inc. v. Keta Realty Co., 130 A.3d 19, 29 (Pa.Super. 2015)). Further, “an inquiry into whether a party is indispensable is to be from the prospective of protecting the rights of the absent party, not from the view of whether the joinder or nonjoinder of a party would make the matter more difficult to litigate.” Ocwen Loan Servicing, LLC v. Gasparik, 2013 WL 11261812 *5 (Pa.Super. 2013) (Non-Precedential Decision) (citation and quotation marks omitted), appeal denied, 87 A.3d 816 (Pa. 2014). When undertaking this inquiry, the nature of the particular claim and the type of relief sought should be considered. HYK Construction Company v. Smithfield Township, 8 A.3d 1009, 1015 (Pa.Cmwlth. 2010), appeal denied, 21 A.3d 1195 (Pa. 2011).

“The failure to join an indispensable party is a non-waivable defect that implicates the trial court’s subject matter jurisdiction.” Guiser, 237 A.3d at 505 (citation and quotation marks omitted). The “failure to join an indispensable party deprives a court of jurisdiction, may be raised by a court *sua sponte*, and cannot be waived by a failure to raise it by preliminary objection, answer, or reply.” Ocwen *5 (citation omitted). Because an indispensable party is one whose rights are so connected with the claims of the litigants that no decree can be made without impairing those rights, to proceed in the absence of an indispensable party would deprive that party of due process. Accordingly, the absence of an indispensable party “renders any order or decree of court null and void for want of jurisdiction.” Columbia Gas Transmission Corp. v. Diamond Fuel Co., 346 A.2d 788, 789

(Pa. 1975).

While Keller is the current record title owner of the Property, exactly what rights he has in the Property and what authority he has to act with respect to the Property is neither set forth in his deed (Ex. P-2), his Straw Party Agreement with Mazzella Enterprises (Ex. P-6), or elsewhere in the record. Significantly, and more importantly, Mazzella Enterprises is acknowledged in the Straw Party Agreement to be the equitable owner of the Property and in the deed to “*retain* the beneficiary interest in the [P]roperty,” (emphasis added), the beneficiary interest thus retained being presumably the same beneficiary interest Mazzella Enterprises held when it was the record title owner of the Property, which, by logical extension, encompasses the right to possess, use and enjoy the Property. The damages claimed in the Complaint relate directly to Payne’s occupancy of the Property and indirectly to Mazzella Enterprises’ loss of use and enjoyment of the Property. (N.T., 3/8/24, p.16).

In reviewing the four factors set forth in Guiser in determining if a party is indispensable, Mazzella Enterprises’ equitable ownership and retention of the beneficiary interest in the Property clearly relates to a right to possess, use and enjoy the Property, which is the focal point of Keller’s action in ejectment. “Ejectment is a possessory action only, and can succeed only if the plaintiff is out of possession, and if he has a present right to immediate possession.” Siskos v. Britz, 790 A.2d 1000, 1008 (Pa. 2002) (citation and quotation marks omitted); Soffer v. Beech, 409 A.2d 337, 340-41 (Pa. 1979) (“The writ of ejectment has long been the general method for obtaining possession of real

property.")). "The purpose of an ejectment action as opposed to quiet title is not to determine the relative and respective rights of all potential title holders, but rather the immediate rights between plaintiff and defendant involved in that particular litigation." Siskos, 790 A.2d at 1006 (citation and quotation marks omitted). Keller's ejectment action is specific to Payne's possession and occupation of the Property and does not seek to adjudicate any ownership interests claimed by Payne.³

Addressing the second, third and fourth Guiser factors, Mazzella Enterprises' rights and interests in the Property emanate from its deed to Keller, the same document upon which Keller relies as the basis of his claim against Payne. Further, Mazzella Enterprises' rights and interest in the Property is inextricably intertwined with whatever right or interest in the Property is claimed by Keller and would necessarily be adversely impacted by a ruling allowing Payne to remain on the Property. Under these circumstances, justice and due process require that Mazzella Enterprises be provided an opportunity to advocate and participate in litigation that may significantly impair its rights

³ At the time of Payne's mother's death, Payne resided in the Property with his mother. As her only child, upon her death legal title to this Property passed to Payne. 20 Pa.C.S.A. §301(b). Further, as both the personal representative of her estate and as an heir or devisee who at the time of her death occupied the Property, Payne was entitled to possession. 20 Pa.C.S.A. §3311(a). Whether that right was extinguished when the Property was sold at tax sale has yet to be decided given Payne's objections to the upset tax sale which were pending at the time of the non-jury trial in this matter and are presently scheduled for hearing before the Honorable Steven R. Serfass of this court on August 26, 2024. (N.T., 3/8/24, pp. 24-25). While the validity of the tax sale has a direct bearing on whether Mazzella Enterprises acquired legal title to the Property and thereafter was able to convey title to Keller, as well as Payne's claim to possession, because an ejectment action does not adjudicate title or ownership interests in real estate, this question remains for another day. As it stands, our decision here does not affect Payne's rights and claims made in his objections to the upset tax sale. See In re Estate of Smith, 296 A.3d 635 *4 (Pa.Super. 2023) (Non-Precedential Decision) (recognizing ejectment historically as the vehicle for asserting possession of property, as opposed to adjudicating ownership interests).

and interests in the Property.

Because Mazzella Enterprises' rights in the Property arise from the same deed on which Keller bases his claims against Defendant and our decision may adversely impact Mazzella Enterprises' equitable ownership, use and enjoyment of the Property, Mazzella Enterprises is an indispensable party to this action without whose participation justice cannot be done. Cf. Huston v. Campanini, 346 A.2d 258 (Pa. 1975) (holding persons to whom vendors allegedly sold restaurant after declaring forfeiture and repossession from plaintiffs were possible bona fide purchases and, therefore, indispensable parties).

CONCLUSION

Pa.R.C.P. 1032(b) provides that "whenever it appears by suggestion of the parties or otherwise... that there has been a failure to join an indispensable party, the court shall order that... the indispensable party be joined, but if that is not possible, then it shall dismiss the action." Under this Rule, "[i]f an indispensable party is not joined, a court is without jurisdiction to decide the matter. The absence of an indispensable party renders any order or decree of the court null and void. The issue of the failure to join an indispensable party cannot be waived." Hart v. O'Malley, 647 A.2d 542, 549 (Pa.Super. 1994) (citations and quotation marks omitted), affirmed, 676 A.2d 222 (Pa. 1996).

Here, at the time of trial when it became apparent that Mazzella Enterprises was an indispensable party, we directed Keller to file an amended complaint joining Mazzella Enterprises as an involuntary plaintiff, with the further direction that if this were not done, the case would be dismissed. Keller having elected not to join Mazzella Enterprises, the

case was properly dismissed.⁴

BY THE COURT:



P.J.

⁴ An indispensable party stands in contrast to a party without standing to file a suit. An indispensable party is one whose rights are so connected with the claims of the litigants that no decree can be made without impairing those rights. Sprague v. Casey, 550 A.2d 184, 189 (Pa. 1988). The absence of an indispensable party is jurisdictional, relates to the court's power to hear and decide the case, and cannot be waived. Ocwen Loan Servicing, LLC v. Gasparik, 2013 WL 11261812 *4, 5 (Pa.Super. 2013) (Non-Precedential Decision) (citations omitted). In contrast, the core concept of standing "is that a person who is not adversely affected in any way by the matter he seeks to challenge is not 'aggrieved' thereby and, therefore, may not obtain a judicial resolution of his challenge." Ocwen Loan Servicing, LLC, *4 (citation and quotation marks omitted), appeal denied, 87 A.3d 816 (Pa. 2014). Whether a party is a real party in interest implicates standing and is waivable. Ocwen Loan Servicing, LLC, *6. Likewise, "[n]ecessary parties are distinct from indispensable parties." William Penn School District v. Pennsylvania Department of Education, 294 A.3d 537, 873-74 (Pa.Cmwlth. 2023) (Cohn Jubelirer, P.J.) (single judge opinion). "[A] necessary party is one whose presence, while not indispensable, is essential if the court is to resolve completely a controversy and to render complete relief." Podolak v. Tobyhanna Twp. Bd. of Supervisors, 37 A.3d 1283, 1289 (Pa.Cmwlth. 2012) (citation omitted).