

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO EX REL. ROBERT MCCABE REAL ESTATE GROUP, AN OHIO GENERAL PARTNERSHIP,	:	APPEAL NO. C-170328 TRIAL NO. A-1700706
and	:	<i>JUDGMENT ENTRY.</i>
STATE OF OHIO EX REL. THE ROBERT MCCABE COMPANY, INC.	:	
Relators-Appellants,	:	
vs.	:	
CITY OF MADEIRA,	:	
Respondent-Appellee,	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Relators-appellants, Robert McCabe Real Estate Group and The Robert McCabe Company, Inc., appeal the trial court’s dismissal of their verified petition for a writ of mandamus to compel respondent-appellee the city of Madeira (“Madeira”) to initiate appropriation proceedings.

In a single assignment of error, they argue the trial court erred by granting Madeira’s motion to dismiss their petition.

In order to dismiss a complaint for failure to state a claim upon which relief may be granted pursuant to Civ.R. 12(B)(6), it must appear beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 144, 573 N.E.2d 1063 (1991). When construing a complaint upon a Civ.R. 12(B)(6) motion to dismiss, the trial court must presume the truth of all the factual allegations of the complaint and make all reasonable inferences in favor of the nonmoving party. *Id.* We review a dismissal by the trial court pursuant to Civ.R. 12(B)(6) under a de novo standard of review. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5.

In their petition, relators-appellants alleged that they own and operate a hardware store on property located between Laurel Avenue and Railroad Avenue, which is east of Miami Avenue, the main north-south roadway in Madeira. They further alleged that in 2013, Madeira narrowed Railroad Avenue from 25 feet to 20 feet at its intersection with Miami Avenue, and changed Railroad Avenue from a two-way street to a one-way street for 100 feet east of Miami Avenue.

Prior to the road change, relators-appellants had invested over \$1 million into the property and business based on the access to Miami Avenue using Railroad Avenue. They further alleged that all products delivered to the hardware store are and must be received by eastbound Railroad Avenue from Miami Avenue and that the road change has severely hindered the property's use by limiting trucks from safely entering Railroad Avenue from Miami Avenue. They alleged that by reducing the intersection of Railroad Avenue at Miami Avenue from two directions to just one direction, Madeira has caused internal circuitry of traffic unique to their property because delivery trucks are no longer able to exit west on Railroad Avenue to reach Miami Avenue, but must drive across the property and exit on Laurel Avenue to reach Miami Avenue. They

further alleged that the delivery trucks are also forced into multiple turns at public roadways intersections that are unsafe.

Relators-appellants' petition fails to allege facts against Madeira which would support a compensable taking. "In order to establish a taking, a landowner must demonstrate a substantial or unreasonable interference with a property right. Such an interference may involve the actual physical taking of real property, or it may include the deprivation of an intangible interest in the premises." (Citations omitted.) *State ex rel. OTR v. Columbus*, 76 Ohio St.3d 203, 206, 667 N.E.2d 8 (1996). One of the elemental rights of real property ownership is the right of access to any public roadway abutting the property. *State ex rel. Merritt v Linzell*, 163 Ohio St. 97, 126 N.E.2d 53 (1955). When the state completely deprives a landowner of all access to an abutting roadway, the state has substantially interfered with the right of access. *State ex rel. OTR* at 211.

A taking can occur, however, even if the state's interference does not amount to a total obstruction of access. Courts have found a substantial or unreasonable interference with the right of access when the state blocks an existing access point so as to create circuitry of travel within a property. *Hilliard v. First Indus. L.P.*, 158 Ohio App.3d 792, 2004-Ohio-5836, 822 N.E.2d 441, ¶ 8 (10th Dist.); *Castrataro v. Lyndhurst*, 8th Dist. Cuyahoga No. 60901, 1992 WL 209578 (Aug. 27, 1992). "Circuitry of travel within one's own property occurs when one entrance or exit way is removed and another is not created." *Hilliard* at ¶ 8. For example, when a property owner has two entrances from an abutting roadway, and the state blocks one of the entrances without supplying an additional entrance, circuitry of travel within the property results. *See Castrataro*, supra.

OHIO FIRST DISTRICT COURT OF APPEALS

Here, relators-appellants have not alleged that any physical taking of their property occurred. Nor have they alleged that Madeira's change to Railroad Avenue removed or blocked their access to Railroad Avenue. *Compare Bowles v. Ohio Dept. of Transp.*, 10th Dist. Franklin No. 89AP-1426, 1990 WL 93883 (June 28, 1990). Moreover, the change in the directional flow of traffic on Railroad Avenue that forces delivery trucks into multiple turns from the property to reach Miami Avenue does not constitute a taking. *See New Way Family Laundry, Inc. v. Toledo*, 171 Ohio St.242, 168 N.E.2d 885 (1960), paragraph three of the syllabus. Because relators-appellants can prove no set of facts in support of their claim that would entitle them to relief, the trial court did not err by granting Madeira's motion to dismiss the petition pursuant to Civ.R. 12(B)(6). We, therefore, overrule their sole assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MYERS, P.J., MILLER and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on June 27, 2018

per order of the court _____.
Presiding Judge