

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

CITY OF MADEIRA EX REL.	:	APPEAL NO. C-160762
DOUGLAS OPPENHEIMER, a.k.a.	:	TRIAL NO. A-1506891
PHILIP DOUGLAS OPPENHEIMER,	:	
Relator-Appellant,	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
CITY OF MADEIRA,	:	
and	:	
THOMAS E. MOELLER,	:	
Respondents-Appellees.	:	

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.

Relator-appellant Douglas Oppenheimer initiated a municipal-taxpayer action against respondents-appellees the city of Madeira and Madeira City Manager Thomas E. Moeller. Thomas Powers was also named as a respondent in the action. Oppenheimer’s complaint sought a declaratory judgment and injunctive relief relating to Madeira Ordinance No. 15-30, which authorized Madeira to sell a portion of “vacant land” located at 7010 Miami Avenue to Powers. Oppenheimer alleged that the action authorized by Ordinance No. 15-30 was in violation of Article XVI of Madeira’s City Charter, which provides that:

The City of Madeira was deeded and assumed ownership of the “Hosbrook House” located at 7014 Miami Ave. and the “Muchmore House” located at 7010 Miami Ave. In addition to these two properties the City also has ownership of the historic Railroad Depot located at 7701 Railroad Ave. These three important and historic properties are to be preserved, protected, and left standing on the same ground that the structures were built upon. These three historic structures will be included in the “Historic District.”

Oppenheimer sought a declaratory judgment that Article XVI prohibited Madeira from proceeding with the land-sale contract authorized by Ordinance No. 15-30. And he sought an injunction restraining Madeira and Moeller from executing or performing any acts in furtherance of any contract or prospective contract authorized by Ordinance No. 15-30 and from executing any deed transferring any portion of the Muchmore House property.

Powers filed a motion to dismiss all claims against him for failure to state a claim upon which relief can be granted. The trial court granted Powers’s motion. Madeira and Moeller then filed a motion for judgment on the pleadings, arguing that Article XVI of the Madeira City Charter was not in conflict with Ordinance No. 15-30 and did not prevent Madeira from selling a portion of the “vacant land” on the Muchmore House property.

During a hearing on the respondents’ motion, the trial court questioned whether there still existed a justiciable controversy in light of Powers’s dismissal from the action and the respondents’ representation that the contract authorized by Ordinance No. 15-30 was no longer pending. The court stated on the record that it was dismissing the complaint without ruling on the merits. It then, however, issued an entry granting the motion for judgment on the pleadings in its entirety and dismissing the complaint.

Oppenheimer appealed the trial court's judgment. Following submission of the appeal to this court, we remanded the cause for the trial court to clarify whether it had intended to dismiss the action as moot because there no longer existed a justiciable controversy, or whether it had intended to grant the motion for judgment on the pleadings. The trial court complied with our order, and issued an entry specifying that it was granting respondents' motion for judgment on the pleadings because the motion was legally appropriate under Civ.R. 12(C). The trial court's entry further specified that it had not found the cause to be moot.

Oppenheimer has raised six assignments of error for our review. In his first assignment of error, he argues that the trial court erred in orally dismissing his complaint based upon mootness but then failing to specify that the dismissal was without prejudice. And in his second assignment of error, he argues that the court erred in dismissing the complaint with prejudice, even though it concluded that the claims were moot. Oppenheimer's contentions are not reflected in the record. In its amended entry, the trial court clarified that it had not dismissed Oppenheimer's complaint as moot, and that it had granted the motion for judgment on the pleadings on its merits. Consequently, the first and second assignments of error are overruled.

In his third assignment of error, Oppenheimer argues that the trial court erred in granting the motion for judgment on the pleadings with only a "bare-bones entry." The record likewise fails to reflect this contention. The trial court's amended entry explained its reasoning for granting the motion for judgment on the pleadings and for denying Oppenheimer the requested declaratory judgment and injunctive relief. The third assignment of error is overruled.

In his fourth and fifth assignments of error, Oppenheimer argues that the trial court's granting of the respondents' motion for judgment on the pleadings was in error because his complaint stated a viable claim and because it was inappropriate to adjudicate the merits of the action. We address these assignments together.

We hold that, after taking the complaint's allegations as true and making all reasonable inferences in favor of Oppenheimer, the trial court correctly determined that he could prove no set of facts entitling him to relief. *See Sullivan v. Anderson Twp.*, 1st Dist. Hamilton No. C-070253, 2009-Ohio-6646, ¶ 7; Civ.R. 12(C). The plain language of Article XVI of the Madeira City Charter establishes that it is not in conflict with Ordinance No. 15-30, and that it does not restrict Madeira from contracting to sell "vacant land," as opposed to structures, on the addresses listed in Article XVI. In reaching this decision, we conclude that under the clear and unambiguous language of the charter, the historic "properties" to be "preserved, protected and left standing" are the specifically identified "Hosbrook House," "Muchmore House" and "Railroad Depot," and not the unencumbered land at the identified addresses. Consequently, Oppenheimer was not entitled to the declaratory judgment and injunctive relief sought in his complaint. The trial court did not err in granting the motion for judgment on the pleadings. The fourth and fifth assignments of error are overruled.

In his sixth and final assignment of error, Oppenheimer argues that the trial court erred in dismissing Powers from the action. In light of our resolution of the fourth and fifth assignments of error, we hold that any error that may have occurred from the early dismissal of Powers resulted in no prejudice to Oppenheimer, as the entire suit has been dismissed. The sixth assignment of error is overruled.

We note that, after issuing its amended entry granting the motion for judgment on the pleadings and dismissing the action, the trial court issued a nunc pro tunc entry specifying that the action was dismissed without prejudice. This was in error. In granting the motion for judgment on the pleadings under Civ.R. 12(C), the court ruled on the merits of the action. Consequently, its dismissal was with prejudice. *See Dragon v. Henderson*, 8th Dist. Cuyahoga No. 104021, 2016-Ohio-7305, ¶ 3, fn. 1; Staff Notes to Civ.R. 41.

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Having overruled all assignments of error, we accordingly affirm the judgment of the trial court.

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.

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

To the clerk:

Enter upon the journal of the court on October 27, 2017
per order of the court _____.
Presiding Judge