IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

ASSOCIATION TO PRESERVE THE EATONVILLE COMMUNITY, INC. and BABETTA ROSE LEACH HATLER,

Plaintiffs,

vs.

SCHOOL BOARD OF ORANGE COUNTY,

Defendant.
_____/

Case No. 2023-CA-005295-O
Division 39

FINAL ORDER OF DISMISSAL

THIS MATTER came before the Court for a hearing on October 4, 2024 on Defendant School Board of Orange County, Florida's Motion for Judgment on the Pleadings, and/or Summary Judgment, Dismissing Plaintiffs' Claims Due to Sovereign Immunity and Lack of Jurisdiction filed on July 29, 2024 ("Defendant's Motion for Judgment on the Pleadings or, in the Alternative, Summary Judgment") and the Court, being duly advised in the premises and having considered the argument of counsel, finds as follows.

BACKGROUND

The Town of Eatonville ("Eatonville") was incorporated in 1887 as one of the first all-Black incorporated municipalities in the United State of America (Am. Compl. ¶ 1). Early Eatonville residents, Edward and Anna Hungerford, donated 160 acres of land within Eatonville ("Hungerford Property") for the purpose of operating the Robert Hungerford Normal and Industrial School ("Hungerford School")(*Id.* at ¶¶ 18-19). The donation was

implemented by trust deed conveying the Hungerford Property to eight trustees "and their successors and assigns forever" for the purpose of "the creation of a public charitable trust consisting of a coeducation normal school for negroes" (*Id.* at ¶¶ 24-25).

In 1951, the School Board of Orange County, Florida ("School Board") acquired the Hungerford School and the Hungerford Property (Am. Compl. ¶ 4) resulting in litigation. The acquisition was eventually approved by the Florida Supreme Court, *see Fenske v. Coddington*, 57 So. 2d 452, 453 (Fla. 1952), as was the circuit court's 1951 order providing that:

> upon the conveyance of said real and personal property to The Board of Public Instruction of Orange County, Florida, said real property shall be used as a site for the operation of a public school thereon for negroes with emphasis on the vocational education of negroes and to be known as "Robert Hungerford Industrial School" and the personal property so conveyed to said Board shall be used in connection therewith.

(*Id.* at Ex. 1). Thus, as a result of the 1951 litigation, the School Board's use of the Hungerford Property and Hungerford School was "restricted to the operation of a public school for Black children" (*Id.* at ¶ 40)("1951 Court-Imposed Use Restriction"). Notably, certain other property (related to the Hungerford School's religious chapel) was not subject to the conveyance to the School Board, and was instead reserved to the Public Charitable Trust and Property and Assets of the Robert Hungerford Chapel Trust ("Hungerford Chapel Trust").

In 1974, the School Board sought to sell a portion of the Hungerford Property, resulting in more litigation. This time, the successor trustees of the Hungerford Chapel Trust opposed the sale (Am. Compl. ¶ 62). The circuit court found that, as a result of the 1951 conveyance, the Hungerford Chapel Trust had no title or interest in the Hungerford Property (*Id.* at ¶ 63), and authorized the sale of that portion of the Hungerford Property

and lifted the 1951 Court-Imposed Use Restriction with respect to that portion of that Hungerford Property.

In 2010, Eatonville and the School Board endeavored to cooperate to remove the 1951 Court-Imposed Use Restriction from the remainder of the Hungerford Property with the goal of increasing Eatonville's ad valorem tax base for the ultimate benefit of Eatonville's citizens. In furtherance thereof, Eatonville sued the School Board and the Hungerford Chapel Trust ("2011 Allen Litigation"). In the 2011 Allen Litigation, Eatonville and the Hungerford Chapel Trust executed a joint stipulation for the release of the 1951 Court-Imposed Use Restriction (to which the School Board was not a party), and then a subsequent joint stipulation (to which the School Board was a party) which was approved by the circuit court. The case was dismissed, and the parties subsequently entered into a further settlement resulting in the payment of $1,000,000 by the School Board to the Hungerford Chapel Trust in exchange for the release of the 1951 Court-Imposed Use Restriction (Am. Compl. ¶ 103). A portion of the Hungerford Property was also sold to a non-party. In 2022, the Hungerford Chapel Trust recorded its Release of Hungerford Trust Restrictions (*Id.* at Ex. 2), which provided that:

> for the avoidance of doubt, this Release of the Hungerford Trust Restrictions is only intended to (and does) release and extinguish the Hungerford Trust Restrictions from the Property

(*Id.*).

As part of the above efforts to remove the Court-Imposed Use Restriction, and since then, the School Board has been engaged in efforts to sell the Hungerford Property. However, it is specifically alleged that:

> The School Board and Eatonville entered into various sales contracts related to the Hungerford Property…

> The 2019 contract … was terminated by the School Board on June 18, 2021, and is no longer in effect.
>
> In February 2020, the School Board put out a request for proposal (RFP) to develop the Hungerford Property.
>
> The School Board did not receive responsive submissions until the RFP was re-issued in June 2021.
>
> In December 2021, Falcone & Associates and the School Board entered into a purchase and sale agreement for the property…
>
> At the February 7 Eatonville Town Council meeting, the Council voted to reject the comprehensive plan amendments and zoning changes sought by the developer.
>
> On March 13, 2023, the developer notified the School Board that it wished to terminate the sales contract.
>
> [T]here is no longer a sales contract in place for the Hungerford Property.
>
> The School Board has indicated, through a spokesperson, that it has decided not to accept new bids for the property at this time and will consider its options moving forward.
>
> The School Board has not taken any official action at a public meeting related to the Hungerford Property since the termination of the sales contract in March 2023.

(Am. Compl. ¶¶ 122, 126, 127, 128, 129, 136, 137, 138, 140, 141).

Against that factual background and based on the allegations in the Amended Complaint, the School Board moved to dismiss Plaintiffs' action on the ground that, inter alia, "there is no present, actual controversy because the School Board is taking no action in regard to the Hungerford Property" (Def.'s Mot. Dismiss at § B. 4.).[1] The Court denied the motion in full, specifically finding that "[g]iven the history of attempts to sell the property, the termination of the most recent transaction does not affirmatively and

[1]Defendant School Board of Orange County, Florida's Motion to Dismiss Complaint with Prejudice filed on August 14, 2023 ("Defendant's Motion to Dismiss").

conclusively demonstrate that Plaintiffs cannot establish a present, actual controversy as a matter of law…The denial of the Motion is without prejudice to the School Board asserting the lack of a present, actual controversy at a later stage of the proceedings."

ANALYSIS AND CONCLUSION

The Court's prior order denying the School Board's motion to dismiss is an interlocutory order. *GEICO Gen. Ins. Co. v. Harvey*, 109 So. 3d 236, 237 (Fla. 4th DCA 2013). An interlocutory order is "subject to judges' reconsideration sua sponte, even to the point of withdrawing completely or reversing the initial ruling." *Campos v. Campos*, 230 So. 3d 553, 556 (Fla. 1st DCA 2017) *citing Silvestrone v. Edell*, 721 So. 2d 1173, 1175 (Fla. 1998)(recognizing inherent authority of trial judges to reconsider interlocutory orders); *LoBello v. State Farm Fla. Ins. Co.*, 152 So. 3d 595, 560 (Fla. 2d DCA 2014) *quoting Oliver v. Stone*, 940 So. 2d 526, 529 (Fla. 2d DCA 2006)(well established that a trial court may reconsider and modify interlocutory orders at any time until final judgment is entered). After a case is assigned to a different judge, a successor judge also has the inherent authority to reconsider its predecessor's prior interlocutory orders. *Id. See also Whitlock v. Drazinic*, 622 So. 2d 142 (Fla. 5th DCA)(en banc), *review denied mem.*, 630 So. 2d 1103 (Fla. 1993)(trial judge has inherent authority to reconsider interlocutory rulings, and a successor judge has the same authority to vacate or vary an interlocutory order as the original judge).

Here, in Defendant's Motion to Dismiss, the School Board properly raised whether there was a bona fide, present need for the declaratory relief sought by Plaintiffs. Chapter 86 authorizes trial courts to render declaratory judgments on the existence, or non-existence, of any immunity, power, privilege, or right. *See Apthorp v. Detzner*, 162 So. 3d

236, 240 (Fla. 1st DCA 2015)(no justiciable controversy regarding constitutionality of statute authorizing public officials' use of blind trusts where no public officials were alleged to have used them, despite "substantial interest in this case from the bench and bar") *citing* § 86.011, Fla. Stat.[2] However, it is well settled that Florida courts will not render, in the form of a declaratory judgment, what amounts to an advisory opinion at the instance of parties who show merely the possibility of legal injury on the basis of a hypothetical state of facts which have not arisen and are only contingent, uncertain, and rest in the future. *Id. citing Santa Rosa County v. Admin. Comm'n, Div. of Admin. Hearings*, 661 So. 2d 1190, 1193 (Fla. 1995)(quotations omitted). Accordingly, it was incumbent on Plaintiffs to plead allegations which, taken as true and in the light most favorable to Plaintiffs, demonstrate that:

> there is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that some immunity,

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[2] The *Apthorp* court elaborated:

> [w]e have declined to exercise jurisdiction in numerous cases seeking declaratory relief where there was a lack of a justiciable controversy. *See, e.g., 1108 Ariola, LLC v. Jones*, 71 So. 3d 892 (Fla. 1st DCA 2011)(holding that the trial court inappropriately granted declaratory relief because the leaseholders did not plead any facts establishing a bona fide, present need for such a declaration); *Fla. Dep't of Ins. v. Guarantee Trust Life Ins. Co.*, 812 So. 2d 459 (Fla. 1st DCA 2002)(determining that the trial court's order declaring a statute unconstitutional was an impermissible advisory opinion because the plaintiffs merely alleged that there was a possibility at some point in the future that the application of the statute would result in the denial of their requests for a rate change); *State v. Fla. Consumer Action Network*, 830 So. 2d 148 (Fla. 1st DCA 2002)(reversing final summary judgment granting declaratory relief because all of the allegations within the complaint were grounded on speculation and hypothesis); *Fla. Soc'y of Ophthalmology v. State*, 532 So. 2d 1278 (Fla. 1st DCA 1988)(affirming the dismissal of a complaint seeking a declaratory judgment because the complaint failed to allege a justiciable controversy between the parties arising from application of the challenged act); *Montgomery v. Dep't of Health & Rehab. Servs.*, 468 So. 2d 1014, 1016–17 (Fla. 1st DCA 1985)(affirming the dismissal of a rule challenge stating, "It is the function of a judicial tribunal to decide actual controversies by a judgment which can be carried into effect, and not to give opinions on moot questions, or to declare principles or rules of law which cannot affect the matter in issue").

Apthorp v. Detzner, 162 So. 3d 236, 241 (Fla. 1st DCA 2015).

> power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; that the antagonistic and adverse interest are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity. *These elements are necessary in order to maintain the status of the proceeding as being judicial in nature and therefore within the constitutional powers of the courts.*

Id. citing Martinez v. Scanlan, 582 So. 2d 1167, 1170 (Fla. 1991)(emphasis in original) *quoting May v. Holley*, 59 So. 2d 636, 639 (Fla. 1952).

On consideration of the foregoing allegations of the Amended Complaint, the Court finds that Plaintiffs fail to demonstrate the existence of a justiciable controversy so as to provide this Court with jurisdiction to grant declaratory relief. While contracts for the purchase and sale of the Hungerford Property existed at one time, it is undisputed, based on Plaintiffs' own pleading, that there is no pending contract for the sale of the property. Eatonville has rejected the zoning changes required to bring a prior contract to close. The School Board is not actively accepting bids for the purchase and sale of the property. It has taken no public action related to the Hungerford Property since the termination of the most recent contract. The sole allegation lending support to the notion that there is a present, actual need for declaratory relief is Plaintiffs' allegation that "the School Board's statements and lack of action ... indicate that a controversy still remains as to the procedures the School Board is required to follow in disposing of the land and whether it has a right to convey the land without the education restrictions" (Am. Compl. ¶ 144). However, that allegation is conclusory in nature and insufficient, in and of itself, to demonstrate that there is a justiciable controversy for which declaratory relief is available in this case. It is accordingly

ORDERED and ADJUDGED that:

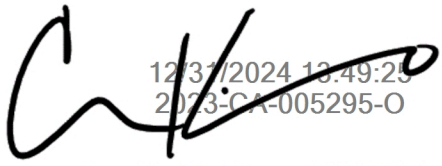
1. The Court sua sponte reconsiders its predecessor's Order Denying Defendant's Motion to Dismiss Complaint with Prejudice rendered November 3, 2023 to the extent the order denied Defendant's motion to dismiss on the ground that the Amended Complaint fails to sufficiently plead allegations demonstrating that there is a present, actual controversy for which declaratory relief is available, and the order is VACATED to that extent.

2. Defendant's Motion to Dismiss is GRANTED for Plaintiffs' failure to sufficiently plead allegations demonstrating that there is a present, actual controversy providing this Court with jurisdiction to grant relief pursuant to Chapter 86, Florida Statutes.

3. The Amended Complaint is DISMISSED with prejudice.

4. Defendant's Motion for Judgment on the Pleadings or, in the Alternative, Summary Judgment is DENIED as moot.

DONE and ORDERED.



eSigned by Chad Alvaro 12/31/2024 13:49:25 6c0uk2RZ

Chad K. Alvaro
CIRCUIT JUDGE

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