

STATE OF MISSOURI)
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CITY OF ST. LOUIS)

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

ORDER AND JUDGMENT

The Court has before it the Proposed Intervenors' Motion for Leave to Intervene. The Court now rules as follows.

Plaintiff Regional Convention and Sports Complex Authority ("RSA") brought this action to declare invalid City Ordinance 66509, codified as Chapter 3.91 of the Revised Code of the City of St. Louis ("the Ordinance"). At issue is the validity of the Ordinance, which requires a fiscal note, public hearing and public vote before the City may provide financial assistance for a new professional sports facility.

Proposed Intervenors Jeanette Mott Oxford, Earl Garrett, and William White are residents, voters and taxpayers of the City of St. Louis. Additionally, Proposed Intervenor Oxford is one of the original signatories to the petition to place the Ordinance on the City ballot in 2002. Proposed Intervenors seek to intervene "to protect their rights and the rights of all voters and taxpayers who pay taxes to the City of St. Louis" to exercise their right to participate in such a public hearing and public vote.

Proposed Intervenors acknowledge that the sole issue in this action is the validity of the Ordinance but assert they have a right to intervene "as voters and taxpayers."

Under Rule 52.12(a) of the Missouri Rules of Civil Procedure, an individual has a right to intervene in a lawsuit if a statute confers an unconditional right to intervene, or the individual "claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

Proposed Intervenors assert that they have an unconditional right to intervene pursuant to §527.110 RSMo, which provides in pertinent part: "When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings." Section 527.110 does not, however, grant an unconditional right to intervene in an action for declaratory judgment. See Alexian Bros. Sherbrooke Vill. v. St. Louis Cnty., 884 S.W.2d 727, 729 (Mo.App. E.D. 1994). Proposed Intervenors have not identified any

other statute in support of their claim to an unconditional right to intervene. Rule 52.12(a)(1), therefore, is not applicable.

"In the absence of a statute conferring an unconditional right of intervention," a person seeking to intervene as of right must establish the following three elements: "(1) an interest relating to the property or transaction which is the subject of the action; (2) that the applicant's ability to protect the interest is impaired or impeded; and (3) that the existing parties are inadequately representing the applicant's interest." See Allred v. Carnahan, 372 S.W.3d 477, 481 (Mo.App. W.D. 2012).

It is well-settled that "a motion [to intervene under Rule 52.12(a)(2)] does not prove itself." Mack v. Mack, 349 S.W.3d 475, 477 (Mo.App. S.D. 2011). "The proposed intervenor carries the burden of establishing the presence of all three elements required for intervention as a matter of right;" i.e., a motion to intervene as of right under Rule 52.12(a)(2) may properly be denied if even one of the three elements is not established. Allred, 372 S.W.3d at 481.

Proposed Intervenors cannot establish any of the required three elements for intervention as a matter of right.

To intervene as a matter of right, a movant's interest in the action must be "a direct and immediate claim to, and have its

origin in, the demand made or the proceeds sought or prayed by one of the parties to the original action." See In re Clarkson Kehrs Mill Transp. Dev. Dist., 308 S.W.3d 748, 753-54 (Mo.App. E.D. 2010). "[T]he interest must be so immediate and direct that the would-be intervenor will either gain or lose by the direct operation of the judgment that may be rendered therein." Id. It does not include a consequential, remote or conjectural possibility of being affected as a result of the action. Id.

Status as a registered voter and signatory to a referendum petition is not an interest that constitutes the direct and immediate claim required to intervene as a matter of right in a pending action. See Myers v. City of Springfield, 445 S.W.3d 608, 614 (Mo.App. S.D. 2014). Likewise, Proposed Intervenors' interest as taxpayers is not an interest that constitutes a direct and immediate claim to the subject of a pending action that requires intervention. See In re Clarkson Kehrs Mill, 308 S.W.3d at 754.

Proposed Intervenors have no interest in the subject matter of this action, the sole purpose of which is to determine the validity of the Ordinance, other than a "generalized concern for the promotion of laws." See Myers, 445 S.W.3d at 614. Proposed Intervenors have not pled a "contractual or any type of significant right that distinguishes them" from any other member

of the community. Id. Moreover, Proposed Intervenor's interest in ensuring enforcement of the Ordinance, as distinguished from determining the validity of the Ordinance, is not a "direct and immediate claim" on the subject matter of this action.¹ See Prentzler v. Carnahan, 366 S.W.3d 557, 564 (Mo.App. W.D. 2012).

The second element of intervention requires a showing that, absent intervention, the proposed intervenor's "ability to protect his interest will be impaired or impeded as a practical matter" by the disposition of the action. See Allred, 372 S.W.3d at 485. Proposed Intervenor's alleged interest in ensuring a public hearing and public vote before financial assistance is provided for a new professional sports facility is not at issue, and therefore cannot be impeded, in this action, which is concerned solely with determining the validity of the Ordinance. Proposed Intervenor has failed to establish how the outcome of this action will directly affect their legal rights as supporters of the Ordinance and, therefore, have failed to meet their burden under Rule 52.12(a)(2) to prove that they are "so situated that the disposition of the action may as a practical matter impair or

¹ This Court makes no judgment as to whether Proposed Intervenor would have standing to seek the enforcement of the Ordinance in a separate lawsuit. See Craighead v. City of Jefferson, 898 S.W.2d 543, 546 (Mo. banc 1995).

impede their ability to protect their interest." See Prentzler, 366 S.W.3d at 562; Kinney v. Schneider Nat. Carriers, Inc., 200 S.W.3d 607, 614 (Mo.App. W.D. 2006).

Proposed Intervenors cannot show that the existing parties are inadequately representing their interests. Under the City's Charter, the City's law department represents the City in all cases where the validity of an ordinance is challenged. Here, the City Counselor has filed an answer, a counterclaim, and a motion for judgment on the pleadings, all of which argue that the Ordinance is valid. Proposed Intervenors admit that "the City Counselor has submitted a well-written memo, persuasive on the question of validity of the Ordinance."

"When two parties are advocating the same position and one is already a party to the underlying suit, leave to intervene is not required." See Ring v. Metro. St. Louis Sewer Dist., 41 S.W.3d 487, 492 (Mo.App. E.D. 2000). "One party is adequate to represent both parties' interests." Id.

The City is not only defending, but also asserting in its Counterclaim, that the Ordinance is valid. Therefore, the interest of the Proposed Intervenors is identical to the interest of the City with regard to the validity of the Ordinance, which,

as Proposed Intervenors admit, is the only issue before the Court in this action.

Through requests for public information through the Sunshine Act,² Proposed Intervenors have obtained several emails from the Office of the Mayor regarding the New Stadium project. Proposed Intervenors argue that one email in particular, a preliminary draft of a statement that was later issued by the Mayor, is evidence that the City's interests are adverse to the Proposed Intervenors' interests with regard to the validity of the Ordinance. The draft states:

As I have said many times, if the new stadium requires a general tax or fee increase, other than on the game day experience, it will require a vote of the people—whatever the law says. Otherwise, we will follow the law.

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The City's participation would make up less than 15% of the project costs. It would not happen without \$450 million in private investment, and a lease from an NFL franchise. It would not require a tax increase.

The press release ultimately issued by the Mayor did not contain the statement that the City's participation would not require a tax increase or the contention that a vote would only be required if there was a tax increase. The final press release stated in pertinent part: "The St. Louis Regional Convention and 2 Section 610.010 et seq., RSMo.

Sports Complex Authority (RSA) today filed a lawsuit against the City of St. Louis to challenge an ordinance requiring a vote of the people before the City can participate in the construction of a new stadium built by the RSA on the north riverfront. City Counselor Winston Calvert will vigorously defend the validity of our ordinance. Whatever the outcome, we will follow the law."

The Court does not believe that the draft statement from the Office of the Mayor quoted by Proposed Intervenors shows that the City cannot or will not adequately represent the Proposed Intervenors' interests with regard to the validity of the Ordinance. Moreover, the Court finds that the City Counselor has done nothing but vigorously defend the validity of the Ordinance.

The Court finds that Proposed Intervenors have not met their burden of showing an interest relating to the property or transaction which is the subject of this action, that, absent intervention, the ability to protect their interest is impaired or impeded, or that the City, as an existing party, is not adequately representing their interest in this action. Proposed Intervenors, therefore, do not have a right to intervene under Rule 52.12(a).

Proposed Intervenors alternatively move for permissive intervention under Rule 52.12(b) of the Missouri Rules of Civil

Procedure, which allows a court to permit an individual to intervene if either a statute confers a conditional right to intervene, or an applicant's claim or defense and the main action have a question of law or fact in common. Whether to permit intervention under Rule 52.12(b) is solely within the Court's discretion. Rule 52.12(b); Johnson v. State, 366 S.W.3d 11, 21 (Mo. banc 2012).

Proposed Intervenors have not identified a conditional right to intervene conferred by statute. Nonetheless, Proposed Intervenors argue that they should be permitted to intervene in order to obtain records to bring to public light the City's and RSA's plans for financing a new professional sports facility.

Both the City and the RSA have submitted motions for judgment on the pleadings, which, when ruled upon, will fully resolve this action. Additionally, the discovery sought by Proposed Intervenors is not relevant to the issue before the Court in this action, which, as Proposed Intervenors admit, is only the validity of the Ordinance.

Further, Proposed Intervenors are not entitled to permissive intervention if they simply will reassert the same defenses as the parties; i.e., intervention can be appropriate when the intervenors can show an "interest unique to themselves." Johnson,

366 S.W.3d at 21. The Court finds that Proposed Intervenors have no unique interests that cannot be, and are not, adequately represented by the City.

Finally, "no public policy is served by allowing intervention premised on a taxpayer's mere interest in the subject matter of a suit." See Comm. for Educ. Equal. v. State, 294 S.W.3d 477, 487 (Mo. banc 2009). Permitting Proposed Intervenors to intervene as taxpayers will open the floodgates to allow any City taxpayer to intervene in any action involving the validity of any City ordinance. Id.

The Court finds that Proposed Intervenors have no interest that would permit intervention in this action and, therefore, denies Proposed Intervenors' request pursuant to Rule 52.12(b) to intervene in this action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Proposed Intervenors' Motion for Leave to Intervene shall be, and hereby is, DENIED.

SO ORDERED:

THOMAS J. FRAWLEY, Judge

Dated: _____