

NOT DESIGNATED FOR PUBLICATION

**STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT**

NUMBER 2006 CA 0851

ARCHIE PERRY

VERSUS

CITY OF BOGALUSA AND JERRY BAILEY

Judgment Rendered: FEB 14 2007

Appealed from the Twenty-second Judicial District Court
in and for the Parish of Washington
State of Louisiana
Docket Number 92,373

Honorable Donald M. Fendlason

Archie Perry
Bogalusa, LA

Counsel for Plaintiff/Appellant
Archie Perry

Christopher Moody
Hammond, LA

Counsel for Defendants/Appellees
City of Bogalusa and Jerry Bailey

BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

Downing, J. concurs.

HUGHES, J.

Plaintiff appeals a trial court judgment sustaining the defendant's peremptory exception pleading the objection of no right of action. For the following reasons, we reverse and remand.

FACTUAL AND PROCEDURAL HISTORY

The City of Bogalusa (City) adopted City Ordinance 1872 in July, 2003. It provided that "[a]ny household where the total amount of income is \$7,500 or less, such household shall receive an exemption in the amount of fifty percent (50%) of the current monthly user fee for sewer and water." In August 2003, Archie Perry submitted an application to receive the exemption at municipal address 630 East 9th Street, Bogalusa, LA. The City made no response following Mr. Perry's application and he commenced paying the reduced amount in September 2003.

On May 19, 2004, the City terminated Mr. Perry's water service at 630 East 9th Street. Subsequent to the termination, Mr. Perry received a letter from Jerry Bailey, Director of Administration for the City. The letter, dated May 26, 2004, advised Mr. Perry that his application for the reduction had been denied because he had not proven ownership of the residence. Therefore, it informed him that his account had a past due balance that would have to be paid before his water service could be reinstated.

Thereafter, Mr. Perry filed suit claiming that the City and Mr. Bailey had wrongfully terminated his water service because his account was current with no outstanding balance due under the provisions of City Ordinance 1872. He further alleged that the defendants had violated his right to due process by failing to give him proper notice of their intent to terminate.

The defendants responded by filing a peremptory exception pleading the objection of no right of action.¹ Therein, they claimed that Mr. Perry was not entitled to receive the exemption provided for by City Ordinance 1872 because he was not the “record owner” of the property. According to the defendants, the pertinent exemption is only available to “the record owner” of the property because, pursuant to City of Bogalusa Ordinance, Art. IV, § 19-156, “[a]ll charges for water ...shall be chargeable to the property owner and not to the tenant, and payments shall be made by the property owner.” Because Mr. Perry was not listed as the record owner of the residence, they argue, he was not entitled to the exemption. Therefore, because Mr. Perry only paid the reduced amount, his account accumulated a past due balance ultimately leading the City to terminate his water service for nonpayment.

At the hearing, Mr. Perry argued that the defendants did not notify him that his application had been denied until after his water service had been terminated. He further stressed that the ordinance creating the exemption employed the term “household” not “recorded property owner.” Lastly, he claimed that the record owner of the property was his mother, but that she is now deceased. He maintained that he and his siblings now own the property. After taking the matter under advisement, the trial court ultimately sustained the defendants’ peremptory exception pleading the objection of no right of action. From this judgment, Mr. Perry now appeals.

LAW AND DISCUSSION

The narrow issue before us is whether Mr. Perry has a right of action. Generally, an action can be brought only by a person having a real and actual interest that he asserts. La. C.C.P. art. 681. The peremptory

¹ Therein, the defendants also pleaded the objection of no cause of action. However, the trial court subsequently rendered that objection moot and it is not at issue in this appeal.

exception pleading the objection of no right of action assumes a viable cause of action and challenges whether the plaintiff has a legal interest in judicially enforcing that cause or remedy. **Centofanti v. Diamond Offshore Drilling, Inc.**, 2001-1691, p. 4 (La.App. 1 Cir. 5/22/02), 819 So.2d 1101, 1103. Whether a person possesses a right of action depends upon whether the particular plaintiff belongs to the class in whose favor the law extends a remedy. **Northshore Capital Enterprises v. St. Tammany Hospital District # 2**, 2001-1606, p. 4 (La.App. 1 Cir. 6/21/02), 822 So.2d 109, 112, writ denied, 2002-2023 (La. 11/1/02), 828 So.2d 584. Whether a plaintiff has a right of action is a question of law. Therefore, it is reviewed *de novo* on appeal. To prevail, the defendant must show that the plaintiff does not possess an interest in the subject matter of the suit. **Jackson v. St. Helena Parish Sheriff's Department**, 2001-2792, p. 2 (La.App. 1 Cir. 1/8/02), 835 So.2d 842, 844.

Mr. Perry has filed suit essentially claiming that he is entitled to the exemption provided for by City Ordinance 1872. The defendants claim that he has no right to the exemption because he is not the “record owner” of the property. As an initial matter, we note that City Ordinance 1872 does not use the term “record owner” or even “owner.” It only employs the term “household.” Arguably, the ordinance could apply to those other than the record owner, despite the defendants’ assertion to the contrary.

Moreover, we note that Art. IV, § 19-156, relied upon by the defendants to support their contention that only a “record owner” has an interest in the exemption, does not use the specific term, “record owner.” It simply uses the term “owner.” Mr. Perry’s mother is the recorded owner of

the property; however, she is deceased.² Since his mother's death, Mr. Perry claims that he now owns the residence, albeit in indivision with his siblings. Although a judgment of possession has not been rendered recognizing Mr. Perry's ownership, we note that succession occurs at the death of a person; immediately at the death of the decedent, universal successors acquire ownership of the estate and particular successors acquire ownership of the things bequeathed to them. La. C.C. arts. 934 and 935. Therefore, because Mr. Perry potentially falls within the ambit of the exemption afforded by City Ordinance 1872, we find that he does possess a right of action for wrongful termination of his water service.

Mr. Perry has likewise demonstrated a right of an action regarding the defendants' denial of his right to due process. To terminate a customer's water service is a serious matter that may only be done in a manner totally consistent with stringent due process requirements. See Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 11, 98 S.Ct. 1554, 1561, 56 L.Ed.2d 30 (1978). Considering his alleged ownership interest, his maintenance of a household at the pertinent address, and his payments made to the City for water service, Mr. Perry had a right to due process before his water service was terminated. An elementary and fundamental requirement of due process is notice reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections. **Craft**, 436 U.S. at 13, 98 S.Ct. at 1562. Mr. Perry alleges that he did not receive the appropriate notice; accordingly, Mr. Perry has a right of action regarding this alleged violation of his right to due process.

² Obviously, as a deceased individual, Mr. Perry's mother cannot be a customer nor can she be liable for any amounts owed for water service.

CONCLUSION

For all of the foregoing reasons, the judgment of the trial court is reversed and this matter is remanded for further proceedings. Appeal costs in the amount of \$517.00 are assessed to the City of Bogalusa and Jerry Bailey.

REVERSED AND REMANDED.