

IN THE COURT OF COMMON PLEAS OF
ERIE COUNTY, PENNSYLVANIA

KEEP OUR LIBRARY and CHRIS
SZUMIGALA,

Plaintiffs

vs.

No. 11583 - 2024

ERIE COUNTY; ERIE COUNTY
COUNCIL; BRENTON DAVIS, Erie
County Executive; and
GANNON UNIVERSITY,

Defendants

OPINION AND ORDER

Arner, S.J.

May 5, 2025

Defendant Gannon University and Defendants Erie County and Brenton D. Davis, Erie County Executive have each filed a Motion for Partial Summary Judgment seeking to dismiss Count One of the Plaintiffs' First Amended Complaint for Declaratory Judgment on "Violation of Dedicated or Donated Property Act." The parties have filed briefs, and the court heard the oral arguments of the attorneys on April 30, 2025.

The Defendants argue the Plaintiffs have not stated a valid cause of action for the following two reasons. First, the October 31, 2023 Lease between the County of Erie and Gannon University does not violate the Pennsylvania Dedicated or Donated Property Act because the Gannon University Center for Lake Erie Education and Research is an educational use and open to the public consistent with the purposes for which the Blasco Memorial Library was originally dedicated and/or donated. Second,

because the Lease and/or the Center for Lake Erie Education and Research is a permissible use under the conditions of the Library property's donation/dedication, the County of Erie was not required to first obtain an Order of Court.

The Plaintiffs and the Defendant Erie County Council oppose the Motions for the following reasons. First, there remains a genuine issue of material fact as to whether the October 31, 2023 Lease violates the Dedicated and Donated Property Act that can only be resolved by continuing the normal course of discovery. Second, because further discovery is required to resolve genuine issues of material fact, the court cannot make a legal determination as to whether the Lease and/or the Center for Lake Erie Education and Research is a permissible use under conditions of the Library property's donation/dedication, or whether Erie County was required to first obtain an Order of Court.

The issue this court must decide is whether the Defendants are entitled to partial summary judgment pursuant to Pennsylvania Rule of Civil Procedure 1035.2 because there is no issue of any material fact that Erie County has not violated the Pennsylvania Dedicated or Donated Property Act.

Section 3382 of the Act, 53 Pa.S.A. § 3382, provides:

All lands or buildings heretofore or hereafter donated to a political subdivision for use as a public facility, or dedicated to the public use or offered for dedication to such use, where no formal record appears as to acceptance by the political division, as a public facility and situate within the bounds of a political subdivision, regardless of whether such dedication occurred before or after the creation or incorporation of the political subdivision, shall be deemed to be held by such political subdivision, as trustee, for the benefit of the public with full legal title in the said trustee.

Section 3383 provides

All such lands and buildings held by a political subdivision, as trustee, shall be used for the purpose or purposes for which they were originally dedicated or donated, except insofar as modified by court order pursuant to this act.

The Defendants argue the Plaintiffs have not stated a valid cause of action in Count One because the record shows that Erie County did not violate its duty as trustee since Gannon will use the lands and buildings for the purpose for which they were originally dedicated or donated.

Pennsylvania appellate courts have addressed the question of when a property is dedicated or donated. In *In re Borough of Downingtown*, 161 A.3d 844, 856 (Pa. 2017), the Court stated:

Noting that our Court in *Erie Golf Course* failed to define what constitutes a 'dedication to public use' under Section 3382, the orphans' court utilized a definition offered by the Commonwealth Court. See *White v. Twp. of Upper St. Clair*, 799 A.2d 188, 193 (Pa. Cmwlth. 2002) ('Dedication may be found in a single act, such as the giving of a deed or the recording of a plan, or it may be found from a series of acts, all consistent with and pointing to the intention to dedicate.'). Accordingly, to determine if the park had been dedicated to public use, the court considered the Borough's stated reasons for acquiring the land to create the park—to expand the available land in the Borough which could be utilized for recreation activities, historical, and conservation purposes—as well as the Borough's lengthy history of maintaining and making improvements to the park, and the continuous recreational and other public uses of the park by the community. Although the court noted that certain areas of the park were used more heavily by patrons—such as the walking trail, the areas around the Victims of Violence Memorial, the ponds, and the parking areas—the court nonetheless concluded that the public had always been given access to the entire park property and used those other areas from time to time. Consequently, the court concluded that the park property, as a whole, was dedicated to public use.

In the present case, the subject Library property was donated by the Port Authority to the County by Deed of May 4, 1994, which directs its use as a "Public

Library," "open to and operating for the benefit of the public..." The property was also donated by Pennsylvania Electric Company to the County by Deed of May 4, 1994, which directs, "the Library Parcel and the improvements erected thereon may be used only as a public library or for substantially similar nonprofit, public, cultural or educational uses which are compatible with the uses of, and will not cause a reduction in value of, the Project Site,..." The Library property was further dedicated by a series of acts including a dedication ceremony and use by public as a public library for about 30 years.

Rule 1035.2 provides:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Regarding Rule 1035.2(1), the Pennsylvania Supreme Court in *Sevast v. Kakouras*, 915

A.2d 1147, 1152–53 (Pa. 2007) stated:

The Pennsylvania Rules of Civil Procedure governing summary judgment instruct, in relevant part, that the court shall enter judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action. Pa.R.C.P. No.1035.2(1). In considering the merits of a motion for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Jones v. SEPTA*, 565 Pa. 211, 772 A.2d 435, 438 (2001). Finally, the court may grant summary judgment only when the right to such a judgment is clear and free from doubt. *Marks v. Tasman*, 527 Pa. 132, 589 A.2d 205, 206 (1991).

Rule of Civil Procedure 1035.1 defines "record" as "(1) pleadings, (2) depositions, answers to interrogatories, admissions and affidavits, and (3) reports signed by an expert witness that would, if filed, comply with Rule 4003.5(a)(1), whether or not the reports have been produced in response to interrogatories." The "record" includes evidence that has been attached to a brief that was filed of record with the prothonotary. *L.T. by & Through Copenhagen v. Kubota Mfg. of Am. Corp.*, 332 A.3d 47, 55–57 (Pa. Super. 2025).

In viewing the record, this court must determine whether "there is no genuine issue of any material fact as to a necessary element of the cause of action." In *Strine v. Com.*, 894 A.2d 733, 738 (Pa. 2006), the Supreme Court stated: "... a factual issue is considered 'material' for summary judgment purposes if its resolution could affect the outcome of the case under the governing law."

The record in this case consists of the First Amended Complaint, the Answers and New Matter of Defendant Gannon University, Defendants Erie County and Brenton Davis, and Defendant Erie County Council, and the Plaintiffs' Reply to each New Matter, the Motions for Partial Summary Judgment, the Responses to the Motions, and the attorneys' Briefs.

Defendant Gannon's New Matter contains a description of the proposed project on pages 18 and 19, at paragraphs 82, 83, and 84. In their Reply to New Matter, paragraphs 88, 89, and 90, the Plaintiffs have denied each averment. The Plaintiffs have referenced paragraphs 88, 89, and 90 instead of 82, 83, and 84 because Defendant Gannon misnumbered those paragraphs in New Matter; they should have

been numbered 88, 89, and 90. The New Matter of Defendants Erie County and Brenton Davis contains the same description in the same misnumbered paragraphs as Defendant Gannon's and the Plaintiffs have denied those averments in the same manner as they did Defendant Gannon's.

Defendant Gannon has also described the proposed project in its Motion for Partial Summary Judgment. Defendants Erie County and Brenton Davis have incorporated those descriptions by reference in their Motion. In paragraph 15 of Defendant Gannon's Motion, Gannon refers to a description of the project in the document which is attached to the Motion as Exhibit A; its Answers to Plaintiffs' Interrogatories 7 and 8. In paragraph 16 of its Motion, Defendant Gannon refers to the two images in Exhibit B, showing plans available on its website. In paragraph 17, Gannon mentions Exhibits A and B. In paragraph 19, Defendant Gannon cites County Council's Answer and Response to Plaintiffs' Interrogatories paragraph 13, attached as Exhibit C. The Plaintiffs, in their Responses in Opposition to paragraphs 15, 16, 17, and 19 of the Motions, have denied the Defendants' allegations on the bases that discovery relating to the Dedicated or Donated Property Act remains ongoing and that they are with information sufficient to form a belief as to the allegations.

The record does not contain any other discovery responses or transcripts of depositions.

The only other mention of the proposed project that is relevant to disposition of the Motions for Partial Summary Judgment is in the Plaintiffs' Brief in Opposition to the Motions. On Page 8, the Plaintiffs refer to the Affidavit of Mary Rennie, attached as

Exhibit 1, and on page 17 they cite to pages of Gannon's website, Exhibit 6, to support their argument for dismissal of the Motions.

Upon consideration of the record, this court finds that the Plaintiffs have denied all the allegations of facts the Defendants have made in support of their position that Erie County did not violate its duty as trustee since Defendant Gannon will use the lands and buildings for the purpose for which they were originally dedicated or donated. The court cannot conclude there is no genuine issue of any material fact as to Count One of the Amended Complaint which could be established by additional discovery or expert report.

The following are some possible remaining issues of material fact. Is a "public library" necessarily occupied and operated by a public entity? Is Defendant Gannon's proposed use a "public use" which is substantially similar to that of a public library or is it a private use, or both? Is Defendant Gannon's proposed use an "educational use" which is substantially similar to use as a public library? Is research conducted by Gannon "substantially similar" to use as a public library?

The court has also considered Rule 1035.2(2), which authorizes a party to move for summary judgment,

if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Here, there has been ongoing discovery since the Defendants filed their Motions and apparently, there will be additional discovery. However, even if discovery relevant to the Motions has been completed, the court cannot grant the Motions pursuant to Rule

1035.2(2) because the Plaintiffs have produced the Affidavit of Mary Rennie, which is evidence essential to the cause of action in Count One which would require the issues to be submitted to a jury.

Hence, the following Order:

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ORDER OF COURT

AND NOW, May 5, 2025, it is **ORDERED** that the Motions for Partial Summary Judgment of Defendants Gannon University and Erie County and Brenton D. Davis, Erie County Executive are denied.

BY THE COURT:



James G. Arner, S.J.

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