In The

Supreme Court of Virginia

RECORD NO. 091299

CHAD CRAWFORD ROBERSON,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

BRIEF OF APPELLEE
CITY OF VIRGINIA BEACH

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STATEMENT OF THE CASE

The Circuit Court for the City of Virginia Beach convicted Chad Crawford Roberson ("Roberson") of driving while under the influence 1st offense on November 1, 2007. Roberson appealed his conviction to the Court of Appeals which dismissed the appeal for lack of jurisdiction. Roberson now appeals the dismissal and conviction to this Court. This Court has directed the City of Virginia Beach ("the City") to file a brief stating whether the City is a party to this appeal. For the following reasons, the City submits that it is a party to this appeal and the Court of Appeals appropriately dismissed the appeal for Roberson's failure to name an indispensible party.

QUESTION PRESENTED

Is the City of Virginia Beach a necessary party to Roberson's appeal of his conviction in the Circuit Court of Virginia Beach to the Court of Appeals of Virginia?

FACTS

On May 5, 2007, Officer Sanders ("Sanders") of the Virginia Beach Police Department arrested Roberson for violating "Section 21-1/18.2-266," or driving while intoxicated. (Appx. pgs. 1-4). On the warrant, Sanders checked the box charging Roberson with violating City Ordinance Section

21-1 as opposed to the state statute, Va. Code § 18.2-266. (Appx. pg. 1). The General District Court convicted Roberson of driving while under the influence, and pursuant to Code § 16.1-136, Roberson appealed his conviction to the Circuit Court for the City of Virginia Beach. (Appx. pgs. 3-4).

On November 5, 2007 the Circuit Court entered an order convicting Roberson of driving while under the influence. (Appx. pg. 7). The trial court styled the final order "CITY OF VIRGINIA BEACH vs. CHAD CRAWFORD ROBERSON." (Appx. pg. 7). However, under the heading "CODE SECTION" the order cited code section "18.2-266," which is the Commonwealth's driving under the influence statute. (Appx. pg. 7). Roberson appealed this conviction to the Court of Appeals and styled his notice of appeal "Commonwealth of Virginia, Plaintiff, v. Chad Crawford Roberson, Defendant." (Appx. pg. 10).

The Court of Appeals granted the petition for appeal. (Appx. pg. 47). Prior to oral argument, the Assistant Attorney General assigned to the case filed a motion for leave for the trial court to correct an alleged clerical error in the final order. (Appx. pgs. 47-48). The motion noted that there was a discrepancy in the final order between the style of the case and the statute under which Roberson was convicted. (Appx. pgs. 47-48). Specifically, the

style listed the parties as “CITY OF VIRGINIA BEACH vs. CHAD CRAWFORD ROBERSON,” and the order stated that Roberson was convicted under the state statute, Code § 18.2-266. (Appx. pgs. 47-48). The Court of Appeals granted the motion. (Appx. pg. 27).

On December 15, 2008, pursuant to the Court of Appeals’ mandate, the trial court issued an order stating that the final order did not need to be corrected. (Appx. pg. 28). In fact, the trial court indicated that Roberson was appropriately “charged under the City Ordinance for his violation of state law,” and thus the style of the case was correct. (Appx. pg. 28). In response, the Assistant Attorney General sent a letter to the Court of Appeals stating the while she would appear before the Court to answer questions regarding her letter, she did not have authority pursuant to Code § 2.2-511 to represent the City of Virginia Beach on appeal. (Appx. pgs. 29-30).

Ultimately, the Court of Appeals held that Roberson failed to add an indispensable party, the City, and found it did not have jurisdiction to hear the appeal. (Appx. pgs. 46-50). Accordingly, the Court of Appeals dismissed Roberson’s appeal. (Appx. pgs. 46-50). Roberson appealed to this Court.

ARGUMENT

Roberson was arrested and charged with violating a City Ordinance, specifically Section 21-1, and thus the City of Virginia Beach is an indispensible party to this appeal.

This Court has unequivocally held that the failure to join an indispensable party is a jurisdictional defect that requires dismissal of the appeal. See Asch v. Friends of the Community of Mount Vernon Yacht Club, 251 Va. 89, 91, 465 S.E.2d 817, 818 (1996) ("[A] court lacks the power to proceed with a suit unless all necessary parties are properly before the court."); see also Jay v. Commonwealth, 275 Va. 510, 517, 659 S.E.2d 311, 315 (2008) (stating that "dismissing rather than denying the appeal[ ]" renders the defect jurisdictional). Thus, to adjudicate an appeal, this Court must have jurisdiction over both the appeal itself and the indispensable parties. Vaughn v. Vaughn, 215 Va. 328, 330, 210 S.E.2d 140, 142 (1974). Where one, or both, is lacking, this Court cannot adjudicate the appeal. Id. For this Court to obtain jurisdiction over an individual who was a party in the trial court, the party must be named in the notice of appeal, otherwise this Court lacks jurisdiction over the person. Id. (Emphasis Added).

Roberson argues that given the style of the pleadings and orders prepared by the parties below there was a “mutual understanding” that the Commonwealth of Virginia was the proper party before the Court, and that the parties should have been able to rely upon those pleadings and orders with regard to the proper identity of the parties. However, Roberson’s argument fails to acknowledge that the trial court specifically found that Roberson was charged and convicted under the City’s ordinance as opposed to a state statute. And although the parties may have had a mutual understanding that the Commonwealth’s Attorney was representing the interests of the Commonwealth as well as those of the City before the trial court, Roberson failed to properly perfect his appeal.

Specifically, Roberson failed to name all indispensable parties—i.e., the City—which according to this Court, is a jurisdictional requirement. As such, contrary to Roberson’s argument that the parties had a mutual understanding as to the parties to the appeal and thus his error should not result in the dismissal of his appeal, the exclusion of indispensable parties in the caption of the notice of appeal is not a mere deficiency in formality. Instead, it is a failure to comply with a requirement made mandatory by both statute and rule. Asch, 251 Va. at 91 465 S.E.2d at 818. Moreover, it

is a failure to transfer jurisdiction over the indispensable party from the trial court to the appellate court. Vaughn, 215 Va. at 330, 210 at 142.

Accordingly, in order for the Court of Appeals to have jurisdiction of the appeal, Roberson was required to name all indispensable parties, including the City of Virginia Beach, in his notice of appeal.

CONCLUSION

For the reasons stated, the City asserts that it is an indispensible party to Roberson's appeal. Thus, the Court of Appeals correctly dismissed the appeal for lack of jurisdiction.

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CERTIFICATE

The undersigned certifies as follows:

I, Natalie P. Mann, Assistant City Attorney, Counsel for the City of Virginia Beach, hereby certifies pursuant to Rule 26(d) of the Rules of the Supreme Court of Virginia, that fifteen paper copies and one electronic copy on CD of this Brief has been hand filed with the Clerk of the Supreme Court of Virginia and a true copy of this Brief has been mailed, via U.S. Mail, postage prepaid, to counsel for Appellant, John D. Hooker, Jr., Esquire, John D. Hooker, Jr. & Associates, P.C., 1206 Laskin Road, Suite 110, Virginia Beach, Virginia 23451 and counsel for Appellee, Virginia B. Theisen, Esquire, Sr. Assistant Attorney General, Office of the Attorney General, 900 East Main Street, Richmond, Virginia 23213, this 4th day of November, 2009.

Natalie P. Mann