DOCKET NO. FBT-FA-23-6127138-S	:	SUPERIOR COURT
LORI COGLITORE	:	JUDICIAL DISTRICT
v.	:	OF BRIDGEPORT
ANTONIO COGLITORE	:	MAY 13, 2024

FILED
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BRIDGEPORT

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MEMORANDUM OF DECISION
Motion to Intervene (#116.00)

Before the court is a motion to intervene filed by two nonparties to this marital dissolution action, Sharon and James Peloquin (Peloquins), the plaintiff's parents. The motion was the subject of a remote hearing on April 30, 2024. For the reasons fully described in this memorandum of decision, the motion is denied.

I. BACKGROUND AND FACTS

The court finds that the following facts, having reviewed the contents of the court file, including the allegations set forth in the motion to intervene and memorandum of law in support, and the argument made by counsel for the Peloquins and by counsel for each of the parties during the hearing on the present motion. The present dissolution of marriage action was filed on September 11, 2023, and the defendant appeared, through counsel, on September 20, 2023. Both parties appeared with counsel at the November 7, 2023 resolution plan date, and trial was scheduled for May 23, 2024 at that time.

Among the assets listed on each party's financial affidavit is 19 Pamela Drive in Monroe, Connecticut (Property), which is the marital residence owned jointly by the plaintiff and defendant (Parties). On March 6, 2024, the Peloquins filed their motion to intervene. The Peloquins allege the following facts. In or around 2013, they entered into an oral agreement with the Parties, that if the Peloquins constructed, at the Peloquins' own cost, an addition to the Property, then the Peloquins could reside in the Property indefinitely. Pursuant to that agreement, the Peloquins provided funds that were used to build an 1,100 square foot addition,

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a garage, a retaining wall, landscaping, and a patio at the Property. In or around January, 2014, the Peloquins moved into the Property, and they live there most of the year. Since moving into the Property, the Peloquins have also paid the Parties $1,100 per month as a contribution towards the real estate taxes and utilities associated with the Property. The Peloquins further allege that they "understood that if the Property were to be sold, and they were forced to find another residence, they would be entitled to a portion of the proceeds from the sale representing the value of the improvements they made to the Property."

The defendant filed a memorandum of law in opposition (#121.00) to the motion to intervene; arguing that the Peloquins have not satisfied the standards for either intervention as of right or permissive intervention; and the Peloquins filed a reply (#123.00).

II. DISCUSSION

A. Applicable Legal Standards

"The judicial authority may determine the controversy as between the parties before it, if it can do so without prejudice to the rights of others; but, if a complete determination cannot be had without the presence of other parties, the judicial authority may direct that they be brought in. If a person not a party has an interest or title which the judgment will affect, the judicial authority, on its motion, shall direct that person to be made a party. (See General Statutes § 52-107 and annotations.)"[1] Practice Book § 9-18.

[1] General Statutes § 52-107 provides: "The court may determine the controversy as between the parties before it, if it can do so without prejudice to the rights of others; but, if a complete determination cannot be had without the presence of other parties, the court may direct that such other parties be brought in. If a person not a party has an interest or title which the judgment will affect, the court, on his application, shall direct him to be made a party."

1. Intervention as of Right

"Intervention as of right provides a legal right to be a party to the proceeding that may not be properly denied by the exercise of judicial discretion." *BNY Western Trust* v. *Roman*, 295 Conn. 194, 204 n.8, 990 A.2d 853 (2010). "[A] four element, conjunctive inquiry govern[s] the decision on a motion for intervention as a matter of right . . . . Specifically, [t]he motion to intervene must be timely, the movant must have a direct and substantial interest in the subject matter of the litigation, the movant's interest must be impaired by disposition of the litigation without the movant's involvement and the movant's interest must not be represented adequately by any party to the litigation." (Citation omitted; internal quotation marks omitted.) *Kerrigan* v. *Commissioner of Public Health*, 279 Conn. 447, 456-57, 904 A.2d 137 (2006). "Failure to meet any one of the four elements, however, will preclude intervention as of right." *BNY Western Trust* v. *Roman*, supra, 295 Conn. 206.

"For purposes of judging the satisfaction of [the] conditions [for intervention] we look to the pleadings, that is, to the motion for leave to intervene and to the proposed complaint or defense in intervention, and . . . we accept the allegations in those pleadings as true. The question on a petition to intervene is whether a well-pleaded defense or claim is asserted. Its merits are not to be determined. The defense or claim is assumed to be true on motion to intervene, at least in the absence of sham, frivolity, and other similar objections. . . . Thus, neither testimony nor other evidence is required to justify intervention, and [a] proposed intervenor must allege sufficient facts, through the submitted motion and pleadings, if any, in order to make a showing of his or her right to intervene. The inquiry is whether the claims contained in the motion, if true, establish that the proposed intervenor has a direct and immediate interest that will be affected by the judgment." (Citation omitted; internal quotation marks omitted.) *Kerrigan* v. *Commissioner of Public Health*, supra, 279 Conn. 457.

2. Permissive Intervention

"Permissive intervention means that, although the person may not have the legal right to intervene, the court may, in its discretion, permit him or her to intervene, depending on the circumstances. *Palmer* v. *Friendly Ice Cream Corp.*, 285 Conn. 462, 479, 940 A.2d 742 (2008) ([p]ermissive intervention . . . is entrusted to the trial court's discretion . . . [and] depends on a balancing of factors . . .). In deciding whether to grant a request for permissive intervention, a trial court should consider: the timeliness of the intervention; the [prospective] intervenor's interest in the controversy; the adequacy of representation of such interests by other parties; the delay in the proceedings or other prejudice to the existing parties the intervention may cause; and the necessity for or value of the intervention in resolving the controversy. . . . With respect to the propriety of the trial court's balancing of these factors, we have stated that [a] ruling on a motion for permissive intervention would be erroneous only in the rare case [in which] such factors weigh so heavily against the ruling that it would amount to an abuse of the trial court's discretion. . . . A party challenging a ruling on permissive intervention bear[s] the heavy burden of demonstrating an abuse of . . . discretion . . . ." (Internal quotation marks omitted.) *Austin-Casares* v. *Safeco Ins. Co. of America*, 310 Conn. 640, 663-64, 81 A.3d 200 (2013). "The decision whether to grant a motion for the addition of a party to pending legal proceedings rests generally in the sound discretion of the trial court. . . . The real issue in any motion for joinder is the presence of all the interested parties, either as plaintiffs or as defendants, to enable the court to make a complete determination of all of the matters in controversy." *Lettieri* v. *American Savings Bank*, 182 Conn. 1, 13, 437 A.2d 822 (1980).

3. Intervention in a Marital Dissolution Action

"[A] third person with a claimed interest in property that is the subject of a dissolution action may properly be joined as a party. That rule holds that although the spouses are

ordinarily the only proper parties to a dissolution action, joinder or intervention of third parties is permissible where third parties claim an interest in property involved in the proceedings. . . . The policy supporting this view is the desirability of avoiding multiple suits and of granting complete relief in a single proceeding." (Citations omitted.) *Gaudio* v. *Gaudio,* 23 Conn. App. 287, 293, 580 A.2d 1212, cert. denied, 217 Conn. 803, 584 A.2d 471 (1990).

"The action for dissolution of a marriage is a special and peculiar proceeding. It is not akin to an action for the breach of an ordinary contract, for the foreclosure of a mortgage, or for the recovery of damages in tort for a wrong done the plaintiff. It is in the interest of the state, the parties, and especially the children that this action for the dissolution of a marriage be disposed of with expedition. If [a third party] is made a party to this action, the final disposition of the case and the distribution of the property involved could be delayed indefinitely. The rights of the respective parties, particularly those of the children . . . would be seriously affected." *Venuti* v. *Venuti*, 36 Conn. Supp. 56, 58-59, 410 A.2d 1012 (1979). "[P]ermitting creditors to intervene into dissolution cases takes us down a slippery slope. The Family courts are charged with insuring that dissolution of marriage cases proceed in a fair and expeditious manner." *Otto* v. *Otto*, Superior Court, judicial district of Tolland, Docket No. FA-07-4007084-S (November 27, 2007, *Shluger, J.*) (44 Conn. L. Rptr. 549).

A non-exhaustive list of categories of persons who are routinely permitted to intervene in marital dissolution actions has been stated as follows. "There are certain categories of persons who are permitted to intervene in a dissolution action. The attorney general is permitted to become a party under General Statutes § 46b-55; any interested third party may intervene with regard to the custody of minor children under § 46b-57; parties having physical custody of a child may be made parties under General Statutes § 46b-100; and any person may request visitation rights under General Statutes § 46b-59." *Livsey* v. *Livsey*, 11 Conn. App. 43,

46, 525 A.2d 546 (1987), overruled on other grounds by *Gaudio* v. *Gaudio*, supra, 23 Conn. App. 294, accord *Kinney* v. *Kinney*, Superior Court, judicial district of New Haven, Docket No. FA-14-4061339-S (October 24, 2014, *Gould, J.*) (59 Conn. L. Rptr. 203).

B. Peloquins' Claim for Intervention as of Right

The Peloquins seek to intervene in this action, pursuant to Practice Book § 9-18, on the grounds that the four-prong test for intervention as of right is satisfied. Specifically, they argue that the motion is timely; that they have a direct and substantial interest in the Property; that the proposed disposition of this action would impair their interest in the Property; and that neither the plaintiff nor the defendant can adequately represent their interests before this court.

1. First Prong: Timeliness

"Turning to the first prong in determining whether a proposed intervenor is entitled to intervene as a matter of right, timeliness, [t]he necessity for showing that a would-be intervenor made a timely request for intervention involves a determination of how long the intervenor was aware of an interest before he or she tried to intervene, any prejudicial effect of intervention on the existing parties, any prejudicial effect of a denial on the applicant and consideration of any unusual circumstances either for or against timeliness. . . . Factors to consider also include the nature of the interest and the purpose for which the intervenor is seeking to be brought into the action." (Citation omitted; internal quotation marks omitted.) *BNY Western Trust* v. *Roman*, supra, 295 Conn. 208-209. "Although the point to which the suit has progressed is one factor in the determination of timeliness, it is not solely dispositive. Timeliness [under either the as-of-right or permissive intervention standards] is to be determined from all the circumstances. And it is to be determined by the court in the exercise of its sound discretion; unless that discretion is abused, the court's ruling will not be disturbed on review." (Internal quotation marks omitted.) *Austin-Casares* v. *Safeco Ins. Co. of America*, supra, 310 Conn. 651.

In the Peloquins' reply (#123.00), they argue that their motion is timely because it was filed shortly after settlement discussions with the defendant broke down. However, the Peloquins concede that they were aware of the pendency of the present action since its commencement; reply to objection to motion to intervene, pendente lite (#123.00), p. 3; which means that they did not file the present motion until nearly six months had elapsed, and less than three months before the scheduled start of trial. Further, at the hearing on the present motion, counsel for the Peloquins represented that if the motion is granted, the Peloquins could not be ready for trial commencing on May 23, 2024 and would seek a continuance of the trial date. Such a continuance would prejudice the defendant.

Considering all of the circumstances, the Peloquins have failed to plead sufficient facts permitting the court to reasonably conclude that they did not delay in filing their motion to intervene, that they acted diligently to notify this court of their interests in this action, and the court finds that the Peloquins' motion to intervene is not timely.

2. Second and Third Prongs: Direct and Substantial Interest and Impaired Interest

The second prong to be considered in ruling on a motion to intervene as of right requires the movant to show that he "ha[s] a direct and substantial interest in the subject matter of the litigation"; *BNY Western Trust* v. *Roman*, supra, 295 Conn. 205; while the third prong requires the movant to show that his interest would "be impaired by disposition of the litigation without the movant's involvement . . . ." (Internal quotation marks omitted.) Id.

"An applicant for intervention has a right to intervene under Practice Book . . . [§ 9-18] where the applicant's interest is of such a direct and immediate character that the applicant will either gain or lose by the direct legal operation and effect of the judgment. . . . [A] person or entity does not have a sufficient interest to qualify for the right to intervene merely because an impending judgment will have some effect on him, her, or it. The judgment to be rendered must

affect the proposed intervenor's direct or personal rights, not those of another." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *Vernon* v. *Rumford Associates IV*, 53 Conn. App. 785, 789-90 n.4, 732 A.2d 779 (1999).

"The distribution of assets in a dissolution action is governed by [General Statutes] § 46b-81, which provides in pertinent part that a trial court may assign to either the husband or the wife all or any part of the estate of the other. . . . In fixing the nature and value of the property, if any, to be assigned, the court, after hearing the witnesses, if any, of each party . . . shall consider various factors relevant to the property distribution. . . . There are three stages of analysis regarding the equitable distribution of each resource: first, whether the resource is property within § 46b-81 to be equitably distributed (classification); second, what is the appropriate method for determining the value of the property (valuation); and third, what is the most equitable distribution of the property between the parties (distribution). . . . In defining the term property . . . our Supreme Court [has] stated: Rather than narrow the plain meaning of the term property from its ordinarily comprehensive scope, in enacting § 46b-81, the legislature acted to expand the range of resources subject to the trial court's power of division, and did not intend that property should be given a narrow construction. . . . [O]ur broad definition of property was not entirely without limitation, and that property under § 46b-81 includes . . . interests that are presently existing, as opposed to mere expectancies." (Citations omitted; internal quotation marks omitted.) *Rousseau* v. *Perricone*, 148 Conn. App. 837, 848, 88 A.3d 559 (2014).

Accepting all the factual allegations made by the Peloquins as true, this court concludes that the Peloquins' interest is not direct and substantial and that the effect a judgment rendered in this action without their involvement will not impair their interests. The Peloquins' claim

against the Parties is monetary, and their relationship to the Parties is that of a creditor.[2] The Peloquins' allegations are insufficient to bring themselves without the ambit of the general rule disfavoring a creditor's intervention in a marital dissolution action. Their claim will survive the rendition of judgment and even a sale of the Property. With respect to their part-time occupancy of the Property, their interest is no different than a tenant in possession, and it is beyond peradventure that a tenant would not be permitted to intervene in a marital dissolution action absent special circumstances not present here.

3. Fourth Prong: Interest Not Represented Adequately by Any Other Party

The fourth prong requires the movant to demonstrate that their interest must not be represented adequately by any other party to the litigation. "The most significant factor in assessing the adequacy of representation is how the interests of the absentees compare with the interests of the present parties . . . . *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, 60 Conn. App. 134, 148, 758 A.2d 916 (2000). The burden for establishing inadequate representation of similar interests is minimal. Indeed, the United States Supreme Court has acknowledged that one successfully establishes inadequate representation if the applicant shows that representation of his interest may be inadequate . . . . *Trbovich* v. *United Mine Workers*, 404 U.S. 528, 538 n.10, 92 S. Ct. 630, 30 L. Ed. 2d 686 (1972). The particular circumstances of each case will dictate whether the absentee has an interest different from that of an existing party, and doubts should be resolved in favor of intervention." (Internal quotation marks omitted.) *State* v. *Tomasso*, 49 Conn. Supp. 327, 333, 878 A.2d 413 (2004).

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[2] During argument, counsel for the plaintiff asserted that if the Peloquins are not permitted to intervene, the plaintiff would be forced to prosecute a six-figure claim on behalf of a "third-party creditor." While this assertion seems to assume that the debt allegedly owed to the Peloquins is the responsibility of the defendant, rather than both Parties, it underscores the Peloquins' creditor status.

In the present case, based on the allegations within the Peloquins' pleadings, this court concludes that their interest is not adequately represented by either the plaintiff or the defendant, since their position is directly adverse to that of the Parties.

Because the Peloquins have alleged facts sufficient to satisfy only one of the four elements of the court's conjunctive inquiry, rather than all four, they may not intervene in this action as of right. *BNY Western Trust* v. *Roman*, supra, 295 Conn. 206.

C. Peloquins' Claim for Permissive Intervention

The balancing of factors necessary for permissive intervention also dictates that the Peloquins' claim for permissive intervention must fail. In this regard, the court incorporates the reasoning previously articulated with respect to the timeliness of the Peloquins' motion, their direct and substantial interest and impaired interest, and the inadequacy of representation by the existing parties to this litigation. The Peloquins' presence is not necessary to permit the court to resolve the controversy concerning the Property. The court will be able to make a complete determination of the Parties' interest in, and any disposition of, the Property without the Peloquins being parties to this litigation. Indeed, their presence as parties would only further complicate the litigation. Accordingly, court finds that the Peloquins have not satisfied their burden for permissive intervention.

III. CONCLUSION

The Peloquins' motion to intervene (#116.00) is denied.

Kowalski, J.