

IN THE MISSOURI COURT OF APPEALS  
EASTERN DISTRICT

MARY LOU WATSON, ET AL,                    )  
  )  
          Appellant(s)                            )  
  )  
v.    )       ED109793  
  )  
RAINTREE PLANTATION                        )  
PROPERTY OWNERS'                            )  
ASSOCIATION, INC., ET AL,                 )  
  )  
          Respondent(s).                        )

**APPELLANTS' RESPONSE TO RAINTREE PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.'S MOTION TO DISMISS FOR LACK OF STANDING**

COMES NOW, Appellants, by and through counsel, Brandon T. Moonier of the Thurman Law Firm, and provides this response to Raintree Plantation Property Owners' Association, Inc.'s Motion to Dismiss for Lack of Standing. In support hereof, Appellants states to this Court as follows:

A. Appellants are a party for the purposes of appeal.

Although counsel for Raintree Plantation Property Owners' Association, Inc. (hereinafter referred to as "RPOA") has framed the issue in their Motion to Dismiss as lack of standing, this is legally inaccurate. As the United States Supreme Court set forth in *Devlin v. Scardelletti*, the issue is whether the petitioner is a "party" for purposes of appealing the settlement for only a party to the lawsuit or those that properly become parties may appeal an adverse judgment. 211 Supreme Court 2005, 2006 (S.Ct. 2002). Standing implicates jurisdiction of the Court, which is not an issue in this case.

While RPOA relies heavily on *Ring v. Metropolitan St. Louis Sewer District* for its position, the cases relied upon by the Court in *Ring*, particularly *Guthrie v. Evans*, 815 F. 2d 626 (11<sup>th</sup> Cir. 1987) and *Marino v. Ortis*, 108 S. C. 586 (1988) were either abrogated or distinguished by the United States Supreme Court in *Devlin*. Thus, any analysis of whether Appellants are a party for appeal purposes is inadequate without an in-depth review of *Devlin*.

In *Devlin*, pension plan participants sought to intervene in a class action lawsuit determining a cost-of-living increase within the plan. *Devlin* at 2006. The Motion for Intervention was denied and objections were heard to the settlement including those filed by the petitioner that appealed. *Id.* The settlement was ultimately approved and petitioner, a non-named class member, filed a timely appeal.

The United States Supreme Court specifically held that non-named class members that have objected in a timely manner to the approval of a settlement at a fairness hearing have the power to bring an appeal without first intervening. *Id.* In reaching this analysis, the Court indicated that it has never restricted the right of appeal to named parties. *Id.* The Court found that if a non-named party has objected to the settlement at the fairness hearing and the settlement is approved, over the objections, this amounts to a final decision of a petitioner's right or claim with is sufficient to trigger the petitioner's right to appeal. *Id.* The Court reasoned that the right to appeal "cannot be effectively accomplished through the named class representative – *once the named parties reach a settlement that is approved over the petitioner's objections, petitioner's interest diverged from those of the class representative.*" *Id.* emphasis added.

In reaching this holding, the Court abrogated *Guthrie v. Evans* (which is the primary case used in the Court's reasoning in *Ring*) and distinguished *Marino* as the parties sought to appeal in *Marino* were not members of the class.

The Court in *Devlin* further reasoned that considering non-named class members as parties for the purpose of bringing an appeal does not conflict with any other aspects of class procedure. *Id* at 2006. The Court logically concludes that the important aspect of whether the non-named class members were parties for the purposes of appeal is being bound by the settlement. *Id*. Allowing non-named class members to appeal a settlement approval after objecting at the fairness hearing preserves the non-named class members own interests in a settlement that will bind such member, despite their expressed objections before the Court. *Id*. Finally, the Court concludes that allowing such appeals will not undermined the class action goal of preventing multiple suits and restricting the power to appeal to those members who objected at the fairness hearing limits the class a potential appellants considerably. *Id*.

The Court's reasoning in *Devlin* has been adopted by appeals courts in Missouri, *Paulson v. Dynamic Pet Products, LLC*. Within this case, the Court's reasoning in *Devlin*, as set forth above, is quoted verbatim in allowing non-named class members who have filed objections to a settlement within the timeframe described by the trial court to appeal absent intervention. *Paulson v. Dynamic Pet Products, LLC*, 560 S.W.3d 583, 590 (Mo. App. W.D. 2018). Counsel for RPOA has attempted to suggest that the Court in *Paulson* has limited the right to appeal only when objectors have "fully participated in litigation." However, full participation is not an element nor does it factor into the analysis of the Court

in *Paulson* nor *Devlin*. Further, all of the cases cited by counsel for RPOA in support of their position pre-date *Paulson* and ignores the precedent as set forth in *Devlin*. The Courts have made it clear that the analysis has shifted from requiring intervention for appellate rights, to allowing an appeal without intervention provided that objections are timely filed by non-named class members. This is a logical and just shift as the Courts have recognized that objectors and class representatives no longer share a common interest in these circumstances.

Here, counsel for RPOA does not argue that the objections are untimely filed nor that a divergence in interest has been created amongst the class representative and the objectors. Counsel clearly believes that Appellants are bound by the terms of the settlement which, according to *Devlin*, gives the Appellants the right to appeal. Counsel's inability to differentiate between "standing" and "a party" is the true "ploy to flout the requirements of this Court" and divest Appellants, who have timely filed objections and are bound by the terms of the settlement, a right to appeal.

### **CONCLUSION**

As Designated Objectors timely filed objections which were overruled by the Trial Court and are bound by the terms and conditions of the Settlement Agreement, the Designated Objectors are considered a party for the purposes of appeal. Therefore, the Motion to Dismiss should be denied.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been filed electronically via the Court's Electronic Filing System on this 7<sup>th</sup> day of March, 2022.



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BRANDON T. MOONIER #59931