**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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| Monahan Office Complex, LTD, | : | |
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| Appellant | : | |
| | : | |
| v. | : | No. 1205 C.D. 2014 |
| | : | |
| The Borough of Dunmore | : | Argued: March 9, 2015 |

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION**
**BY JUDGE COHN JUBELIRER** **FILED: June 18, 2015**

Monahan Office Complex, LTD (Monahan) appeals from the Order of the Court of Common Pleas of Lackawanna County (trial court), sustaining The Borough of Dunmore's (Borough) Preliminary Objections (POs) in the nature of demurrer and lack of capacity and dismissing Monahan's suit in its entirety. On appeal, Monahan argues that the trial court erred in concluding that Monahan: (1) lacks standing under Pennsylvania law; and (2) failed to satisfy the requirements

for associational standing under the Americans with Disability Act of 1990[1] (ADA) and the Rehabilitation Act of 1973[2] (RA). Discerning no error, we affirm.

Monahan, an entity authorized and existing pursuant to Pennsylvania law, owns a commercial office complex at 118 Monahan Avenue in Dunmore, Pennsylvania (Property). (Trial Ct. Op. at 1.) Monahan and Habit OPCO, Inc. (Habit) entered into a lease agreement on March 4, 2009, to allow Habit to open a methadone clinic at the Property. (Trial Ct. Op. at 1.) Habit began making preparations to become operational at the Property, "which is zoned as [a] C-4 Heavy Commercial Zoning District." (Trial Ct. Op. 1.)

Prior to Monahan and Habit entering into the lease agreement, the Borough had enacted a zoning ordinance mandating certain requirements for drug rehabilitation facilities as well as drug treatment centers (Ordinance).[3,4] (Trial Ct.

[1] 42 U.S.C. §§ 12101-12213.

[2] 29 U.S.C. §§ 701-796.

[3] Although the trial court states in its opinion that the Ordinance was enacted *in response* to the lease agreement, (Trial Ct. Op. at 2), at oral argument both parties acknowledged that the Ordinance was actually enacted before the lease agreement.

[4] The Ordinance provided, in relevant part, as follows:

5.270 Drug Rehabilitation Facilities and Drug Treatment Centers

> 5.271 No methadone treatment facility shall be permitted unless it is licensed by the PA Department of Health.
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> 5.272 No methadone treatment facility shall be permitted if it is determined by the PA Department of Health that such use would be detrimental to the health,

*(Continued…)*

Op. at 2.) Monahan and Habit challenged the Ordinance and the Borough reviewed the Ordinance and conducted public hearings. (Trial Ct. Op. at 3.) Consequently, the Borough agreed to repeal Section 5.273 of the Ordinance, but retained the remaining sections. (Trial Ct. Op. at 3.) However, litigation continued and, on April 21, 2011, this Court issued an opinion declaring the Ordinance exclusionary. Habit OPCO v. Borough of Dunmore (Pa. Cmwlth., No.

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> welfare, peace, and morale of the inhabitants of the neighborhood within a radius of one-half (1/2) mile of the facility.
>
> 5.273 No methadone treatment facility or any other permitted drug rehabilitation facilities and drug treatment centers shall be nearer to any of the following uses than one-half mile. For the purposes of this section, spacing distances shall be measured as follows: (1) from all property lines of the uses regulated in this Section 5.270 hereof; (2) from the outward line or boundary of all residential zoning districts; (3) from all property lines of any of the following uses:
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> a. Church, charitable institution, school or public playground.
> b. Child day-care center or family day-care home.
> c. Pennsylvania liquor store established, operated and maintained pursuant to the terms of Article III of the PA Liquor Code.
> d. Hotel, restaurant or club possessing a retail liquor license issued pursuant to Article IV of the PA Liquor Code.
> e. Older adult living center licensed by the PA Department of Aging.
> f. Any senior center as defined in Section 3 of the PA Senior Center Grant Program Act.
>
> 5.274 Such use shall have frontage on a primary street or a collector street, and, it shall be accessible from such a street.
>
> . . . .
>
> 5.332 No conditional use shall be nearer to existing development than 1,000 feet or such greater distance as may be required to assure the health, safety and welfare of the community, or any lesser distance specified in this ordinance.

(Trial Ct. Op. at 2-3.)

2312 C.D. 2010, filed April 21, 2011). The Borough did not appeal this Court's decision. (Trial Ct. Op. at 3.)

On July 30, 2013, Monahan initiated the instant matter, "alleging the loss of twenty-seven . . . months of rental payments under the lease agreement with Habit due to" the Ordinance violating several federal constitutional provisions and federal laws. (Trial Ct. Op. 3.) Specifically, Monahan's Complaint alleges that the Ordinance violated the Due Process and Equal Protection clauses of the 14th Amendment of the United States Constitution and requested damages pursuant to 42 U.S.C. § 1983. (Complaint at 5-7, R.R. at 7-9.) The Complaint also alleges that the Ordinance constituted a regulatory taking, and that it violated the ADA and RA by discriminating against individuals with drug addictions as well as the landowners who lease facilities to entities administering methadone treatment. (Complaint at 8-11, R.R. at 10-13.) On January 21, 2014, the Borough filed its POs, averring that Monahan's Complaint is legally insufficient under Pennsylvania Rule of Civil Procedure 1028(a)(4), Pa. R.C.P. No. 1028(a)(4), since "Monahan lacks standing to sue under any of the theories outlined in the Complaint because it lacks standing to assert either a federal statutory or constitutional violation." (PO ¶ 8, R.R. at 18.)

Concluding that Monahan needed to satisfy the requirements for standing under Pennsylvania law rather than federal law, the trial court, accordingly, analyzed whether Monahan's interest in the outcome of the litigation was substantial, direct, and immediate pursuant to Fumo v. City of Philadelphia, 972 A.2d 487 (Pa. 2009), and William Penn Parking Garage, Inc. v. City of Pittsburgh, 346 A.2d 269 (Pa. 1975). (Trial Ct. Op. at 7-9.) Ultimately, the trial court found

that, although Monahan met the substantiality and directness elements for standing, it failed to meet the immediacy requirement because "Monahan's interest in the outcome of this litigation is too attenuated." (Trial Ct. Op. at 14.) Notwithstanding the trial court's determination that Pennsylvania's standing requirements govern, it reached its conclusion by examining two federal cases with similar facts, CRC Health Group, Inc. v. Town of Warren (D. Maine, No. 2:11-CV-196-DBH, filed February 19, 2013), and RHJ Medical Center, Inc. v. City of DuBois, 754 F. Supp. 2d 723 (W.D. Pa. 2010), which both assessed associational standing under the ADA. (Trial Ct. Op. at 9-13, 16, 18.) Finding these cases persuasive, the trial court determined that "there is a certain juxtaposition of the immediacy prong of Pennsylvania standing and the associational relationship under the ADA." (Trial Ct. Op. at 18.) Because it concluded that Monahan does not satisfy associational standing requirements under the ADA and RA, the trial court determined that, "logically speaking, lack of standing beseeches an identical outcome for each count of the complaint." (Trial Ct. Op. at 15.) The trial court concluded that "Monahan's claims are too remote on which to have solid ground to stand" and that "demurrer is proper because Pennsylvania's principles of standing guarantee that Monahan cannot recover." (Trial Ct. Op. at 18.) Accordingly, the trial court held that "Monahan lacks capacity to sue, which deems its complaint legally insufficient." (Trial Ct. Op. at 18.)

On appeal,[5] Monahan argues that the trial court erred in concluding it lacks standing. It contends that it has met Pennsylvania's prudential test for standing, set

[5] "Our review of a trial court's ruling on preliminary objections is limited to determining whether the trial court abused its discretion or committed an error of law or whether *(Continued…)*

forth in Fumo and William Penn Parking, by demonstrating that it has a substantial, direct, and immediate interest in the outcome of this litigation. Monahan argues that the trial court erred in analogizing the immediacy prong of Pennsylvania standing to associational standing under the ADA and RA, as interpreted by federal case law; instead, the trial court should have focused only on whether Monahan satisfied the immediacy prong under Pennsylvania law. Monahan argues that its injury "was direct and precise" and that the Borough's "illegal and discriminatory conduct immediately and directly caused significant economic harm to Monahan and was in no way remote." (Monahan's Br. at 13.) Moreover, the loss of income that Monahan experienced was not speculative since Monahan and Habit entered into a contract, and Monahan lost $8,100 per month during the twenty-seven month time period when the Borough's Ordinance was challenged. Monahan maintains that, but for the Borough's illegal and discriminatory conduct, "Monahan would have been able to collect rental income from [Habit] and would not have suffered significant economic harm." (Monahan's Br. at 14.) Monahan also argues that the causal connection between the Borough's conduct and Monahan's injury is no more remote than in William Penn Parking, where our Supreme Court concluded that parking garage operators had standing to challenge a tax imposed by the City of Pittsburgh on parking patrons.

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constitutional rights were violated." City of Philadelphia v. Borough of Westville, 93 A.3d 530, 532 n.3 (Pa. Cmwlth. 2014).

In federal courts, standing requirements originate from Article III of the United States Constitution. In re Hickson, 821 A.2d 1238, 1243 n.5 (Pa. 2003). "State courts, however, are not governed by Article III and are thus not bound to adhere to the federal definition of standing." Id.; see also ASARCO Incorporated v. Kadish, 490 U.S. 605, 617 (1989) (holding that "the constraints of Article III do not apply to state courts, and accordingly the state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability even when they address issues of federal law, as when they are called upon to interpret . . . a federal statute"). Unlike federal courts, whose standing requirements are constitutionally derived, Pennsylvania's standing doctrine "is a prudential, judicially-created tool meant to winnow out those matters in which the litigants have no direct interest in pursuing the matter." In re Hickson, 821 A.2d at 1243 & n.5. Thus, although Monahan's claims against the Borough arise under federal law, this Court's analysis of whether Monahan has standing to pursue its claims is governed by Pennsylvania's standing requirements.

The core concept of standing under Pennsylvania law "is that a person who is not adversely affected in any way by the matter he seeks to challenge is not 'aggrieved' thereby and has no standing to obtain a judicial resolution of his challenge." William Penn Parking, 346 A.2d at 280-81. In order for a plaintiff to establish that he is aggrieved, he must satisfy a three-part test by demonstrating that his interest in the subject matter of the litigation is (1) substantial, (2) direct, and (3) immediate. Id. For a party's interest to be substantial, "there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law." Id. at 282. For a party's interest to

be direct, "the person claiming to be aggrieved must show causation of the harm to his interest by the matter of which he complains." Id. The immediacy requirement is perhaps the most difficult requirement of the three-part test to demonstrate and "concern[s] . . . the nature of the causal connection between the action complained of and the injury to the person challenging it." Id. at 283. In general, an interest is immediate where the "causal connection is not remote or speculative." Fumo, 972 A.2d at 496 (quotation omitted).

In the instant case, we agree with the trial court that Monahan has demonstrated a "substantial" interest. As alleged in the Complaint, Monahan suffered lost rent in the amount of $8,100 per month for twenty-seven months because Habit was unable to commence its operations due to the Ordinance. (Complaint ¶¶ 17-20, R.R. at 6-7.) Because the lost rent had a "discernible adverse effect" on Monahan's interest and that interest was different from the "abstract interest of all citizens in having others comply with the law," Monahan has a substantial interest in the outcome of this litigation. William Penn Parking, 346 A.2d at 282. We next address whether Monahan's interest is direct or immediate under the William Penn Parking test.

In Beauty Hall, Inc. v. State Board of Cosmetology, 210 A.2d 495 (Pa. 1965), a case predating William Penn Parking, our Supreme Court examined whether a party has standing to challenge the constitutionality of a statute, where the statute only indirectly affects the party. Beauty Hall, 210 A.2d at 497. Beauty Hall, Inc. (Beauty Hall), a registered school of beauty culture, raised due process challenges to a statute requiring all individuals sitting for the state cosmetology

examination to have completed a tenth grade education or its equivalent. Id. The statute at issue did "not direct [Beauty Hall] to do any act or refrain from doing any act." Id. Moreover, the statute did not "require [Beauty Hall] to turn away prospective beauty school students who [were] without a tenth grade education or its equivalent; the educational requirement [was] a prerequisite to taking the state examination[,] not to entering [Beauty Hall]." Id. There was also no suggestion in the statute that the General Assembly intended to regulate beauty schools. Id. Rather, the object of the General Assembly "was the further protection of beauty parlor patrons" through the "direct regulation of the individual who desires to become a beauty operator; only this individual [was] directly burdened by or subject to the" statute. Id. Beauty Hall argued it had standing on the ground that "some persons who would have become tuition paying students in its school in the absence of the new educational requirement [would] not become its students in the presence of such a requirement" and that, consequently, Beauty Hall would suffer a financial loss. Id.

Our Supreme Court determined that it was not certain that the statute would result in a financial loss to Beauty Hall. Id. However, the Supreme Court also concluded that, even if Beauty Hall could demonstrate a financial loss, it still would not have standing to challenge the constitutionality of the statute. Id. Specifically, the Supreme Court determined that "an adverse, economic impact which is merely an indirect, remote, and non[-]purposeful consequence or merely a side effect of the direct, governmental regulation of or imposition of burdens upon other persons . . . does not provide standing to attack the constitutionality of that regulation." Id. at 498. The Supreme Court noted that, in previous cases where

constitutional challenges to statutes were raised, the challenges were made by persons "directly regulated or burdened or prevented from free pursuit of his chosen occupation," and that in none of those cases were the challenges "made by one who was only indirectly economically affected by the direct regulatory impact upon others." Id. at 499. The Supreme Court also highlighted the remoteness of the statute's impact on Beauty Hall by noting, *inter alia*, that Beauty Hall could neither demonstrate that the statute "*prohibited* persons without a tenth grade education or its equivalent from attending" Beauty Hall nor that the statute "*prohibited* [Beauty Hall] from contracting with, teaching and receiving tuition from such persons." Id. at 500 (emphasis in original). Accordingly, due to the "indirect, remote and non[-] purposeful economic loss" resulting to Beauty Hall from the statute, our Supreme Court concluded that Beauty Hall lacked standing. Id. at 501.

Subsequently, in William Penn Parking, parking garage operators challenged a tax imposed by the City of Pittsburgh "on all patrons of 'non-residential parking places.'" William Penn Parking, 346 A.2d at 275. The parking garage operators averred that they would suffer substantial losses of income as a result of fewer patrons using their facilities due to the tax. Id. at 288. The City of Pittsburgh filed POs, arguing that only persons actually required to pay the tax could challenge it. Id. The Supreme Court concluded that, under Pennsylvania's three-part standing test, the parking operators' interest was *direct* because "a declaration that the ordinance [was] invalid would obviate" the operators' injuries, and *substantial* because they suffered a pecuniary loss. Id. at 289. In analyzing the immediacy prong of the three-part test our Supreme Court noted that, although "the tax [fell]

initially upon the patrons of the parking operators, it" was essentially levied upon transactions between the parking garage operators and its patrons, and that "the effect of the tax upon their business [was] removed from the cause by only a single short step." Id. Thus, because the tax burdened transactions between the parking garage operators and its patrons, the Supreme Court held "that the causal connection between the tax and the injury to the parking operators [was] sufficiently close" to be immediate and, thus, confer on them standing. Id.

In William Penn Parking, our Supreme Court also distinguished its holding from Beauty Hall, in which, although "[t]he injury claimed was a reduction in the number of potential pupils resulting from the disqualification for licensing of those without a tenth grade education," the challenged statute "involved no burden upon or regulation of the transactions between the school and such potential pupils." William Penn Parking, 346 A.2d 290. The Supreme Court also noted that, in Beauty Hall, "those lacking [a] tenth grade education were still entirely free to enroll in the school if they so desired." William Penn Parking, 346 A.2d 290. Accordingly, the Supreme Court in William Penn Parking determined that the causal connection in Beauty Hall between the governmental action and the alleged injury was one step further removed than the injury experienced by the parking garage operators from the tax in William Penn Parking. William Penn Parking, 346 A.2d 290.

We conclude that the facts of the instant case are more similar to Beauty Hall than to William Penn Parking. The Ordinance at issue was aimed at limiting the location of methadone treatment facilities and was not ostensibly targeted at

landlords renting office space to methadone clinic operators. Monahan should have known of the existence of the Ordinance at the time it entered into the lease agreement with Habit,[6] but still chose to enter into a long term lease agreement with Habit. Monahan could have utilized or leased its Property for any other use permitted in the C-4 Heavy Commercial Zoning District and was not required to lease the Property to Habit. Like the statute at issue in Beauty Hall, the Ordinance neither prohibited anyone from leasing Monahan's Property, nor prevented Monahan from entering into a lease agreement. In entering into a lease agreement, Monahan also had the opportunity to include lease provisions that would lessen or eliminate any adverse impact of the Ordinance. Moreover, unlike William Penn Parking in which our Supreme Court concluded that the regulation directly burdened transactions between parking garage operators and patrons, William Penn Parking, 346 A.2d at 289, here there was no *direct* regulatory impact of the Ordinance on Monahan.

Because the adverse impact of the Ordinance on Monahan was "merely an indirect, remote, and non[-]purposeful consequence," Beauty Hall, 210 A.2d at 498, or side effect of the Borough's direct regulation of methadone clinics, we conclude Monahan lacks standing to contend that its loss of rental income resulted in a violation of the ADA, RA, and its constitutional rights. Our disposition in this case might be different had the Borough enacted the Ordinance *in response* to the

[6] See generally Wilson v. Plumstead Township Zoning Hearing Board, 894 A.2d 845, 853 (Pa. Cmwlth. 2006) (quotation omitted) (holding that a landowner has a duty to "check the zoning status of real estate" and that "[o]ne who undertakes to make use of real estate for commercial purposes without inquiring as to whether the use is permitted by the municipality's zoning ordinance, does so at his own peril").

lease agreement between Monahan and Habit. However, given that the Ordinance predated the lease agreement, the causal connection between the Borough's enactment of the Ordinance and Monahan's alleged injuries is simply too remote and attenuated to satisfy either the directness or immediacy prong of the William Penn Parking test for standing. Thus, the trial court did not err in sustaining the Borough's POs and dismissing Monahan's suit.

Accordingly, for the foregoing reasons, the trial court's Order is affirmed.[7]

**RENÉE COHN JUBELIRER, Judge**

Senior Judge Friedman concurs in the result only.

[7] Because we conclude that Monahan has not met the Pennsylvania test for standing, it is unnecessary to address whether the trial court erred in concluding that Monahan also did not meet federal associational standing requirements under the ADA and RA.

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**O R D E R**

**NOW**, June 18, 2015, the Order of the Court of Common Pleas of Lackawanna County, entered in the above-captioned matter, is hereby **AFFIRMED**.

**RENÉE COHN JUBELIRER, Judge**