The Appellate Advocate:

A Recap of Recent Decisions by NJ's Appellate Courts

Sponaugle v. Walsh
No. A-0833-24

When you own a home, you learn a lot of things about the law that are never taught in law school. Noise ordinances do not let you mow your lawn before you go to work in the morning. Sanitation ordinances force you to get creative about the definition of "bulk item." But for me personally, I never appreciated the distinction between a backyard and a front yard until I was standing in the Zoning office sketching a "survey" (a generous description) of my planned fence—with certain heights crossed out because, as I learned mid-sketch, a corner lot effectively has no backyard and therefore must comply with lower maximum-height provisions for a fence. My Siberian Husky escaped a few times. And this case jumped out to me.

In Sponaugle v. Walsh, the Appellate Division ruled that the "law of the case" doctrine could not be used to bar Glen R. Sponaugle from contesting whether a narrow utility driveway beside his Avalon property qualifies as a street under local zoning law. That classification was central: if the driveway is a street, the pool sits in a prohibited front yard and must either receive a variance or be removed.

The controversy traces back to 2021, when zoning officials approved a pool for the property while it was still owned by a limited liability company. A neighbor, Carol Walsh, challenged the approval, arguing that the utility driveway constituted a public street. The Avalon Planning Board rejected that claim, but a trial court later reversed the board, declaring the driveway a street—without naming or notifying either the then-owner or Mr. Sponaugle, who had already agreed to buy the property.

That earlier ruling set off a chain reaction. After Mr. Sponaugle closed on the home, the borough issued a zoning violation requiring the pool's removal, and the board denied his request for a variance. When he sought relief in court, the trial judge declined to reconsider the driveway issue, reasoning that it had already been decided.

The appellate panel disagreed. The law-of-the-case doctrine, the judges explained, applies only within the same lawsuit and cannot bind someone who was not a party to the earlier case. Because neither Mr. Sponaugle nor the prior owner had been joined as indispensable parties, invoking the doctrine deprived him of a basic opportunity to defend his property rights.

The court emphasized that zoning disputes affecting the use and enjoyment of land require the participation of those whose interests are directly at stake. It sent the case back to the trial court for a full hearing on whether the utility driveway is, in fact, a street—a determination that will dictate whether the pool may remain and whether the borough can enforce its removal order.

About Thomas Cotton

Thomas Cotton is a litigation partner at Schenck Price, representing clients in trial and appellate courts throughout the United States. In addition to his practice, he authors *The Appellate Advocate*, a semi-weekly blog offering thoughtful yet accessible commentary on recent appellate rulings.

973-540-7333
tjc@spsk.com

About Schenck Price

Founded in 1912 as a two-person law firm in Morristown, New Jersey, Schenck Price has entered its second century as a full-service firm with 80+ attorneys in its New Jersey and New York offices. Our Firm's long history of legal excellence in the areas of litigation, corporate transactions and governance, construction, health care, trust and estate planning, real estate, family law, banking, and environmental law has expanded as the Firm has grown.