FRIDAY • JULY 2, 2010

THE DAILY REPORTER

COLUMBUS' ONLY DAILY BUSINESS AND LEGAL NEWSPAPER - ESTABLISHED 1896

Reversal of annexation case must return to common pleas court, 10th District rules

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The Franklin County Court of Common Pleas must revisit the issue raised by three Dublin property owners who wish to detach their property from the incorporated municipality to neighboring Washington Township on grounds the city has failed to provide the services promised at the time of annexation.

A 10th District Court of Appeals held this week that the lower court overlooked a genuine issue of material fact in that the three parcels, totaling about 43 acres of farmland, are being taxed in substantial excess relative to the services the city provides to the property and its owners.

"A city cannot annex land and then willfully refuse to provide services to it," Columbus attorney Bruce Ingram, partner in the firm Vorys, Sater, Seymour and Pease LLP, said on behalf of his client, Reywal Co. Limited Partnership, one of the property owners.

Reywal Co. owns about 28 acres that it purchased in 2000. Diane Banks and Mark Sheriff together own about 7 acres, while Banks individually owns another 8 acres; the Banks-Sheriff properties were purchased in 1987. All of the property lies along Sawmill Road in Franklin County.

According to case summary, all three parcels were annexed to appellee in 1974. The properties consist of undeveloped farmland surrounded by commercial, retail and residential development. There are no buildings or structures on the properties. For the past decade, the Reywal property has been used exclusively by the owner of a neighboring horse stable to grow hay and graze horses.

Appellants filed April 18, 2007 a petition pursuant to R.C. 709.41 in the trial court, seeking detachment of the properties from appellee into Washington Township. The appellants asserted that the city of Dublin had failed to provide sewer services to the properties despite its pledge to do so at the time of annexation. Additionally, they argued the properties are being taxed in substantial excess of the benefits conferred by reason of the annexation.

The city opposed the petition, summary continued.

Subsequently, the litigation generated myriad motions, conferences and court orders pertaining to discovery issues. The city on Nov. 19, 2008 filed a motion to stay general discovery pending the court's ruling on its simultaneously filed motion for summary judgment. The appellants filed a combined motion for additional time to respond to appellee's motion for summary judgment and to conduct additional discovery pursuant to Civ.R. 56(F) and response in opposition to appellee's motion to stay discovery Dec. 8, 2008.

The trial court filed a decision and entry granting the city's motion to stay general discovery Jan. 9, 2009, summary detailed. In the same decision and entry, the trial court determined appellants were entitled to limited additional discovery on the single issue raised in the city's motion for summary judgment.

The trial court granted summary judgment in favor of the city, having determined that appellants could not establish that the properties at issue were and would continue to be taxed in substantial excess of the benefits conferred by appellee.

"In the instant case, the trial court granted summary judgment on a single fact — the amount of the yearly, Current Agricultural Use Value-reduced tax of $388.81 collectively paid by appellants to appellee," 10th District Judge John Connor wrote for the court. "The court did not consider the full freight of taxes paid on this property. Even though only one of the parcels was subject to the CAUV-reduced tax, there is no evidence in the record regarding the current tax rate without the CAUV-reduced tax.

"In 2001, when the fair market value of the parcel was $332,220, the taxes were $20,897.92 per year. In 2008, the fair market value of the parcel was $1,086,800, and the CAUV-reduced tax was $4,426.78, but there is no evidence of the non-CAUV-reduced tax rate. There was quite a difference between the amounts CAUV-reduced tax rate and the non-CAUV-reduced tax rates in 2001."

The appellate court reasoned further that even though the common please court did not examine any services provided to the properties, it held that they had to be worth more than $388.

"The trial court here did no comparison of the current municipal services compared to township services after detachment," Connor continued. "Although appellee alleged that the city of Dublin provided parkland acquisition, roadways, refuse, recycling, snow removal services and police protection, the scant evidence did provide that there was no snow removal services provided to these parcels and fire services were provided by Washington Township.

"There was no other evidence of the township services and no evaluation of the cost of the services to determine if the property owners, at the present time, are paying a substantially excessive amount for the services provided by the municipality. Neither analysis was completed by the trial court; the trial court just assumed the services were valued at more than $388."

The appellants also argued on appeal that the trial court abused its discretion by denying their Civ.R. 56(F) Motion and by limiting them to a single deposition of a witness solely of the city's choosing. The argument, however, was rendered moot as a result of the appellate court's reversal and remand order.

Inquiries seeking comment from attorneys representing the city were not addressed by press deadline.

Presiding Judge Gary Tyack joined Connor's opinion, while fellow 10th District Judge Judith French concurred separately.

The case is cited as *Reywal Co. Ltd. Partnership v. Dublin*, 2010-Ohio-3013.