2016 IL App (4th) 160122-U

NO. 4-16-0122

FILED
November 7, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

STEPHEN SCHREINER and PAMELA SCHREINER, Plaintiffs-Appellants, v. THE COUNTY OF LOGAN, a Body Politic and Corporate; THE LOGAN COUNTY BOARD; DOUGLAS MUCK; and KAELLYN ARCH, Defendants-Appellees.	)	Appeal from Circuit Court of Logan County No. 13CH27 Honorable William A. Yoder, Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court reversed the trial court, concluding a subsequent amendment to a zoning ordinance did not make it impossible for the trial court to grant plaintiffs relief because a ruling on the plaintiffs' claims would have a practical effect on the controversy.

¶ 2 In July 2015, plaintiffs, Stephen Schreiner and Pamela Schreiner, filed a third amended complaint challenging a decision made by defendant the County of Logan through the actions of the Logan County Board (Logan County or Logan County Board). The complaint sought to challenge Logan County's 2012 decision to rezone property owned by defendants Douglas Muck and Kaellyn Arch from special district (SD) to M-3. This decision changed the use of the property at issue from agricultural to use as a limestone quarry. In August 2015, Logan County, defendant Muck, and defendant Arch filed separate motions to dismiss pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2014)). The

trial court granted the motions to dismiss, finding the matter was moot based on an unchallenged 2015 zoning ordinance amendment.

¶ 3 Plaintiffs appeal, arguing the 2015 ordinance amendment could not (1) ratify the 2012 decision to rezone the subject property from SD to M-3 or (2) otherwise reclassify the subject property as M-3. We reverse.

¶ 4 I. BACKGROUND

¶ 5 In October 2012, defendants filed a rezoning application requesting a change of zoning classification for approximately 280 acres of land from SD to M-3 to allow for the extraction of limestone deposits and related limestone crushing processes. In December 2012, the Logan County Board adopted a resolution approving the petition for rezoning and designating the subject property as an M-3 Extraction District. In March 2013, plaintiffs, who own land adjacent to the subject property, timely filed a complaint challenging the rezoning. Following numerous pleading defects, the trial court granted plaintiffs leave to file a third amended complaint. Filed in July 2015, the third amended complaint raised procedural and substantive due process claims, the details of which are not relevant to this appeal.

¶ 6 On March 17, 2015, the Logan County Board adopted a resolution amending certain sections of the ordinance related to extraction operations. The M-3 Extraction District ordinance originally provided for permitted uses and conditional uses for land zoned M-3. Permitted uses included "sand, gravel, marl, clay, limestone, salt, coal extraction and related crushing processes" and "oil and gas extraction." Conditional uses included "cement concrete or asphaltic concrete mixing plants."

¶ 7 The proposed ordinance, which was adopted by the Logan County Board, amended the ordinance such that the only permitted use for land zoned M-3 was borrow pits.

Section 3.73-3 (Logan County Zoning Ordinance § 3.73-3 (adopted Mar. 17, 2015)) of the amended ordinance designated the following conditional uses for land zoned M-3:

> "a. Cement concrete or asphaltic concrete mixing plants.
>
> b. Sand, gravel, marl, clay, limestone, salt, coal extraction and related crushing processes.
>
> c. Oil and gas extraction."

The amendment also added Section 3.73-5 (Logan County Zoning Ordinance § 3.73-5 (adopted Mar. 17, 2015)) to the M-3 Extraction District ordinance, which provides as follows:

> "Effective Date: Uses listed in Section 3.73-3(b) and (c) shall be permitted uses: (1) for all land where such uses already exist and are in operation on the effective date of this amendment; or (2) for all land which has been or is otherwise approved or designated for M-3 classification by ordinance of the Logan County Board on or before the effective date of this amendment. All such uses identified in (1) and (2) of this section as of the effective date of this amendment are designated as M-3 on the attached zoning classification map dated March 17, 2015."

The parties do not dispute that the attached map identified the subject property as being zoned an M-3 Extraction District. Plaintiffs did not appeal adoption of this amendment.

¶ 8 On July 23, 2015, plaintiffs filed their third amended complaint. On August 24, 2015, Logan County, defendant Muck, and defendant Arch filed separate motions to dismiss pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2014)). Defendants all argued the March 17, 2015, amendment rendered plaintiffs' claims moot because the amendment

reclassified the subject property as an M-3 Extraction District. Following oral argument, the trial court entered a written order finding the amendment adopted on March 17, 2015, "again designated the Muck/Arch property M-3 classification." The court determined "the subsequent County Board action on March 17, 2015[,] classified the Muck/Arch property as M-3 and[,] as no appeal of that action was filed, rendered moot the current litigation." Accordingly, the court granted defendants' motions to dismiss with prejudice.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Plaintiffs appeal, arguing their claims are not moot because the 2015 zoning amendment could not (1) ratify the 2012 decision to rezone the subject property from SD to M-3 or (2) otherwise reclassify the subject property as M-3. Defendants contend the plain language of the March 2015 ordinance amendment rezoned the subject property as an M-3 extraction district, thereby preventing the trial court from granting effective relief based on the 2012 rezoning.

¶ 12 "A motion to dismiss under section 2-619(a) admits the legal sufficiency of the plaintiff's claim but asserts certain defects or defenses outside the pleadings which defeat the claim." *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55, 962 N.E.2d 418. Where events occur that make it impossible for the court to render effectual relief, an issue is moot. *Feret v. Schillerstrom*, 363 Ill. App. 3d 534, 538, 844 N.E.2d 447, 452 (2006). Put another way, "[w]hen an intervening event occurs rendering it impossible for a reviewing court to grant the relief to any party, the case becomes moot because a ruling on the issue cannot have any practical effect on the controversy." *International Federation of Professional & Technical Engineers v. Chicago Park District*, 349 Ill. App. 3d 546, 547, 812 N.E.2d 407, 408 (2004). We review *de*

novo an order granting a motion to dismiss pursuant to section 2-619 of the Code. *Figiel v. Chicago Plan Comm'n*, 408 Ill. App. 3d 223, 229, 945 N.E.2d 71, 76 (2011).

¶ 13 We first address defendants' contention that plaintiffs argue this court should accept as true the legal conclusion set forth in the complaint that the 2012 rezoning was void when interpreting the 2015 amendment. We think this misses the point of plaintiffs' argument. Plaintiffs do not ask this court to accept legal conclusions set forth in the complaint. Rather, plaintiffs contend this court must determine whether the 2015 amendment was an event which rendered the case moot because a ruling on the issue of the validity of the 2012 rezoning would not have any practical effect on the controversy. In other words, we must determine whether the 2015 amendment supersedes the 2012 rezoning such that a judgment in plaintiffs' favor on the claims raised in the complaint would have no practical effect. This necessarily requires considering the effect of the 2015 amendment if plaintiffs were to prevail in obtaining a judgment ruling the 2012 rezoning void. This is not the same as accepting as true a legal conclusion—indeed, this does not entail expressing any conclusions as to the merits of plaintiffs' underlying claims regarding the 2012 rezoning. It merely involves considering whether the 2015 amendment did indeed "rezone" the subject property. We conclude it did not.

¶ 14 The general rules of statutory construction and interpretation are used when evaluating zoning ordinances. *Platform I Shore, LLC v. Village of Lincolnwood*, 2014 IL App (1st) 133923, ¶ 10, 17 N.E.3d 214. The goal of statutory interpretation is to determine the legislative intent, of which the best evidence is the plain and ordinary meaning of the statutory language. *Id.* "Where a statute is capable of more than one reasonable interpretation, that statute is ambiguous and we may consider extrinsic aids to construction, such as the legislative history." *Id.*

¶ 15 The 2015 amendments to the M-3 Extraction District zoning ordinance made previously permitted uses of M-3 property conditional uses. Prior to the 2015 amendment, limestone extraction was a permitted use of M-3 property. Following the 2015 amendment, limestone extraction was a conditional use. However, the 2015 amendment included an "effective date" provision, which provided limestone extraction would remain a permitted use:

> "(1) for all land where such uses already exist and are in operation on the effective date of this amendment; or (2) for all land which has been or is otherwise approved or designated for M-3 classification by ordinance of the Logan County Board on or before the effective date of this amendment. All such uses identified in (1) and (2) of this section as of the effective date of this amendment are designated as M-3 on the attached zoning classification map dated March 17, 2015." (Logan County Zoning Ordinance § 3.73-5 (adopted Mar. 17, 2015))

¶ 16 Defendants contend the plain language of this "effective date" clause (1) clearly identifies the subject property and (2) supersedes the 2012 rezoning by effectively rezoning the subject property as M-3. We disagree. First, the plain and ordinary meaning behind the language of the amendment does not evidence the intent to rezone property. As defendants Muck and Arch both point out in their briefs, the amendment states limestone extraction will be a permitted use "for all land *previously* approved for M-3 classification *prior to* March 17, 2015, which land is identified in the attached zoning classification map and includes the [d]efendants' property." Although the map attached to the amendment does identify the subject property, the language of the effective date does not purport to actively zone or rezone any property as M-3.

The effective date merely establishes a grandfather clause that allows owners of property previously zoned M-3 to dispense with the additional requirements property owners will have to comply with going forward when seeking approval for the conditional uses of M-3 classified property. The plain language identifies the subject property as previously approved for M-3 classification and does not in any way suggest the amendment approves that classification.

¶ 17 Although we think the plain language of the 2015 amendment does not evidence an intent to reclassify or rezone any property, to the extent that the language "is capable of more than one reasonable interpretation," we find it ambiguous and turn to the extrinsic aids to construction. *Platform I Shore, LLC*, 2014 IL App (1st) 133923, ¶ 10, 17 N.E.3d 214. Attached as exhibits to Logan County's motion to dismiss were copies of the March 17, 2015, board meeting minutes and the published notice of the public hearing on the 2015 amendments. These extrinsic aids *clearly* demonstrate the intent of the amendments was not to rezone or reclassify any property. Rather, the intent was to enact generally applicable amendments to allow greater flexibility in imposing conditions for future proposed uses. The board meeting minutes show the intent of the effective date provision was to grandfather in property already rezoned M-3. The minutes contain no mention of rezoning or reclassifying any particular property. Moreover, the published notice of the hearing on the amendments makes no mention of rezoning or reclassifying any property. Rather, it states the proposed amendments were "to make changes to permitted uses, conditional uses, special regulations and adding an effective date provision." Accordingly, we conclude the intention behind the 2015 amendment was not to rezone or reclassify the subject property. The 2015 amendment merely identified the subject property as property previously zoned M-3 (by the 2012 rezoning).

¶ 18 If plaintiffs were to prevail in their challenge to the 2012 rezoning, then the 2015 grandfather clause simply would not apply to the subject property if it were rezoned M-3 in the future. Rather, the limestone quarry would be a conditional use of the subject property once properly rezoned. If plaintiffs are unsuccessful in the challenge to the 2012 rezoning, then the grandfather clause would apply to the subject property and the limestone quarry would be a permitted use under the 2015 amendment. Thus, although the 2015 amendment may have some effect if plaintiffs prevail and defendants seek to rezone the property in the future, it is clear the 2015 amendment did not make it impossible for the trial court to grant plaintiffs relief because a ruling on plaintiffs' claims would have a practical effect on the controversy. Accordingly, we conclude the court erred in finding plaintiffs' claims moot and dismissing the complaint with prejudice.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we reverse the trial court's judgment.

¶ 21 Reversed.