

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CITY OF ALLIANCE	:	JUDGES:
	:	Sheila G. Farmer, P.J.
Plaintiff-Appellant	:	Julie A. Edwards, J.
	:	Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2008 CA 00024
LEXINGTON TOWNSHIP BOARD OF TRUSTEES	:	
	:	
	:	
Defendant-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil Appeal From Stark County Court Of
Common Pleas Case No. 2007 CV 03723

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: February 9, 2009

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

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Edwards, J.

{¶1} Appellant, City of Alliance, appeals from the January 2, 2008 Judgment Entry of the Stark County Court of Common Pleas affirming the decision of the Stark County Commissioners that denied a petition to annex 51.279 acres from Lexington Township to appellant City of Alliance.

STATEMENT OF THE FACTS AND CASE

{¶2} On May 1, 2007, a petition for annexation of 51.279 acres located in Lexington Township to appellant City of Alliance was filed with the Stark County Commissioners. The property sought to be annexed, which is known as the “WMMT-RFIPM Annexation”, was located adjacent to and contiguous with the City of Alliance. The annexation petition was signed by three (3) of the five (5) fee simple owners [the petitioners] who own a total of approximately 15 acres.

{¶3} Beatrice Hoopes, on February 21, 2007, signed the annexation petition as owner of GNW Aluminum, Inc. (hereinafter “GNW”). Representatives from RFIPM Holdings, LLC and WMMT Properties Ltd Partnership also signed the annexation petition.

{¶4} On or about May 18, 2007, the agent for the petitioners mailed out notices scheduling a public hearing for July 17, 2007. The notice sent to petitioner GNW was sent to the address listed in the annexation petition and included a notice that GNW had 21 days to withdraw its signature.

{¶5} At the July 17, 2007, public hearing, Commissioner Vignos asked if there was anyone present who had signed the annexation petition who wanted his or her signature removed from the same. There was no response.

{¶6} Nathan Hoopes, the President and CEO of GNW, testified at the hearing that, while he received the notice of the annexation hearing, he had “no prior knowledge of any information or any legal legalities or anything on the annexation...” Transcript of July hearing at 97. He further testified that they were told that they could either sign the annexation petition or pay a \$10,000.00 water bill. Hoopes, when asked, testified that he was not for or against the annexation, but wanted more information on what an annexation involved and wanted to consult an attorney. The annexation hearing was continued until August 21, 2007.

{¶7} On July 26, 2007, Beatrice Hoopes, the owner of GNW, signed an affidavit indicating her intention to remove her name from the annexation petition and requesting that her name be withdrawn from the same. The affidavit was hand delivered to the Stark County Commissioners on August 3, 2007. Beatrice Hoopes also submitted a letter to the Board of Commissioners on August 14, 2007, seeking to withdraw her signature from the annexation petition.

{¶8} At the August 21, 2007, hearing, Beatrice Hoopes testified that her life had been in “undue distress” over the past year due to the deaths of her father and husband and that, although she was named owner of GNW, she knew nothing about the company. The following is an excerpt from her testimony:

{¶9} “My - - my son [Nathan Hoopes] has totally been running it since my husband got sick with cancer. So when I signed it, I signed it because I was told I - - I really - - if I didn’t sign it, I needed to pay the water bill, which was a lien against the property. And at that time, which was only a week after my father had passed away, I didn’t - - I didn’t - - I couldn’t proceed coming up with the \$10,000 to pay the water bill.

And we were still settling my husband's estate and everything. So - - and then plus I was a City employee and Vince was my boss. And I really needed the job because of the loss of my husband and stuff. And I didn't see any - - anything I could do but to sign it.

{¶10} "MS. VIGNOS: Go Ahead. You have a question.

{¶11} "MR. HARMON: Your affidavit expresses your wish to be removed as a signer?

{¶12} "MS. HOOPES: Yes.

{¶13} "MR. HARMON: So you want us to understand that you absolutely do not see a benefit at this point in time to becoming a part of the city - - or the City of Alliance?

{¶14} "MS. HOOPES: No.

{¶15} "MR. HARMON: And you want us to further understand that your reasoning for signing it in the first place was because of emotional duress, the outstanding water bill as a factor and your relationship as an employee?

{¶16} "MS. HOOPES: Yes." Transcript of August 21, 2007 hearing at 14-15.

{¶17} On cross-examination, Beatrice Hoopes testified that she did not say that Vince Marion, her boss, had pressured her to sign the annexation petition when he gave it to her, but that she felt pressured because she was an employee of the City of Alliance and he was her boss. She further testified that when she asked Marion what her choices were, he said she could either pay the water bill or sign the petition. Beatrice Hoopes also testified that she believed by signing the petition, the water bill would be forgiven. When asked, she testified that she did not hear Commissioner Vignos announce at the July 17, 2007 hearing that anyone who wanted to remove his or

her signature from the annexation petition should come forward, although she testified that, if she had heard Commissioner Vignos, she would have gone forward and done so.

{¶18} At the August 21, 2007, hearing, Vince Marion, who is Director of Planning and Development for the City of Alliance and Beatrice Hoopes's boss, testified that he had not pressured her into signing the annexation petition. He testified that Beatrice Hoopes signed it after he went to her and asked her who he should be talking to regarding the annexation since Hoopes's husband, who had owned the company, had died.

{¶19} As memorialized in a Resolution adopted on August 30, 2007,¹ the Stark County Board of Commissioners denied the annexation petition on the basis that a majority of the Board of County Commissioners did not vote in favor of the annexation. While one Commissioner had voted in favor of the annexation, another voted against it and the third abstained from voting.

{¶20} Appellant City of Alliance then appealed the denial of the annexation petition to the Stark County Court of Common Pleas. Pursuant to a Judgment Entry filed on January 2, 2008, the trial court affirmed the decision of the Stark County Board of Commissioners denying the annexation petition. The trial court, in its Judgment Entry, found that "[t]here is sufficient evidence in the record that the Commissioners could have concluded that Beatrice Hoopes felt undue influence when she signed the Petition." The trial court further stated, in relevant part, as follows:

{¶21} "WMMT appeared at the hearing by its duly appointed Agent as permitted by Ohio law. WMMT favored annexation and indicated that it believed that it would

¹ The Resolution was approved by Commissioners Vignos and Harmon.

benefit from the economic development funds available from the City of Alliance after annexation. There was also testimony that Petitioner RFIPM had already received economic development benefits from the City of Alliance and had, as a result, agreed to the annexation. However, once GNW made it clear that it wished to withdraw its Signature and not be annexed into the City of Alliance, the general good requirement could not (sic) longer be satisfied.”

{¶22} Appellant now raises the following assignments of error on appeal:

{¶23} “I. THE COURT OF COMMON PLEAS ERRED IN FINDING THAT THERE WERE FACTS ON THE RECORD BEFORE THE BOARD OF COUNTY COMMISSIONERS PERMITTING THE WITHDRAWAL THE SIGNATURE OF BEATRICE HOOPEES, SOLE OWNER OF GNW ALUMINUM, INC. FROM THE ANNEXATION PETITION.

{¶24} “II. THE TRIAL COURT ERRED IN FINDING THAT THE ANNEXATION DECISION CRITERIA DID NOT SUPPORT ANNEXATION.”

STANDARD OF REVIEW

{¶25} An order denying a petition to annex a property may be appealed pursuant to R.C. 2506.01. *Smith v. Granville Twp. Bd. of Trustees*, 81 Ohio St.3d 608, 612, 1998-Ohio-340, 693 N.E.2d 219. The scope of review by a court of such an administrative order is defined in R.C. 2506.04, which states: “[t]he court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body

appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court. The judgment of the court may be appealed by any party on questions of law as provided in the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.”

{¶26} In *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 147, 2000-Ohio-493, 735 N.E.2d 433, citations omitted, the Supreme Court of Ohio discussed the difference between the standards of review to be applied by the trial court and the court of appeals: “Construing the language of R.C. 2506.04 , we have distinguished the standard of review to be applied by common pleas courts and courts of appeals in R.C. Chapter 2506 administrative appeals. The common pleas court considers the ‘whole record,’ including any new or additional evidence admitted under R.C. 2506.03, and determines whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence.* * *

{¶27} “The standard of review to be applied by the court of appeals in an R.C. 2506.04 appeal is ‘*more limited* in scope.’ (Emphasis added.)* * *. ‘This statute grants a more limited power to the court of appeals to review the judgment of the common pleas court only on “questions of law,” which does not include the same extensive power to weigh “the preponderance of substantial, reliable and probative evidence,” as is granted to the common pleas court.’ * * * ‘It is incumbent on the trial court to examine the evidence. Such is not the charge of the appellate court.* * * The fact that the court of appeals, or this court, might have arrived at a different conclusion than the administrative agency is immaterial. Appellate courts must not substitute their judgment

for those of an administrative agency or a trial court absent the approved criteria for doing so.' * * * ”

{¶28} “[W]ithin the ambit of ‘questions of law’ for appellate court review would be abuse of discretion by the common pleas court.” *Kisil v. Sandusky* (1984), 12 Ohio St.3d 30, 465 N.E.2d 848 at FN 4. In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983) 5 Ohio St.3d 217, 450 N.E.2d 1140.

I

{¶29} Appellant, in its first assignment of error, argues that the trial court erred in finding that there were facts on the record before the Board of County Commissioners permitting the withdrawal of the signature of Beatrice Hoopes, the sole owner of GNW, from the annexation petition.

{¶30} R.C. Chapter 709 provides two methods for an owner who has signed an annexation petition to have his or her name removed from the same. R. C. Section 709.03(C) states as follows: “(C) Any owner who signed the annexation petition may remove that signature by filing with the clerk of the board of county commissioners a written notice of withdrawal of the owner's signature within twenty-one days after the date the agent for the petitioners mailed the notice of the hearing to the owner as provided in division (B)(2) of this section. Thereafter, signatures may be withdrawn or removed only in the manner authorized by section 709.032 of the Revised Code.”²

{¶31} In turn, R.C. 709.032 states as follows: “(D) At the [public] hearing, any owner who signed the petition for annexation may appear and, after being sworn as

² The parties cite R.C. 709.03 incorrectly.

provided by section 305.21 of the Revised Code, testify orally that the owner's signature was obtained by fraud, duress, misrepresentation, including any misrepresentation relating to the provision of municipal services to the territory proposed to be annexed, or undue influence. Any person may testify orally after being so sworn in support of or rebuttal to the prior testimony by the owner. Any witnesses and owners who testify shall be subject to cross-examination by the necessary parties to the annexation proceedings. If a majority of the county commissioners find that the owner's signature was obtained under circumstances that did constitute fraud, duress, misrepresentation, or undue influence, they shall find the signature to be void and shall order it removed from the petition as of the time the petition was filed.”

{¶32} In the case sub judice, the agent for the petitioners mailed a notice of the July 17, 2007 hearing to the property owners on May 18, 2007. Beatrice Hoopes, as a property owner, had twenty-one (21) days from such date to file a written notice of withdrawal of her signature with the Clerk of the Board of Stark County Commissioners. Hoopes, however, did not file her written withdrawal within such time frame.

{¶33} The trial court, in its Judgment Entry, after determining that Beatrice Hoopes did not file her notice requesting that her name be withdrawn in accordance with R.C. 709.03, considered R.C. 709.032, cited above. As is stated above, after considering the evidence, the trial court concluded that there was sufficient evidence in the record “that the Commissioners could have concluded that Beatrice Hoopes felt undue influence when she signed the petition” and that, “once GNW made it clear that it wished to withdraw its signature and not be annexed into the City of Alliance, the

general good requirement could not (sic) longer be satisfied.”³ On such basis, the trial court found that the decision of the Stark County Board of Commissioners denying the annexation petition was not unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable and probative evidence.

{¶34} However, the trial court, in so ruling, erred in concluding that the Stark County Board of Commissioners had permitted GNW to withdraw its signature to the annexation petition. The Resolution adopted by the Stark County Commissioners on August 30, 2007, which denied the annexation petition, states, in relevant part, as follows:

{¶35} “Commissioners Vignos moved the adoption of the following resolution, which was seconded by Harmon. WHEREAS, a petition was filed on May 1, 2007, proposing to annex 51.279 acres, more or less, located in Lexington Township, Stark County, Ohio to the City of Alliance; and WHEREAS, as required by law, a public hearing was held this date of July 17, 2007 and continued until August 21, 2007; and WHEREAS, this Board has examined the arguments, sworn testimony, maps, legal documents, and petition, both for and against such annexation; and WHEREAS, it has been determined that Beatrice Hoopes was the legal owner of GNW Aluminum and authorized to sign the annexation petition; and WHEREAS, the request from Beatrice Hoopes to withdraw her signature from the petition in an affidavit submitted to the Board

³ We note that R.C. 709.033 (A) sets forth the applicable criteria for approving an annexation. R.C. 709.033 states, in relevant part, as follows: “(A) After the hearing on a petition for annexation, the board of county commissioners shall enter upon its journal a resolution granting the annexation if it finds, based upon a preponderance of the substantial, reliable, and probative evidence on the whole record, that each of the following conditions has been met:... “(5) On balance, the general good of the territory proposed to be annexed will be served, and the benefits to the territory proposed to be annexed and the surrounding area will outweigh the detriments to the territory proposed to be annexed and the surrounding area, if the annexation petition is granted. ...”

of Commissioners on August 3, 2007, and in a letter submitted to the Board of Commissioners on August 14, 2007, and according to her sworn testimony given during the public hearing did not fulfill the requirements of the law according to ORC Section 709.03(C) and 709.032(D) to withdraw a signature.”

{¶36} As is stated above, R.C. 709.032 states, in relevant part, as follows: “If a majority of the county commissioners find that the owner's signature was obtained under circumstances that did constitute fraud, duress, misrepresentation, or undue influence, they shall find the signature to be void and shall order it removed from the petition as of the time the petition was filed.” In the case sub judice, a majority of the Commissioners did *not* find that Beatrice Hoopes had withdrawn her signature. There was no such finding in the August 30, 2008 Resolution. Rather, the Board of Commissioners, in its Resolution, made the following findings of fact:

{¶37} “NOW, THEREFORE, BE IT RESOLVED that this Board of County Commissioners hereby makes the following findings of fact:

{¶38} “1) The petition meets all the requirements set for, in, and was filed in the manner provided in ORC Section 709.02. The legal notice was published and procedures proven as required by ORC Section 709.03.

{¶39} “2) The persons who signed the petition are owners of real estate within the territory proposed to be annexed and, at the time of filing, the number of signatures on the petition constitute a majority of the owner of land within said territory as required by ORC 709.033(A)(2).

{¶40} “3) The municipality has complied with ORC 709.03(D), the requirement to adopt by ordinance or resolution a statement indicating what services it will provide to said territory.

{¶41} “4) The territory is not unreasonably large. (ORC 709.033(A)(4)

{¶42} “5) On balance, the general good of the territory to be annexed will be served, and the benefits to the territory and the surrounding area will outweigh the detriments to the annexation area and surrounding area.

{¶43} “6) No street or highway will be divided or segmented by the boundary line between the township and the municipality as to create a road maintenance problem or if a street or highway will be so divided or segmented, the municipality has agreed, as a condition of the annexation, that it will assume the maintenance of that street. (ORC 709.033(A)(6).”

{¶44} As is stated above, the Resolution was approved by two of the three commissioners.

{¶45} We find, therefore, that the trial court erred as a matter of law in concluding that Hoopes’ signature had been withdrawn from the annexation petition and in determining that, therefore, the general good requirement could not be satisfied.⁴ Because a majority of the Board of Commissioners did not find that Beatrice Hoopes’ signature was obtained under circumstances that constituted fraud, duress, misrepresentation, or undue influence, they did not find her signature to be void and did not order it removed from the petition as of the time the petition was filed.

⁴ In the case *In re Proposed Annexation of 95.577 acres, more or less, from Lexington Township, Stark County Ohio, into the City of Alliance* (Feb. 22, 2000), Stark App. No. 1999CA00312, 2000 WL 222223, this Court found that the trial court had erred, as a matter of law, in concluding that the State of Ohio could not be considered an “owner” for purposes of an annexation proceeding. We reversed the judgment of the trial court and remanded the matter for further proceedings.

{¶46} Appellant’s first assignment of error is, therefore, sustained.

II

{¶47} Appellant, in the second assignment of error argues that the trial court erred in finding that the annexation decision criteria did not support annexation.

{¶48} As is stated above, the trial court found that once GNW made it clear that it wished to withdraw its signature to the annexation petition, the general good requirement could not be satisfied.

{¶49} Based on our disposition of appellant’s first assignment of error, the second assignment of error is also sustained.

{¶50} Accordingly, the judgment of the Stark County Court of Common Pleas is reversed and this matter is remanded to the trial court for further proceedings.

By: Edwards, J.

Farmer, P.J. and

Delaney, J. concur

JUDGES

