IN THE COURT OF APPEALS OF IOWA

No. 9-718 / 09-0269
Filed November 25, 2009

WILLIAM and SHARON OGLESBY, HERBERT and MARY LOOPS, DALE and DEBRA OTTS, ALFRED and CAROL SCHILTZ, RICHARD and LORRAINE TURNIPSEED, and CITIZENS FOR SENSIBLE DEVELOPMENT,
Plaintiffs-Appellees,

vs.

CITY OF CORALVILLE, IOWA,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Douglas S. Russell, Judge.

The defendant City appeals the district court's grant of summary judgment in favor of the plaintiffs, holding that the City did not comply with the notice requirements for a voluntary annexation. **AFFIRMED.**

Ivan T. Webber of Ahlers & Cooney, P.C., Des Moines, for appellant.

Webb L. Wassmer and Paul P. Morf of Simmons, Perrine, Moyer, Bergman, P.L.C., Cedar Rapids, for appellee.

Heard by Vogel, P.J., and Doyle and Mansfield, JJ.

MANSFIELD, J.

This is an annexation case. The City of Coralville ("City" or "Coralville") appeals from the district court's grant of summary judgment in favor of the plaintiffs, who own land either within or contiguous to territory the City sought to annex, and who successfully blocked the annexation.[1] On appeal, the City asserts that the district court should have dismissed the plaintiffs' action because they failed to exhaust administrative remedies with a state agency, the City Development Board, before seeking relief in the courts. Alternatively, the City argues it was not required to notify the plaintiffs before hearing the annexation application because the plaintiffs did not own land within the territory to be annexed. We find the plaintiffs were not required to exhaust remedies with the City Development Board prior to going to court. Additionally, we hold that regardless of whether the plaintiffs were entitled to notice as owners of land within the territory to be annexed, they should have received notice as owners of land adjoining the territory to be annexed. Accordingly, we find the City's arguments without merit and affirm the district court's ruling that the City failed to comply with the notice requirements in Iowa Code section 368.7(1)(d) (2005).

I. Background Facts & Proceedings.

Scanlon Properties submitted an application to the City, requesting that it annex property owned by Scanlon, as well as North Liberty Road and a half mile of the right-of-way for North Liberty Road that connects the City to the Scanlon

[1] All of the plaintiffs are landowners except for the Citizens for Sensible Development, which is a self-styled "surrogate organization" pursuing the same claims as the individual plaintiffs. Throughout the opinion we refer to the landowner plaintiffs as the plaintiffs.

property. On October 24, 2006, the plaintiffs filed a petition in district court seeking a writ of certiorari, a declaratory judgment, and injunctive relief. The petition alleged that the City had failed to provide the required notice to interested landowners pursuant to Iowa Code sections 369.7(1)(b) and (d) before considering Scanlon's application for annexation. Additionally, the petition alleged that Iowa Code chapter 368 enables a city to annex adjoining land, but this annexation was instead a "shoestring" or an "umbilical cord" annexation. In other words, it involved noncontiguous land that would be connected to the city only by a proposed annexation of one half-mile of right of way.

That same day, the Coralville City Council voted to approve the annexation application.[2] On November 1, 2006, the plaintiffs filed an amended and substituted petition seeking the same relief but also alleging the City had acted illegally and without jurisdiction in holding a hearing and approving the annexation without the notice required under Iowa Code chapter 368.

A hearing on the plaintiff's petition was held on November 7, 2006. Before the district court ruled, on November 16, 2006, the City moved to dismiss the petition for failure to state a cause of action. The City asserted that the plaintiffs did not have standing to bring their claims and had failed to exhaust administrative remedies.

[2] The plaintiffs also filed an application for a temporary restraining order (TRO) seeking to enjoin the Coralville City Council's vote on the application for annexation. The City moved to dismiss the TRO request, asserting that no service had been obtained and insufficient notice had been provided to the City pursuant to Iowa Rule of Civil Procedure 1.1507. The district court granted the City's motion, finding insufficient notice.

On November 22, 2006, the district court found: (1) the plaintiffs owned either property the City sought to annex and/or property adjoining the proposed annexation; (2) the City was required to give these landowners notice before taking action to annex the land; and (3) there was an invasion or threatened invasion of the plaintiffs' rights as a result of the City's failing to provide the required notice. The district court issued a temporary injunction, which enjoined the City "from taking further action on the proposed Scanlon property annexation until such time as it complies with all statutory notice requirements." The City filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2), reasserting that the plaintiffs did not have standing to bring the suit and/or had failed to exhaust their administrative remedies. On December 1, 2006, the district court denied the City's rule 1.904(2) motion.[3]

On February 16, 2007, the district court denied Coralville's motion to dismiss. Again, the district court found the City had failed to give plaintiffs the required notice. Furthermore, the district court held the plaintiffs had not failed to exhaust administrative remedies.

Ultimately, on October 17, 2008, the plaintiffs moved for summary judgment to obtain a final resolution of the case. Plaintiffs' motion asserted that at a minimum, the plaintiffs were adjoining landowners entitled to notice pursuant to Iowa Code section 367.7(1)(d) and the City had not provided the required

[3] Following this ruling, on December 13, 2006, the City petitioned our supreme court for a writ of certiorari, asserting that the district court did not have jurisdiction to issue a temporary injunction because the plaintiffs were required to exhaust administrative remedies. On February 21, 2007, without giving reasons, the supreme court denied Coralville's petition for writ of certiorari. The supreme court's certiorari review is discretionary, *Sorci v. Iowa Dist. Court*, 671 N.W.2d 482, 490 (Iowa 2003), and thus a denial has no precedential significance.

notice to them. Therefore, the plaintiffs maintained, the City had acted illegally and without jurisdiction when it approved the annexation. The plaintiffs requested that a writ of certiorari and a declaratory judgment be entered annulling the city council vote and declaring the annexation illegal and without jurisdiction, and that the City be permanently enjoined from proceeding with the annexation without a new hearing and vote in accordance with all applicable laws. On October 27, 2008, the City resisted and cross-moved for summary judgment. The City asserted that the plaintiffs were not entitled to notice, did not have standing, and did not exhaust administrative remedies.

On June 27, 2009, the district court issued its ruling. The court found there was no dispute as to the following facts: (1) The plaintiffs were owners of property adjoining the land to be annexed by the City; (2) As adjoining landowners, the plaintiffs were entitled to notice of the annexation hearing; and (3) The City did not provide proper notice to the plaintiffs. As a result, the City did not have jurisdiction to consider the annexation application, and the City's actions were void. Additionally, the district court found that because the City's decision was void, there was no decision to be reviewed by the City Development Board and there were no administrative remedies for the plaintiffs to exhaust in this matter. The district court granted the plaintiff's motion for summary judgment and denied the City's motion for summary judgment. The City was ordered to proceed with consideration of the annexation application only in accordance with the procedures of Iowa Code chapter 368.

The City appeals and asserts the district court erred by granting summary judgment in favor of the plaintiffs because (1) the plaintiffs failed to exhaust administrative remedies and (2) the City complied with Iowa Code chapter 368.

II. Standard of Review.

We review a district court's grant of summary judgment for correction of errors at law. Iowa R. App. P. 6.907 (2009). Summary judgment shall be granted when the entire record demonstrates there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3). The moving party bears the burden to establish there is no genuine issue of material fact, and the facts must be viewed in the light most favorable to the moving party.

III. Analysis.

A. Exhaustion of Administrative Remedies.

We first examine the City's assertion that the district court should have dismissed the plaintiffs' action because the plaintiffs failed to exhaust their administrative remedies before seeking relief in the courts. "It is well established that a party must exhaust any available administrative remedy before seeking relief in the courts." *Shors v. Johnson*, 581 N.W.2d 648, 650 (Iowa 1998). "The exhaustion doctrine applies when (1) an adequate administrative remedy exists and (2) the governing statute requires the remedy to be exhausted before allowing judicial review." *Id.*; *accord Regional Ret. Living, Inc. v. Bd. of Review*, 611 N.W.2d at 779, 781 (Iowa 2000).

The City's argument is as follows: Once Coralville had approved the annexation petition, the petition's next port of call was the City Development

Board. At the City Development Board, a review would have been made as to whether the annexation petition was valid. Accordingly, for a court to rule on the validity of the annexation petition before the City Development Board had an opportunity to do so violates the principle of exhaustion of remedies.

We disagree. Unlike a "truly easy" voluntary annexation,[4] which does not require City Development Board review, this annexation, although voluntary, had to go before the City Development Board because Coralville sought to annex property that was within the urbanized area of another city—North Liberty. *See* Iowa Code § 368.7(3); Iowa Admin. Code r. 263-7.1. As we read chapter 368, the primary purpose of the City Development Board in this context is to assure that annexation-related issues are not simply resolved on a "first come, first served" basis in favor of the first annexer but that broader public interests are taken into account. *See City of Dubuque v. Iowa Dist. Ct.*, 725 N.W.2d 449, 450 (Iowa 2006) (competition between two cities over annexation); *accord City of Asbury v. Iowa City Dev. Bd.*, 723 N.W.2d 188, 191-93 (Iowa 2006); *Pruss v. Cedar Rapids/Hiawatha Annexation Special Local Comm.*, 687 N.W.2d 275, 277-78 (Iowa 2004); *City of Des Moines v. City Dev. Bd.*, 633 N.W.2d 305, 307-08 (Iowa 2001); *City of Des Moines v. City Dev. Bd.*, 473 N.W.2d 197, 198-99 (Iowa 1991).

If the City Development Board were viewed as an all-purpose enforcer of chapter 368's requirements, presumably *all* voluntary annexation petitions would have to go through the Board. However, they do not. In fact, while the City

[4] We borrow the phrase from Nicholas O. Cooper, *Annexation in Iowa and the "Textbook Example" of a Voluntary Annexation that Hardly Seems Voluntary*, 9 Drake J. Agr. Law 103, 106-07 (2004).

Development Board rules provide that any voluntary application that implicates the urbanized area of another city will be reviewed upon submission for compliance with chapter 368, *see* Iowa Admin. Code r. 263-7.7(2), there is no requirement that the application demonstrate compliance with the landowner notification requirement in Iowa Code § 368.7(1)(d). *See* Iowa Admin. Code r. 263-7.2 (listing required contents of request). Thus, in the ordinary course of events, the Board will not even have information about the extent to which landowners were notified before the City acted.

In short, after considering the "terms and implications" of chapter 368 and the City Development Board's administrative rules, we conclude that resort to the Board to rectify a failure by the City to give notice is "permissive only or not exclusive of the judicial remedy." *See George v. D.W. Zinser Co*., 762 N.W.2d 865, 872 n.1 (Iowa 2009).[5]

Additionally, this is not a case where "an adequate administrative remedy exists." *Shors*, 581 N.W.2d at 650. For this reason as well, we find the doctrine

[5] In reaching this conclusion, we do not adopt either side's position. The City argues that our present case is like *Dunn v. City Development Board*, 623 N.W.2d 820, 825 (Iowa 2001), where the supreme court held that the doctrine of administrative remedies precluded a lawsuit challenging the Board's decision to accept an involuntary annexation petition despite the City's prior noncompliance with chapter 368. However, in that case, the plaintiffs were challenging a Board action that had already been taken. Moreover, that case involved an involuntary annexation, where the Board is expressly empowered to review and determine "if the petition is legally sufficient." *See* Iowa Code §§ 368.11, .12; *City of Des Moines*, 633 N.W.2d at 308 n.1. Here, by contrast, plaintiffs are directly challenging an action of Coralville, involving a voluntary annexation, not an action of the Board. Therefore, we do not believe *Dunn* is relevant here.

On the other hand, we believe the plaintiffs' treatment of the issue is somewhat too simplistic. The plaintiffs argue that because Coralville is not an "agency" within the meaning of Iowa Code chapter 17A, the exhaustion requirement does not apply. However, the Board clearly is such an agency. Exhaustion of administrative remedies may be required even if resort to that administrative remedy has not yet commenced, provided the two conditions set forth in *Shors* and similar cases are met.

of exhaustion of administrative remedies to be inapposite. In a classic Catch-22, after submitting the voluntary annexation application to the Board, Coralville took the position *before the Board* that the plaintiffs did not have standing to appear in Board proceedings on that application. (At the same time, as noted above, Coralville argued *to the district court* that plaintiffs had not exhausted their administrative remedies.) Specifically, Coralville argued to the Board that the plaintiffs were not "resident[s] or property owner[s] in the territory or city involved," Iowa Code § 368.22 (defining the individuals who may appeal a Board decision), but were at most owners of land adjoining the proposed annexation. Thus, the City argued that plaintiffs lacked standing to appear before the Board, since anyone who lacked standing to appeal a Board determination presumably had no standing to appear in the first place. In any event, an administrative remedy would hardly be "adequate" for the plaintiffs if it expressly disallowed them from appealing the administrative decision. For these reasons, we reject the City's exhaustion arguments.[6]

B. Notice to Landowners.

We next examine the City's assertion that it was not required to give notice to the plaintiffs. Iowa Code section 368.7 provides that landowners may apply to an adjoining city for voluntary annexation of a territory. Any approval must occur at a public hearing. At least fourteen days before that hearing, the

[6] The City argues that if the plaintiffs "are right," they are owners of land to be annexed, not just owners of adjoining land, and thus would have standing to appeal an adverse City Development Board decision. *See* Iowa Code § 368.22. However, part of plaintiffs' challenge to the annexation is based on their status as adjoining landowners, and it is clear that they lack an administrative remedy to the extent they are asserting that status. Furthermore, two of the plaintiffs concededly do not own land that would be annexed; their challenge is based *only* on their status as adjoining landowners.

city must provide written notice to certain entities and landowners, including any nonconsenting owners of property in the territory to be annexed and any owners of property adjoining the territory to be annexed. *See* Iowa Code § 368.7(1)(d).

Here, the territory to be annexed included portions of North Liberty Road, a county road. The City claims the plaintiffs do not "own" the county road[7] and, as a result, were not entitled to notice as owners. However, as the district court found, we need not determine whether the plaintiffs own the county road to be annexed because, regardless, the plaintiffs were entitled to notice as adjoining landowners. Even if the plaintiffs are deemed not to own North Liberty Road itself, they certainly own land next to it. The City does not dispute on appeal that the plaintiffs are adjoining landowners, were entitled to notice under section 368.7(1)(d), and did not receive it. Accordingly, we agree with the district court's resolution of this issue and find no merit to the City's argument.

The facts are not in dispute—the plaintiffs are adjoining landowners entitled to notice prior to any City action on the annexation application, and the City did not give the plaintiffs the required notice. As a result, we conclude the district court properly granted summary judgment to the plaintiffs.

AFFIRMED.

[7] The City concedes that, as a technical matter, the plaintiffs have legal title to the land over which the road passes and the county has only an easement. *See Bangert v. Osceola County*, 456 N.W.2d 183, 186 (Iowa 1990). However, it argues that legal title is immaterial because the right to use and control the land rests with the county. As discussed in the main body of our opinion, we need not and do not resolve that issue today.