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Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000941-MR

CITY OF LEBANON, KENTUCKY

APPELLANT

v. APPEAL FROM MARION CIRCUIT COURT
HONORABLE ALLAN RAY BERTRAM, JUDGE
ACTION NO. 06-CI-00070

ELINOR B. GOODIN, TRUSTEE
OF AND ON BEHALF OF ELINOR
B. GOODIN REVOCABLE TRUST;
RANDALL LAWSON; CONNIE
LAWSON; GERRY D. ROGERS;
KAREN P. ROGERS; DARRELL
SHEWMAKER; AND ROSE LEE
SHEWMAKER

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: TAYLOR, CHIEF JUDGE; ACREE AND COMBS, JUDGES.

TAYLOR, CHIEF JUDGE: The City of Lebanon, Kentucky, (City) brings this appeal from an April 22, 2010, summary judgment of the Marion Circuit Court

declaring invalid certain ordinances annexing unincorporated real property into the City. We affirm.

The present controversy centers upon the City's annexation in 2006 of some 415-acres of real property pursuant to Kentucky Revised Statutes (KRS) 81A.420.¹ Elinor B. Goodin, trustee of and on behalf of Elinor B. Goodin revocable trust, Randall Lawson, Connie Lawson, Gerry D. Rogers, Karen P. Rogers, Darrell Shewmaker, and Rose Lee Shewmaker (collectively referred to as appellees) owned property within the proposed annexed area and opposed annexation. Nevertheless, the City proceeded with annexation and successfully annexed the property under KRS 81A.420.

Appellees challenged the propriety of the annexation in circuit court. They argued that KRS 81A.420 was unconstitutional and/or that the City improperly manipulated the boundaries of the annexed area to achieve success under KRS 81A.420. Both parties filed motions for summary judgment under Kentucky Rules of Civil Procedure (CR) 56. Initially, the circuit court rendered summary judgment in favor of the City and concluded that annexation was proper. Thereafter, upon appellees' CR 59 motion to vacate, the circuit court decided otherwise and rendered summary judgment in favor of appellees. The circuit court concluded that the City's manipulation of the boundaries of the annexed property rendered the annexation "void." This appeal follows.

¹ The City of Lebanon, Kentucky, enacted two ordinances (Ordinance 05-13 and Ordinance 06-01) to effectuate the annexation.

The City contends that the circuit court improperly rendered summary judgment declaring the annexation void. After carefully reviewing the parties' briefs, the record, and applicable law, we conclude that summary judgment was proper. Our reasoning is as follows.

Summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure 56; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). And, all facts and inferences are to be viewed in a light most favorable to the nonmoving party. *Steelvest*, 807 S.W.2d 476.

To begin, the property annexed by the City consisted of approximately 415-acres and was held by thirteen separate land owners. Attached to this Court's Opinion is a map illustrating the boundaries of the annexed property. Upon review of this map, it becomes immediately apparent that the boundaries of the annexed property were unusually configured and resulted in five separate parcels of nonannexed property being located within the parameters of the annexed property. It was to these tortured boundaries that appellees objected, and it was because of these boundaries that the circuit court ultimately invalidated the annexation.

While it is clear that the establishment of boundaries for annexed territory constitutes a political act within the exclusive control of the General Assembly, it is equally settled that a municipality must follow statutory procedures and mandates when establishing those boundaries. *See Louisville v. Kraft*, 297 S.W.2d 39 (Ky. 1957); *Kelley v. Dailey*, 366 S.W.2d 181 (Ky. 1963); *Ridings v. City of*

Owensboro, 383 S.W.2d 510 (Ky. 1964); *Griffin v. City of Robards*, 990 S.W.2d 634 (Ky. 1999); *Rector v. City of Bowling Green*, 594 S.W.2d 891 (Ky. App. 1979). One such statutory mandate is set forth in KRS 81A.410, which provides:

- (1) Except as provided in [KRS 67C.111\(3\)](#), a city legislative body may extend the city's boundaries to include any area:
 - (a) Which is adjacent or contiguous to the city's boundaries at the time the annexation proceeding is begun[.]

KRS 81A.410(1)(a).

A plain reading of KRS 81A.410(1)(a) reveals that the boundaries of annexed property must be “adjacent or contiguous” to a municipality’s boundaries. Simply stated, only property adjacent or contiguous to a city may be annexed. However, “adjacent or contiguous,” as utilized in KRS 81A.410(1)(a), is not defined therein, and to resolve this appeal, it is necessary to define same.² To do so, we look to legislative intent and to the history of annexation law in this Commonwealth.

Prior to enactment of KRS 81A.410(1)(a), a mandate of contiguity between boundaries of annexed property and boundaries of a municipality was recognized as fundamentally implicit in this Commonwealth’s statutory annexation scheme by the Supreme Court in *Ridings*, 383 S.W.2d 510. Therein, the Court pointed out that “[t]he substantial weight of authority from other jurisdictions appears to be

² The interpretation of a statute presents a question of law, and our review proceeds *de novo*. *City of Worthington Hills v. Worthington Fire Protection District*, 140 S.W.3d 584 (Ky. App. 2004).

that **contiguity is required even in the absence of a specific statutory requirement** to that effect.” *Id.* at 511 (emphasis added). In discussing its holding, the Court cited to KRS 84.040, which required second-class cities to be composed of “adjacent and compact territory.”³ The Court reasoned that the General Assembly’s utilization of the terms “adjacent and compact” signaled its underlying intent that the boundaries of the City and any annexed property must be “contiguous.” *Id.* In effect, the Supreme Court equated the terms “adjacent and compact” with the term “contiguous” in the context of municipality annexation. Moreover, the Supreme Court concluded that a contiguity mandate is implicit in this Commonwealth’s municipal annexation law.

Further support for the intrinsic correlation of the terms “adjacent” and “contiguous” is found in *Parsons v. Dils*, 172 Ky. 774, 189 S.W. 1158 (1916). In *Parsons*, the Supreme Court defined contiguous as meaning “[a]djacent, in actual close contact, touching, near” *Id.* at 1159. Here, contiguous was plainly defined as meaning adjacent. And, a significant number of other jurisdictions have interpreted “contiguous or adjacent” in municipality annexation statutes as being quintessentially equivalent terms. See [Hillman v. City of Pocatello](#), 74 Idaho 69, 256 P.2d 1072 (1953), criticized on other grounds by [Alexander v. Trustees of Village of Middleton](#), 92 Idaho 823, 452 P.2d 50 (1969); [Johnson v. City of Hastings](#), 241 Neb. 291, 488 N.W.2d 20 (1992); [Hawks v. Town of Valdese](#), 299 N.C. 1, 261 S.E.2d 90 (1980); [City of Middletown v. McGee](#), 39 Ohio St. 3d 284,

³ Kentucky Revised Statutes 84.040 was repealed effective July 15, 1980.

530 N.E.2d 902 (1988); *City of Ada v. Whitaker*, 202 Okla. 249, 212 P.2d 482 (1949); *St. Andrews Public Service Dist. v. City Council of City of Charleston*, 339 S.C. 320, 529 S.E.2d 64 (S.C. Ct. App. 2000), *rev'd on other grounds*, 349 S.C. 602, 564 S.E.2d 647 (2002); *City of Pasadena v. State ex rel. City of Houston*, 442 S.W.2d 325 (Tex.1969); *Town of Lake v. City of Milwaukee*, 255 Wis. 419, 39 N.W.2d 376 (1949); *Board of County Com'rs of County of Laramie v. City of Cheyenne*, 85 P.3d 999 (Wyo. 2004).

Considering legislative intent and case law interpreting same, we interpret “adjacent or contiguous” in KRS 81A.410(1)(a) as collectively imposing a contiguity mandate upon the boundaries of annexed territory in relation to municipal territory.⁴ In other words, we interpret KRS 81A.410(1)(a) as mandating that the boundaries of annexed territory must be contiguous to the boundaries of the municipality.⁵ This mandate of contiguity in annexation has been well recognized and defined in Kentucky. *Ridings v. City of Owensboro*, 383 S.W.2d 510; *Griffin v. City of Robards*, 990 S.W.2d 634 (Ky. 1999); *Merritt v. City of Campbellsville*, 678 S.W.2d 788 (Ky. App. 1984).

⁴ When the term “or” is utilized in a statute, it is ordinarily interpreted in the disjunctive as meaning “an alternative.” THE AMERICAN HERITAGE DICTIONARY 873 (2nd ed. 1982); *McDaniel v. McDaniel*, 165 S.W.2d 966 (Ky. 1942). However, the term “or” is defined in the conjunctive when necessary to effectuate legislative intent as “synonymous or equivalent.” THE AMERICAN HERITAGE DICTIONARY 873 (2nd ed. 1982); *Chilton v. Gividen*, 246 S.W.2d 133 (Ky. 1952); *Overnite Transp. Co. v. Gaddis*, 793 S.W.2d 129 (Ky. App. 1990).

⁵ Although not binding on this Court, our interpretation is also consistent with two Opinions of the Attorney General of Kentucky (OAG 82-157 and OAG 82-531).

In *Ridings*, 383 S.W.2d 510 and *Griffin*, 990 S.W.2d 634, the Supreme Court set forth a test to determine if the boundaries of annexed property and of a municipality were contiguous. To reach a determination upon contiguity, the court must consider the boundaries of the annexed property in relation to the boundaries of the municipality. *Ridings*, 383 S.W.2d 510; *Griffin*, 990 S.W.2d 634. Annexed property is considered contiguous to municipal property if the boundaries of the annexed property are touching or sharing common boundaries with the municipality and if the boundaries of the annexed property are natural or regular. *Griffin*, 990 S.W.2d 634. If the annexed property has unnatural or irregular boundaries, the annexed property does not *per se* violate the contiguity requirement of KRS 81A.410(1)(a). *Griffin*, 990 S.W.2d 634. Rather, the court must then determine whether a concrete or tangible municipal value or purpose exists to justify the unnatural or irregular boundaries. *Ridings*, 383 S.W.2d 510; *Griffin*, 990 S.W.2d 634. If such municipal value or purpose exists, the boundaries of annexed territory are deemed contiguous; on the other hand, if no such municipal value or purpose exists, the boundaries of annexed territory fail to meet the contiguity mandate. *Ridings*, 383 S.W.2d 510; *Griffin*, 990 S.W.2d 634.

Turning again to the attached map outlining the boundaries of the annexed territory, we cannot say that the boundaries are natural or regular. As hereinbefore pointed out, five separate parcels of nonannexed property are located within the annexed property resulting in some sixteen directional boundary changes of the annexed property. It is quite obvious that the boundaries of the annexed property

were not drawn naturally or regularly. To explain these oddly drawn boundaries, we turn to the circuit court record.

The record indicates that the City manipulated the annexed property's boundaries so as to ensure success of the proposed annexation. Upon this point, the circuit court recognized:

(8) In order to guarantee the success of its annexation [City] intentionally included in the annexation all properties whose owners approved annexation, but omitted therefrom enough properties whose owners opposed annexation.

. . . .

(10) [City] arranged the boundary lines and predetermined the result of the election by eliminating most of the opposition thereto.

(11) [City] knew, prior to the first reading of its annexation ordinance, that of the thirteen owners whose property was included in the annexation, eight approved annexation and five opposed it.

(12) [City] knew, prior to the first reading of its annexation ordinance, that there were not enough property owners opposed to annexation to require an election, or enough resident voters to defeat annexation in the event of an election.

From these uncontroverted facts, it is evident that the City manipulated the boundaries to the annexed property and, in so doing, intentionally omitted sufficient dissenting property owners so as to ensure success of the annexation. While the City's actions may have been politically expedient and may have ensured success of the annexation, we cannot conclude that a concrete or tangible

municipal value or purpose existed justifying the unnatural and irregular boundaries of the annexed property. *See Ridings*, 383 S.W.2d 510; *Griffin*, 990 S.W.2d 634. Accordingly, we conclude that the boundaries of the annexed property were not contiguous or adjacent to the boundaries of the City per KRS 81A.410(1)(a) and that the annexation violated the statute. *See Ridings*, 383 S.W.2d 510; *Griffin*, 990 S.W.2d 634.

We view the City's remaining contentions of error as moot.

In sum, we hold that the circuit court properly rendered summary judgment declaring the City's annexation invalid.

For the foregoing reasons, the summary judgment of the Marion Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Kandice D. Engle-Gray
Lebanon, Kentucky

F. Keith Brown
Shepherdsville, Kentucky

BRIEF FOR APPELLEES:

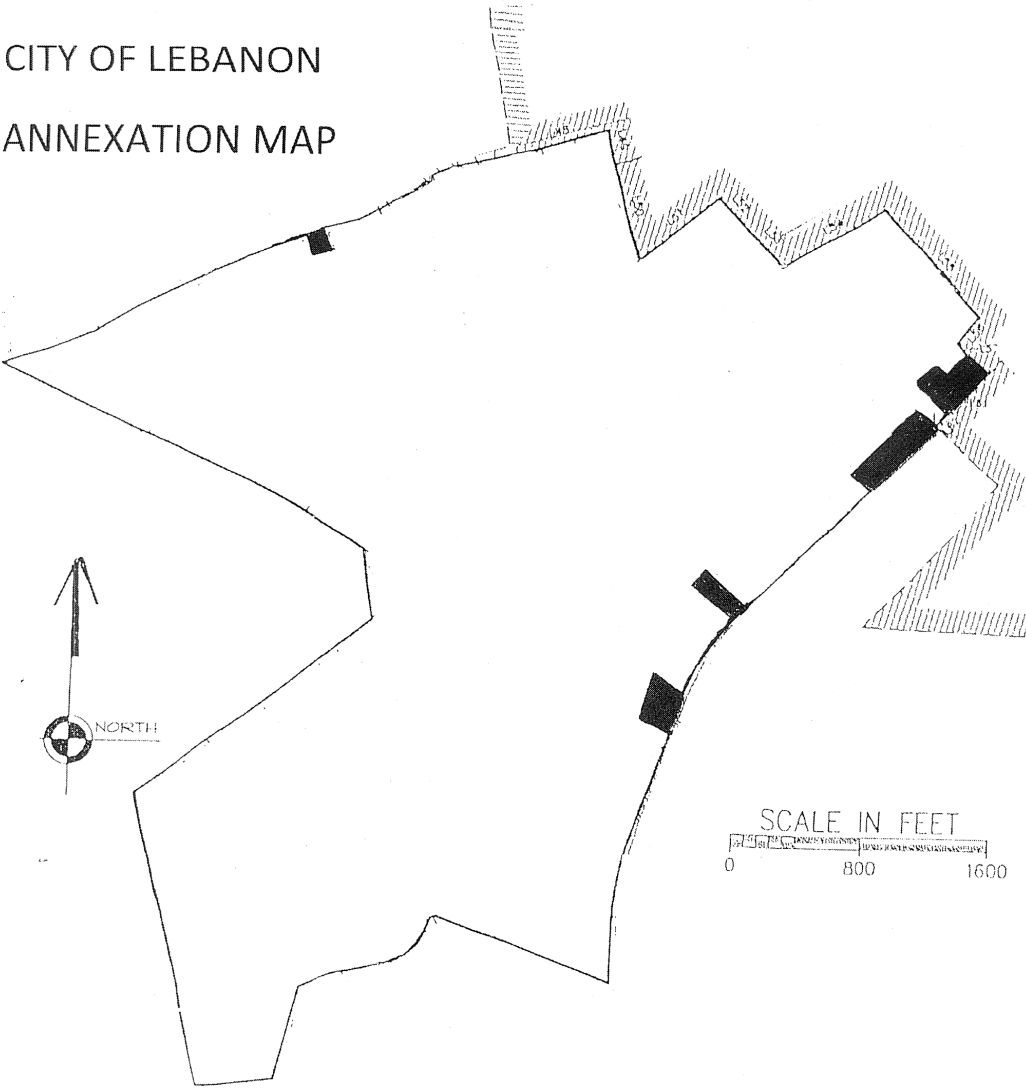
Theodore H. Lavit
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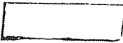

BRIEF FOR AMICUS CURIAE
THE KENTUCKY LEAGUE OF
CITIES:

R. Temple Juett
Laura Milam Ross
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CITY OF LEBANON
ANNEXATION MAP



LEGEND

-  Existing City Boundary Line
-  Annexed Property
-  Unannexed Property