MENTOR GREEN MOBILE ESTATES, Plaintiff-Appellant, v. CITY OF MENTOR, Defendant-Appellee

Case No. 90-L-15-135

Court of Appeals of Ohio, Eleventh Appellate District, Lake County

Case Law Establishing the Boundaries of the Jurisdiction of the Ohio Department of Health

MENTOR GREEN MOBILE ESTATES, Plaintiff-Appellant, v. CITY OF MENTOR, Defendant-Appellee

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1991 Ohio App. LEXIS 4052

August 23, 1991

PRIOR HISTORY: [*1] Character of Proceedings: Civil Appeal from the Court of Common Pleas; Case No. 90 CV 000855.

DISPOSITION: JUDGMENT: Affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant mobile home park sought review of a judgment of the Court of Common Pleas (Ohio), which denied its request for injunctive relief to prevent appellee city from enforcing ordinance 150.105, which allowed a maximum density of eight mobile home units per acre.

OVERVIEW: The park obtained authority from the Ohio Department of Health to develop seven additional sites. The city refused to permit utility tie-ins citing a violation of Ord. 150.105. The city also denied the park's request to expand the mobile home park site. The trial court denied the park's request for injunctive relief, and dismissed the park's complaint. The park maintained that the trial court erred in not finding a conflict between the city ordinance and Ohio Rev. Code Ann. § 3733.02, which allowed 12 units per acre. The court held that given the plain language of both the statute and the ordinance, neither the trial court nor the park should have inferred density requirements. The court found that there was no conflict between Ord. No. 150.105 and Ohio Rev. Code Ann. § 3733.02, and noted that the city's stricter requirements were within its constitutional power of home rule.

OUTCOME: The court affirmed the decision of the trial court.

CORE TERMS: ordinance, density, mobile home, lot sizes, municipality, maximum, per acre, square feet, assignments of error, local ordinances, general laws, prevail, site, home rule, state law, state statute, local police, police powers, manufactured, zoning, acre, injunctive relief, words used, promulgated thereunder, plaintiff-appellant, pre-emption, pertaining, authorizes, sanitary, licenses

OPINION

This appeal is from the trial court's decision denying appellant, Mentor Green Mobile Estates, injunctive relief. On June 29, 1990 appellant filed a verified complaint seeking to enjoin appellee, City of Mentor, from enforcing Mentor ordinance 150.105 which allows a

maximum density of eight mobile home units per acre. Appellee answered and counterclaimed for declaratory judgment, praying for a determination that zoning ordinance No. 150.105 is not in conflict with OAC 3701-27-08. Alternatively appellee prayed for a declaration that R.C. 3723.02 and OAC 3701-27-08 are unconstitutional as applied here.

On July 6, 1989, appellant obtained authority from the Ohio Department of Health to develop [*2] seven (7) additional sites in the mobile home park. These additional sites would raise the number of mobile home units to 139 sites in the park measuring 12+ acres. Appellee refused to permit utility tie-ins citing appellant's violation of Ord. 150.105.

In a letter dated January 19, 1989, appellee denied appellant's request to expand the mobile home park site. Appellee stated that appellant's 9.7 units per acre park density was established prior to the enactment of the zoning ordinance, and this nonconforming use would not be permitted to expand.

On September 20, 1990, the trial court held there was no conflict between the state area requirements and appellee's density requirements. The court further stated the R.C. 713.09 authorizes city lot sizes to prevail over less strict state regulation. Thus, the trial court denied appellant's request for Preliminary Injunctive Relief, dissolved the Temporary Restraining Order, and further dismissed appellant's complaint. It is from this judgment entry that appellant now appeals raising the following assignments of error:

"1. The Trial Court erred to the prejudice of plaintiff-appellant in ruling that ' O.R.C. 713.09 authorizes city lot sizes [*3] to prevail over less strict state regulations' in a manufactured home park"

"2. The Trial Court erred to the prejudice of plaintiff-appellant in ruling that there is no conflict between the Board of Health area requirements for a manufactured home park and the City of Mentor density requirements."

In its first assignment of error, appellant contends that the trial court erred in holding R.C. 713.09 mandates that local zoning ordinances prevail over less strict state regulations. Appellant asserts that this logic ignores the rule of statutory construction in R.C. 1.52. Appellant argues that the statutes, R.C. 713.09 and R.C. 3733.02, are irreconcilable and therefore R.C. 3733.02, the one enacted later, prevails.

Appellee contends that the trial court found no conflict between Ord. 150.105 and OAC 3701-27-08 and, therefore, should not have applied 713.09. This argument does not address appellant's argument that 713.09 and 3733.02 are conflicting. However, the applicability and continued validity of R.C. 713.09 was not before the trial court. That court was asked to determine the propriety of Mentor Ord. 150.105 and the application of R.C. 3733.02. The reference to R.C. 713.09 was [*4] made as part of the trial court's rationale or reasoning. Neither the parties nor this court are bound by such statements contained in the lower court's judgment. *State, ex rel. Squire* v. *Cleveland* (1937), 60 Ohio App. 395, 402, states:

"* * * The reasoning of the court in rendering the judgment forms no part of the judgment, as regards its [sic] conclusive remarks made or opinions expressed by the court in deciding the cause, which do not necessarily enter into the judgment."

This court does not consider it proper to indulge in advisory opinions on the hierarchial scheme of particular statutes referenced in the trial court's rationale for its holding, when the matter presented to the trial court may be properly determined without such reference.

As such appellant's first assignment of error is without merit.

In its second assignment of error, appellant maintains that the trial court erred in not finding a conflict between the city ordinance and the regulations under OAC 3701-27 authorized by R.C. 3733.02.

Appellant contends that a conflict exists based on two theories. First, appellant argues that the Ohio Department of Health has exclusive authority regarding [*5] all matters pertaining to mobile home parks. Therefore, any and all local ordinances concerning mobile homes conflict with the state statute.

R.C. 3733.02 states:

HN1 "The public health council, subject to sections 119.01 to 119.13 of the Revised Code, shall make, and *has the exclusive power to make,* rules of general application throughout the state governing the issuance of licenses, location, layout, construction, drainage, sanitation, safety, tiedowns, and operation of manufactured home parks. Such rules are not to apply to the construction, erection, or manufacture of any building to which section 3781.06 of the Revised Code is applicable."

(Emphasis added).

Appellee relies exclusively on its powers under home rule Section 3, Article XVIII, Ohio Constitution, which states:

HN2 "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws. (adopted September 3, 1912.)"

Appellant's assertion of express pre-exemption lacks merit as such an act by the legislature would be considered unconstitutional. *Fondessy Enterprises, Inc.* v. *Oregon* (1986), 23 Ohio St. 3d 213, 216 [*6] states:

"If the provisions of R.C. 3734.05(D)(3) do preclude a home rule municipality, with police powers guaranteed it by the Ohio Constitution, from enacting any and all legislation related to the state statute, then that provision of state law must be ruled unconstitutional.

"* * *

"Furthermore, as HN3 'the power of any Ohio municipality to enact local police regulations is derived directly from Section 3 of Article XVIII of the Ohio Constitution and is no longer dependent upon any legislative grant thereof,' the same police power cannot be extinguished by a legislative provision. *West Jefferson* v. *Robinson* (1965), 1 Ohio St. 2d 113 [30 O.O.2d 474], paragraph one of the syllabus; *Scalera, supra,* at 66. If R.C. 3734.05(D)(3) were elevated to a level of 'express preemption' (its level as a result of the judgments of the courts below), no police power ordinance in the instant field would survive long enough to face a conflict test against a state statute."

As express pre-emption is not appropriate, appellant may not rely on a statutory construction which would prohibit any municipal enactments pertaining to mobile home parks. [1] Therefore, [*7] if a conflict exists, its presence must be determined by the conflict test in *Village of Struthers* v. *Kokol* (1923), 108 Ohio St. 263, at paragraph two of the syllabus, which states:

HN4"In determining whether an ordinance is in 'conflict' with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa."

FOOTNOTES

1 It seems apparent that the exclusivity clause was added primarily to dispose of the possible conflict between the State Board of Health and local health boards in the monitoring of mobile home parks.

Both the state regulations and the city ordinance prescribed a minimum lot size of 3600 square feet. However, the city ordinance further mandates a maximum density of eight units per acre. The parties stipulated that the state regulations do not speak to density. However, appellant's second theory of conflict argues that the state regulations implicitly allow a maximum of twelve units per acre. This implicit maximum is derived [*8] by dividing an acre by the minimum square footage per lot required by the state regulation. Appellant further maintains that the maximum density requirements of the local ordinance actually increases the minimum lot requirement to 5400 square feet. The trial court's judgment entry also improperly analyzes the ordinance as requiring a minimum lot size of 5400 square feet. 2

FOOTNOTES

2 While the maximum density per acre may mathematically translate into 5400 square feet per lot, the trial court should not interpret the ordinance as requiring those lot sizes. The local ordinance speaks only to density and appellee argued its purpose is to allow local government to plan for the utilization of public services.

Bernardini v. *Board of Education* (1979), 58 Ohio St. 2d 1, 4, states:

"When this court has been called upon to give effect to an Act of the General Assembly, a standard of judicial restraint has developed when the wording of the enactment is clearly unambiguous. For example, HN5a statute that is free [*9] from ambiguity and doubt is not subject to judicial modification under the guise of interpretation. *Crowl* v. *Deluca* (1972), 29 Ohio St. 2d 53, 58-59; *Slingluff* v. *Weaver* (1902), 66 Ohio St. 621. In ascertaining the legislative intent of a statute, 'It is the duty of this court to give effect to the words used [in a statute], not to delete words used or to insert words not used.'"

This passage has two applications to the instant case. Appellant should not be able to infer state density requirements from the state regulations. Further, neither appellant nor the trial court could properly infer that the city ordinances' density maximums dictate lot sizes to be a minimum of 5400 square feet. Therefore, there is no conflict between Ord. No. 150.105 and R.C. 3733.02, or the regulations promulgated thereunder, as the state

regulations do not speak to density. See *Board of Trustee Jackson Township, Clermont County* v. *Miami Valley Association Inc.* (June 2, 1975), Clermont App. No. 540, unreported.

Furthermore, assuming arguendo that the inferences concerning stricter local standards could properly be drawn, there is still no conflict [*10] presented.

Stary v. *City of Brooklyn* (1954), 162 Ohio St. 120, 127 states:

"The statutes are not, however, such as to pre-empt the entire field of legislation with respect to trailer camps and to bar municipalities from adopting regulations on the same subject so far as such local regulations are not in conflict with general laws."

Miami Valley Association, Inc., supra, at page five of the opinion, held that larger local lot sizes did not present a conflict. (Although the cases were decided prior to the amendment of R.C. 3733.02 their decisions are still applicable due to this court's earlier determination that an express pre-emption would be unconstitutional.)

Fondessy, supra, at 219, Locker, J., concurring, quoting from 2 Ohio Constitution Convention, Proceedings and Debates (1913) 433, states:

HN6"Because the power of a home rule municipality was to be derived from the Constitution, the laws of the municipality would be every bit as authoritative and effective as a state law so long as the local law did not diminish the general state law:

"'It is not intended to invade state authority in the least, but to make clear that the municipality [*11] has the right to enact such local police, sanitary and other similar regulations as are not in conflict with general laws. It can not take away, however, for instance, take the quarantine laws. A city can not make them less strict than the state, but it can make them more strict.'"

When R.C. 3733.02, and the Regulations promulgated thereunder, are compared with the local ordinance, no conflict exists. The state legislation prohibits more than 12 units per acre and fewer than 3600 square feet per lot in mobile home parks. The local ordinance, by imposing limits of 8 units per acre, does not permit something that the state prohibits. An apparent conflict may arise by construing the State regulation as permitting all that is not prohibited, but such a construction violates the rule of strict construction set forth in *Bernardini, supra.* As no conflict exists, appellant's second assignment of error lacks merit, and the trial court's decision is hereby affirmed.

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