IN THE COURT OF APPEALS OF IOWA

No. 2-787 / 12-0600
Filed January 9, 2013

J.D. FRANCIS, INC.,
Plaintiff-Appellant,

vs.

THE BREMER COUNTY BOARD OF SUPERVISORS,
Defendant-Appellee.

Appeal from the Iowa District Court for Bremer County, Colleen D. Weiland, Judge.

The plaintiff appeals from the district court order granting summary judgment in favor of the defendant on its claims for inverse condemnation and writ of mandamus. **AFFIRMED.**

David J. Dutton and Matthew M. Craft of Dutton, Braun, Staack & Hellman, P.L.C., Waterloo, for appellant.

John T. McCoy of McCoy, Riley, Shea & Bevel, P.L.C., Waterloo, for appellee.

Heard by Doyle, P.J., and Mullins and Bower, JJ.

BOWER, J.

J.D. Francis, Inc. filed a petition against the Bremer County Board of Supervisors alleging one count of inverse condemnation when the board arbitrarily denied its rezoning applications, resulting in a taking of at least half the value of its land without providing adequate compensation. J.D. Francis, Inc. further requested a writ of mandamus requiring the board to initiate condemnation proceedings against certain land it owned and compensate it for the land's loss of value. J.D. Francis, Inc. now appeals from the district court order granting summary judgment in favor of the board.

The undisputed facts fail to show the board's denial of J.D. Francis, Inc.'s rezoning applications and its amendment of its land use plan amounted to a regulatory taking of the value of J.D. Francis, Inc.'s property. Because the district court's grant of summary judgment was proper, we affirm.

I. Background Facts and Proceedings.

Edna C. Anhalt was the owner of 34.5 acres of agricultural land outside of Waverly. J.D. Francis, a developer and homebuilder, became interested in purchasing the property. The land was zoned as "A-1" agricultural and "A-2" modified agricultural. The land was designated by the Bremer County Comprehensive Land Use Plan (CLUP) for future residential growth and development.

On June 20, 2006, Anhalt and Francis requested the land be rezoned to "R-1" single-family residential. The 34.5 acres had an average corn suitability rating (CSR) of 53.60, a rating that classified it as "prime" agricultural land that

should be preserved for agricultural use under the CLUP.[1] Following a public hearing, the Bremer County Planning and Zoning Commission unanimously recommended denial of the rezoning request.

The board of supervisors held a public hearing concerning the zoning request on July 31, 2006. Francis and thirty-seven residents with neighboring property attended. The board voted unanimously to deny the request finding "that good Agricultural Farm land not be taken out of production and because of many other environmental concerns."

The following day, Francis and Anhalt submitted a revised rezoning request, which excluded approximately four acres of productive farmland included in the original request. Excluding those acres dropped the CSR of the remaining 30.75 acres to 49.5. However, approximately half—or 15.46 acres—of that parcel had a CSR of fifty or higher. The planning and zoning commission again held hearings on the matter and received letters from the public regarding the request. The commission voted four-to-one to deny the rezoning request.

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[1] The CLUP states in pertinent part:

> It is a goal of Bremer County to strive to preserve agricultural land, placing emphasis on areas that are considered "prime" agricultural areas.
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> . . . .
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> d. Bremer County will prioritize the preservation of "prime" agricultural soils, which includes soil types with a Corn Suitability Rating (CSR) of fifty (50) or greater.

Other stated goals of the CLUP include: preserving and protecting environmental features and sensitive areas; considering the need for services when assessing a potential development; maintaining and improving the quality of life of country residents; limiting residential development to areas that are planned for that type of growth; limiting commercial development in the unincorporated areas of the county; collaborating with other levels of government with regard to future land use and development; and seeking to promote orderly growth.

The board of supervisors held a public hearing concerning the rezoning request on October 9, 2006. The board voted unanimously to deny the request. The primary reason cited by the board members was the CSR and the desire to keep agricultural land.

On November 1, 2006, Francis and Anhalt filed a petition against the board of supervisors, arguing that by denying the request to rezone, it had acted arbitrarily and capriciously in violation of the CLUP. Francis and Anhalt further alleged they had been denied equal protection and substantive due process. They sought a writ of certiorari requiring the board to certify a transcript of the October 9, 2006 hearing, and asked the court to set aside the board's action.

On November 14, 2006, Francis's corporation, J.D. Francis, Inc., purchased the property at issue from Anhalt.

The district court eventually granted summary judgment in favor of the board on Francis and Anhalt's petition. The court found the board did not act arbitrarily and capriciously in denying the rezoning request. The court stated:

> The transcript of the board proceeding reflects that the board gave adequate consideration to the arguments of persons in favor and against the proposed zoning requests, after considering the factors and guidelines of the Bremer County comprehensive land use plan. Supervisor Hinderaker . . . expressly stated that the board would weigh all the factors presented at the hearing when making their decision. The board also properly considered the zoning and planning and zoning commission's recommendation to deny the request. The board heard evidence from community members relative to the lack of infrastructure around the parcel, the character of the area, adjacent land uses and agricultural concerns. As section 335.5 of the Code notes, the regulations should be designed to preserve the availability of agricultural land. The plan itself, in the implementation section, notes that consistency with the plan is only one factor to be considered along with compatibility with surrounding land uses, minimal impact on adjacent property,

> density of proposed use, impact on traffic generation and flow, and environmental impact, among others.

The court also found the plaintiffs failed to show equal protection and due process violations.

Francis appealed from the district court ruling. This court affirmed the summary judgment ruling, stating:

> [T]he comprehensive plan does not mandate a "residential" designation for land with a CSR of less than fifty. It simply states that the county will "strive to preserve agricultural land, placing emphasis on" areas with a CSR of fifty or greater. Importantly, the plan lists other factors for consideration, including the protection of "environmental features and sensitive areas" and the "[q]uality of life."
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> The record contains substantial evidence supporting the existence of these "other factors." Citizens in the vicinity of the proposed development expressed concerns about the effect of residential development on wildlife in the area, leapfrog development in the area, and contamination of groundwater. While the plaintiffs argued that these concerns were pretextual, and that these individuals simply did not want nearby development to occur, and further countered that new wells would not affect existing wells because the water would be drawn from different aquifers, the board was not required to accept their arguments.

Francis v. Bremer Cnty. Bd. of Sup, No. 08-1583, 2009 WL 3369263, at *2 (Iowa Ct. App. Oct. 21, 2009).

In December 2009, the board amended its CLUP to exclude planned residential developments on certain designated land. Francis's property was included in this redesignation. Francis filed an action in the United States District Court for the Northern District of Iowa, alleging the board's 2006 rezoning denials were an unconstitutional taking. He later amended his complaint to allege the December 2009 CLUP amendment was also an unconstitutional taking. The complaint was dismissed in March 2011 because the issue was not ripe for

consideration; the court noted Francis had failed to seek compensation through state procedures by instituting an inverse condemnation action.

On December 9, 2011, J.D. Francis, Inc. filed the instant action. It alleged the board's denials of the rezoning request and the CLUP amendment resulted in a taking of at least half of the value of the property in question without adequate compensation. J.D. Francis, Inc. seeks a writ of mandamus requiring the board to formally condemn the property, and seeks judgment in an amount sufficient to compensate it for the loss in value of the property.

The board filed a motion for summary judgment, which the district court granted on March 16, 2012. The court found the doctrines of issue and claim preclusion apply on the issue of whether the board acted arbitrarily in denying the rezoning requests. The court further determined no genuine issue of material fact exists and found the board was entitled to judgment as a matter of law because the board's actions did not constitute a taking that requires compensation.

J.D. Francis, Inc. appeals.

II. Scope and Standard of Review.

We review the district court's grant of summary judgment for the correction of errors at law. *See Gannon v. Bd. of Regents*, 692 N.W.2d 31, 37 (Iowa 2005). Summary judgment is properly granted only if the record shows no genuine issue of material fact is in dispute and the moving party is entitled to judgment as a matter of law. *Id.* If reasonable minds differ on the resolution of an issue, a

genuine issue of material fact exists. *Id.* The burden is on the moving party to show the nonexistence of a fact question. *Id.*

We review the record in the light most favorable to the non-moving party and afford it all reasonable inferences that the record will bear. *Id.* An inference is legitimate if it is rational, reasonable, and otherwise permissible under the governing substantive law. *Id.* An inference is not legitimate if it is based upon speculation or conjecture. *Id.*

III. Analysis.

J.D. Francis, Inc. alleges the district court erred in granting summary judgment in favor of the board. It argues the doctrine of res judicata is inapplicable because it was unnecessary to prove arbitrariness in the inverse condemnation action. It further argues the district court erred in dismissing its claim regarding the 2009 CLUP amendment, to which res judicata does not apply. Finally, J.D. Francis, Inc. argues it is entitled to a writ of mandamus on the inverse condemnation claim.

A. Res Judicata.

J.D. Francis, Inc. asserts in its petition that the board "continues to ignore the Comprehensive Plan and grants or denies rezoning requests as they see fit on an arbitrary basis and without regard for the standards they established, publicly promoted and advertised to the general public." It alleges that "[a]s a proximate result of Defendant's arbitrary denial of the rezoning application, the Defendant has taken, without providing adequate compensation, at least half the

value of Plaintiff's property." It seeks reimbursement for the loss of property value and income caused by the board's "arbitrary and capricious denials."

In granting the board's motion for summary judgment, the district court found: "Inherent in Francis' argument is that the Board acted arbitrarily in denying Francis' zoning requests." The court went on to determine that any argument regarding the "arbitrariness" of the board's actions were barred by the doctrine of res judicata.

The doctrine of res judicata includes both issue preclusion and claim preclusion. *Winnebago Indus., Inc. v. Haverly*, 727 N.W.2d 567, 571 (Iowa 2006). Issue preclusion prevents parties from relitigating issues raised and decided in one action in another action. *Employers Mut. Cas. Co. v. Van Haaften*, 815 N.W.2d 17, 22 (Iowa 2012). In order to invoke issue preclusion, a party must prove

> (1) the issue in the present case must be identical, (2) the issue must have been raised and litigated in the prior action, (3) the issue must have been material and relevant to the disposition of the prior case, and (4) the determination of the issue in the prior action must have been essential to the resulting judgment.

Id.

Claim preclusion holds that a valid and final judgment on a claim bars a second action on the adjudicated claim or any part thereof. *Pavone v. Kirke*, 807 N.W.2d 828, 835 (Iowa 2011). Therefore, a party must litigate all matters growing out of a claim, and claim preclusion will apply "not only to matters actually determined in an earlier action, but to all relevant matters that could have

been determined." *Id.* Claim preclusion may preclude litigation on matters the parties never litigated in the first claim. *Id.*

> [A] party must try all issues growing out of the claim at one time and not in separate actions. An adjudication in a prior action between the same parties on the same claim is final as to all issues that could have been presented to the court for determination. Simply put, a party is not entitled to a "second bite" simply by alleging a new theory of recovery for the same wrong.

Id. at 836.

Claim preclusion only applies where the party against whom preclusion is asserted had a full and fair opportunity to litigate the claim or issue in the first action. *Id.* The second claim is likely to be barred by claim preclusion where the acts complained of and the recovery demanded are the same, or where the same evidence supports both actions. *Id.* In order to establish claim preclusion, a party must show

> (1) the parties in the first and second action are the same parties or parties in privity, (2) there was a final judgment on the merits in the first action, and (3) the claim in the second suit could have been fully and fairly adjudicated in the prior case (i.e., both suits involve the same cause of action).

Id.

We agree with the district court that the doctrine of res judicata prevents J.D. Francis, Inc. from relitigating the issue of whether the board acted arbitrarily in denying its rezoning requests. The question of whether the board's denial was arbitrary was litigated and decided by the district court when it granted summary judgment in favor of the board on Francis and Anhalt's 2006 action. That ruling was later affirmed by this court. The arbitrariness of the board's denials was

material and relevant to that disposition, and was essential to the resulting judgment.

J.D. Francis, Inc. argues that res judicata cannot apply because the parties in the actions are not identical. However, where—as here—issue preclusion is raised defensively, it is not required that the parties to both actions be identical so long as the four elements of issue preclusion exist and the party against whom the doctrine is defensively invoked "was so connected in interest with one of the parties in the former action as to have had a full and fair opportunity to litigate the relevant claim or issue and be properly bound by its resolution." *Am. Family Mut. Ins. Co. v. Allied Mut. Ins. Co.*, 562 N.W.2d 159, 164 (Iowa 1997). We find that requirement is met here, where J.D. Francis, Inc. is challenging the board's denial of the rezoning requests made by Francis and Anhalt.

To the extent J.D. Francis, Inc. is required to prove the board acted arbitrarily in denying its rezoning requests, we find the issue is precluded by Francis's prior litigation against the board. We therefore find it unnecessary to consider whether the claim was precluded by the previous action.[2]

The district court noted in its ruling that the doctrine of res judicata does not apply to the board's 2009 CLUP amendment, which occurred after the prior

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[2] Although we need not reach the issue, we agree that claim preclusion does not apply here. In order to bring an inverse condemnation action, a plaintiff is first required to exhaust administrative remedies. *See Molo Oil Co. v. City of Dubuque*, 692 N.W.2d 686, 693 (Iowa 2005) ("Only after a property owner exhausts his or her appeals would a court be in a position to determine the inverse condemnation claim because at that point the allowable use of the property would be finally determined."). The inverse condemnation claim could not have been brought with the earlier action challenging the board's denial of the rezoning requests.

litigation with the board was dismissed. However, as the court noted, J.D. Francis never alleged in its petition or in oral argument that the CLUP amendment was arbitrary or improper.

B. Inverse Condemnation.

J.D. Francis, Inc. next contends the district court erred in granting summary judgment on its inverse condemnation claim. It alleges the district court erred in finding there was no taking.

Inverse condemnation is "a generic description applicable to all actions in which a property owner, in the absence of a formal condemnation proceedings, seeks to recover from a governmental entity for the appropriation of his property interest." *Kingsway Cathedral v. Iowa Dep't of Transp.*, 711 N.W.2d 6, 9 (Iowa 2006). In determining whether a taking has occurred, we must ask the following questions: "(1) Is there a constitutionally protected private property interest at stake? (2) Has this private property interest been 'taken' by the government for public use? and (3) If the protected property interest has been taken, has just compensation been paid to the owner?" *Id.*

There is no question that J.D. Francis, Inc. has a constitutionally protected private property interest at stake. The question is whether that interest has been "taken" by the board. The type of taking alleged here is a "regulatory taking." Such a taking occurs when the government exercises its police powers to restrict use of property, which often occurs through implementation of land use planning, zoning, and building codes. *Id.* Loss of development potential may be a significant factor in taking claims based on zoning restrictions. *Fitzgarrald v. City*

of Iowa City, 492 N.W.2d 659, 665 (Iowa 1992). But absent some physical invasion, a taking does not occur until there has been "a substantial interference with investment-backed expectations." *Id.* In making this determination, we must look at the (1) value of the use remaining rather than the diminution of the property's value and (2) entire parcel rather than to whether rights in a particular segment have been entirely abrogated. *Id.*

In *Stone v. City of Wilton*, 331 N.W.2d 398, 400 (Iowa 1983), the plaintiffs purchased six acres of undeveloped land with the intention of developing a low-income, federally-subsidized housing project. After the land was purchased, the plaintiffs incurred expenses for architectural fees and engineering services in the preparation of plans and plats to be submitted to the city council and its planning and zoning commission. *Stone*, 331 N.W.2d at 400-01. After the plaintiffs filed a preliminary plat project with the city clerk, the planning and zoning commission recommended the land be rezoned to single-family residential—a recommendation that affected all of the plaintiffs' property. *Id.* at 401. The city council passed the rezoning ordinance. *Id.*

The *Stone* court found the plaintiffs did not have a vested right to complete their intended project and, therefore, their taking claim failed. *Id.* at 404.

> All that the rezoning did was to deprive plaintiffs of what they considered to be the land's most beneficial use. If, as we have found, the ordinance is a valid exercise of police power, the fact that it deprives the property of its most beneficial use does not render it an unconstitutional taking.

Id. Even with a resulting forty-two percent decrease in the value of the property, the court held the economic impact did not constitute a taking in light of the

council's reasonable belief that the public welfare required a change in zoning. *Id.*

In *Fitzgarrald*, our supreme court addressed a takings claim involving ten acres of property adjacent to an airport. 492 N.W.2d at 661. Following the extension of a runway, the city passed a "clear zone" ordinance that restricted the uses of the adjoining property. *Id.* at 662. The plaintiffs alleged the "clear zone" requirement was a detriment to their property's development potential and, therefore, constituted a taking. *Id.* at 665. The court rejected this claim, noting the alleged deprivation was much less severe than that in *Stone*. *Id.* at 666. The court found "the plaintiffs continue to have an economically viable use of their property even though its market value has to some extent been diminished as a result of the airport zoning ordinances. This loss of value is insufficient to support a finding that a regulatory taking has occurred." *Id.*

In the present case, the economic loss is even less than that alleged in *Fitzgarrald*. There was no rezoning that led to a diminution of value; rather, the board simply refused to rezone the land to increase its economic viability. Furthermore, the plaintiff purchased the land *after* the board denied both rezoning requests. Even the CLUP amendment, which occurred after purchase and limits the likelihood that the land will be rezoned to residential, does not amount to a taking. The property remains economically viable as agricultural land, just as it did prior to the plaintiff's purchase. Under these circumstances, we agree with the district court's finding that the board's actions did not constitute a taking.

Because J.D. Francis has failed to show a genuine issue of material fact exists, and because the board is entitled to judgment as a matter of law, we affirm the district court order granting the board's motion for summary judgment on the plaintiff's claims.

AFFIRMED.