NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2015 CA 1973

LAVERNE DEAL, DARRELL IRVIN, LLOYD IRVIN, ROOSEVELT MACKYEON, TYRONE SMITH, AND FRANK SMITH, JR.

VERSUS

CITY OF GONZALES MAYOR BARNEY ARCENEAUX, THE CITY COUNCIL FOR THE CITY OF GONZALES, AND THE ZONING COMMISSION FOR THE CITY OF GONZALES

Judgment rendered October 28, 2016.

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Appealed from the
23rd Judicial District Court
in and for the Parish of Ascension, Louisiana
Trial Court No. 104,557
Honorable Jessie M. LeBlanc, Judge

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LAVERNE DEAL, DARRELL IRVIN,
LLOYD IRVIN, ROOSEVELT
MACKYEON, TYRONE SMITH,
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AND THE ZONING COMMISSION FOR
THE CITY OF GONZALES

* * * * *

BEFORE: PETTIGREW, McDONALD, AND DRAKE, JJ.

PETTIGREW, J.

In this rezoning dispute, this is the second appeal by Laverne Deal, Darrell Irvin, Lloyd Irvin, Roosevelt Mackyeon, Tyrone Smith, and Frank Smith, Jr. (the plaintiffs) of district court judgments that dismissed their claims against the City of Gonzales Mayor Barney Arceneaux, the City Counsel for the City of Gonzales, and the Zoning Commission for the City of Gonzales (the defendants), finding the rezoning change that plaintiffs sought to invalidate was valid. The first judgment plaintiffs appealed was a partial summary judgment rendered in favor of the defendants, dated May 6, 2013; this court dismissed the appeal on the basis that it was an interlocutory ruling by the district court that did not constitute a final judgment for purposes of appeal. The matter was remanded for further proceedings and the rendition of a district court judgment "adjudicating all of the claims and the rights and liabilities of the parties." **Deal v. City of Gonzales**, 2013-1386 (La. App. 1 Cir. 3/26/14), 2014 WL 1259117, *3 (unpublished)(hereinafter referred to as **Deal 1**).

On remand, after a hearing, a judgment was rendered June 24, 2015, in favor of the defendants, specifically finding that the rezoning request they had been granted was valid and did not constitute spot zoning. The plaintiffs now appeal that judgment, as well as the earlier May 6, 2013 judgment.

BACKGROUND FACTS AND PROCEDURAL HISTORY

The facts and procedural history of this matter, through the date of the appeal in **Deal 1**, is adequately stated therein, and we adopt it herein:

This litigation arises out of a zoning dispute in Gonzales, Louisiana. In January 2012, the city annexed 39.060 acres into the city limits. That same month, L & L Investment Corporation, through Nolan A. "Sonny" Lamendola, petitioned the Gonzales Planning and Zoning Commission ("the Commission") to change 38.89 of those acres from the existing "residential" zoning to I-1 (light industrial). Following various hearings and procedural events, in June of 2012, the Commission approved a change for 18.62 acres of the tract to a C-2 zone classification and approved a special use permit to allow for the operation of a "minor fabrication facility of greater than 10,000 square feet" thereon.

In August 2012, plaintiffs, Laverne Deal, Darrell Irvin, Lloyd Irvin, Roosevelt Mackyeon, Tyrone Smith and Frank Smith, Jr., filed a petition for judicial review and declaratory judgment alleging that the property had been rezoned by the city without following the applicable rules, procedures,

city ordinances and codes. Plaintiffs named as defendants the City of Gonzales, the Mayor, the City Council and the Zoning Commission. Plaintiffs alleged that the zoning change should be set aside and the property should revert back to its original residential zoning classification. Specifically, plaintiffs alleged that the procedures were deficient and the zoning change was interdicted by the city and/or the Commission's actions in their:

- (1) Failure to collect a required fee;
- (2) Failure to obtain a detailed submittal package of the zoning request as required by the City Code;
- (3) Failure to wait six months to accept the subsequent rezoning request;
- (4) Acceptance of a verbal request for a zone change;
- (5) Voting for a zoning change not requested by applicant;
- (6) Failure to follow the city's Comprehensive Master Growth Plan;
- (7) Failure to require widening of the street as a condition of the rezoning request;
- (8) Engagement in spot zoning; and
- (9) Reduction of the area of the requested rezoning change without following proper procedures.

In December 2012, the defendants filed a motion for summary judgment urging the trial court to uphold the zoning change, contending that all "substantive requirements for the rezoning of property were met." Following a hearing, the trial court granted the defendants' motion for summary judgment as to all issues, except plaintiffs' allegations of improper "spot zoning." The May 6, 2013 judgment of the trial court provided, in pertinent part, as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion for Summary Judgment is GRANTED on all issues except the issue of "spot zoning," for which the court found a genuine issue of material fact on the issue of spot zoning.

Deal v. City of Gonzales, 2013-1386 (La. App. 1 Cir. 3/26/14).

As noted earlier, on remand, the district court held a bench trial on the merits on June 23, 2015, concerning only whether the rezoning constituted spot zoning. Following that trial, a final judgment was rendered, finding the rezoning was valid and did not constitute spot zoning, and maintaining its earlier dismissal of all of plaintiffs' claims against the defendants. Thus, both judgments, the first partial summary judgment and the final judgment on the merits on the spot zoning issue, both in favor of the defendants, are before us on appeal.

ASSIGNMENTS OF ERROR

Plaintiffs set forth four assignments of error, as follows:

(1) The trial court erred in granting summary judgment in favor of the defendants-appellees.

- (2) At the hearing on the issue of spot zoning the trial court erred in granting the judgment declaring the rezoning of the subject property did not constitute spot zoning.
- (3) The trial court erred in not giving greater weight to the plaintiff[s'] expert witness, Lydia Z. Jemison.
- (4) The trial court erred in allowing Ryland Percy, the attorney for the City of Gonzales and the Zoning Commission for the City of Gonzales, to testify and give opinion testimony at the trial of this matter.

DISCUSSION/ANALYSIS

Assignment of Error number one relates to the May 6, 2013 partial summary judgment rendered, which was the subject of the first appeal before this court, wherein we dismissed the appeal as not being from a final, appealable judgment. As to that judgment, plaintiffs contend there were genuine issues of fact precluding judgment dismissing their claims. Specifically, plaintiffs alleged the rezoning was accomplished without following the applicable rules, procedures, city ordinances, and codes. Plaintiffs assign error to that prior judgment and state the appeal raises the issue of whether there are genuine issues of fact regarding the proper filing fees and the proper notice in connection with the rezoning; however, in this appeal, they do not advance any argument in support of their contention that partial summary judgment was improperly granted. Rather in brief to this court, they state they "would like to adopt its' [sic] oral argument and brief on the summary judgment ... appealed earlier."

On *de novo* review, we find the defendants adhered to all substantive requirements for rezoning set forth in La. R.S. 33:4726(A)¹ and the City of Gonzales Code

¹ Louisiana Revised Statutes 33:4726(A) provides:

In order to avail itself of the powers conferred by R.S. 33:4721 through 4729, the legislative body of the municipality shall appoint a zoning commission whose function it shall be to recommend the boundaries of the various original districts as well as the restrictions and regulations to be enforced therein, and any supplements, changes, or modifications thereof. Before making any recommendation to the legislative body of the municipality, the zoning commission shall hold a public hearing. Notice of the time and place of the hearing shall be published at least three times in the official journal of the municipality, or if there be none, in a paper of general circulation therein, and at least ten days shall elapse between the first publication and date of the hearing. After the hearing has been held by the zoning commission, it shall make a report of its findings and recommendations to the legislative body of the municipality. The legislative body shall not hold public hearings or take action until it has received the final report of the zoning commission.

of Ordinances 22-22(a) and (b)², including (1) public hearing, (2) notice, and (3) vote of proper authorities. All other procedural "defects" alleged by the plaintiffs are not substantive, and do not affect the otherwise validity of the rezoning of the subject property.

The primary objective of the rules of procedure is to secure all parties the full measure of their substantive rights and that rules of procedure exist for the sake of substantive law and to implement substantive rights, not as an end in and of itself.

Radcliffe 10, L.L.C. v. Zip Tube Systems of Louisiana, Inc., 2009-0417 (La. App. 1 Cir. 12/29/09), 30 So.3d 825, 831, writ denied, 2010-0244 (La. 4/9/10), 31 So.3d 394.

Plaintiffs allege that the notice requirements of applicable law were not satisfied. Our review of the record reveals that the defendants provided six notices of the public hearing in the local newspaper. Two separate hearings were held in which the floor was open for all citizens to voice their concerns regarding the rezoning of the subject property. The record also reflects that at least one of the named plaintiffs, Tyrone Smith, testified he was in actual attendance at every Zoning Commission meeting and every council hearing where the zoning of the subject property was at issue. Additionally, the minutes of those meetings contained in the record reflect that three of the named plainitffs, Roosevelt Mackyeon, Tyrone Smith, and Frank Smith, Jr., attended the meetings and voiced their opposition to the rezoning. We find the record evidences, contrary to the plaintiffs' allegations, that the plaintiffs not only had notice of the meetings, but they also had, and exercised, the opportunity to be heard and voiced their opposition to the rezoning. The record also reveals that the required fee was paid to the City Clerk on June 28, 2012.

² Ordinance 22-22 for the City of Gonzales provides as follows, in pertinent part:

⁽a) The city council may from time-to-time, on its own motion or on petition, after public notice and hearing, amend the districts and the district regulations established therefore in accordance with the provisions of R.S. 33:4725.

⁽b) A proposed amendment or rezoning request upon motion of the city council or upon motion of the planning and zoning commission shall require a recommendation and report of the planning commission after public notice and hearing.

Plaintiffs also alleged procedural "errors" occurred during the rezoning process and claim the rezoning of the property should be declared null and void. However, they cite no authority (nor have we found any) that supports this request. Moreover, we have reviewed the plaintiffs' alleged "procedural errors" and find, contrarily, that all procedures were in compliance with the law. The City Council has the authority on its own motion to amend the districts and the district regulations, pursuant to Ordinance 22-22(a), and had the discretion to grant, deny, or amend a request to something less permissive, as long as the amendment is for the same property originally applied. Moreover, the record amply reflects that the City Council and the Zoning Commission placed this matter under intensive consideration for months before taking final action. The ordinance was passed after public discussions with the owner of the subject property, the surrounding property owners, and the concerned citizens of the City of Gonzales.

Accordingly, we find the record amply reflects that the rezoning statutory requirements of notice and public hearings were met. All other minor procedural errors alleged by the plaintiffs do not violate the legislative intent, nor do they affect the validity of the zoning ordinance. Therefore, we find no merit in plaintiffs' appeal of the grant of the partial summary judgment; there were no genuine issues of material fact regarding the procedural errors alleged by the plaintiffs and dismissal of their claims, except for the allegation concerning spot zoning. The district court's judgment of May 6, 2013, is affirmed.

Assignments of Error numbers 2, 3, and 4 relate to the final judgment rendered after trial on the merits of the spot zoning issues, whereby plaintiffs' remaining claims were dismissed based on the district court's finding that the rezoning of the subject property was valid, and did not constitute spot zoning. For the following reasons, we likewise find no merit to plaintiffs' appeal of the June 23, 2015 judgment.

Plaintiffs assert the district court erred in not giving greater weight to the testimony of their expert witness, Lydia Z. Jemison. Ms. Jemison, a planning consultant, was accepted as an expert in zoning and land use. She testified that, in her opinion, the rezoning in this matter falls under Black's Law Dictionary's definition of *spot zoning*.

"[T]he granting of a zoning classification to a piece of land that differs from that of other land in the immediate area. The term refers to the zoning which singles out an area for treatment different from that of similar surrounding land and which cannot be justified on the bases of health, safety, morals, or general welfare of the community and which is not in conformance [sic] with a comprehensive plan." Ms. Jemison concluded that the rezoning was "clearly spot zoning in my opinion." She further testified that in her opinion, the rezoning does not conform to the comprehensive Land Use Plan for the City of Gonzales, in that the reclassification allegedly benefits only one property owner, the owner of the subject property. However, Ms. Jemison offered nothing in support of this conclusion. Plaintiffs contend that no other expert was called to testify, and thus, the testimony of Ms. Jemison should have been a sufficient basis for the district court to conclude the rezoning in this matter constituted spot zoning.

It is well settled in Louisiana that the trier of fact is not bound by the testimony of an expert, but such testimony is to be weighed the same as any other evidence. **Williams v. Rubicon, Inc.**, 2001-0074 (La. App. 1 Cir. 2/15/02), 808 So.2d 852, 858, writ granted, 2002-0802 (La. 6/7/02), writ grant recalled as improvidently granted; writ denied, 2002-0802 (La. 12/4/02), 833 So.2d 942. The trier of fact may accept or reject in whole or in part the opinion expressed by an expert. **Harris v. Delta Development Partnership**, 2007-2418 (La. App. 1 Cir. 8/21/08, 10), 994 So.2d 69, 77.

The district court rendered written reasons for judgment and those reasons, which, as noted below we adopt herein by reference, carefully detail the testimony of Ms. Jemison and explain the rationale and the lack of supporting evidence in the record that contributed to the weight it chose to give the expert's testimony. The effect and weight to be given expert testimony is within the broad discretion of the trial judge. **Wade v. Teachers' Retirement System of Louisiana**, 2005-1590 (La. App. 1 Cir. 6/9/06), 938 So.2d 103, 108, writ denied, 2006-2024 (La. 11/3/06), 940 So.2d 673. As reflected by the written reasons, the district court gave full consideration to Ms. Jemison's testimony, and in light of the rest of the record, it chose to conclude, contrary to her opinion, that the rezoning did not constitute spot zoning. For the reasons detailed by the district court,

we find it did not abuse its discretion in not giving full weight to her testimony. We find no merit in this assignment of error.

We likewise find no merit to plaintiffs' assertion that the district court erred in allowing the testimony and opinion testimony of Robert Ryland Percy, III. According to plaintiffs, because Mr. Percy was an attorney representing the defendants in this matter, he should not have been allowed to testify. However, plaintiffs cite no supporting authority. Indeed, La. C.E. art. 701, governing opinion testimony by lay witnesses, allows a witness not testifying as an expert to give opinion testimony as long as the testimony is (1) rationally based on the perception of the witness, and (2) helpful to a clear understanding of his testimony or the determination of a fact in issue. The district court is vested with broad discretion in administering this article. La. C.E. art. 701, Comment B. Mr. Percy was the city attorney for the City of Gonzales from 1990 through early 2015. He was serving in that capacity when the Comprehensive Land Use plan was developed and published for the city, in April 1997, and was active in advising members of the planning and zoning commission whenever they requested legal consultation, including regarding the rezoning of the subject property.

We find that allowing Mr. Percy to give opinion testimony falls within the permissible scope of La. C.E. art. 701 and was not error. We additionally note that the only mention in the reasons for judgment by the district court of the testimony of Mr. Percy is that, together with the testimony of another defense witness, Mr. Frank Cagnalotti, the record established that property annexed by the city after the comprehensive use plan was adopted is automatically zoned into the most restrictive residential classification, pursuant to the ordinance. Thus, it appears that the only weight given to the opinion testimony of Mr. Percy concerned a fact about which there was corroborative testimony. We find no merit to this assignment of error.

Finally, the plaintiffs contend the district court erred in granting judgment, declaring the rezoning of the subject property did not constitute spot zoning. We find the written reasons for judgment rendered by the district court reflect that this assignment also has no merit. The reasons are comprehensive and detail the totality of the evidence

in the record and considered by the court, and legal support is provided therein for all of the court's findings. Accordingly, we adopt, by reference, those detailed written reasons as our own, finding they correctly and fully resolve the issues presented, and wholly support the ultimate finding that the rezoning did not constitute prohibited spot zoning.

CONCLUSION

For all of the foregoing reasons, including the district court's written reasons adopted by reference herein, we conclude the district court did not err in finding there were no genuine issues of material fact and that defendants are entitled to judgment, as a matter of law, that the statutory requirements for the rezoning were met, and also, as a matter of law, the rezoning did not constitute spot zoning. Because the record fully supports that the rezoning was valid, we affirm both the May 6, 2013 and the June 24, 2015 judgments. Plaintiffs are assessed all costs of this appeal.

AFFIRMED.