IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Annette Baldwin, Bishop Baldwin, Patricia Morgan, Anthony Buba, Michelene Thomas, Linda White, Michael Stout, Virginia Eskridge, Edward Cloonan and Charles P. McCullough	:	
v.	:	No. 783 C.D. 2010
Allegheny County	:	Argued: November 9, 2010
Appeal of: Annette Baldwin, Bishop Baldwin, Patricia Morgan, Anthony Buba, Michelene Thomas, Linda White, Michael Stout, Virginia Eskridge and Edward Cloonan	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: January 24, 2011**

Annette Baldwin, Bishop Baldwin, Patricia Morgan, Anthony Buba, Michelene Thomas, Linda White, Michael Stout, Virginia Eskridge, and Edward Cloonan (collectively, Appellants) appeal from the March 29, 2010, Order of the Court of Common Pleas of Allegheny County (trial court) granting Allegheny County's (County) Motion to Dismiss (Motion) Appellants' statutory appeal. The

trial court granted the Motion because: (1) Appellants lacked standing; and (2) the County's Resolution #44-09-RE (Resolution), the purported adjudication from which Appellants filed their statutory appeal, was a legislative enactment not subject to judicial review pursuant to the Local Agency Law (Law), 2 Pa. C.S. §§ 551-554, 751-754, Mazur v. Trinity Area School District, 599 Pa. 232, 961 A.2d 96 (2008), and Ondek v. Allegheny County Council, 860 A.2d 644 (Pa. Cmwlth. 2004). Appellants argue that the trial court erred in relying on Mazur and Ondek to conclude that the Resolution was a legislative enactment when, in their view, it was actually an adjudication pursuant to this Court's decision in North Point Breeze Coalition v. City of Pittsburgh, 431 A.2d 398 (Pa. Cmwlth. 1981). Further, Appellants assert that the trial court erred in concluding that they lacked standing to challenge the Resolution.

The background in this matter derives from the University of Pittsburgh Medical Center's (UPMC) decision to close its hospital located in Braddock Borough (Braddock Hospital) as of January 31, 2010, against which there was much public opposition. In fact, several legal challenges were filed with the trial court attempting to prevent UPMC from closing Braddock Hospital, which, ultimately, were unsuccessful. In addition, a member of the Braddock Borough Council filed a Civil Rights Complaint against UPMC with the Federal Department of Health and Human Services. The instant challenge to the Resolution appears to be another attempt to challenge UPMC's closure of Braddock Hospital.[1]

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[1] Although the Resolution contains no specific reference to Braddock Hospital, Appellants allege throughout their brief that the purpose of the Resolution is to authorize bonds to assist UPMC to ensure the closure of Braddock Hospital and construct a new hospital facility in Monroeville. Appellants' main contention, as evidenced by the long discussions contained

(Continued…)

On December 15, 2009, County Council (Council) held a meeting, at which it enacted the Resolution.[2] The Resolution, in pertinent part, stated:

> A Resolution approving a Project for the benefit of UPMC, . . . to be financed by the Allegheny County Hospital Development Authority [(Authority)] by the issuance of the Authority's tax-exempt refunding bonds, to be issued in one or more series, in a principal amount not to exceed $1,175,000,000, provided that the taxing power of the [County] shall not be obligated in any way with respect to the Bonds (hereinafter defined), and determining that the purpose of the financing will be to benefit the health and welfare of the citizens of [the County].

(Resolution at 1, R.R. at 31A.) The Resolution indicated that, pursuant to Section 5607(b)(2)(iv) of the Municipal Authorities Act (Act), 53 Pa. C.S. § 5607(b)(2)(iv),[3] public hospitals, nonprofit corporation health centers or nonprofit

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within their brief, is that if they are able to successfully challenge the enactment of the Resolution, they may somehow prevent UPMC from closing Braddock Hospital.

[2] Numerous protestants were given the opportunity to express their objections to the Resolution at the December 15, 2009, meeting.

[3] Specifically, Section 5607(b)(2)(iv) provides:

> (b) Limitations. – This section [(5607)] is subject to the following limitations:
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> . . . .
>
> (2) The purpose and intent of this chapter being to benefit the people of the Commonwealth by, among other things, increasing their commerce, health, safety and prosperity and not to unnecessarily burden or interfere with existing business by the establishment of competitive enterprises; none of the powers granted by this chapter shall be exercised in the construction, financing, improvement, maintenance, extension or operation of any projection or projects or providing financing for insurance reserves which in whole or in part shall duplicate or compete with existing enterprises serving substantially the same

(Continued…)

hospital corporations serving the public, such as UPMC, may be financed with loans made by a municipal authority created under the Act, like the Allegheny County Hospital Development Authority (Authority), if the municipality organizing the authority declares by resolution or ordinance that it is desirable for the health, safety, and welfare of the people in the area served by such projects and facilities to have such projects and facilities financed through the authority.[4] (Resolution at 2, R.R. at 32A.) Additionally, the Resolution stated that neither the bonds nor the approval granted in the Resolution obligated the taxing power of the County in any way, and were limited obligations of the Authority, payable solely from the revenues pledged by the Authority for such payment. (Resolution at 2, R.R. at 32A.) The Resolution indicates that the project to be financed by the Authority (Project) consists of the issuance of bonds that will be used to (a) finance the costs of "refund[ing] all or a portion" of already-issued bonds and (b) pay for all or a portion of the related financing costs of refunding the already-issued bonds.

> purposes. **This limitation shall not apply to the exercise of the powers granted under this section:**
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> . . . .
>
> > (iv) to hospital projects or health centers to be leased to or financed with loans to public hospitals, nonprofit corporation health centers or nonprofit hospital corporations serving the public . . . **if each municipality organizing an authority for such a project shall declare by resolution or ordinance that it is desirable for the health, safety and welfare of the people in the area served by such facilities to have such facilities provided by or financed through an authority.**

53 Pa. C.S. § 5607(b)(2)(iv) (emphasis added).

[4] The Authority reviewed the bond request and approved the issuance of the bonds on November 24, 2009. Therafter, the County's Chief Executive first introduced the Resolution for Council approval at Council's December 1, 2009, meeting.

(Resolution at 1-2, 4, R.R. at 31A-32A, 34A.) Section 3 of the Resolution specifically declared "that it is desirable for the health, safety and welfare of the people of the County . . . to have the Project financed through the Authority." (Resolution at 3, R.R. at 33A.) The County's Chief Executive signed the Resolution on December 17, 2009.

On January 12, 2010, Appellants filed an appeal challenging the enactment of the Resolution, citing Section 752 of the Law (relating to appeals from local agency adjudications), and arguing that there was neither sufficient nor substantial evidence to support the Resolution's purported determination that the bonds approved therein served the public interest, the purposes of the Act would be furthered by the issuance of these bonds, or the Resolution's declaration that the Project that would be financed by the bonds is desirable for the health, safety and welfare of the citizens of the County. The appeal asserted that the enactment of the Resolution was an arbitrary and capricious act that was contrary to law.[5] The County filed the Motion, asserting that the trial court lacked jurisdiction, Appellants lacked standing, and the Resolution was a legislative enactment not subject to judicial review. Appellants responded that they had standing because of their interest in precluding UPMC from closing Braddock Hospital. The trial court heard argument on March 29, 2010, and, after considering the arguments presented, granted the Motion. The trial court held that none of the Appellants,

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[5] Appellants argue, *inter alia*, that the Resolution's enactment was arbitrary and capricious because Council failed to hold any hearings for the purpose of accepting evidence in support or opposition to the Resolution and precluded Council members and the public from asking UPMC officials questions regarding the use of the bond funds.

who alleged only that they were County residents and within UPMC's service area, had the direct interest requisite to convey standing and that the Resolution was a legislative enactment not subject to judicial review pursuant to Mazur and Ondek. Appellants filed a notice of appeal to this Court, and the trial court issued an Opinion on June 9, 2010, in support of its March 29, 2010, Order.[6]

On appeal, Appellants argue, *inter alia*, that the trial court erred in relying on Mazur and Ondek to determine that the Resolution was a legislative enactment and not an adjudication under the Law subject to judicial review. Appellants contend that Mazur and Ondek are distinguishable and that the enactment of the Resolution is an adjudication in accordance with North Point Breeze. Thus, Appellants assert Section 752 of the Law provides the trial court with jurisdiction to review the Resolution.

Section 752 of the Law provides that "[a]ny person aggrieved by an adjudication of a local agency who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals by or pursuant to Title 42 (relating to judiciary and judicial procedure)." 2 Pa. C.S. § 752. An "adjudication" is "[a]ny final order, decree, decision, determination or ruling of an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties

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[6] Pursuant to the Law and the procedural posture of this case, i.e, the filing of a Notice of Appeal pursuant to Section 752 of the Law, "[o]ur standard of review, where the trial court takes no additional evidence, is limited to determining whether constitutional rights were violated, an error of law was committed or whether necessary findings of fact are supported by substantial evidence of record." Ondek, 860 A.2d at 648 n.7.

to the proceeding in which the adjudication is made." 2 Pa. C.S. § 101. In interpreting this provision, this Court has held that any agency action determining the person or property rights or obligations of the parties before an agency in a particular proceeding is an adjudication. Ondek, 860 A.2d at 648 (citing LaFarge Corporation v. Commonwealth of Pennsylvania, Insurance Department, 690 A.2d 826, 833 (Pa. Cmwlth. 1997), rev'd on other grounds, 557 Pa. 544, 735 A.2d 74 (1999)). However, if "the agency action does not affect the rights of the parties, but only affects the interest of the public in general, then the action will not be deemed an adjudication." Ondek, 860 A.2d at 648 (quoting LaFarge, 690 A.2d at 833).

In North Point Breeze, this Court held that a resolution, in which Pittsburgh City Council (city council) approved a conditional use on a particular property, was an adjudication subject to judicial review under Section 752 of the Law. The applicant in North Point Breeze purchased a property with the intent to use it as a temporary women's shelter, which was permitted as a conditional use under the zoning ordinance with city council's approval when the proposal complied with the ordinance's specific requirements. The applicant filed an application for a conditional use with the city's planning department, which, after a hearing, recommended the application be denied. Notwithstanding this recommendation, city council passed a resolution approving the conditional use. Id., 431 A.2d at 399. The objectors, who had appeared at the hearings, appealed to the trial court, which quashed the appeal on the grounds that city council's grant of the conditional use permit by resolution was a legislative enactment from which no right to appeal existed. Id. On appeal, this Court agreed with the objectors that

city council was acting in its administrative, not legislative, capacity when it passed the resolution approving the conditional use and, therefore, the resolution was an adjudication subject to judicial review. In so holding, we stated:

> The council, in passing the resolution, did not enact a new ordinance or amend the existing ordinance. The resolution was not legislative in nature because it established no rule of general application. On the contrary, the council, by allowing the applicant to use the property as a [women's shelter] through a conditional use permit, applied the specific criteria outlined in [the zoning ordinance] to a single applicant and one designated piece of land. Council essentially approved the issuance of a permit, nothing more.

North Point Breeze, 431 A.2d at 400 (citation omitted). "The council's decision clearly affected the property rights of the applicant at least; the resolution operated in a concrete manner to change the position of the individual parties" and, therefore, was an adjudication under the Law. Id. at 401.

In Ondek, Council, at the request of a private development group, passed a resolution approving the creation of a tax increment financing[7] (TIF) district and the County's participation in a plan to finance certain costs of a particular commercial development within the TIF district (TIF Resolution). Ondek, 860 A.2d at 645. As part of the process for approving the use of TIF funds, the county redevelopment authority and, ultimately, Council, determined that the proposed area for the commercial development was blighted and qualified for

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[7] Tax increment financing is "'a technique used by a municipality to finance commercial developments [usually] involving issuing bonds to finance land acquisition and other up-front costs, and then using the additional property taxes generated from the new development to service the debt.'" Ondek, 860 A.2d at 645 n.2 (quoting Blacks Law Dictionary at 1502 (8th ed. 2004)).

redevelopment. Id. at 646-47. A group of objectors appealed to the trial court asserting procedural and substantive defects to the enactment of the TIF Resolution. The trial court found no merit in the objectors' arguments and denied their appeal. The objectors then appealed to this Court, where Council asserted, for the first time, that the TIF Resolution was a legislative enactment and not subject to judicial review. In response, the objectors contended that, pursuant to North Point Breeze, the TIF Resolution was an adjudication under the Law subject to judicial review. We agreed with Council and held that North Point Breeze was inapplicable, noting that, unlike the city council in North Point Breeze, which applied the existing zoning ordinance to enact a resolution that was actually a grant of a conditional use permit, Council in Ondek enacted an entirely new resolution as it was required to do by the Tax Increment Financing Act (TIF Act).[8] Ondek, 860 A.2d at 649. "Clearly the [resolution in North Point Breeze] affected the 'personal or property rights or obligations' of the applicant and the adjoining landowners, as is the case in any land use appeal. The TIF Resolution, on the other hand, is a legislative act intended to spur local development." Id.

In Mazur, our Supreme Court relied on Ondek to hold that the TIF Resolution in Mazur was a legislative enactment excluded from judicial review under Section 752. Mazur, 599 Pa. at 246, 961 A.2d at 104-05. As in Ondek, the TIF Resolution in Mazur was passed to assist in financing a particular commercial development project. Id. at 237, 961 A.2d at 99. The objectors appealed the adoption of the TIF Resolution and filed complaints in equity, to which the taxing

[8] Act of July 11, 1990, P.L. 465, as amended, 53 P.S. §§ 6930.1-.13.

authority filed preliminary objections. Id. The trial court held that it lacked subject matter jurisdiction, sustained the preliminary objections, and dismissed the objectors' complaints. Id. This Court affirmed, and the objectors appealed to the Supreme Court. The Supreme Court agreed with this Court that a TIF resolution or ordinance, which included a determination of blight, is not an adjudication under the Law, but a purely legislative enactment not subject to judicial review under Section 752 of the Law. Id. at 246, 961 A.2d at 104. Our Supreme Court explained that the prohibition of judicial review of legislative enactments arises from the

> essence [of] the constitutional doctrine of separation of powers. As the United States Supreme Court has stated, "[courts] are not equipped to decide desirability [of legislation]; and a court cannot eliminate measures which do not happen to suit its tastes if it seeks to maintain a democratic system. The forum for the correction of ill-considered legislation is a responsive legislature.

Id., 599 Pa. at 246, 961 A.2d at 104 (quoting Daniel v. Family Security Life Insurance Co., 336 U.S. 220, 224 (1949)). The Supreme Court rejected the objectors' reliance on the certification of blight found in the TIF Resolution, concluding that the determination did not constitute an adjudication because "a certification of blight does not, in and of itself, have a **legal** effect on property rights." Id., 599 Pa. at 246, 961 A.2d at 104-05 (quoting In re Condemnation by the Urban Redevelopment Authority of Pittsburgh, 527 Pa. 550, 556, 594 A.2d 1375, 1378 (1991) (emphasis in original)). The Supreme Court further explained that the determination of blight was not an adjudication, "but rather is a statutorily-required component of a legislative enactment under the TIF Act." Mazur, 599 Pa. at 246, 961 A.2d at 105. With regard to the dismissal of the objectors' equity complaints, the Supreme Court held that this Court erred in holding that the trial

court lacked jurisdiction in equity to review a challenge to a municipal ordinance such as a TIF resolution. Id. at 247, 961 A.2d at 105. Citing its decision in Crawford v. Redevelopment Authority of the County of Fayette, 418 Pa. 549, 211 A.2d 866 (1965), the Supreme Court held that "a court of common pleas does have jurisdiction in equity to review a challenge to a municipal ordinance . . . but that matter is justiciable only if the court determines that the local authority acted arbitrarily, in bad faith, contrary to statutory procedures, or in violation of constitutional safeguards." Mazur, 599 Pa. at 247, 961 A.2d at 105. However, because the objectors' pleadings in their equity complaints failed to plead facts sufficient to support their assertion of bad faith, the objectors did not establish a justiciable cause of action. Id. at 249-50, 961 A.2d at 107.

Appellants assert that Mazur and Ondek are distinguishable because both Mazur and Ondek involved resolutions that designated areas as "blighted" and eligible for redevelopment through TIF, and this matter does not involve TIF. Moreover, unlike the Resolution here, the TIF Resolutions in Mazur and Ondek were not adjudications because, even though they included determinations of blight, "a certification of blight does not, in and of itself, have a legal effect on property rights." Mazur, 599 Pa. at 246, 961 A.2d at 105 (emphasis omitted). Instead, Appellants assert that Council, as the governing body of the County, is analogous to the city council in North Point Breeze and, as a governing body, Council was acting in its administrative capacity when it enacted the Resolution. Specifically, Appellants contend that the Resolution disposed of a particular administrative item, i.e., the determination required by Section 5607(b)(2)(iv) of the Act necessary to approve the specific bond issue to UPMC, not to a general

class of borrowers, thus, there was a "personal" element to the Resolution. (Appellants' Br. at 31.) Moreover, Appellants argue that the Resolution is an adjudication because, at its sixth line, the Resolution uses the word "determining" and the definition of adjudication includes a "determination." 2 Pa. C.S. § 101.

After reviewing the Resolution, relevant statutes, and case law, we have no choice but to agree with the County that the Resolution is a legislative enactment akin to the TIF Resolutions in Ondek and Mazur, and not the adjudicative resolution involved in North Point Breeze and is, therefore, not an adjudication subject to judicial review. Like the TIF Resolutions in Ondek and Mazur, Council enacted the Resolution as an entirely new resolution, as it was required to do by Section 5607(b)(2)(iv) of the Act. This section requires the municipality that created the authority issuing the financing bonds, here, the County, to perform a legislative act by adopting either a resolution or an ordinance that indicates that it is desirable to the health, safety, and welfare of the people of the county that the authority issue the financing. 53 Pa. C.S. § 5607(b)(2)(iv). In contrast, the resolution passed in North Point Breeze was not a new enactment, but merely applied the criteria of the city's existing zoning ordinance to the question presented - an application for a conditional use permit. Moreover, the resolution granting the conditional use permit in North Point Breeze clearly affected the property rights and obligations of both the applicant and the adjoining property owners. Here, the Resolution's determination that it is desirable to the health, safety, and welfare of the people of the County for the Authority to issue the financing was a determination that affected and involved the interests of the public in general. Furthermore, the fact that the Resolution contained a "determination" with respect

to the interests of the people of the County does not render the Resolution an adjudication. Like the determination of blight made in the TIF Resolution in Mazur, the determination here was a statutorily-required component of the legislative enactment specifically required by Section 5607(b)(2)(iv) of the Act.

To the extent that Appellants assert that the fact that UPMC was the "beneficiary" of the Resolution, we note that, in this regard, UPMC is like the private commercial developers who requested the enactment of the TIF Resolutions in Ondek and Mazur. Those developers received a benefit from the TIF Resolutions as they obtained public financial assistance for their developments. Indeed, the commercial developers in Ondek and Mazur benefited even more so because, under the TIF Resolutions, property tax revenues collected by the taxing authorities would be used to actually service the debt. Here, as indicated by the Resolution, the enactment of the Resolution and the issuance of the bonds in no way obligated the taxing authority of the County. (Resolution at 1-2, R.R. at 31A, 32A.) For the foregoing reasons, we conclude that the trial court did not err in concluding that the Resolution was a legislative enactment, which is not subject to judicial review pursuant to Section 752 of the Law. Indeed, "[i]t is not in the jurisdiction of this Court to rule on the wisdom of legislative enactments" or to "sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceeds along suspect lines." Mercurio v. Allegheny County Redevelopment Authority, 839 A.2d 1196, 1203 (Pa. Cmwlth. 2003).

Finally, Appellants note in their brief, as a point of interest, that in Mazur our Supreme Court held that a party can challenge a legislative action in a court of equity if that action was taken arbitrarily, in bad faith, contrary to statutory procedures, or in violation of constitutional safeguards. Id. Appellants contend that they raised these defects with respect to the enactment of the Resolution with sufficient specificity. With respect to Appellants' citation to the discussion of equity jurisdiction in Mazur, Appellants' filed a Notice of Appeal, not a complaint in equity, in the trial court's original jurisdiction and, therefore, neither invoked the trial court's equity jurisdiction, nor did they invoke that jurisdiction during the hearing before the trial court. Although a trial court may have equitable jurisdiction over these types of matters when properly pleaded, Appellants, like the objectors in Mazur, did not do so here.

Accordingly, we conclude that the trial court properly held that the Resolution is a legislative enactment that is not subject to judicial review.[9] Thus, we are constrained to affirm the trial court's grant of the Motion.

RENÉE COHN JUBELIRER, Judge

Judge McCullough did not participate in the decision in this case.

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[9] Because of our determination that the Resolution is not subject to judicial review, we do not address Appellants' additional argument that the trial court erred in holding that they lacked standing to challenge the Resolution.

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O R D E R

NOW, January 24, 2011, the Order of the Court of Common Pleas of Allegheny County in the above-captioned matter is hereby **AFFIRMED**.

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RENÉE COHN JUBELIRER, Judge