DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2006

CAROLYN J. WRIGHT, MICHAEL BORNSTEIN, ANITA MITCHELL, GLADYS D. VAN OTTEREN, and **PATRICIA M. HIGH,**
Appellants,

v.

LOIS FRANKEL, as mayor of City of West Palm Beach, a municipality of the State of Florida**; ISAAC ROBINSON, JR.; GERALDINE MUOIO; JAMES EXLINE; KIMBERLY MITCHELL;** and **WILLIAM MOSS,** as city commissioners of the City of West Palm Beach, a municipality of the State of Florida, and **CITY OF WEST PALM BEACH,** a municipality of the State of Florida**,**
Appellees.

Nos. 4D06-3386 & 4D06-3697

December 27, 2006

STONE, J.

This appeal arises from an order quashing an alternative writ of mandamus and denying a motion for summary judgment. The writ was sought to compel the city of West Palm Beach (City) to place a petition committee's (Committee) proposed initiative on the ballot. The primary issue presented is whether the trial court abused its discretion in determining that laches barred the mandamus action. We affirm.

Beginning in July 2002, a series of resolutions were passed by the city commission relating to the development of a city center area ("City Center"). On September 7, 2002, City passed resolutions determining that the county property on Banyan Boulevard was a suitable location for a new city hall and authorizing an expenditure of $1,138,000 for the acquisition of the land.

From November 2002 until November 2003, City passed more resolutions, including authorizing a request for proposals to develop the property and setting forth its intention to acquire other properties for the development. On November 18, 2003, City passed a resolution authorizing the relocation of the library; the resolution indicated that

City held a public forum to receive input regarding the location of the library, and the majority opinion at that forum supported the relocation.

Subsequent resolutions of the West Palm Beach Community Redevelopment Agency (CRA) authorized expenditures for City Center development in the amounts of $16,115,400, $17,670,000, $19,490,000, $155,000, and $1,635,000. On February 3, 2004, City passed a resolution authorizing the issuance of a request for proposals for a developer to design and build city hall and the library on property known as the D&D block, proposed to be known as City Center. On October 12, 2004, CRA passed a resolution authorizing two expenditures, each in the amount of $585,000. CRA also passed a resolution authorizing its chair to enter into an agreement with Republic Properties Corporation ("Republic") for designing and developing City Center. On January 3, 2005, City authorized $2,900,000 in expenditures for the city commons and waterfront construction fund. On March 28, 2005, CRA passed a resolution amending City Center construction and operation funds, authorizing expenditures in the amounts of $1,188,268 and $650,000. On November 7, 2005, CRA approved the City Center strategic finance plan and the implementation of said plan. On March 13, 2006, CRA passed a resolution authorizing expenditures of $405,000. Also on this date, CRA passed a resolution authorizing amendment of the agreement with Republic to provide for the demolition of the structures on the existing site. On June 26, 2006, CRA passed a resolution authorizing its chair to execute an agreement with Catalfumo Management Investments Inc. for completion of City Center. Additional resolutions appear in the record relating to completion of City Center.

Relevant portions of the city charter are as follows:

> ARTICLE VI. INITIATIVE AND REFERENDUM
>
> **Sec. 6.01. Power of initiative.**
>
> The electors may propose any ordinance . . . and may adopt or reject it at the polls. . . . Any initiated ordinance may be submitted to the City Commission by petition. . . .
>
> **Sec. 6.02. Power of referendum**
>
> **. . .** Within thirty (30) days after enactment of an ordinance, a petition signed by at least (5) percent of the City electors as shown by the current voter registration lists may be filed

with the City Clerk requesting that the ordinance be either repealed or submitted to vote of the electors.

Sec. 6.07. Consideration by City Commission

The City Commission shall proceed forthwith to consider any certified initiative or referendum petition received from the City Clerk. In considering an ordinance proposed by initiative petition, the City Commission shall follow the same procedural requirements for passage that are prescribed hereby for ordinances generally, including public hearing thereon, and the City Commission shall take final action thereon not later than thirty (30) days after the date of submission thereof to it. . . .

Sec. 6.08. Submission to electors.

If the City Commission fails to pass an ordinance proposed by initiative petition or passes it in a form different from that set forth in the petition . . . the proposed or referred ordinance shall be submitted to the electors in its original form not less than thirty (30) days nor more than ninety (90) days after the final vote thereon by the City Commission. The City Commission may provide for a special election, and it shall so provide if no regular election is to be held within this period.

On May 16, 2006, Committee filed a petition for initiative ordinance on the relocation of city hall, which provided, in pertinent part,

INTRODUCTION:
. . . THE BELOW LISTED PETITION COMMITTEE PROPOSES THAT THE FOLLOWING ORDINANCE BE SUBMITTED TO THE CITY COMMISSION PURSUANT TO ARTICLE 6 OF THE CITY CHARTER. THE SUMMARY AND FULL TEXT OF THE PROPOSED ORDINANCE IS AS FOLLOWS:

SUMMARY AND FULL TEXT OF PROPOSED ORDINANCE:
AN ORDINANCE OF THE CITY OF WEST PALM BEACH REQUIRING A REFERENDUM BY THE VOTERS OF THE CITY OF WEST PALM BEACH BEFORE CITY HALL CAN BE RELOCATED TO ANOTHER SITE, PROVIDING FOR

REPEAL OF LAWS IN CONFLICT, PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Hall of the City of West Palm Beach and the property upon which it is situated is a valuable and historical asset and resource of the City;

WHEREAS, any decision to relocate the City Hall is a decision that will greatly impact the voters and residents of the City of West Palm Beach;

WHEREAS, the voters of the City of West Palm Beach should decide where their city government should operate and conduct business;

***

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF WEST PALM BEACH, FLORIDA:

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Section 2. Referendum Vote: The City Hall of the City of West Palm Beach shall not be relocated to another site unless the relocation is first approved upon favorable vote of a majority of the electors of the City of West Palm Beach voting thereon in a referendum election.

Section 3. Repeal of Laws and Conflict: All local laws and Ordinances of the City of West Palm Beach in conflict with any provisions of this Ordinance are hereby repealed.

Committee also filed a petition for initiative ordinance on the relocation of the city library with identical provisions.

On May 22, 2006, the city clerk certified to the city commission that sufficient signatures were received for the initiative petitions. On June 19, 2006, City passed a resolution authorizing the filing of an action in circuit court for declaratory relief, stating the city attorney had "conducted such review and has determined that the Initiative Petitions

do not contain ballot questions that may be properly placed on a ballot for consideration by the voters."

On June 20, 2006, Committee filed a complaint for issuance of alternative writ of mandamus to require City to set an election on the two initiatives. The complaint was based on City's failure to either pass the ordinances, or submit the ordinances to the electors within the window provided by the charter.

On June 20, 2006, Committee also filed a "motion to issue alternate [sic] writ of mandamus." The memorandum in support of this motion contended that the ordinances concerned legislative, rather than administrative matters, and, thus, were appropriate matters for an ordinance, that the petitions were not submitted in an untimely manner, and that the petitions would not impair City's contractual obligations. Committee prayed the court to grant relief in the form of placing the ordinances on the September 5, 2006 ballot. The court initially issued the alternative writ of mandamus. City then filed a motion to quash, an answer with affirmative defenses, and a counterclaim for declaratory relief.

The trial court subsequently entered an amended order quashing alternative writ of mandamus and denying Committee's motion for summary judgment. The court determined that laches barred mandamus relief, recognizing that mandamus is not appropriate if its issuance "would result in disorder, confusion and disturbance," and that public interests are a factor in determining whether the writ should issue. The court also found that City would be "severely prejudiced" by the delay that would be caused by granting the requested relief.

Mandamus is awarded "to enforce the performance of a ministerial duty imposed by law where such duty has not been performed as the law requires." *State ex rel. Clendinen v. Dekle,* 173 So. 2d 452, 456 (Fla. 1965) (emphasis omitted) (citations omitted). It is a discretionary writ, "awarded, not as a matter of right, but in the exercise of a sound judicial discretion[1] and upon equitable principles. 'It is an extraordinary remedy,

[1]City contends that our standard of review should be *de novo. See, e.g., Gallagher v. Dupont,* 918 So. 2d 342, 346 (Fla. 5th DCA 2005) (summary judgment on a mandamus action). Though the court did necessarily deny Committee's motion for summary judgment, the order on appeal properly relates to the court quashing the alternative writ. Because mandamus is a discretionary remedy, and the determination of laches is within the discretion of the trial court, we review the order on appeal for an abuse of discretion.

which will not be allowed in cases of doubtful right, and it is generally regarded as not embraced within statutes of limitations applicable to ordinary actions, but as subject to the equitable doctrine of laches.'" *State ex rel. Haft v. Adams,* 238 So. 2d 843, 844 (Fla. 1970) (citations omitted). The ruling of the trial court in mandamus proceedings will not be disturbed absent clear error. *La Gorce Country Club v. Cerami*, 74 So. 2d 95, 99 (Fla. 1954) (citation omitted). Mandamus has been deemed an "extremely limited" basis for jurisdiction and has traditionally been "employed sparingly." *Brown v. Firestone,* 382 So. 2d 654, 671 (Fla. 1980) (citations omitted). Further, notwithstanding "a clear legal right," a mandamus writ will not be issued when to do so "would result in disorder, confusion and disturbance. . . ." *Adams,* 238 So. 2d at 844.

Laches is defined as an "[u]nreasonable delay in pursuing a right or claim – almost always an equitable one – in a way that prejudices the party against whom relief is sought." *Black's Law Dictionary* 891 (8th ed. 2004). Generally, whether a lawful claim is barred by laches is a matter of trial court discretion. *Metro. Dade County Plumbing Contractors' Examining Bd. v. State ex rel. Bishop,* 216 So. 2d 76, 77 (Fla. 3d DCA 1968).

In *Adams,* a candidate sought to compel a declaration that he was the only duly qualified candidate for an office. The candidate brought the action less than a month before the scheduled primary election, and the court noted it "would be necessary to print ballots, mail out absentee ballots, and make other arrangements for the orderly holding of such primary election." Thus, the court found that interfering with the imminent election process after the candidate's twenty-one day delay in invoking jurisdiction of the court "would result in confusion and injuriously affect the rights of third persons."

In *Ladas v. Titus,* 53 So. 2d 323 (Fla. 1951), the court denied mandamus relief to a police officer on the basis of laches, where his action was brought nine months and fifteen days after a motion for rehearing was filed, and over seventeen months from his dismissal. The court noted that it could not allow claims against the city to be presented in an untimely manner because "[i]t would be most disastrous to permit the city's business to drag along in such a slipshod, hit or miss kind of a way. Those who have claims against the City are expected to present them promptly."

In *Board of Public Instruction of Hendry County v. State ex rel. Hilliard*, 188 So. 2d 337 (Fla. 2d DCA 1966), *aff'd on other grounds,* 191 So. 2d

561 (Fla. 1966), the court held that laches was applicable in a mandamus action where a challenge to the millage rate, after the tax bills calculated at another rate had been mailed out, "would in all probability not only create great confusion and disorder in the operation of the . . . schools, but would also create a chaotic condition in the Tax Assessor and Tax Collector's offices as well as wreak havoc in the entire operation of Hendry County." *But see Clendinen*, 173 So. 2d at 456 (holding that a sixty-day delay in bringing an action to establish that a constitutional amendment was adopted, and not rejected, did not cause a "prejudicial change" in any parties' position; therefore, defense of laches was inapplicable); *City of Daytona Beach v. Layne,* 91 So. 2d 814 (Fla. 1957) (finding that a police officer's seven-month delay in bringing a mandamus action did not prejudice or materially affect the city, so that laches was inapplicable).

Committee contends that laches does not apply under the circumstances presented here, citing to *Wilson v. Dade County,* 369 So. 2d 1002 (Fla. 3d DCA 1979). In that case, the Third District reversed where the trial court found an ordinance proposed by initiative petition to be invalid and entered a temporary injunction against the county forbidding the ordinance to be placed on the ballot. *Id.* at 1003. Committee also relies on *Scott v. City of Orlando,* 173 So. 2d 501 (Fla. 2d DCA 1965), wherein the court found the legislative act of locating a municipal theater proper for referendum, notwithstanding that City had already spent funds in anticipation of building the facility. *Wilson* and *Scott*, however, are distinguishable, as neither involved a mandamus action with the defense of laches.

Committee also cites, in support of its contention that laches should not be a bar, *Teachers Management & Investment Corp. v. City of Santa Cruz*, 64 Cal. App. 3d 438 (1976). We find this case unpersuasive, in that it did not deal with mandamus relief. Further, the specific laches defense here goes to almost three years of unreasonable delay and does not involve an attempt to have an ordinance declared void. *Duran v. Cassidy,* 28 Cal. App. 3d 574 (1972), where the California court found laches inapplicable when the petitioners acted with diligence in presenting their initiative, is also unpersuasive. There, the city approved a development plan in November 1971, and the voters appeared at a November 15, 1971 counsel meeting to voice their objections. Here, in contrast, almost three years have passed, the project is well underway, and millions of dollars have been spent and committed.

Committee further contends that laches is inapplicable in this case

because the proposed ordinances are not directed to the current relocation of city hall and the library, but rather, are ordinances of general applicability. Consequently, Committee urges that any issue of whether the proposed ordinance would apply to the current city hall and library relocation would not be ripe for consideration until the electorate had passed the ordinance. This contention is predicated on the proposition that whether an ordinance may be applied in a certain circumstance does not bar the ordinance from being placed on the ballot. *See, e.g., West Palm Beach Ass'n of Firefighters, Local Union 727 v. Bd. of City Comm'rs of the City of West Palm Beach,* 448 So. 2d 1212 (Fla. 4th DCA 1984); *Citizens for Responsible Growth v. City of St. Pete Beach,* 940 So. 2d 1144 (Fla. 2d DCA 2006). These cases, however, each involve discrete legal issues and are distinguishable from this case in that none involved a defense of laches.

In any event, we reject Committee's argument that these proposed ordinances are simply of general applicability. Although the proposed ordinances are silent as to whether they apply to the current move of the city hall and library, the record is clear that they are, in substantial part, directed to the current relocation. First, section three of each ordinance provides that "All local laws and Ordinances of the City of West Palm Beach in conflict with any provisions of this Ordinance are hereby repealed." Consequently, the proposed ordinances are intended to repeal the plethora of resolutions already passed in relation to the current relocation. Second, in Committee's own motion for issuance of alternative writ of mandamus, it states that the procedure set forth in the ordinances, wherein the electorate must vote on a proposed relocation, "applies not only to the current contemplated relocation of the buildings, but to all future relocations of the buildings as well." Moreover, at a hearing on its motion, Committee argued that the allocation of $11 million for the current relocation would be "completely wasted if our ordinance passes and the citizens vote not to [approve the City Center site]."

Indeed, the record supports that at the time Committee was gathering signatures, there was much public discussion relating to the current relocation. In her deposition, committee member Wright said:

> One of the most surprising things in gathering signatures in the referendum process was how little we had to explain to people. Because at that time there was saturation of media coverage by the two major newspapers servicing this area, the Sun Sentinel and The Post, both in editorials and

> in news coverage . . . . People had a high, high, high knowledge of this because of the saturation of news coverage.
>
> They were all very well aware of the debate. They were well aware of the library debate. They were well aware of the City Center debate. We did not have to spend as much time explaining things because they already knew it and they already knew about the petition campaign.

Thus, we glean the intent of the signatories to petitions was for the proposed ordinances to affect the current relocation. This is a proper consideration in these circumstances. *See generally Advisory Opinion to the Governor – 1996 Amendment 5 (Everglades),* 706 So. 2d 278 (Fla. 1997) (citation omitted) ("The touchstone for determining the meaning of a constitutional amendment adopted by initiative is the intent of the voters who adopted it . . . ."); *Dep't of Envtl. Prot. v. Millender,* 666 So. 2d 882 (Fla. 1996) (citation omitted) ("[W]e may look to the explanatory materials available to the people as a predicate for their decision as persuasive of their intent."); *Jenkins v. State,* 385 So. 2d 1356 (Fla. 1980) (citation omitted) ("The significance of the public discussion concerning the amendment is that it provides a frame of reference by which to ascertain the intent of the voters in adopting the amendment.").

As we recognize the broad discretion a trial court has in issuing a writ of mandamus and in finding laches applicable, we conclude that the trial court could properly decide that mandamus in this case was barred by the application of laches, where there was evidence that Committee had not acted for approximately three years while City continued to pass resolutions regarding the current relocation of city hall and the library and development of City Center. Accordingly, it was within the trial court's discretion to reject Committee's argument that laches was inapplicable because its mandamus action was filed a day after City refused to place the ordinances on the ballot. Although the parties argue as to the extent of planning, expenditures, and completeness of the project as it relates to the prejudice element, there certainly has been enough work done on the project to support a conclusion of prejudice.

We also find section 6.02 instructive in determining what constitutes an unreasonable delay. In that section, a petition seeking to repeal an ordinance or submit that ordinance to a vote of the electors must be filed within thirty days of enactment of that ordinance. While here City

passed resolutions,[2] the time limitation in the charter evinces a requirement that objections be lodged to the actions of City within a brief period of time. Though we are mindful of the difference between an ordinance and a resolution[3], we find section 6.02 to be of such like character as to guide us in considering the equity of laches as it applies to unreasonable delay in objecting to a resolution. *See generally Radiation, Inc. v. Campbell,* 200 So. 2d 192 (Fla. 4th DCA 1967) (citing *Grable v. Nunez,* 64 So. 2d 154 (Fla. 1953)), ("[R]ecognizing that in courts of equity there is no such thing as a statute of limitations but rather that the court is governed by the doctrine of laches, [but noting] the Florida Supreme Court nevertheless held an equity action could be barred by applying the statute of limitations"); *Reed v. Fain,* 145 So. 2d 858 (Fla. 1961) ("A statute of limitation may, of course, be employed as a guide in an equity action in connection with a careful consideration of all of the existing equities").

Here, the delay could properly be considered unreasonable when gauged in light of the thirty-day limitation period that would have been imposed had City acted by ordinance rather than resolution. Committee acknowledges the thirty-day limit would have applied to these petitions had it been contesting an ordinance. If the right to contest an ordinance is cut off after thirty days, it follows that, at some point, the right to contest these resolutions should similarly be cut off.

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[2] Whether City should have passed ordinances rather than resolutions to effectuate the plans is not a determinative issue in this case and, consequently, is not being addressed.

[3]Section 166.041 provides, in relevant part,

> (1) As used in this section, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:
>
> (a) "Ordinance" means an official legislative action of a governing body, which action is a regulation of a general and permanent nature and enforceable as a local law.
>
> (b) "Resolution" means an expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body.

§ 166.041(1)(a)(b), Fla. Stat. (2005).

As noted by the trial court, the delay in this case was thirty times longer than the time period provided in the charter. There comes a point when an unreasonable delay in bringing an action challenging the site selection cuts off the right to vote on that selection. *See Paget v. Logan,* 474 P.2d 247 (Wash. 1970) (en banc) (citation omitted) (holding "at some point in time, a proposed stadium project may progress to a point where only administrative decisions will remain to complete the project. Initiative measures concerning site selection at that time could well be inappropriate"); *Kirsch v. City of Abilene,* 244 P. 1054 (Kan. 1926) (finding laches where "[t]he plaintiffs . . . stood by from April until September, while the city, under the instruction of the voters, was disposing of bonds, wrecking a building, incurring large obligations, expending considerable sums of public money, and entering into contracts involving great amounts of money and levying a tax for payment of bonds, before they asserted their claims . . . .There has been such a change of conditions during the inexcusable delay of plaintiffs that the granting of the relief asked would be extremely prejudicial to the defendants, and work great hardship and loss to the city and those with whom they had dealt.")

Finally, the trial court could properly consider that issuing the writ in this case would have caused confusion as to whether the relocation in process will proceed or whether it must be stopped. Committee acknowledges that this would not be clearly determined until a later date. Disorder and disturbance to City would result from having to stop the current relocation, wait for the vote on the ordinances, and, if the ordinances passed, determine whether the new ordinances are even applicable to the move in progress, and, if so, wait until the voters either accepted or rejected the current site. If the site was so rejected, City would have to begin the process of selecting a site anew. As our supreme court stated in *Ladas,* "[i]t would be most disastrous to permit the city's business to drag along in such a slipshod, hit or miss kind of a way." The same considerations are present here.

Additionally, although we recognize that the proposed ordinances necessarily contemplate voting on future relocations beyond the one in progress, mandamus cannot issue to prevent a future harm. Further, our affirmance of the instant order in no way precludes Committee from seeking to place an initiative ordinance on the ballot pertaining to any future relocation of city hall and the library.

As we affirm on the basis of laches, we do not reach the issue of whether the proposed ordinances are impermissibly vague in failing to

provide a time frame for voting and failing to provide what constitutes "relocation."

As to all other issues raised, we also find no reversible error or abuse of trial court discretion. Therefore, the order on appeal is affirmed.

SHAHOOD and TAYLOR, JJ., concur.

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Consolidated appeals from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Amy L. Smith, Judge; L.T. Case No. 502006CA006094XXXXMB.

Thomas R. Julin and Patricia Acosta of Hunton & Williams LLP, Miami, and John M. Jorgensen and S. Brian Bull of Scott, Harris, Bryan, Barra & Jorgensen, P.A., Palm Beach Gardens, for appellants.

Jane Kreusler-Walsh and Rebecca Mercier-Vargas of Jane Kreusler-Walsh, P.A., Brian B. Joslyn and Richard A. Jarolem of Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell, and Claudia M. McKenna, City Attorney, West Palm Beach, for appellees.

Not final until disposition of timely filed motion for rehearing.