MEMORANDUM DECISION

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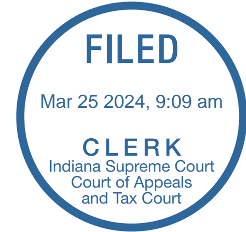

IN THE

Court of Appeals of Indiana

Chirico Media, LLC,

Appellant-Defendant

v.

Indiana Department of Transportation,

Appellee-Plaintiff

March 25, 2024

Court of Appeals Case No.
23A-PL-2179

Appeal from the Marion Superior Court

The Honorable Kurt Eisgruber, Judge

Trial Court Cause No.
49D06-2109-PL-30265

Memorandum Decision by Judge Vaidik
Judges May and Kenworthy concur.

Vaidik, Judge.

[1] In 2015, Chirico Media, LLC ("Chirico") applied for a permit to erect a billboard near mile marker 101 of I-74 in Shelby County. The Indiana Department of Transportation ("INDOT") denied the permit on the basis that it had designated that stretch of I-74 as part of a scenic byway—the Historic Michigan Road Byway—in 2011. Under federal and state law, new billboards generally cannot be built next to roads designated as scenic byways. 23 U.S.C. § 131(s); 105 Ind. Admin. Code 7-4-19(a).

[2] Chirico initiated an administrative appeal with INDOT. An administrative law judge was appointed in January 2016, but Chirico took no action in the appeal for almost four years. Eventually, Chirico filed briefs arguing that Historic Michigan Road Byway wasn't validly created in 2011. Specifically, Chirico asserted that the creation of a scenic byway is a "rule" that must go through the stringent rulemaking requirements of Indiana's Administrative Rules and Procedures Act (ARPA), Ind. Code ch. 4-22-2, which INDOT didn't do in 2011. Therefore, according to Chirico, the byway didn't actually exist in 2015 and shouldn't have been relied on to deny Chirico's permit application. INDOT's Commissioner disagreed and denied the appeal, and Chirico's petition for judicial review was denied by the trial court.

[3] Chirico now appeals to this Court, renewing its rulemaking argument. For the reasons that follow, we need not reach the merits of that argument.

[4] In 2019, while Chirico's administrative appeal was pending but dormant, INDOT went through the ARPA rulemaking process to establish a rule governing scenic byways. The rule identifies the scenic byways that were designated before July 1, 2018, including the Historic Michigan Road Byway, and states that the designation of each byway "is hereby ratified and confirmed by the department." 105 I.A.C. 7-4-21(a)-(b). INDOT contends this development renders Chirico's appeal moot:

> Because the designation of Historic Michigan Road Scenic Byway has been ratified through a properly promulgated regulation, Chirico's argument that the original designation was invalid is moot. There is no relief that the Court can grant because Historic Michigan Road has been properly designated as a scenic byway, and it would be a violation of 23 U.S.C. § 131(s) and 105 IAC 7-3-12 [now 105 I.A.C. 7-4-19(a)] for a permit for a billboard that is visible from the byway to be granted.

Appellee's Br. p. 20. "A case should be dismissed as moot when no effective relief can be rendered to the parties before the court." *DeCola v. Starke Cnty. Election Bd.*, 146 N.E.3d 1084, 1085 (Ind. Ct. App. 2020).

[5] Chirico doesn't dispute that 105 I.A.C. 7-4-21 is valid or that it can be relied on to deny more recent billboard permit applications. However, Chirico contends that it had "vested rights" in the billboard project before the regulation was adopted and therefore can't be denied a permit based on the regulation. It is true that a party's vested rights in a project are generally protected against retroactive application of a new land-use restriction. *See, e.g.*, *Mainstreet Prop. Grp., LLC v. Pontones*, 97 N.E.3d 238, 245 (Ind. Ct. App. 2018), *trans. denied*. But

a party claiming to have vested rights must show a material expenditure of money, time, or effort in furtherance of the project, such as the costs of leases, options, land purchases, surveying, engineering, site planning, or rezoning. *Id.* at 246-53. Here, Chirico's only argument that it had vested rights before the adoption of 105 I.A.C. 7-4-21 is that it was granted a zoning variance by the Shelby County Board of Zoning Appeals in May 2015. Appellant's Reply Br. p. 12 n.2. It cites no evidence of the money, time, or effort it took to obtain that variance. Evidence that Chirico obtained a variance, standing alone, is insufficient to show vested rights. *Cf. City of New Haven v. Flying J, Inc.*, 912 N.E.2d 420 (Ind. Ct. App. 2009) (affirming finding of vested rights where landowner presented detailed evidence of significant expenditures in furtherance of travel-plaza project), *trans. denied*.[1]

[6] Because Chirico didn't have vested rights in the billboard project before INDOT adopted the regulation that confirmed the existence of the Historic Michigan Road Byway, its request for a permit is subject to that regulation. And because the existence of the byway forecloses the issuance of a billboard

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[1] In its opening brief, Chirico argued that when it submitted its permit application in 2015, "it acquired a vested property interest in that permit per I.C. § 36-7-4-1109(c)." Appellant's Br. p. 33. Section 36-7-4-1109(c) provides that an application for a land-use permit is governed "for at least three (3) years" by the law in effect at the time the application is filed. But as INDOT notes, that statute, which is in Title 36 (Local Government), "applies only to local government agencies, not State agencies." Appellee's Br. p. 20. In its reply brief, Chirico doesn't dispute that point and instead shifts to the argument we reject above—that it had vested rights because of the zoning variance it received in May 2015.

Chirico also argues in its reply brief that "INDOT never contested whether Chirico had a vested property interest in the administrative proceedings, meaning that argument is waived." Appellant's Reply Br. p. 12 n.2. However, Chirico didn't make a vested-rights argument during the administrative proceedings, so there was nothing for INDOT to contest in that regard.

permit, we could not grant Chirico effective relief even if we were to agree with its argument about the original designation of the byway. Therefore, this appeal is moot and must be dismissed.

[7] Dismissed.

May, J., and Kenworthy, J., concur.

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