

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000416-MR

CAMPBELL COUNTY, KENTUCKY;
CAMPBELL COUNTY FISCAL COURT;
STEVEN PENDREY, as Campbell County
Judge/Executive (by substitution
for prior Judge/Executive Kenneth Paul);
ROLAND VORIES, Campbell County
Commissioner; DAVID E. OTTO, Campbell
County Commissioner; and WILLIAM VERST,
Campbell County Commissioner

APPELLANTS

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE LEONARD L. KOPOWSKI, JUDGE
ACTION NO. 98-CI-001038

LONNIE HUMPHRIES

APPELLEE

OPINION
REVERSING

** ** * * * * *

BEFORE: GUDGEL, CHIEF JUDGE, KNOPF AND McANULTY, JUDGES.

McANULTY, JUDGE: This is an appeal of a judgment of the Campbell Circuit Court which determined that the Campbell County Fiscal Court's (hereinafter Fiscal Court) denial of a zoning map amendment for property owned by Lonnie Humphries (hereinafter appellee) was arbitrary and therefore void. The appellants maintain that the appeal is barred because appellee failed to file his appeal timely. We agree.

The time for filing an appeal from an action of the Fiscal Court regarding a zoning map amendment is governed by KRS 100.347(3):

Any person or entity claiming to be injured or aggrieved by any final action of the legislative body of any city, county or urban-county government, relating to a map amendment shall appeal from the action to the Circuit Court of the county in which the property, which is the subject of the map amendment, lies. Such appeal shall be taken within thirty (30) days after the final action of the legislative body. All final actions which have not been appealed within thirty (30) days shall not be subject to judicial review. The legislative body shall be a party in any such appeal filed in the Circuit Court. (Emphasis added.)

For purposes of the planning and zoning chapter, a "final action" is deemed to have occurred on the calendar date when the vote is taken to approve or disapprove the matter pending before the body. KRS 100.347(5).

The record indicates that the Campbell County Planning and Zoning Commission voted 3-2 to approve appellee's request for a map amendment. Upon receipt of a recommendation by a planning commission with respect to a map amendment, a majority of the entire local legislative body must vote to override the planning commission's recommendation. KRS 100.211(1). Ordinance O-12-98, which called for rezoning appellee's property from agricultural to rural commercial, was presented for first reading at the August 4, 1998 meeting of the Fiscal Court. After discussion by the Judge/Executive and Commissioners, the County Attorney informed the Fiscal Court that if it was going to deny the ordinance before it, the correct action to take was voting to

deny rather than passing an ordinance. The Fiscal Court then voted to deny the zone change.

Subsequently, at the Fiscal Court meeting on August 19, 1998, Judge Kenneth Paul added an amendment to the minutes of the August 4 meeting as to Ordinance O-12-98. The amendment stated that the Fiscal Court members were of the opinion that the requested zone change was not in compliance with the county's comprehensive plan, which called for the area to be zoned agricultural, and that it would be an instance of spot zoning. Thereafter, the minutes of the August 4, 1998 meeting were approved with the addition of the amendment.

Appellee took an appeal in the Campbell Circuit Court by filing a complaint on September 17, 1998, and an amended complaint on September 18, 1998. Appellants requested summary judgment on the ground that the appeal was not timely as it was more than 30 days after the final action of the Fiscal Court on August 4, 1998.

Appellee contended that the correct date of the final action was August 19, 1998. The circuit court agreed. The court held that the appeal period begins to run "when the zoning ordinance is given its second reading and final passage by the legislative body," citing Leslie v. City of Henderson, Ky. App., 797 S.W.2d 718, 720 (1990). Consequently, the court found that the appeal in this case was timely.

We do not agree that Leslie applies to the case at bar, since that case involved an ordinance which was approved. Rather, we find relevant the more recent case of City of Lyndon

v. Proud, Ky. App., 898 S.W.2d 534 (1995), in which the City of Lyndon decided against the zoning change recommended by the planning commission, and unanimously passed a resolution denying the commission's recommendation. Pursuant to KRS 100.347(5), the action taken by the city in Proud, a resolution denying the zoning change, was final on the date it passed. Id. at 536. Additionally, this Court determined that the "administrative task of approving the minutes at the following meeting did not affect the finality of the resolution." Id.

We find Proud to be on point. Since the ordinance was not passed by the Fiscal Court in this case, and not required, there was no need for a "second reading" or any further action after the vote. Furthermore, the amendment to the minutes did not constitute a second reading. As in Proud, this was simply an administrative follow up. A municipal body can amend the minutes of a meeting to reflect what actually happened. Commonwealth v. Combs, Ky., 426 S.W.2d 461 (1968); Janutola and Comadori Constr. Co. v. Taulbee, 229 Ky. 213, 16 S.W.2d 1026 (1929). The Fiscal Court did not take further action on the requested ordinance. Therefore, pursuant to KRS 100.347(5), the final action of the Fiscal Court on this matter was the vote to deny on August 4, 1998.

Appellee's appeal to the circuit court was not timely filed. As a result, we vacate the decision of the Campbell Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Paul H. Twehues, Jr.
Newport, Kentucky

BRIEF FOR APPELLEE:

James W. Morgan, Jr.
Morgan, Hazen & Galbreath
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