

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001356-MR

JOHN BIZZACK AND
LEWIS BIZZACK

APPELLANTS

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 97-CI-01185

ALICE SOUTH HUME AND
CRIT BLACKBURN LUALLEN

APPELLEES

OPINION AND ORDER
DISMISSING APPEAL
** **

BEFORE: DYCHE, EMBERTON, AND MILLER, JUDGES.

MILLER, JUDGE: John Bizzack and Lewis Bizzack bring this appeal from a February 5, 1999, opinion and order of the Franklin Circuit Court. We dismiss.

In March of 1997, appellants, John Bizzack and Lewis Bizzack, applied to the Frankfort/Franklin County Planning Commission for a change in the zoning classification of property located in Franklin County outside the City of Frankfort. Appellees, Hume and Luallen, are area property owners and protested the rezoning. Despite their protest, the Planning Commission recommended that the Bizzacks' application be granted.

In agreement with said recommendation, on July 10, 1997, the Franklin Fiscal Court ordered rezoning. On August 8, 1997, appellees requested the Franklin Circuit Court to review the fiscal court's zoning change. In a February 10, 1998, order, the circuit court remanded the matter to the fiscal court for compliance with the mandates of Kentucky Revised Statutes (KRS) 100.213. Upon remand, the fiscal court once again approved the zoning change of appellants' property. Thereupon, appellees once more sought review in the circuit court and specifically named the Franklin Fiscal Court and the members thereof parties as required by KRS 100.347(3). On February 5, 1999, the circuit court entered an Opinion and Order wherein it concluded that appellees were denied due process of the law. The circuit court consequently vacated the fiscal court's decision.

Appellants filed a notice of appeal with this Court on June 9, 1999. The notice of appeal stated: "The names of the Appellees against whom this appeal is taken are Alice South Hume and Crit Blackburn Luallen, Petitioners in the Franklin Circuit Court action." The Franklin Fiscal Court was not named as a party in the notice of appeal.

On November 8, 1999, appellees moved this Court to dismiss the appeal. Appellees maintained the fiscal court is an indispensable party and must be named in the notice of appeal. Appellees further argued that failure of appellants to do so mandated dismissal of the instant appeal. By a January 6, 2000, order, appellees' motion to dismiss was passed for disposition to the merit panel. We now consider the motion.

An indispensable party to an appeal is one whose absence prevents the court from granting complete relief among those already parties. Ky. R. Civ. P. 19.01, and Milligan v. Schenley Distillers, Inc., Ky. App., 584 S.W.2d 751 (1979). Under KRS 100.211, only the legislative body of a planning unit can grant or deny a zoning change application. KRS 100.347 clearly requires the legislative body (fiscal court) be made a party in any appeal to the circuit court. See Kentucky Unemployment Insurance Commission v. Carter, Ky., 689 S.W.2d 360 (1985) (holding that statutes which establish judicial review of decisions of administrative bodies and which require certain parties to be joined, in effect transform such parties into indispensable ones.) When an appeal is taken from a circuit court's order overruling a governmental entity's decision upon rezoning, we view that governmental entity as an indispensable party to such appeal. In sum, we hold that the fiscal court is, indeed, an indispensable party to this appeal. See Boyd & Usher Transport v. Southern Tank Lines, Inc., Ky., 320 S.W.2d 120 (1959).

For the foregoing reasons, the appellees' motion to dismissed is SUSTAINED, and it is hereby ORDERED that this appeal be, and is DISMISSED.

ALL CONCUR.

ENTERED: September 1, 2000

/s/ John D. Miller
JUDGE, COURT OF APPEALS

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