RENDERED: AUGUST 23, 2002; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001020-MR

CITY-COUNTY PLANNING COMMISSION
OF BOWLING GREEN, WARREN COUNTY — APPELLANT

v. — APPEAL FROM WARREN CIRCUIT COURT
HONORABLE THOMAS R. LEWIS, JUDGE
ACTION NO. 00-CI-01456

JOHN W. RIDLEY AND
ROIANN R. RIDLEY — APPELLEES

OPINION AND ORDER DISMISSING APPEAL

** ** ** ** **

BEFORE: GUIDUGLI, MILLER AND TACKETT, JUDGES.

GUIDUGLI, JUDGE. The City-County Planning Commission of Bowling Green, Warren County ("the Commission") appeals from an order of the Warren Circuit Court denying the Commission's petition to enjoin John W. Ridley and Roiann R. Ridley ("the Ridleys") from operating a parcel of improved real property in violation of a zoning district. For the reasons stated herein, we must dismiss the appeal as moot.

The facts are not in controversy. The Ridleys were owners of the subject parcel known as "Boxwood" situated in Bowling Green, Kentucky. The record indicates that the Ridleys

rented out the Boxwood property for private functions and/or overnight lodging.

At the time of the filing of the instant petition, Boxwood was located in an "R-3" zoning district[1], which permitted single family dwellings, two family dwellings, multi-family dwellings of no more than eight units, and the taking of boarders. In mid-2000, the Bowling Green Code Enforcement Board ("the Board") cited the Ridleys with having violated the R-3 ordinance by using Boxwood as a retail business and place of assembly (Citation No. 1015).

In July, 2000, the Board conducted a hearing on the matter in which it upheld the validity of Citation No. 1015. The Ridleys appealed to the Warren District Court, which rendered findings of fact, conclusions of law, order and judgment on February 8, 2001. The court found in relevant part that the Ridleys' use of the parcel did not run afoul of the R-3 ordinance, and it ruled that Citation No.1015 was not valid.

During the pendency of the District Court proceeding the Commission filed a petition with the Warren Circuit Court seeking to both temporarily and permanently enjoin the Ridleys from operating Boxwood in a matter which violated the R-3 ordinance. The petition for a temporary injunction was denied by way of an order rendered on December 21, 2000.

On April 12, 2001, the circuit court rendered an order denying the Commission's petition for permanent injunctive relief. The court found in relevant part that the zoning

[1]The zoning districts have subsequently been amended.

ordinance at issue did not specifically prohibit the types of activities being conducted by the Ridleys at Boxwood. It opined that since zoning ordinances constitute a deprivation of property rights, they must be strictly construed. In so doing, the court concluded that the Ridleys had not violated the ordinance, and as such it denied the Commission's petition for permanent injunctive relief.

The Commission now appeals from the circuit court's denial of its petition for permanent injunctive relief. We need not reach the corpus of the Commission's claim of error, however, as the matter at bar has been rendered moot by events occurring subsequent to the filing of the petition for injunctive relief. On May 17, 2001, the Ridleys sold the Boxwood property. This fact, taken alone, renders the matter moot because the Commission is now seeking to enjoin the Ridleys from an activity which they are no longer able to pursue.

As the parties are well aware, the Unites States Supreme Court has held that the voluntary cessation of wrongful activity does not render moot an action against the alleged wrongdoer to enjoin the activity. See generally, United States v. W.T. Grant Co., 345 U.S. 629 (1953). The basis for this rule is the Court's recognition that the wrongdoer may resume the conduct after the dismissal of the action. Lexington Herald-Leader Co., Inc. v. Meigs, Ky., 660 S.W.2d 658 (1983).

In the matter at bar, though, this rationale does not form a sound basis for continuing the appeal since the Ridleys, who no longer have any legal interest in the Boxwood property,

cannot resume the alleged wrongful conduct. The Commission's best argument in support of its position, we believe, is that future owners of the Boxwood property may seek to use the property in violation of a then-existing ordinance. This contention is purely speculative, though, and in any event the Commission would be availed of the opportunity of seeking permanent injunctive relief against that future owner. Furthermore, even if the Ridleys were permanently enjoined from a particular activity at the Boxwood property, that injunction would not bar future owners from the same or similar conduct since they are not parties to the instant action. It remains uncontroverted that the Ridleys cannot resume the conduct of which the Commission complains irrespective of the outcome of the instant appeal. The matter, therefore, is moot.

The Commission's interest in the instant appeal appears to center on the effect the outcome the appeal will have on a pending federal action filed by the Ridleys against the City of Bowling Green and the Board. It maintains that a judgment against the City in the federal case would affect the Commission's budget, the result being that the Commission has a collateral interest in the federal litigation which keeps the instant appeal alive. We are not persuaded by this argument. The dispositive inquiry with respect to mootness is whether the Ridleys are in a position to resume the alleged wrongful conduct at the conclusion of the instant appeal. Clearly, they are not. A desire of either party to use the outcome of the instant action in the federal case, or to prevent its use, has no bearing on

whether the circuit court properly denied the petition for permanent injunctive relief, or whether the matter has been rendered moot by the Ridleys' sale of the property.

Lastly, it is worth noting that the zoning ordinance in existence at the filing of the instant petition has been replaced with new regulations which are substantially more comprehensive in scope. We need not enter into a protracted analysis of the new zoning ordinance, because the instant appeal is moot irrespective of this change. Suffice it to say that the ordinance's amendment supports the argument that the instant appeal is moot, for not only is the Commission seeking to enjoin a party who no longer owns the Boxwood property, it is seeking to enforce a zoning ordinance which no longer exists.

For the foregoing reasons, we dismiss as moot the Commission's appeal from the order of the Warren Circuit Court denying the Commission's petition for injunctive relief.

ALL CONCUR.

ENTERED: August 23, 2002

/s/ Daniel Guidugli
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Frank Hampton Moore, Jr. Matthew P. Cook Bowling Green, KY	Charles E. English Park L. Priest Bowling Green, KY