RENDERED: JULY 23, 2004; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000488-MR

TRUMAN MONROE, AND HIS WIFE,
LINDA MONROE; DAN SUTHERLAND
AND HIS WIFE, SUE DUVALL
SUTHERLAND; EUELL HOWERTON
AND HIS WIFE, ELLEN HOWERTON;
LARRY CHEEK AND HIS WIFE,
ANNA RUTH CHEEK; AND
DEBBIE GIBSON — APPELLANTS

APPEAL FROM SPENCER CIRCUIT COURT
v. HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 02-CI-00189

SPENCER COUNTY, KENTUCKY;
SPENCER COUNTY FISCAL COURT;
AND THE SEASONS, LLC, A
KENTUCKY LIMITED LIABILITY
COMPANY — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: GUIDUGLI, JOHNSON AND MINTON, JUDGES.

GUIDUGLI, JUDGE. Truman Monroe, et al., (collectively referred to as “Monroe”), appeal from an order of the Spencer Circuit

Court granting summary judgment in favor of Spencer County, Kentucky, Spencer County Fiscal Court, and The Seasons, LLC. Monroe claimed that the Spencer County Fiscal Court improperly granted a zoning change on a parcel of real property that The Season, LLC sought to develop. For the reasons stated herein, we must affirm the order of summary judgment.

On April 30, 2002, The Season, LLC ("The Seasons") filed an application with the Taylorsville – Spencer County Joint Planning and Zoning Commission ("the Commission") requesting a change of zoning classification for a parcel of real property it wished to develop. The parcel is an 84 acre tract located in Spencer County, Kentucky near Taylorsville. At the time the application was filed, the parcel was zoned AG-1 Agricultural. The Seasons sought a change to R-1 Residential on 6.29 acres of frontage, and a change to R-3 Residential for the remaining 77.76 acres.

Public hearings on the application were conducted on June 6, 2002, and July 9, 2002. Monroe opposed the application. Upon considering the testimony and exhibits, the Commission voted against recommending the requested zoning change to the Fiscal Court.

The matter went before the Fiscal Court, which conducted readings of the application on August 5, 2002 and August 19, 2002. After the second reading, the Fiscal Court

tabled the application in the apparent hope that the parties would settle their differences. On September 3, 2002, the Fiscal Court approved an amended ordinance rezoning 50 acres from AG-1 Agricultural to R-1 Residential, and the remaining 34 acres from AG-1 Agricultural to R-3 Residential.

Monroe then appealed to the Spencer Circuit Court pursuant to KRS 100.347. He argued that the zoning change was made in violation of the express requirements of KRS Chapter 100; that the county lacked a proper evidentiary basis for making the change; and, that the approval of the change was arbitrary and capricious and in violation of the law.

On October 16, 2002, The Seasons filed a motion for summary judgment. It argued that the procedure followed by the Fiscal Court in approving the zoning change complied with the express requirements of KRS Chapter 100, and that the Fiscal Court did not act in an arbitrary and capricious manner. The circuit court went on to reject Monroe's argument that The Seasons was barred from prosecuting its request for a zoning change because it had previously submitted another application for the same property.

Following a hearing, the circuit court rendered an order on January 17, 2003, sustaining the motion for summary judgment. It addressed the standard of review, and found that the decision of the Fiscal Court was supported by substantial

evidence. It went on to reject Monroe's claim of res judicata as unsupportable. Monroe's subsequent motion to alter, amend or vacate pursuant to CR 59 was denied, and this appeal followed.

Monroe first argues that the circuit court erred in granting the County's motion for summary judgment without indicating that it gave consideration to the record below. He maintains that while the trial court gave lip service to the standard of review, it gave no explanation as to why it believed the decision of the Fiscal Court was supported by substantial evidence. He argues that in the absence of a showing that the circuit court gave any meaningful consideration to the record below, its ruling must be reversed.

Having closely examined the record and the law, we find no basis for reversing the order on appeal. Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56.03. "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." Steelvest, Inc. v. Scansteel Serv. Ctr., Inc., Ky., 807 S.W.2d 476, 480 (1991). "Even though a trial court may believe the party opposing the

motion may not succeed at trial, it should not render a summary judgment if there is any issue of material fact." Id. Finally, "[t]he standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." Scifres v. Kraft, Ky. App., 916 S.W.2d 779, 781 (1996).

More specifically, the Supreme Court of Kentucky has ruled that judicial review of zoning decisions is limited to the question of whether the administrative decision was arbitrary. Fritz v. Lexington-Fayette Urban County Government, Ky.App., 986 S.W.2d 456 (1999), citing Danville-Boyle County Planning and Zoning Commission v. Prall, Ky., 840 S.W.2d 205 (1992). Arbitrary means clearly erroneous and unsupported by substantial evidence. Id.

In the matter at bar, the circuit court expressly found that the decision of the Spencer County Fiscal Court was supported by substantial evidence. Monroe contends that because the circuit court gave an inadequate explanation of why it believed the decision of the Fiscal Court was supported by substantial evidence, the order on appeal requires reversal. We are not persuaded by this argument. While we agree with Monroe that the circuit court could have stated with more clarity the facts upon which its conclusion was based, the dispositive point

is that the court properly stated and relied upon the correct standard of review in reaching its conclusion that the Fiscal Court's action was supported by substantial evidence.

The trial court is presumptively correct in its rulings, and the burden rests with Monroe to overcome this presumption. City of Louisville v. Allen, Ky., 385 S.W.2d 179 (1964). Monroe has not met this burden. It is not enough to merely allege that the circuit court failed to provide an adequate factual basis in support of its conclusion, or that reasonable minds could have reached a different result. Rather, in order to prevail Monroe must show that the court improperly failed to conclude that the Fiscal Court's action was arbitrary. Fritz, supra.

The circuit court concluded that the Fiscal Court's decision was supported by substantial evidence, that its findings were proper, and that its decision-making process comported with due process requirements. We find no basis for reversing this conclusion.

Monroe also contends that the circuit court improperly concluded that the doctrine of res judicata has no application to the facts at bar.[1] He noted before the circuit court that the property at issue is a portion of a larger parcel that was the

[1] This argument was briefly mentioned in the "Statement of the Case" section of Monroe's written argument, but not expounded upon in the "arguments" section.

subject of a prior zoning application by The Seasons. That prior application was denied. Monroe contended below that the doctrine of res judicata should operate to bar further consideration of the instant matter.

We find no error on this issue. Monroe cites no case law or statutory authority in support of the argument that the instant action is barred by operation of res judicata, and The Season correctly states that Spencer County has not acted pursuant to KRS 100.213(2) to adopt a reconsideration prohibition.

Monroe's remaining argument is that the circuit court erred when it refused to consider his motion to alter, amend or vacate the judgment. He maintains that the circuit court improperly denied the motion due to Monroe "having not set and/or noticed this motion for a hearing on the next available rule day and having cited no authority." Monroe contends that his motion comported with local court rules and that the circuit court erred in summarily denying the motion for relief.

The order of the Spencer Circuit Court rendered on February 3, 2003, states, in relevant part, that the motion was overruled as having cited no authority, and The Seasons cites Local Rule 5 (a copy of which is appended to their written argument) as requiring the motion to be accompanied by an appropriate memorandum of law. The circuit court's finding that

no authority was cited in support of the motion is a sufficient basis for affirming the order denying the relief sought. We find no error. City of Louisville, supra.

For the foregoing reasons, we affirm the order of the Spencer Circuit Court granting summary judgment.

MINTON, JUDGE, CONCURS.

JOHNSON, JUDGE, CONCURS IN RESULT ONLY.

BRIEF AND ORAL ARGUMENT FOR APPELLANTS:	BRIEF AND ORAL ARGUMENT FOR APPELLEES:
John David Seay Bardstown, KY	Linda S. Bouvette Taylorsville, KY