[Cite as *Laketran Bd. of Trustees v. Mentor*, 2002-Ohio-3497.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

LAKETRAN BOARD OF TRUSTEES,	:	**O P I N I O N**
Plaintiff-Appellee,	:	
		CASE NO. 2001-L-187
- vs -	:	
CITY OF MENTOR,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 00 CV 000050

Judgment: Affirmed.

Mark I. Wallach and *Julie A. Harris*, Calfee, Halter & Griswold, L.L.P., 1400 McDonald Investment Center, 800 Superior Avenue, Cleveland, OH 44114-2688, and *Donald J. Ezzone*, Donald J. Ezzone Co., L.P.A., Interstate Square Building I, 4230 State Route 306, #240, Willoughby, OH 44094, and *Barry M. Byron*, Byron & Byron Co., L.P.A., Interstate Square Building I, 4320 State Route 306, #240, Willoughby, OH 44094 (For Plaintiff-Appellee).

Daniel F. Richards and *Geoffrey W. Weaver*, Wiles and Richards, Centre Plaza South, 35350 Curtis Boulevard, #530, Eastlake, OH 44095 (For Defendant-Appellant).

DONALD R. FORD, J.

{¶1} Appellant, the city of Mentor, is appealing from an October 4, 2001 judgment entry of the Lake County Court of Common Pleas.

{¶2} Appellee, Laketran Board of Trustees, is a public entity and has the

statutory power to manage and conduct the affairs of Laketran, the regional transit authority for Lake County, Ohio. Pursuant to R.C. 306.31, appellee is considered a political subdivision of this state and exists for the primary purpose of acquiring and operating public transit facilities. As part of its general powers, appellee has the ability under R.C. 306.35(K) to exercise the power of eminent domain.

{¶3} Consistent with its statutory purpose, appellee operates a number of Park-and-Ride facilities throughout Lake County. These facilities consist of large parking lots, with bus depots. Patrons can park in the lot and ride an express bus to downtown Cleveland.

{¶4} In 1995, appellee purchased twelve acres of land located near the intersection of State Route 306 and Adkins Road in Mentor, Ohio. Appellee planned to build a Park-and-Ride facility on nine acres of the land. Appellee chose this particular parcel because it was located a short distance from State Route 2, a major four-lane highway that provides Lake County residents with access to Cuyahoga County and Cleveland. Appellee had concluded that the parcel was an ideal location for the Park-and-Ride facility because its buses would have easy access to Route 2 via a large clover-leaf interchange which is located at the intersection of Routes 2 and 306.

{¶5} Pursuant to the Mentor zoning code, appellee's parcel can be used only for single-family dwellings. However, the ordinance also states that the parcel can be used for certain "public" facilities if a conditional use permit is obtained from the Mentor Planning and Zoning Commission. Appellee's parcel is located near two residential neighborhoods, which have been developed within the past few years. Existing homes are immediately adjacent to the east, west, and north sides of the parcel. Although the

land south of the parcel is zoned for commercial use, there are no commercial buildings located on the same side of Route 2 where the parcel is situated.

{¶6} Prior to acquiring the parcel, appellee's general manager, Frank Polivca ("Polivca"), spoke to certain Mentor officials, including its city manager, about the possibility of building a Park-and-Ride facility at that site. Based upon these conversations, Polivca determined that city officials would not oppose the construction of such a facility. Accordingly, after finalizing the deal for the land, appellee filed an application for a conditional use permit with the Mentor Planning and Zoning Commission ("the Commission").

{¶7} The Commission conducted five separate hearings on appellee's permit application. During these proceedings, appellee presented unsworn testimony which tended to prove that the parcel in question had certain characteristics which made it the ideal location from which to provide bus services for residents in that area of Lake County. The Commission also determined that the operation of the Park-and-Ride facility would not adversely affect the quality of life in the adjacent residential developments and would not decrease the value of the homes.

{¶8} Although appellant's officials had previously indicated they would not oppose the plan for the Park-and-Ride facility, appellant presented unsworn testimony during the Commission hearings contradicting the testimony of appellee's witnesses. Appellant's expert witnesses testified that there were other sites which would be adequate for a Park-and-Ride facility and that the air and noise pollution emitted from a Park-and-Ride facility at the Adkins Road site would harm the adjacent residential developments.

{¶9} After hearing the conflicting evidence, the Commission voted to deny appellee's application for a conditional use permit. Once this decision had been journalized, appellee filed an administrative appeal with the Lake County Common Pleas Court, pursuant to R.C. 2506.01.

{¶10} In conjunction with the administrative appeal, appellee also brought a declaratory judgment action against appellants, seeking to have the Mentor zoning ordinance found to be unconstitutional as applied to it. As part of its complaint in this action, appellee alleged that, as a distinct political subdivision under R.C. 306.31, it was immune from the enforcement of the zoning ordinance. However, before a hearing could be held, appellee voluntarily dismissed its declaratory judgment action pursuant to Civ.R. 41(A).

{¶11} Once the record of the Commission proceeding had been filed in the administrative appeal, appellant moved for leave to submit additional evidence to the trial court under R.C. 2506.03(A). The trial court granted the motion and conducted an evidentiary hearing. The court subsequently ruled that appellee had been entitled to the issuance of a conditional use permit.

{¶12} Appellant appealed the decision. In *Laketran Bd. of Trustees v. Mentor* (Oct. 29, 1999), 11th Dist. Nos. 98-L-083, 98-L-088, 1999 WL 1073665, at 6-7 (*Laketran I*), this court held that the zoning board was not the proper body to determine whether appellee was immune from the Mentor zoning code; therefore, the administrative appeal to the common pleas court was improper. We remanded the matter for the trial court to vacate its judgment and issue a new judgment dismissing the administrative appeal.

{¶13} Appellee then filed a complaint for declaratory judgment on January 10,

2000. In its complaint, appellee sought a judgment determining that it was immune from Mentor's zoning regulations.

{¶14} A bench trial was conducted on November 30, 2001. In a February 16, 2001 judgment entry, the trial court found that appellee was immune from Mentor's zoning regulations. On February 22, 2001, appellant filed its notice of appeal. Then, on July 11, 2001, appellant filed a motion for relief from judgment. On October 4, 2001, the trial court, having had the matter remanded to it by this court, denied appellant's motion for relief from judgment. Appellant has filed a timely appeal of that judgment entry and makes the following assignment of error:

{¶15} "The trial court erred to the prejudice of [a]ppellant in overruling [a]ppellant's motion for relief from judgment without conducting an evidentiary hearing and without allowing [a]ppellant to conduct discovery."

{¶16} In its assignment of error, appellant proposes that the trial court erred by denying appellant's motion for relief from judgment without holding an evidentiary hearing. Appellant's motion was filed pursuant to Civ.R. 60(B)(3), (4) and (5). In the memorandum supporting its motion, appellant asserted that appellee had passed a formal resolution stating that it had no intention of building the Adkins Road Park-and-Ride for at least two years, and that there were other suitable alternative locations for the facility. Appellant concluded, therefore, that there had been a misrepresentation, the trial court's opinion would not have prospective application, or there were other grounds justifying relief.

{¶17} However, a cursory review of appellee's resolution, which was attached to the memorandum, indicates that appellant has misstated its content. The resolution

states that “Laketran proposes to the City of Mentor that it move to dismiss its appeal in the 11th District Court of Appeals and pursue a less litigious alternative. Further, Laketran proposes to Mentor and the residents of SR306/SR2 a minimum of a two (2) year period to investigate and implement alternatives to continued litigation.” The resolution does not suggest that appellee had no intention of building the Park-and-Ride facility in the next two years. Nor does it indicate that appellee was considering alternative locations for the facility. Rather, the resolution proposed that the parties seek alternatives to litigation. We do not view this resolution, which sought to avoid the instigation of the instant appeal, as providing any ground for relief pursuant to Civ.R. 60(B).

{¶18} In its appellate brief, appellant also refers to a number of facts that it would have presented if an evidentiary hearing had been held. Specifically, appellant claims it would have presented a March 2001 report that disclosed a planning model that suggested that the market for the proposed Adkins Road facility was already served by existing Park and Ride facilities. Appellant also argues it would have shown the following: that appellee had increased its Park-and-Ride capacity by 424 parking spaces, which would have been more than adequate to serve the needs of the market for the Adkins Road facility; that appellee was in discussions to create a $4 million transit facility with access to 1,750 parking spaces; that the potential market for Park-and-Ride parking spaces in Lake County is 900 spaces, and that appellee had already exceeded this figure with its current lots and lots in the process of being built; and that appellee significantly overestimated the number of Lake County residents commuting to downtown Cleveland, and that more recent figures would suggest that less than 100 city

of Mentor residents would actually use a Park-and-Ride facility.

{¶19} None of the facts outlined above were referenced in appellant's motion for relief from judgment, which was premised entirely upon the aforementioned resolution of appellee. Nor did appellant refer to any of this material in its motion for relief from judgment. Further, no evidential material was submitted pursuant to Civ.R. 56 pertaining to these factual allegations in support of appellant's Civ.R. 60(B) motion. Additionally, appellant claims that much of the foregoing information was purportedly derived from a March 2001 report of appellee. There is no showing that such alleged facts were not available to appellant before it filed its July 11, 2001 motion for relief from judgment. Finally, it is self-evident that if these facts were not even referenced in the motion for relief from judgment, there was nothing presented to the trial court of an evidential quality.

{¶20} A trial court abuses its discretion in denying an evidentiary hearing on a motion for relief from judgment "where grounds for relief from judgment are sufficiently alleged and are supported with evidence which would warrant relief from judgment." *Kay v. Marc Glassman, Inc.*, 76 Ohio St.3d 18, 19, 1996-Ohio-430. Here, the trial court did not abuse its discretion because appellant failed to provide any evidence to support its allegations. Consequently, appellant's assignment of error lacks merit.

{¶21} For the foregoing reasons, the judgment of the Lake County Court of Common Pleas is hereby affirmed.

WILLIAM M. O'NEILL, P.J.,

JUDITH A. CHRISTLEY, J., concur.