

Leese and Swope v. Belfast Township

RICKY LEESE and RALPH SWOPE, Plaintiffs,
v. BELFAST TOWNSHIP and BELFAST TOWNSHIP
BOARD OF SUPERVISORS, Defendants
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Fulton County Branch
Civil Action - Law, No. 301-2001

Summary Judgment; Validity of Ordinance; Preemption

1. Summary judgment is proper whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or if after the completion of discovery relevant to the motion, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action.
2. When considering a motion for summary judgment, the Court must view all inferences in a light most favorable to the non-moving party.
3. The non-moving party must put forth evidence sufficient for a jury to find in that party's favor.
4. In the absence of such evidence, the moving party is entitled to judgment as a matter of law.
5. The Court finds that there are issues of material fact concerning the validity of the Belfast Township Farm Ownership Ordinance and the Belfast Township Environmental Protection Ordinance and that the plaintiffs have failed to prove that they are entitled to judgment as a matter of law.
6. The Water Resources Planning Act, 27 Pa.C.S.A. §3136, expressly prohibits political subdivisions from regulating the allocation of water resources and the conditions of water withdrawal.
7. The exceptions to the Act relate to emergency management services, mandatory connection to water supplies, and protections related to migration of contaminated groundwater and do not apply to this situation.
8. The Belfast Township Residential Well and Spring Protection Act is in direct conflict with the Water Resources Planning Act and is invalid.

Appearances:

Mike Ruggiero, Esq.

Carlton Ann Cook Walker, Esq.

James Cooper, Esq.

Terry Bossert, Esq.

Richard Pomeroy, Esq.

OPINION

Walker, P.J., September 21, 2005

During the mid-1990's, people living in and around Belfast Township became concerned about the environmental harms that could be caused by concentrated animal feeding operations.[1] On or about July 3, 2000, the Township addressed these concerns by enacting three ordinances, Ordinance Number 3 of 2000 titled the "Belfast Township Farm Ownership Ordinance" (hereinafter "FOO"), Ordinance Number 4 of 2000 titled the "Belfast Township Environmental Protection Ordinance" (hereinafter "EPO"), and Ordinance Number 5 of 2000 titled the "Belfast Township Residential Well and Spring Protection Act." The FOO was subsequently amended as Ordinance Number 1 of 2001.

The FOO requires that "no corporation or syndicate . acquire, or otherwise obtain an interest, whether legal, beneficial, or otherwise, in any real estate used for farming in Belfast Township or engage in farming in Belfast Township."[2] Ordinance Number 1 of 2001 §4. This restriction is narrowed by fourteen exceptions that include family farm corporations or syndicates, nonprofit corporations, cooperatives, and land and livestock owned by a corporation or syndicate as of the passage of the ordinance. Id. §5. The FOO requires annual reports from corporations or syndicates that own agricultural land or engage in farming. Id. §7. Under FOO, farms with corporate-owned livestock are prohibited from erecting additional structures to house the livestock being raised under existing or new contracts. Id. §4-5.

The EPO provides:

No corporation shall be allowed to do business or continue to do business within the Township if it has a history of consistent violations or if its Parent Corporation or a Subsidiary Corporation has a history of consistent violations. In addition, this Ordinance prohibits any corporation from doing business within the Township if a Director or Officer of the Applicant Corporation . is a Director or Officer of another corporation that has a history of consistent violations. Ordinance Number 4 of 2000, §5.

The EPO also provides:

No corporation shall be allowed to do business or continue to do business within the Township if a Principal Owner of the Applicant Corporation is also the Principal Owner of other corporations that cumulatively possess a history of consistent violations or if the Principal Owner of the Applicant possesses a history of consistent violations. Id. §6.

The EPO defines "a history of consistent violations" as [t]hree or more violations committed over the prior fifteen year period. Id. §4. If a supervisor has "reason to believe" that a corporation has a history of violations, the supervisor may request a compliance history. Id. §7-8. A "reason to believe" is formed when a Township resident submits documents prepared by local, state or federal government personnel that "proves" that an applicant corporation has a history of consistent violations. Id. §7-8.

The Belfast Township Residential Well and Spring Protection Act provides that no individual or entity may engage in a new withdrawal of water from Township resources in excess of 3,000 gallons per day unless a Water Use Authorization has been obtained from the Township. Ordinance Number 5 of 2000, §5. An applicant must complete a Water Impact Study prior to receiving a Water Use Authorization.[3] Id. §6. There must also be a public hearing on the new use or new construction before a Water Use Authorization is issued. Id. §11.

Plaintiff Ricky Leese owns and operates a farm, including hog, beef, and cattle, in Belfast Township. He produces hogs under a contract with a corporation in Pennsylvania and is interested in the continuation and expansion of this operation. Plaintiff Ralph Swope owns and operates a beef farm in Belfast Township and would like to enter into a contract with a corporation and to expand his farming operation. The plaintiffs allege that these ordinances prohibit them from expanding their operations and forming new contracts. The plaintiffs also allege that the ordinances require them to expend significant amounts of time and money.

The plaintiffs filed a motion for partial summary judgment alleging that the ordinances are invalid and their enforcement should be enjoined. The plaintiffs allege a myriad of legal theories that include lack of Township authority, preemption by state laws, and infirmity under the Dormant Commerce Clause of the United States Constitution.

Discussion

Summary judgment is proper "whenever there is no genuine issue of any material fact as to a necessary element of the cause of action" or "if after the completion of discovery relevant to the motion . an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action." Pa.R.C.P. 1035.2. When considering a motion for summary judgment, the court must view all inferences in a light most favorable to the non-moving party. Ferguson v. King, 524 A.2d 1372 (Pa.Super. 1987). The non-moving party must put forth evidence sufficient for a jury to find in that party's favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 91 L.Ed. 2d 202, 106 S.Ct. 2505 (1986). In the absence of such evidence, the moving party is entitled to judgment as a matter of law. Pa.R.C.P. 1035.2.

I. FOO and EPO

This Court finds that there are issues of material fact concerning the validity of these ordinances and that the plaintiffs have failed to prove that they are entitled to judgment as a matter of law. Therefore, the Court holds that the plaintiffs' motion for partial summary judgment as it pertains to the Belfast Township Farm Ownership Ordinance and the Belfast Township Environmental Protection Ordinance is denied.

II. Belfast Township Residential Well and Spring Protection Act

The Court holds that the plaintiffs' motion for partial summary judgment is granted as it pertains to the Belfast Township Residential Well and Spring Protection Act because the ordinance is pre-empted by state law. The Water Resources Planning Act, 27 Pa.C.S.A. §3136 (hereinafter "the Act"), expressly prohibits political subdivisions from regulating the allocation of water resources and the conditions of water withdrawal. The exceptions to the Act relate to emergency management services, mandatory connection to water supplies, and protections related to migration of contaminated groundwater and do not apply to this situation. Therefore, the Belfast Township Residential Well and Spring Protection Act is in direct conflict with the Water Resources Planning Act.

ORDER OF COURT

September 21, 2005, after reviewing the record, the Court holds that the plaintiffs' motion for partial summary judgment is granted in part and denied in part.

The Court hereby orders that the plaintiffs' motion for partial summary judgment as it pertains to the Belfast Township Farm Ownership Ordinance and the Belfast Township Environmental Protection Ordinance is denied.

The Court hereby orders that the plaintiffs' motion for partial summary judgment as it pertains to the Belfast Township Residential Well and Spring Protection Act is granted because the ordinance is pre-empted by state law. The Belfast Township Residential Well and Spring Protection Act is invalid and its enforcement is enjoined.

[1] A Township Supervisor personally saw contamination caused by a corporate-owned farm in the Township. The citizens of the Township presented a petition for legislative action.

[2] Section Four of the FOO defines "farming" to include the ownership of animals for the production of livestock or livestock products.

[3] The Water Impact Study must be conducted by two certified hydrologists each holding a Ph.D. in the field, that delineates the impact of new construction or new use on private and public well and spring water resources within a three mile radius of the proposed new construction or use. *Ordinance Number 5 of 2000*, § 4.