IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-28

Filed: 19 July 2016

Chatham County, No. 14 CVS 914

PITTSBORO MATTERS, INC., GEORGE A. ROBERTSON, J. TURNER WHITTED, CHRISTOPHER M. WATKINS, DUCKA KELLY AND GREG OGLE, Plaintiff-Appellees,

v.

TOWN OF PITTSBORO, Defendant,

v.

CHATHAM PARK INVESTORS, LLC, Intervenor-Appellant.

Appeal by intervenor from order entered 15 October 2015 by Judge Paul C. Ridgeway in Chatham County Superior Court. Heard in the Court of Appeals 7 June 2016.

Kilpatrick Townsend & Stockton LLP, by Daniel R. Taylor, Jr. and Chris W. Haaf, and Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by Lacy H. Reaves and J. Mitchell Armbruster, for intervenor-appellant.

The Brough Law Firm, PLLC, by Robert E. Hornik, Jr., for plaintiff-appellees.

BRYANT, Judge.

Where plaintiffs' motion for preliminary injunction was well grounded in fact and warranted by existing law and was not brought for any improper purpose, we

affirm the judgment of the trial court denying a motion for sanctions brought pursuant to Rule 11.

On 8 April 2013, the Town of Pittsboro ("defendant Town") adopted an Ordinance Amending the Pittsboro Zoning Ordinance (the "PDD Ordinance") to create the Planned Development District zoning district, and to establish regulations and requirements regarding such districts.

On 9 June 2014, defendant Town's Board of Commissioners approved an ordinance ("First Rezoning Ordinance") rezoning approximately 7,119 acres of land (the "Property") in Pittsboro and its extraterritorial jurisdiction to a Planned Development District to be called Chatham Park ("Chatham Park PDD"), adopted by defendant Town in April 2013. As proposed by Chatham Park Investors, LLC ("intervenor CPI") and owner of the Property, Chatham Park PDD would be developed for 22,000 new residential dwelling units and 22,000,000 square feet of nonresidential structures and uses, all in an area previously zoned and used predominantly for low-density residential uses. Also on 9 June 2014, defendant Town approved a Master Plan for Chatham Park PDD.

About two months later, on 6 August 2014, several residents of Chatham County (who own and reside on land nearby or adjacent to portions of the Property) and a non-profit entity, Pittsboro Matters, Inc., filed a complaint in Chatham County Superior Court ("First Lawsuit") challenging the legality of defendant Town's actions

in adopting the First Rezoning Ordinance. The developer, intervenor CPI, intervened in the First Lawsuit.[1]

In December 2014, defendant Town adopted a new ordinance amending the Town of Pittsboro Zoning Ordinance ("Zoning Ordinance"), and the Town of Pittsboro Zoning Map ("Second Rezoning Ordinance"), and approved a revised Chatham Park Master Plan ("Revised Master Plan"). Later that month, on 23 December 2014, Pittsboro Matters, Inc., and five of the individual plaintiffs to the First Lawsuit—George A. Robertson, J. Turner Whitted, Christopher M. Watkins, Ducka Kelly, and Greg Ogle—(collectively "plaintiffs"), filed this action ("Second Lawsuit") challenging, *inter alia*, defendant Town's approval of the Second Rezoning Ordinance. Specifically, plaintiffs sought

> a judgment nullifying the adoption of (a) the PDD Ordinance by [d]efendant Town of Pittsboro Board of Commissioners on April 8, 2013, and (b) the First Rezoning Ordinance and Chatham Park Master Plan on June 9, 2014, and (c) the Second Rezoning Ordinance and the approval of the revised Chatham Park Master Plan, by [d]efendant Town of Pittsboro Board of Commissioners on December 8, 2014.

[1] Based on defendant Town's adoption of the Second Rezoning Ordinance and Revised Master Plan in December 2014, in January 2015, defendant Town and intervenor CPI moved to dismiss the First Lawsuit as moot. On 25 March 2015, Superior Court Judge Michael R. Morgan granted defendant Town and intervenor CPI's motion and entered an order dismissing plaintiffs' First Lawsuit without prejudice.

Intervenor CPI moved to intervene in the Second Lawsuit, and on 23 February 2015, the trial court allowed intervention. On 27 February 2015, defendant Town and intervenor CPI each filed an answer and moved to dismiss the complaint.

On 20 March 2015, Jeffrey Starkweather, an officer of plaintiff Pittsboro Matters, Inc., read an article in the local Chatham County newspaper indicating that the previous day Ken Atkins, an economic development consultant for intervenor CPI, announced at a Rotary Club meeting that work on a U.S. Highway 64 overpass to connect the north and south parts of the Chatham Park property would soon begin. That same day, Starkweather informed Robert Hornik, attorney for plaintiffs, about the article.

On 23 March 2015, Starkweather spoke with defendant Town's planner, Stuart Bass, about the road/overpass work. Bass advised Starkweather that intervenor CPI did not need approval from defendant Town to begin construction of the U.S. Highway 64 overpass and that this was strictly an issue between the North Carolina Department of Transportation ("NCDOT") and intervenor CPI. Prior to that, Bass had not responded to Hornik, who had made a formal request on behalf of plaintiffs in October 2014 for a determination regarding whether the US 64 bypass project required site plan approval. On 27 March 2015, Hornik wrote a letter on behalf of plaintiffs to defendant Town's attorney Paul Messick, requesting a stop work order on land clearing and construction of the U.S. Highway 64 overpass.

On 6 April 2015, Hornik received a letter from Messick responding to his 27 March 2015 letter. Messick indicated that the highway construction work was not "development" subject to regulation under defendant Town's Zoning Ordinance or under the Chatham Park Master Plan then in effect, despite what plaintiffs contend was contrary language in certain relevant provisions of the zoning ordinance. He also wrote that the project involved no subdivision of land for residential or commercial purposes.

On 10 April 2015, plaintiffs moved for a preliminary injunction to stop all ongoing development and to prohibit all future development in Chatham Park. The basis for plaintiffs' motion was their contention that intervenor CPI was violating the Revised Master Plan that plaintiffs sought to have declared null and void in their complaint filed 23 December 2014 and that defendant Town was violating provisions of defendant Town's Zoning Ordinance and/or Subdivision Regulations by allowing intervenor CPI to proceed. Specifically, plaintiffs sought an order "[e]njoining all development and/or site improvement on or on behalf of Intervenor CPI in Chatham Park until further Order of the Court," specifically asking the court to "[r]estrain and enjoin[] all work by or for Intervenor, [CPI], pursuant to the Encroachment Agreement and/or pursuant to any and all driveway permits or other permits issued by the North Carolina Department of Transportation with respect to the bridge construction project and/or the construction of 'Chatham Parkway.' "

Plaintiffs' motion for preliminary injunction came on for hearing on 20 April 2015 in Chatham County Superior Court, the Honorable Elaine M. Bushfan, Judge presiding. At the hearing, plaintiffs argued that the highway construction work then underway was part of the Chatham Park development, which plaintiffs argued required intervenor CPI to seek and obtain defendant Town's Board approval before commencing "development activity." Plaintiffs' motion was also based on their claim that the highway construction work was proceeding without approval required by defendant Town's Zoning Ordinance and/or Subdivision Regulations, as the work was being done by a private developer, not at NCDOT"s request or as part of an NCDOT contract.

The trial court denied the request for a preliminary injunction in a detailed order entered 30 April 2015. Plaintiffs did not appeal the order denying their motion for a preliminary injunction "even though [they] believed that substantial rights could be affected by the denial of [their] motion."

On or about 19 May 2015, intervenor CPI submitted an again-revised Master Plan and a Third Rezoning Application. In June 2015, defendant Town adopted a new PDD Ordinance, which "attempted to correct the procedural deficiencies which [p]laintiff[s] brought to [defendant Town's] attention in the Complaint." On 10 August 2015, defendant Town adopted a new rezoning ordinance ("Third Rezoning Ordinance"). Because of the Third Rezoning Ordinance, plaintiffs anticipated that

intervenor CPI and/or defendant Town would file a motion to dismiss the Second Lawsuit as moot just as they had moved to dismiss the First Lawsuit. As a result, on 2 September 2015, plaintiffs filed a notice of voluntary dismissal of their entire action without prejudice.

Four months after Judge Bushfan denied plaintiffs' motion for preliminary injunction and a week after plaintiffs' dismissed this lawsuit, intervenor CPI filed a motion pursuant to Rule 11 for sanctions against plaintiff and their counsel for "seeking injunctive relief with no basis in law, and for abandoning a large portion of the relief sought in their motion." Intervenor CPI asked the court to "sanction[] [p]laintiffs and their counsel by ordering them to pay [intervenor] CPI's reasonable attorneys' fees and costs incurred in responding to [p]laintiffs' motion for preliminary injunction, in the amount of $57,097.09."

Superior Court Judge Paul C. Ridgeway heard intervenor CPI's motion for sanctions on 28 September 2015 and on 15 October 2015, denied the motion, finding and concluding that "Intervenor [CPI] has failed to establish that . . . [p]laintiffs' conduct did not conform to the requirements of Rule 11." Intervenor CPI filed notice of appeal.

On appeal, intervenor CPI argues that the trial court erred in denying its motion for sanctions. Specifically, intervenor contends that plaintiffs' preliminary

injunction violated Rule 11 in multiple respects, and as such the trial court's order denying sanctions should be reversed and an order entered awarding sanctions to Developer in the amount of reasonable attorneys' fees and costs Developer incurred in responding to plaintiffs' motion for preliminary injunction. We disagree.

"The trial court's decision to impose or not to impose mandatory sanctions under N.C.G.S. § 1A-1, Rule 11(a) is reviewable *de novo* as a legal issue." *Turner v. Duke Univ.*, 325 N.C. 152, 165, 381 S.E.2d 706, 714 (1989).

> In the *de novo* review, the appellate court will determine (1) whether the trial court's conclusions of law support its judgment or determination, (2) whether the trial court's conclusions of law are supported by its finding of fact, and (3) whether the findings of fact are supported by a sufficiency of the evidence. If the appellate court makes these three determinations in the affirmative, it must uphold the trial court's decision to impose or deny the imposition of mandatory sanctions under N.C.G.S. § 1A-1, Rule 11(a).

Id.

Rule 11(a) of the North Carolina Rules of Civil Procedure states, in relevant part, that:

> The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law . . . and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

N.C.G.S. § 1A-1, Rule 11(a) (2015).

"There are three parts to a Rule 11 analysis: (1) factual sufficiency, (2) legal sufficiency, and (3) improper purpose. . . . A violation of any one of these requirements *mandates* the imposition of sanctions under Rule 11." *Dodd v. Steele*, 114 N.C. App. 632, 635, 442 S.E.2d 363, 365 (1994) (citation omitted). Also, a party seeking a preliminary injunction must show a "*likelihood* of success on the merits . . . ." *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759–60 (1983) (citations omitted). However, "in determining compliance with Rule 11, courts should avoid hindsight and resolve all doubts in favor of the signer." *Twaddell v. Anderson*, 136 N.C. App. 56, 70, 523 S.E.2d 710, 720 (1999) (citations and quotation marks omitted).

In denying intervenor CPI's Rule 11 motion for sanctions, the trial court made the following succinct but relevant findings of fact by a preponderance of the evidence:

> 1. Counsel for Plaintiffs, prior to signing, read each motion, pleading or other paper in this cause;
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> 2. Counsel for Plaintiffs, at the time of signing, had a reasonable opinion, formed after reasonable inquiry, that each motion, pleading and other paper was well grounded in fact and warranted by existing law or a good faith argument for the extension or reversal of existing law; and
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> 3. Counsel for Plaintiffs, at the time of signing, was not interposing any motion, pleading or other paper for any improper purpose.

Intervenor CPI first contends that plaintiffs' preliminary injunction motion was neither "well grounded in fact" nor "warranted by existing law" as plaintiffs did not seek to enforce any claim or right asserted in the complaint.

> In analyzing whether the complaint meets [Rule 11's] factual certification requirement, the court must make the following determinations: (1) whether the plaintiff undertook a reasonable inquiry into the facts and (2) whether the plaintiff after reviewing the results of his inquiry, reasonably believed that his position was well grounded in fact.

McClerin v. R-M Indus., Inc., 118 N.C. App. 640, 644, 456 S.E.2d 352, 355 (1995) (citing *Higgins v. Patton*, 102 N.C. App. 301, 306, 401 S.E.2d 854, 857 (1991)). "To satisfy [Rule 11's] legal sufficiency requirement, the disputed action must be warranted by existing law or a good faith argument for the extension, modification or reversal of existing law." *Dodd*, 114 N.C. App. at 635, 442 S.E.2d at 365 (citations omitted). "[W]hether [it] complies with the legal sufficiency prong of the Rule is determined as of the time it was signed." *Bryson v. Sullivan*, 330 N.C. 644, 657, 412 S.E.2d 327, 334 (1992). " 'Like a snapshot, Rule 11 review focuses on the instant when the picture is taken—when the signature is placed on the document.' " *Id.* at 656, 412 S.E.2d at 333 (quoting *Thomas v. Capital Sec. Servs., Inc.*, 836 F.2d 866, 874 (5th Cir. 1986)).

North Carolina General Statutes § 1-485 authorizes the issuance of a preliminary injunction, in relevant part, as follows:

> (1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and this relief, or any part thereof, consists in restraining the commission or continuance of some act the commission or continuance of which, during the litigation, would produce injury to the plaintiff; or,
>
> (2) When, during the litigation, it appears by affidavit that a party thereto is doing or threatens or is about to do, or is procuring or suffering some act to be done in violation of the rights of another party to the litigation respecting the subject of the action, and tending to render the judgment ineffectual . . . .

N.C.G.S. § 1-485(1)–(2) (2015).

A. Factual Sufficiency

Here, in their Complaint, plaintiffs alleged procedural defects and deficiencies in the adoption of the original PDD Ordinance in April 2013 and in the adoption of the Second Rezoning Ordinance and approval of the Revised Master Plan in December 2014. In their motion for preliminary injunction, plaintiffs asked the court to "prevent, enjoin and restrain any and all development or site improvements . . . pursuant to the Second Rezoning Ordinance . . and the [Revised] Chatham Park Master Plan, as amended and approved by [d]efendant's Board of Commissioners on December 8, 2014 . . . ."

The Complaint and the record thus reflect that there was a factual basis for plaintiffs' motion for preliminary injunction. Indeed, two weeks after entry of Judge Bushfan's order denying the preliminary injunction, defendant Town adopted a new

PDD Ordinance following a letter from defendant Town's attorney explaining the necessity for a further revised Master Plan and Zoning Ordinance because of "alleged deficiencies in the 2013 process adopting both text amendments . . . ." And, on 19 May 2015, intervenor CPI submitted a Third Rezoning Application to defendant Town under the new PDD Ordinance adopted by defendant Town in May 2015.

B. Legal Sufficiency

Plaintiffs' motion for preliminary injunction was also supported by law. North Carolina General Statutes Section 160A-383 provides that all zoning regulations "shall be made in accordance with a comprehensive plan." Here, plaintiffs argued both in their complaint and in their motion for preliminary injunction that the PDD Ordinance and the Second Rezoning Ordinance were not made "in accordance with a comprehensive plan," here, the Revised Master Plan. Specifically, plaintiffs alleged various procedural and substantive deficiencies, in particular that defendant Town failed to adopt a legally sufficient "consistency statement" required by N.C. Gen. Stat. § 160A-383 prior to or when adopting the PDD Ordinance in 2013. As a result, plaintiffs argued in their complaint and their motion for preliminary injunction that the PDD Ordinance should be declared null and void. This argument is "well grounded in law." *See Wally v. City of Kannapolis*, 365 N.C. 449, 453–54, 722 S.E.2d 481, 483–84 (2012) (holding a zoning amendment invalid where the defendant City Council failed to properly approve a statement that addressed consistency,

reasonableness, and the public interest pursuant to N.C.G.S. § 160A-383); *Atkinson v. City of Charlotte*, 235 N.C. App. 1, 5–6, 760 S.E.2d 395, 398 (2014) (holding zoning amendment void where "[t]he Statement of Consistency" adopted by the defendant City Council could not reasonably be said to include an "explanation" as to why the amendment was reasonable and in the public interest).

C. Improper Purpose

Lastly, plaintiffs' motion for preliminary injunction was not brought for any improper purpose. *See Dodd*, 114 N.C. App. at 635, 442 S.E.2d at 365 (citation omitted). Intervenor CPI suggests that plaintiffs' voluntary dismissal of this action in September 2015 was indicative of plaintiffs' improper motives. We disagree.

"[A]n objective standard is used to determine whether a paper has been interposed for an improper purpose, with the burden on the movant [here, intervenor CPI,] to prove such improper purpose." *Mack v. Moore*, 107 N.C. App. 87, 93, 418 S.E.2d 685, 689 (1992) (citing *Bryson*, 330 N.C. at 656, 412 S.E.2d at 333). Here, intervenor CPI has failed to carry its burden of proof on this issue as there is no evidence in the record to support the argument that plaintiffs' motives were improper.

At the time of the 20 April 2015 hearing on their preliminary injunction motion, plaintiffs' goal was to maintain the status quo to stop the road and bridge construction work then underway, and secondarily to stop development of the Property until the legal sufficiency of the zoning and master plan approvals which

allowed its development could be determined. These purposes are entirely consistent with N.C. Gen. Stat. § 1-485. Further, plaintiffs' voluntary dismissal of this action on 2 September 2015 was reasonable and prudent under the circumstances, as defendant Town adopted the Third Rezoning Ordinance and the newly revised Master Plan on 10 August 2015. Voluntary dismissal was also reasonable where, under similar circumstances months earlier, the trial court dismissed the First Lawsuit because the adoption of the Second Rezoning Ordinance had rendered the claims in that lawsuit moot.

Accordingly, as plaintiffs' motion for preliminary injunction was well grounded in fact and warranted by existing law and it was not brought for any improper purpose, the trial court did not err in denying intervenor CPI's motion for sanctions brought pursuant to Rule 11, where the findings of fact are sufficiently supported by competent evidence in the record, and the conclusions are supported by the findings. The judgment of the trial court is

AFFIRMED.

Judges TYSON and INMAN concur.

Report per Rule 30(e).