

138 So.3d 450 (Table)
Unpublished Disposition
(This unpublished disposition is
referenced in the Southern Reporter.)
District Court of Appeal of Florida,
Second District.

TOWN OF KENNETH CITY,
a municipality, Petitioner,
v.

LEALMAN SPECIAL FIRE CONTROL DISTRICT,
an Independent Special Fire District, Respondent.

No. 2D13-4391.

|
April 9, 2014.

Petition for Writ of Certiorari to the Circuit Court for
the Sixth Judicial Circuit for Pinellas County; sitting in its
appellate capacity.

Attorneys and Law Firms

Jay Daigneault and Brandon J. Huffman of Frazer,
Hubbard, Brandt, Trask, Yacavone, Metz & Daigneault,
L.L.P., Dunedin, for Petitioner.

Kevin S. Hennessy and Jennifer R. Cowan of Lewis,
Longman & Walker, P.A., Bradenton, for Respondent.

Opinion

PER CURIAM.

*1 Denied.

DAVIS, C.J., and NORTH CUTT and CASANUEVA,
JJ., Concur.

All Citations

138 So.3d 450 (Table), 2014 WL 1383256

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**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

**LEALMAN SPECIAL FIRE
CONTROL DISTRICT,**
Petitioner,

v.

TOWN OF KENNETH CITY,
Respondent.

Ref. No. 10-000046AP-88B
UCN: 522010AP000046XXXXCV

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

Petitioner, Lealman Special Fire Control District ("District"), filed this action to challenge the Town of Kenneth City's ("Town") voluntary annexation of 16 parcels within the District's jurisdictional boundaries. For the reasons set forth below, the Petition must be granted.

Procedural History

On July 14, 2010, the Town adopted sixteen annexation ordinances, each annexing one parcel into the town pursuant to the voluntary annexation provisions of § 171.044, Fla. Stat. The District filed the instant Petition for Writ of Certiorari challenging the decision to adopt the sixteen annexation ordinances on August 13, 2010. On July 22, 2010, the District notified the Town of a conflict between the District and the Town, and initiated the intergovernmental conflict resolution procedure pursuant to § 164.1052 (1), Fla. Stat. The action in this Court was stayed for the parties to complete the conflict resolution procedure. The parties completed mediation and reached an impasse in the dispute resolution process, and an Order Lifting Stay was entered on February 21, 2013.

Standard of Review

This Court reviews annexation ordinances by Petition for Writ of Certiorari to determine: (1) whether procedural due process has been accorded, (2) whether the essential requirements of law have been observed, and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *City of Ctr. Hill v. McBryde*, 952 So. 2d 599, 601 (Fla. 5th DCA 2007). In its Petition, the District contends that the essential requirements of the law were not observed when the Town adopted the ordinances without providing the proper notice required by § 171.044, Fla. Stat., and that adoption of the ordinances violated § 171.044, Fla. Stat., because the properties are not contiguous and reasonably compact.

The Essential Requirements of the Law

The power to annex property must be exercised in strict accord with the statute. *See Town of Mangonia Park v. Homan*, 118 So. 2d 585, 588 (Fla. 2d DCA 1960). Section six of the Florida voluntary annexation statute, §171.044, Fla. Stat., states that:

Not fewer than 10 days prior to publishing or posting the ordinance notice required under subsection (2), the governing body of the municipality must provide a copy of the notice, via certified mail, to the board of the county commissioners of the county wherein the municipality is located. The notice provision provided in this subsection may be the basis for a cause of action invalidating the annexation.

The notice required in subsection (2) states that:

The notice shall give the ordinance number and a brief, general description of the area proposed to be annexed. The description shall include a map clearly showing the area and a statement that the complete legal description by metes and bounds and the ordinance can be obtained from the office of the city clerk.

The Town did not provide the County Commissioners the map required in subsection (2) ten days prior to the hearing. The Town attempted to notice the County Commissioners about the annexations on three different occasions, but each of the notices failed to include the required maps of the properties to be annexed. Because the Town did not exercise its power to annex property in strict accord with the statute, the essential requirements of the law were not observed.

Competent Substantial Evidence

In addition to failing to provide the proper notice required by § 171.044(2), Fla. Stat., the Town failed to support its decision to adopt the ordinances with competent substantial evidence. Competent substantial evidence is evidence that is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. *See Dep't of Highway Safety & Motor Vehicles v. Timble*, 821 So. 2d 1084, 1087 (Fla. 1st DCA 2002).

In order to voluntarily annex into a municipality, the property to be annexed must be contiguous to the county and reasonably compact. § 171.044(1), Fla. Stat. Compactness means "concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or fingers in serpentine patterns." § 171.031(12), Fla. Stat. The District contends that the annexed properties are not contiguous, nor reasonably compact. However, the record is devoid of any evidence that the Town even considered whether the properties were contiguous or compact. The town council meeting minutes suggest that the councilmembers and the Town's attorney, who they relied upon to advise them of the appropriateness of the proposed annexation ordinances, had not reviewed the ordinances they voted to adopt. Mr. Elias, the town's attorney stated that:

I can't give you a legal opinion with regard to whether or not each and every one of these parcels is compact, whether it creates an enclave, whether it is contiguous. I can tell you that the people who investigated this have put together the ordinances, did a very

thorough job, and we have to rely that they did their homework and that the ordinances are correct and accurate.

Councilmember Dudley responded:

I personally feel like just by listening to what the lawyer just said he really hasn't had time to look at this and do his research and homework to it, and I'd hate to see us move into a lawsuit. I think why not bide our time and let him have time to look at this before we start voting.

Councilmember Desimone then stated:

I think it's unfortunate that in a situation like this where so much is involved that the attorney did not have the opportunity to look at it to make sure that everything was as it should be. I realize that you have competent people working on it, but they are not legal minds, and therefore, that is something that should have happened and did not.

Finally, Councilmember Dudley stated:

I don't see how I can voice yes when I don't have our city lawyer backing me. He's not able to sit here and say to me clearly go ahead with this, everything is good to go. He can't do that.

The meeting minutes and statements by numerous councilmembers who voted to adopt the annexation ordinances make it clear that the decisions were not based on competent substantial evidence that the parcels were contiguous or reasonably compact.


Conclusion


Because the Town did not base its decision on competent substantial evidence, nor follow the essential requirements of the law in deciding to adopt the annexation ordinances, the Petition must be granted. The District is entitled to reasonable costs and attorneys' fees in connection with these ordinances pursuant to § 171.081, Fla. Stat. Jurisdiction is reserved as to the amount of costs and attorney's fees

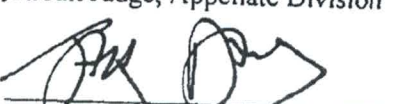
Accordingly, it is

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is GRANTED.

DONE AND ORDERED in Chambers, at St. Petersburg, Pinellas County, Florida, this 14 day of August 2013.


PETER RAMSBERGER
Circuit Judge, Appellate Division


AMY M. WILLIAMS
Circuit Judge, Appellate Division


JACK DAY
Circuit Judge, Appellate Division

Copies furnished to:

KEVIN S. HENNESSY, ESQUIRE
MAGGIE D. MOONEY-PORTALE, ESQUIRE
101 RIVERFRONT BOULEVARD
SUITE 620
BRADENTON, FL 34205

THOMAS J. TRASK, ESQUIRE
JAY DAIGNEAULT, ESQUIRE
595 MAIN STREET
DUNEDIN, FL 34698