

SUPREME COURT OF VIRGINIA

Marsh v. Roanoke City

Marsh · No. Record No. 210560 · Decided June 9, 2022

SUMMARY

The Supreme Court of Virginia affirmed the dismissal of a petition challenging a Board of Zoning Appeals decision. The Court held that the petition improperly named Roanoke City rather than the Roanoke City Council, the locality's governing body, as required by Virginia Code § 15.2-2314. Because this defect constituted misjoinder rather than misnomer, the petition could not be amended under Virginia Code § 8.01-6.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Goodwyn, C.J.; Powell, J.; Kelsey, J.; McCullough, J.; Chafin, J.; Russell, S.J.; Millette, S.J.
JURISDICTION	Virginia
DECIDED	June 9, 2022
DOCKET	Record No. 210560
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Circuit Court of the City of Roanoke's dismissal of a petition for a writ of certiorari challenging a Board of Zoning Appeals decision.
STANDARD OF REVIEW	The court reviewed the circuit court's dismissal of the petition for a writ of certiorari for reversible error.
PRECEDENTIAL VALUE	Published opinion designated for publication in the Virginia Reports and therefore precedential under Virginia law.
PARTIES	Barry Marsh, Becky Marsh, Ginger Morris, Carole Mayberry, Jessica Minnix, Kevin Minnix, Tom Roller, Meredith Roller, Robert Swanson, Amber Swanson, Cathy Greenberg, John Garland, Maria Garland, John Harlow, Oak Hill v. Roanoke City, Board of Zoning Appeals, Pinnacle Treatment Services of Roanoke, LLC, CapGrow Holdings JV Sub V, LLC

TOPICS

writ of certiorari

zoning

motions to dismiss

civil procedure

appellate procedure

PRACTICE AREAS

civil procedure

zoning

municipal law

appellate procedure

QUESTIONS PRESENTED

1. Whether Oak Hill's failure to name the Roanoke City Council as a necessary party within thirty days of the Board of Zoning Appeals decision required dismissal of the petition for certiorari.
2. Whether references to Roanoke City or the City of Roanoke constituted a misnomer for the Roanoke City Council.
3. Whether Virginia Code § 8.01-6 permitted Oak Hill to amend the petition to add the Roanoke City Council and relate the amendment back to the original filing.

HOLDINGS

1. Under Virginia Code § 15.2-2314, the governing body of the locality is a necessary party that must be identified in the petition within the applicable thirty-day period. Failure to do so is a defect that, when timely raised, requires dismissal.
2. The references to Roanoke City and the City of Roanoke identified the City, not the City Council, and therefore were not a misnomer for the Council.
3. Virginia Code § 8.01-6 did not permit the proposed amendment because the petition involved misjoinder, not misnomer.

KEY QUOTATIONS

“The failure to name the governing body as a necessary party within the 30-day window contemplated by Code § 15.2-2314 remains a defect and, when timely raised . . . requires dismissal of the petition.” (at 2)

“A ‘locality’ and its ‘governing body’ are not interchangeable terms but have separate legal identities that must be observed in initiating an action against either as a party defendant in a legal action.” (at 2)

FACTUAL BACKGROUND

Residents of the Oak Hill neighborhood complained that Pinnacle Treatment Services was violating Roanoke's zoning ordinance by operating a halfway house. After the Zoning Administrator rejected the complaint and the Board of Zoning Appeals affirmed that decision, Oak Hill sought circuit-court review. Its petition repeatedly named Roanoke City or the City of Roanoke but did not name the Roanoke City Council as the locality's governing body.

PROCEDURAL HISTORY

Oak Hill appealed the Zoning Administrator's adverse decision to the Board of Zoning Appeals, which affirmed the decision. Oak Hill then filed a petition for a writ of certiorari in the circuit court, naming Roanoke City, the Board of Zoning Appeals, Pinnacle, and CapGrow, but not the Roanoke City Council. The circuit court denied

Oak Hill's motion to amend to add the Council and granted motions to dismiss for failure to name the governing body within the statutory thirty-day period. The Supreme Court of Virginia found no reversible error.

DISPOSITION

affirmed

CASES CITED

- Boasso Am. Corp. v. Zoning Adm'r of City of Chesapeake, 293 Va. 203, 209–11 (2017)
- Christian v. Virginia Dep't of Soc. Servs., 45 Va. App. 310, 316 (2005)
- Miller v. Highland County, 274 Va. 355, 367 (2007)
- Richmond v. Volk, 291 Va. 60, 64 (2016)
- Estate of James v. Peyton, 277 Va. 443, 452 (2009)