

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Morgantown Mall Associates Limited Partnership and Rural King Realty, LLC v. City of Westover and County Commission of Monongalia County

Morgantown Mall Associates · No. No. 16-0835 · Decided September 1, 2017

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed orders concerning the City of Westover’s annexation of approximately 102 acres of commercial property. The court held that the circuit court lacked jurisdiction over the petition for a writ of error because the petitioners failed to timely file the required record, and it upheld judgment on the pleadings rejecting constitutional and other challenges to the annexation statute.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Allen H. Loughry II; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker; Justice Robin Jean Davis
JURISDICTION	West Virginia
DECIDED	September 1, 2017
DOCKET	No. 16-0835
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioners appealed orders of the Circuit Court of Monongalia County that dismissed their petition for a writ of error for lack of jurisdiction, granted judgment on the pleadings to the City of Westover, rejected declaratory relief, and dissolved a preliminary injunction.
STANDARD OF REVIEW	Rulings concerning a new trial and the existence of reversible error are reviewed for abuse of discretion, underlying factual findings are reviewed for clear error, and questions of law are reviewed de novo.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Morgantown Mall Associates Limited Partnership, Rural King Realty, LLC v. City of Westover, County Commission of Monongalia County

TOPICS

municipal law

appellate jurisdiction

constitutional law

due process

equal protection

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether petitioners perfected their appeal from the County Commission's annexation order by timely filing the required original record and bill of particulars, thereby invoking the circuit court's jurisdiction.
2. Whether Westover's annexation of petitioners' property by minor boundary adjustment was lawful.
3. Whether West Virginia Code § 8-6-5 was void for vagueness or constituted an impermissible delegation of legislative authority.
4. Whether West Virginia Code § 8-6-5 violated petitioners' due process or equal protection rights by failing to provide adequate standards against arbitrary or discriminatory application.

HOLDINGS

1. An appellant's failure to timely file the original record required by West Virginia Code § 58-3-4 is fatal to the circuit court's exercise of jurisdiction over an appeal from a county commission annexation order. Petitioners' failure to file the original record within four months meant that the writ-of-error proceeding was not properly perfected.
2. The annexation was lawful in both objective and execution because the record supported the finding that Westover satisfied the statutory threshold requirements for annexation by minor boundary adjustment and did not unlawfully scheme to annex petitioners' property.
3. West Virginia Code § 8-6-5 is not impermissibly vague and does not constitute an impermissible delegation of legislative authority merely because it uses terms such as 'minor boundary adjustment,' 'effectively accomplished,' and 'best interest of the county as a whole.'
4. Petitioners failed to demonstrate that West Virginia Code § 8-6-5 violated due process or equal protection guarantees. The statute provides sufficient standards and procedural safeguards to guide annexation decisions and prevent arbitrary or discriminatory application.

KEY QUOTATIONS

“This Court has concluded that the failure to comply with the statutory requirements to perfect the appeal of an annexation order is fatal to the appeal.” (3)

“Where the petition for appeal . . . is not accompanied by the record from the proceedings below and such record is not [timely] provided . . . the appeal has not been properly perfected and must be refused.” (5)

“Every reasonable construction must be resorted to by the courts in order to sustain constitutionality, and any reasonable doubt must be resolved in favor of the constitutionality of the legislative enactment in question.” (7)

FACTUAL BACKGROUND

The City of Westover sought to annex approximately 102 acres of developed commercial property owned almost entirely by petitioners. After two unsuccessful attempts, the County Commission approved the annexation as a minor boundary adjustment under West Virginia Code § 8-6-5. Petitioners contended that Westover improperly engineered the annexation and that the statute was unconstitutionally vague, constituted an improper delegation of legislative authority, and violated due process and equal protection.

PROCEDURAL HISTORY

The County Commission approved Westover's annexation of approximately 102 acres by minor boundary adjustment under West Virginia Code § 8-6-5. Petitioners filed a verified complaint seeking injunctive and declaratory relief and a writ of error. The circuit court initially granted preliminary injunctive relief, later ruled that petitioners failed to timely file a bill of particulars and the original record required for review of the Commission's order, and subsequently granted Westover judgment on the pleadings and dissolved the injunction. The Supreme Court of Appeals affirmed both orders.

DISPOSITION

affirmed

CASES CITED

- State v. Vance, 207 W. Va. 640, 535 S.E.2d 484 (2000)
- Pettry v. Chesapeake & Ohio Ry. Co., 148 W. Va. 443, 135 S.E.2d 729 (1964)
- In re Stonestreet, 147 W. Va. 719, 131 S.E.2d 52 (1963)
- Tax Assessment Against Purple Turtle, LLC v. Gooden, 223 W. Va. 755, 679 S.E.2d 587 (2009)
- State ex rel. Lilly v. Carter, 63 W. Va. 684, 60 S.E. 873 (1908)
- Tynes v. Shore, 117 W. Va. 355, 185 S.E. 845 (1936)
- Petition of City of Beckley to Annex, by Minor Boundary Adjustment, W. Va. Route 3 Right-of-Way Beginning at Present Corp. Limits, 194 W. Va. 423, 460 S.E.2d 669 (1995)
- Garcelon v. Rutledge, 173 W. Va. 572, 318 S.E.2d 622 (1984)
- Connally v. General Construction Co., 269 U.S. 385 (1926)
- Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489 (1982)
- United States v. Salerno, 481 U.S. 739 (1987)
- Willis v. O'Brien, 151 W. Va. 628, 153 S.E.2d 178 (1967)
- Verizon W. Va., Inc. v. W. Va. Bureau of Employment Programs, Workers' Compensation Division, 214 W. Va. 95, 586 S.E.2d 170 (2003)
- Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976)
- Gibson v. W. Va. Department of Highways, 185 W. Va. 214, 406 S.E.2d 440 (1991)
- State ex rel. Appalachian Power Co. v. Gainer, 149 W. Va. 740, 143 S.E.2d 351 (1965)

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