

SUPREME COURT OF ARKANSAS

City of Fort Smith v. Didicom Towers, Inc.

362 Ark. 469 (2005) (Ark. 2005) · No. No. 04-678 · Decided June 2, 2005

SUMMARY

The Supreme Court of Arkansas addressed a dispute over whether adding platform antennae to a cellular telecommunications tower constituted an intensification of a nonconforming use under the City of Fort Smith's zoning code. The court held that the circuit court did not abuse its discretion by dismissing the City's declaratory-judgment action because the same issues were pending in federal court under the Federal Telecommunications Act, but modified the dismissal to be without prejudice. The court also affirmed denial of default judgment and denial of Didicom's requests for costs and attorney's fees.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Donald L. Corbin
JURISDICTION	Arkansas
DECIDED	June 2, 2005
DOCKET	No. 04-678
DISPOSITION	affirmed
PROCEDURAL POSTURE	The City appealed dismissal of its declaratory-judgment action and denial of its motion for default judgment. Didicom cross-appealed denial of its motion for costs and attorney's fees.
STANDARD OF REVIEW	Abuse of discretion for the trial court's decision to refuse declaratory relief and for the award of costs; application of the legal standards governing default judgment and attorney's fees.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	City of Fort Smith v. Didicom Towers, Inc.

TOPICS

- municipal law
- zoning
- default judgment
- appellate procedure
- federalism

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by dismissing the City's declaratory-judgment action because a pending federal action would resolve the controversy.
2. Whether Didicom was entitled to default judgment because it did not file a new answer in state court after the action was remanded from federal court.
3. Whether Didicom was entitled to costs under the Arkansas Declaratory Judgment Act.
4. Whether Didicom was entitled to attorney's fees under Arkansas Code section 16-22-309 based on an alleged absence of a justiciable issue and bad faith.

HOLDINGS

1. A circuit court may, in its discretion, refuse to render a declaratory judgment when its decision would not terminate the uncertainty or controversy, including when the same issues are being addressed in a pending federal proceeding. The circuit court did not abuse its discretion by dismissing the City's action because the federal court would decide both the alleged zoning-law intensification and the Federal Telecommunications Act issues.
2. The dismissal of the City's declaratory-judgment action should be without prejudice rather than with prejudice, allowing the City to refile if the federal proceeding does not end the controversy.
3. Amended Arkansas Rule of Civil Procedure 55(f), which provides that default judgment may not be entered against a party that filed an answer or Rule 12 motion in federal court during removal, applies retroactively because it is procedural and remedial. Didicom's federal answer therefore defeated the City's motion for default judgment.
4. Didicom was not entitled to costs or attorney's fees. Costs under Arkansas Code section 16-111-111 were discretionary, and attorney's fees under section 16-22-309 required a finding of a complete absence of a justiciable issue and bad faith, which the record did not establish.

KEY QUOTATIONS

"The court may refuse to render or enter a declaratory judgment or decree where the judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding." (209 S.W.3d at 349)

"Accordingly, the issues before the federal court were the same issues before the state court: Whether additional platform antennae would be an intensification of a nonconforming use and whether the City's zoning law impermissibly restricted Didicom's rights under the FTA." (209 S.W.3d at 350)

"Accordingly, we hold that Rule 55(f) is procedural and remedial and Amended Rule 55(f) may thus be applied retroactively to the case at bar." (209 S.W.3d at 351)

FACTUAL BACKGROUND

Didicom constructed a communications tower outside Fort Smith's city limits in March 2001. Fort Smith later adopted an extraterritorial land-use plan and zoning code under which the tower was a lawful but nonconforming use, and the City denied Didicom's request to add platform antennae. After the Planning Commission affirmed the denial, Didicom pursued federal review under the Federal Telecommunications Act while the City's state declaratory-judgment action remained pending.

PROCEDURAL HISTORY

The City filed a declaratory-judgment action in Sebastian County Circuit Court concerning whether additional antennae on Didicom's existing cellular tower constituted an intensification of a nonconforming use and whether the City's zoning restrictions complied with the Federal Telecommunications Act. Didicom removed the action to federal court, which remanded it because the federal claim was not ripe. After the City denied Didicom's permit and the Planning Commission affirmed the denial, Didicom refiled in federal court. The circuit court dismissed the City's action because the federal proceeding would resolve the parties' issues, denied the City's motion for default judgment, and denied Didicom's request for costs and attorney's fees. The Supreme Court of Arkansas affirmed, but modified the dismissal to be without prejudice.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The dismissal is modified to be without prejudice, permitting the City to refile if the federal proceeding does not end the controversy.

CASES CITED

- Southern College of Naturopathy v. State ex rel. Beebe, 360 Ark. 543, 203 S.W.3d 111 (2005)
- Dovers v. Stephenson Oil Co., Inc., 354 Ark. 695, 128 S.W.3d 805 (2003)
- Barnes v. Everett, 351 Ark. 479, 95 S.W.3d 740 (2003)
- UHS of Ark., Inc. v. Charter Hosp. of Little Rock, Inc., 297 Ark. 8, 759 S.W.2d 204 (1988)
- City of Cabot v. Morgan, 228 Ark. 1084, 312 S.W.2d 333 (1958)
- Wilmans v. Sears, Roebuck and Co., 355 Ark. 668, 144 S.W.3d 245 (2004)
- Jegley v. Picado, 349 Ark. 600, 80 S.W.3d 332 (2002)
- Jessup v. Carmichael, 224 Ark. 230, 272 S.W.2d 438 (1954)
- JurisDictionUSA, Inc. v. Loislaw.com, Inc., 357 Ark. 403, 183 S.W.3d 560 (2004)
- Bell v. Bershears, 351 Ark. 260, 92 S.W.3d 32 (2002)
- Middleton v. Lockhart, 344 Ark. 572, 43 S.W.3d 113 (2001)
- Whorton v. Gaspard, 239 Ark. 715, 393 S.W.2d 773 (1965)