

OHIO COURT OF APPEALS

Greenhills Home Owners Corp. v. City of Greenhills, 24 Ohio App. 2d 109

265 N.E.2d 303 (Ohio Ct. App. 1970) · Decided January 12, 1970

SUMMARY

The Ohio Court of Appeals affirmed the dismissal of a property owners' amended petition challenging a Greenhills ordinance regulating the removal of trees from the city's Greenbelt. The court held that the prior Ohio Supreme Court decision upholding the Greenbelt zoning restrictions controlled and that the owners could not establish an uncompensated taking based on restrictions accepted when they acquired the property. The court affirmed the judgment sustaining the demurrer.

CASE DETAILS

COURT	Ohio Court of Appeals
WRITING FOR THE COURT	Shannon; Hildebrant; Hess
JURISDICTION	Ohio
DECIDED	January 12, 1970
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the Court of Common Pleas sustaining a demurrer to an amended petition and entering judgment for the City after plaintiffs declined to plead further.
STANDARD OF REVIEW	Review of the sustaining of a demurrer to determine whether the amended petition stated a cause of action, accepting well-pleaded allegations as true.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	Greenhills Home Owners Corp. v. City of Greenhills

TOPICS

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QUESTIONS PRESENTED

1. Whether the amended petition stated a claim that the City's tree-removal ordinance effected a taking of private property without compensation or due process.
2. Whether the corporation was entitled to seek condemnation compensation for restrictions on use of the Greenbelt despite having acquired the property subject to those restrictions and having benefited from them through a reduced purchase price.

HOLDINGS

1. The amended petition failed to state a cause of action because enforcement of the ordinance did not deprive the plaintiffs of any use of the Greenbelt to which they were entitled as private property and therefore did not constitute a compensable taking.
2. The plaintiffs were not entitled to have a jury impaneled to determine the value of the property because the restricted uses were not part of their private property rights for which compensation was owed.

KEY QUOTATIONS

“By accepting a virtual gift from the sovereign, appellants became a trustee thereof for the benefit of the citizenry.” (at 114)

FACTUAL BACKGROUND

Greenhills Home Owners Corp. owned approximately 109 acres surrounding the City of Greenhills known as the Greenbelt. The property was subject to a zoning ordinance limiting its uses and preserving the Greenbelt as a park and recreational area; the corporation had promoted adoption of the ordinance and received a reduction in the purchase price reflecting the resulting restrictions. After the corporation sought to harvest and sell trees, the City enacted an ordinance requiring permits for cutting or removing trees and expressly prohibiting permits for removal of trees for sale. The City denied the corporation's permit application, leading to the asserted taking and due-process claims.

PROCEDURAL HISTORY

Plaintiffs alleged that a city ordinance prohibiting the cutting and removal of trees in the Greenbelt without a permit, and prohibiting permits for removal of trees for sale, effected a taking without compensation and denied due process. The Court of Common Pleas sustained the City's demurrer for failure to state a cause of action and entered judgment for the City when plaintiffs declined to amend further. The Ohio Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Greenhills Home Owners Corp. v. Greenhills, 5 Ohio St. 2d 207

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