

SUPREME COURT OF RHODE ISLAND

Muschiano v. Travers

973 A.2d 515 (R.I. 2009) · No. No. 2007-47-Appeal · Decided June 26, 2009

SUMMARY

The Rhode Island Supreme Court reviewed a Superior Court judgment ordering Pawtucket officials to issue a building permit for a proposed Dunkin' Donuts franchise. The Court held that mandamus was unavailable because the property owner had not exhausted an adequate administrative appeal concerning landscaping requirements and lacked a clear legal right to issuance of the permit. The Court quashed the writ of mandamus and vacated the judgment, including declaratory and injunctive relief.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Justice Suttell; Chief Justice Williams; Justice Goldberg; Justice Flaherty; Justice Robinson
JURISDICTION	Rhode Island
DECIDED	June 26, 2009
DOCKET	No. 2007-47-Appeal
DISPOSITION	quashed
PROCEDURAL POSTURE	The City of Pawtucket appealed from a Superior Court judgment granting Muschiano a writ of mandamus directing city officials to issue a building permit and enjoining the city from interfering with issuance of the permit. The Supreme Court reviewed the judgment after entry of a Rule 54(b) judgment in favor of Muschiano on counts 1, 2, and 3.
STANDARD OF REVIEW	The Supreme Court applied its usual standard of review to the trial justice's findings, reviewing factual findings for clear error, misconception or overlooking of material evidence, or failure to do substantial justice. It reviewed the legal requirements for mandamus and the propriety of declaratory and injunctive relief.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Rhode Island; precedential.
PARTIES	City of Pawtucket, Ronald F. Travers, in his capacity as director of zoning for the City of Pawtucket, Michael Cassidy, in his capacity as

director of the Department of Planning and Redevelopment for the City of Pawtucket, Ronald Wunschel, in his capacity as finance director for the City of Pawtucket v. Joseph P. Muschiano

TOPICS

exhaustion of remedies writ of certiorari judicial review of agency action zoning declaratory judgment

PRACTICE AREAS

administrative law municipal law zoning appellate procedure remedies

QUESTIONS PRESENTED

1. Whether Muschiano had an adequate administrative remedy and was required to exhaust that remedy before seeking a writ of mandamus.
2. Whether Muschiano had a clear legal right to issuance of the building permit and whether issuance was a ministerial, nondiscretionary duty.
3. Whether the Superior Court properly granted declaratory and injunctive relief without resolving compliance with the landscaping requirements of section 410-78F of the Pawtucket Zoning Ordinance.
4. Whether the existence of an available appeal to the zoning board was plain, speedy, and adequate, or whether circumstances justified bypassing that administrative remedy.

HOLDINGS

1. Muschiano could not obtain mandamus because he failed to pursue the available appeal of the landscaping-plan rejection to the Pawtucket Zoning Board of Review.
2. Mandamus was unavailable because Muschiano did not establish all three prerequisites, including a clear legal right to the permit and a ministerial duty to issue it.
3. The record did not justify bypassing the zoning-board appeal because there was no finding or evidence that the zoning board would fail to address Muschiano's claims promptly and in good faith.
4. The Superior Court erred in granting declaratory and injunctive relief because the landscaping issue remained unresolved and the city was not required to issue the building permit until that issue was resolved.

KEY QUOTATIONS

“For mandamus to lie, Mr. Muschiano must satisfy all three aforementioned conditions. He must show (1) that he has a clear legal right to the issuance of a building permit, (2) that the issuance of a building permit by the appropriate city official was ministerial in nature, and (3) that mandamus was the only means for him to obtain the relief sought.” (973 A.2d at 520)

“Because we determine that in the circumstances of this case the city was not required to issue a building permit until the landscaping issue had been resolved, we also hold that the trial justice erred in granting declaratory and injunctive relief in favor of Mr. Muschiano.” (973 A.2d at 524)

FACTUAL BACKGROUND

Muschiano owned property in Pawtucket where the zoning board had authorized a coffee and doughnut shop with a drive-through window and a barbershop. After agreeing to sell the property to Andrade, the parties sought permits to convert the coffee shop into a Dunkin' Donuts franchise. Although certificates of zoning compliance were issued, city officials withheld the building permit and required a landscaping plan under section 410-78F of the Pawtucket Zoning Ordinance. Andrade abandoned the purchase after the city rejected the submitted landscaping plan, and Muschiano sought mandamus and related relief without appealing the rejection to the zoning board.

PROCEDURAL HISTORY

Muschiano filed an action seeking mandamus, declaratory relief, injunctive relief, and damages after the city declined to issue a building permit for proposed renovations associated with conversion of a coffee shop into a Dunkin' Donuts franchise. The Superior Court denied the city's summary-judgment motion, then granted mandamus and declaratory and injunctive relief without requiring exhaustion of the available appeal to the zoning board. The Supreme Court quashed the writ and vacated the judgment in its entirety.

DISPOSITION

quashed

REMAND INSTRUCTIONS

The writ of mandamus was quashed and the Superior Court judgment was vacated in its entirety. The papers in the case were remanded to the Superior Court.

CASES CITED

- New England Development, LLC v. Berg, 913 A.2d 363 (R.I. 2007)
- Union Station Associates v. Rossi, 862 A.2d 185 (R.I. 2004)
- Arnold v. Rhode Island Department of Labor and Training Board of Review, 822 A.2d 164 (R.I. 2003)
- Martone v. Johnston School Committee, 824 A.2d 426 (R.I. 2003)
- Harris v. Town of Lincoln, 668 A.2d 321 (R.I. 1995)
- Wood v. Lussier, 416 A.2d 690 (R.I. 1980)
- Krivitsky v. Town of Westerly, 849 A.2d 359 (R.I. 2004)
- Marran v. West Warwick School Committee, 317 A.2d 455 (R.I. 1974)
- Warren Education Association v. Lapan, 235 A.2d 866 (R.I. 1967)
- Cullen v. Town Council of Lincoln, 850 A.2d 900 (R.I. 2004)
- Gilbert v. City of Cambridge, 932 F.2d 51 (1st Cir. 1991)
- Fisher v. Applebaum, 947 A.2d 248 (R.I. 2008)
- Narragansett Electric Co. v. Carbone, 898 A.2d 87 (R.I. 2006)

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