

SUPREME COURT OF INDIANA

Johnson v. Celebration Fireworks, Inc.

829 N.E.2d 979 (Ind. 2005) · No. No. 18S02-0501-CV-4 · Decided June 30, 2005

SUMMARY

The Supreme Court of Indiana held that Celebration Fireworks was required to exhaust its administrative remedies before challenging fees and certificate requirements imposed by the Indiana State Fire Marshal. The court rejected arguments that exhaustion was unnecessary because the challenge was ultra vires or administrative review would be futile. It reversed the trial court's judgment and remanded with instructions to dismiss the complaint for lack of subject matter jurisdiction.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Sullivan, Justice; Shepard, Chief Justice; Dickson, Justice; Boehm, Justice; Rucker, Justice
JURISDICTION	Indiana
DECIDED	June 30, 2005
DOCKET	No. 18S02-0501-CV-4
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State appealed a trial-court judgment awarding Celebration Fireworks \$302,000 after a bench trial on its claims for money had and received and quasi-contract. The State argued that the trial court lacked subject matter jurisdiction because Celebration had not exhausted available administrative remedies before seeking judicial relief. The Indiana Supreme Court granted transfer after the Court of Appeals affirmed.
STANDARD OF REVIEW	Whether exhaustion of administrative remedies is required and whether the trial court possessed subject matter jurisdiction are legal questions reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Indiana
PARTIES	Roger Johnson, individually and as Indiana State Fire Marshal, State of Indiana v. Celebration Fireworks, Inc.

TOPICS

exhaustion of remedies judicial review of agency action administrative law subject matter jurisdiction
statutory interpretation

PRACTICE AREAS

administrative law civil procedure appellate procedure statutory interpretation

QUESTIONS PRESENTED

1. Whether Celebration was required to exhaust available administrative remedies before seeking judicial review of the Fire Marshal's certificate and fee requirements.
2. Whether the exhaustion requirement was excused because Celebration characterized the Fire Marshal's action as ultra vires and void.
3. Whether exhaustion could be excused on grounds of futility because the Fire Marshal had not voluntarily changed its general policy and Celebration believed the agency would reject its challenge.
4. Whether failure to exhaust administrative remedies deprived the trial court of subject matter jurisdiction.

HOLDINGS

1. Celebration was required to exhaust the administrative remedies available through the Fire Prevention and Building Safety Commission before seeking judicial review of the Fire Marshal's action.
2. The ultra vires exception did not excuse exhaustion because there was no question that the Fire Marshal possessed legal authority to license fireworks wholesalers.
3. Exhaustion was not excused as futile merely because the agency might reject Celebration's legal position or had not voluntarily changed its policy.
4. Failure to exhaust administrative remedies deprived the trial court of subject matter jurisdiction.

KEY QUOTATIONS

"The exhaustion doctrine is intended to defer judicial review until controversies have been channeled through the complete administrative process." (829 N.E.2d at 982)

"But the mere fact that an administrative agency might refuse to provide the relief requested does not amount to futility." (829 N.E.2d at 984)

"Failure to exhaust administrative remedies deprives the trial court of subject matter jurisdiction." (829 N.E.2d at 984)

FACTUAL BACKGROUND

Indiana law authorized the State Fire Marshal to regulate fireworks sales and issue Certificates of Compliance to wholesalers of restricted fireworks. The Fire Marshal interpreted Indiana Code section 22-11-14-5 to require a \$1,000 annual fee and separate certificate for each wholesale location. Celebration's operations expanded from 45 to 96 locations; after complying with the separate-certificate requirement from 1991 through 1994, it

submitted only one application and fee in 1995, challenged the Fire Marshal's interpretation, and sought refunds of alleged excess fees without first seeking administrative review.

PROCEDURAL HISTORY

Celebration challenged the Fire Marshal's requirement that it obtain and pay for a separate Certificate of Compliance for each wholesale fireworks location. It filed suit without pursuing administrative review, and the trial court initially issued a temporary restraining order; the Court of Appeals reversed the injunction and remanded. On remand, the trial court granted summary judgment against Celebration on its injunction and declaratory-judgment counts but, after a bench trial, awarded Celebration \$302,000 on its remaining claims. The Court of Appeals affirmed, concluding that exhaustion was unnecessary because it would be futile and the availability of an administrative remedy was doubtful. The Indiana Supreme Court reversed and remanded with instructions to dismiss for lack of subject matter jurisdiction.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the trial court with instructions to dismiss Celebration's complaint for lack of subject matter jurisdiction.

CASES CITED

- Boatwright v. Celebration Fireworks, Inc., 677 N.E.2d 1094 (Ind. Ct. App. 1997)
- Boatwright v. Celebration Fireworks, Inc., 810 N.E.2d 766, 771 (Ind. Ct. App. 2004)
- Ind. Dep't of Env'tl. Mgmt. v. Twin Eagle LLC, 798 N.E.2d 839, 844-845 (Ind. 2003)
- Town Council of New Harmony v. Parker, 726 N.E.2d 1217, 1224 (Ind. 2000)
- Austin Lakes Joint Venture v. Avon Utils., Inc., 648 N.E.2d 641, 644 (Ind. 1995)
- Weinberger v. Salfi, 422 U.S. 749, 765 (1975)
- M-Plan, Inc. v. Ind. Comprehensive Health Ins. Ass'n, 809 N.E.2d 834, 839-840 (Ind. 2004)
- Spencer v. State, 520 N.E.2d 106, 110 (Ind. Ct. App. 1988), trans. denied
- Turner v. City of Evansville, 740 N.E.2d 860, 862 (Ind. 2001)
- Greenbrier Hills, Inc. v. Boes, 473 N.E.2d 1040, 1042 (Ind. Ct. App. 1985)
- Solid Waste Agency of N. Cook County v. U.S. Army Corps of Eng'rs, 531 U.S. 159 (2001)

OPINION

SULLIVAN, J.

829 N.E.2d 979 (2005) Roger JOHNSON, Individually and as Indiana State Fire Marshal, and State of Indiana, Appellants (Defendants below), v. CELEBRATION FIREWORKS, INC., Appellee (Plaintiff below). No. 18S02-0501-CV-4. Supreme Court of Indiana. June 30, 2005. *980

Nelson D. Alexander, Julia Blackwell Gelinas, Lucy R. Dollens, Indianapolis, Attorneys for Appellants. *981 Thomas W. Blessing, Indianapolis, Attorney for Appellee.

SULLIVAN, Justice. Celebration Fireworks, Inc., filed suit against the State Fire Marshal to prevent collection of certain fees imposed on sellers of fireworks in Indiana. Celebration did not first appeal the assessment of these fees to the appropriate state agency before going to court. Indiana law required Celebration to do so, and because Celebration did not first exhaust its administrative remedies, the trial court had no subject matter jurisdiction to hear Celebration's lawsuit.

Background In Indiana, fireworks may be sold under specific circumstances depending upon their classification. Fireworks designated as legal for sale by statute ("legal fireworks") may be sold at retail to the general public. Ind.Code § 22-11-14-8 (2004). All fireworks not designated by statute as legal for sale at retail ("restricted fireworks") may be sold only at wholesale to retailers or other wholesalers who must then ship the restricted fireworks out of Indiana within five days of the date of sale.

Ind.Code § 22-11-14-10 (2004). The Indiana State Fire Marshal has been given the statutory authority to enforce the above provisions. Ind.Code § 22-11-14-9 (2004). In regulating the sale of both legal and restricted fireworks, the Fire Marshal is charged with issuing retail sales permits and wholesale Certificates of Compliance. Ind.Code §§ 22-11-14-7, -5 (2004).

Pursuant to Indiana Code Section 22-11-14-5, a wholesaler of restricted fireworks must pay a \$1,000 annual fee to operate in Indiana. The Fire Marshal has consistently interpreted this provision to require payment of the \$1,000 fee for each wholesale location a fireworks wholesaler operates within the state. Between 1991 and 1994, Celebration's operations expanded from 45 locations to 96.

During these years, Celebration complied with the Fire Marshal's requirement that it obtain a Certificate of Compliance for each separate location. In 1995, however, Celebration tendered only one application and fee for its central warehouse. Celebration then, and without seeking administrative review, filed a complaint in the trial court against the Fire Marshal and the State, asserting that, contrary to the Fire Marshal's interpretation, Indiana Code Section 22-11-14-5 only required that it obtain one Certificate of Compliance for all its wholesale locations and seeking a refund of what it considered excess fees it paid in previous years.

Celebration's complaint contained four counts: (1) an equitable action for money had and received; (2) a claim for quasi-contract; (3) a claim for permanent injunctive relief; and (4) a claim for declaratory judgment.

The trial court issued a temporary restraining order enjoining the Fire Marshal from seizing any fireworks on the basis of Celebration's failure to obtain Certificates of Compliance for each of its

locations where restricted fireworks were sold.

The State appealed the injunction, which the Court of Appeals reversed. See *Boatwright v. Celebration Fireworks, Inc.*, 677 N.E.2d 1094 (Ind.Ct.App.1997). The Court of Appeals remanded the case for a resolution of its remaining issues.

On remand, the Fire Marshal moved for and received summary judgment on counts (3) and (4) of Celebration's complaint. However, after a bench trial on counts (1) and (2), the trial court entered judgment in favor of Celebration for \$302,000.

The Fire Marshal and the State appealed the trial court's judgment, arguing that the trial court had had no subject matter jurisdiction *982 over the matter because Celebration had failed to exhaust its administrative remedies.

The Court of Appeals affirmed the judgment, holding on the issue of exhaustion that "exhaustion of remedies is not required [in this case] because compliance would be futile, and there is doubt as to the availability of an administrative remedy." *Boatwright v. Celebration Fireworks, Inc.*, 810 N.E.2d 766, 771 (Ind.Ct.App.2004).

The State sought, and we granted, transfer. 2005 LEXIS 5 (Ind. Jan. 5, 2005). Discussion I In addition to his authority to issue fireworks permits and Certificates of Compliance, the Fire Marshal also has discretionary authority in granting or denying these permits and certificates. See Ind. Admin. Code tit. 675, r. 12-9-9 (2004). Applicants wishing to challenge a decision of the Fire Marshal either granting or denying a permit or certificate have been afforded an administrative remedy to do so.

Petitioners may seek review of a decision of the Fire Marshal granting or denying a permit or certificate through an administrative proceeding conducted by the Fire Prevention and Building Safety Commission ("Commission"). *Id.* Administrative proceedings conducted by the Commission are subject to the provisions of the Administrative Orders and Procedures Act ("AOPA").

See Ind.Code §§ 22-12-7-1 to -2 (2004) (instructing that the AOPA applies to the Commission, its employees, and all employees and agents with the authority to administer or enforce a law). Under the AOPA, "[a] person may file a petition for judicial review... only after exhausting all administrative remedies available within the agency whose action is being challenged and within any other agency authorized to exercise administrative review."

Ind.Code § 4-21.5-5-4(a) (2004). In accordance with the AOPA "[w]e have repeatedly emphasized the value of completing administrative proceedings before resorting to judicial review." Ind. Dept. of Env'tl. Mgmt. v. Twin Eagle LLC, 798 N.E.2d 839, 844 (Ind.2003). See also *Town Council of New Harmony v. Parker*, 726 N.E.2d 1217, 1224 (Ind.2000) (noting "[i]t is well established that, if

an administrative remedy is available, it must be pursued before a claimant is allowed access to the courts."); *Austin Lakes Joint Venture v. Avon Utils.*

Inc., 648 N.E.2d 641, 644 (Ind.1995) (same). We have found that the exhaustion doctrine is supported by "strong policy reasons and considerations of judicial economy...." *Austin Lakes Joint Venture*, 648 N.E.2d at 644. Most notably: The exhaustion doctrine is intended to defer judicial review until controversies have been channeled through the complete administrative process.

The exhaustion requirement serves to avoid collateral, dilatory action... and to ensure the efficient, uninterrupted progression of administrative proceedings and the effective application of judicial review. It provides an agency with an opportunity "to correct its own errors, to afford the parties and the courts the benefit of [the agency's] experience and expertise, and to compile a [factual] record which is adequate for judicial review."

Id. (quoting *Weinberger v. Salfi*, 422 U.S. 749, 765, 95 S. Ct. 2457, 45 L. Ed. 2d 522 (1975)). We have also concluded that even where "the ground of the complaint is the unconstitutionality of the statute, which may be beyond the agency's power to resolve, exhaustion of administrative remedies may still be required because administrative action may resolve the case on other grounds without confronting broader legal issues."

Twin Eagle, 798 N.E.2d at *983 844. Thus, while we avoid applying the doctrine in a mechanical fashion, we recognize its strong policy rationale and adhere to it closely. *II Celebration* has conceded that it failed to exhaust all its administrative remedies prior to seeking judicial review. It asserts, however, that exhaustion was not necessary in this instance because it challenged the Fire Marshal's action requiring a wholesaler to obtain separate Certificates of Compliance for each of its wholesale locations as *ultra vires* and void.

Celebration cites our decision in *Ind. Dept. Env'tl. Mgmt. v. Twin Eagle LLC*, to support its position. The Court of Appeals also relied heavily on *Twin Eagle* in finding that *Celebration* was not required to exhaust its administrative remedies prior to seeking judicial review. *Celebration's* and the Court of Appeals' reliance on *Twin Eagle* is misplaced for the following reasons.

Twin Eagle was a declaratory judgment action brought by a real estate developer against the Indiana Department of Environmental Management challenging some interim regulations governing wetlands' development that the agency had promulgated following a decision by the United States Supreme Court^[1] stating that the development and use of certain wetlands could not be constitutionally regulated by Congress.

See *Twin Eagle*, 798 N.E.2d at 841-42. The developer in *Twin Eagle* apparently feared that the agency would apply the interim regulations to its project and sought various declarations of law as to the agency's authority to regulate in this area and, if it had authority, the validity of the interim regulations. *Id.* at 844.

We found that exhaustion of administrative remedies in *Twin Eagle* was unnecessary "[t]o the extent the issue turns on statutory construction, [and] whether an agency possesses jurisdiction over a matter [as that] is a question of law for the courts." *Id.* It was in this context that we concluded that exhaustion of administrative remedies "may not be appropriate if an agency's action is challenged as being ultra vires and void," *id.*, or otherwise beyond the scope of the agency's authority.

This case differs from *Twin Eagle* in material respect. Unlike the state agency in *Twin Eagle*, there is absolutely no question in the present case of the Fire Marshal's legal authority to license fireworks wholesalers; the question here is at most a mixed question of law and fact and, quite likely in our view, a pure question of fact as to whether each of the individual outlets selling fireworks is itself a wholesaler.

The Court of Appeals was incorrect to hold that the Fire Marshal's authority is a question of statutory construction (a pure question of law), relieving Celebration from exhausting its administrative remedies. We find this to be a question of fact properly resolved through the administrative process. See *id.* at 845.

In addition, while the Court of Appeals correctly observed that we said in *Twin Eagle*, "the plaintiff's claim, if valid, would obviate the need to go through the administrative process," *id.* at 844, that statement standing alone does not provide a basis for avoiding administrative review. It simply was a description of the *Twin Eagle* litigation. III The Court of Appeals also found that exhaustion was unnecessary in the *984 present case because it would have been "futile" for Celebration to resort to the administrative process.

Celebration Fireworks, 810 N.E.2d at 771. The court reached this conclusion on the basis that "[t]he Fire Marshal ignored requests to voluntarily change its policy interpreting the statute." *Id.* We disagree. While "exhaustion of administrative remedies may be excused if the exercise would be futile," *M-Plan, Inc. v. Ind. Comprehensive Health Ins. Ass'n*, 809 N.E.2d 834, 839 (Ind.2004), "the exhaustion requirement... should not be dispensed with lightly on grounds of 'futility.'" *Town Council of New Harmony*, 726 N.E.2d at 1224.

To prevail upon a claim of futility, "one must show that the administrative agency was powerless to effect a remedy or that it would have been impossible or fruitless and of no value under the circumstances." *M-Plan*, 809 N.E.2d at 840. Celebration does not contend that the agency was "powerless" to provide relief but rather appears to invoke the "impossibility" prong of the futility test, arguing there is no "formal mechanism in place for the review of the Fire Marshal's policies of general applicability."

Celebration Fireworks, 810 N.E.2d at 771. But the "exhaustion requirement is much more than a procedural hoop" that can be lightly dispensed with on grounds of "futility." *Town Council of New*

Harmony, 726 N.E.2d at 1224. And in fact, the agency here affirmatively argues that it has procedures for administrative review of Celebration's claims.

The law requires Celebration to invoke these procedures before seeking judicial review. The principal thrust of Celebration's futility argument actually seems to be that it believes it to be inevitable that the agency would rule against it. That may be so; Celebration's legal argument seems to us unlikely to prevail. But the mere fact that an administrative agency might refuse to provide the relief requested does not amount to futility.

Spencer v. State, 520 N.E.2d 106, 110 (Ind.Ct.App. 1988), trans. denied. And even if Celebration is unsuccessful in an administrative challenge, resort to the Commission may produce a reasoned explanation of the considerations going into the Fire Marshal's position. M-Plan, Inc., 809 N.E.2d at 839-40. That in itself would be of value before resort to the courts to resolve such an issue.

Id. (citing Turner v. City of Evansville, 740 N.E.2d 860, 862 (Ind.2001) (noting one of the benefits of exhaustion of administrative remedies is that a record for judicial review may be created)). Conclusion Failure to exhaust administrative remedies deprives the trial court of subject matter jurisdiction. Town Council of New Harmony, 726 N.E.2d at 1224 (citing Greenbrier Hills, Inc. v. Boes, 473 N.E.2d 1040, 1042 (Ind.Ct.App.1985)).

That is the situation here. Having previously granted transfer, we now reverse the trial court's judgment. We remand this matter to the trial court with instructions to dismiss Celebration's complaint for lack of subject matter jurisdiction. SHEPARD, C.J., and DICKSON, BOEHM, and RUCKER, JJ., concur. NOTES [1] Solid Waste Agency of N. Cook County v. U.S. Army Corps of Eng'rs, 531 U.S. 159, 121 S. Ct.

675, 148 L. Ed. 2d 576 (2001).