

SUPREME COURT OF ALABAMA

Town of Pike Road v. City of Montgomery

57 So. 3d 693 (Ala. 2006) · Decided September 1, 2006

SUMMARY

The Alabama Supreme Court held that an appeal concerning competing annexations by the Town of Pike Road and the City of Montgomery was premature because the validity of an earlier annexation by the City remained pending in circuit court. The court granted rehearing, withdrew and substituted its prior opinion, and stayed the appeal until the circuit court entered a final judgment.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Chief Justice Nabers; Justice See; Justice Harwood; Justice Stuart; Justice Bolin
JURISDICTION	Alabama
DECIDED	September 1, 2006
DISPOSITION	other
PROCEDURAL POSTURE	On application for rehearing, the Alabama Supreme Court withdrew and substituted its prior opinion and determined that the appeal concerning competing municipal annexations was premature.
PRECEDENTIAL VALUE	Published Alabama Supreme Court opinion; precedential
PARTIES	Town of Pike Road v. City of Montgomery

TOPICS

municipal law ordinances appellate procedure final judgment rule civil procedure

PRACTICE AREAS

municipal law appellate procedure annexation

QUESTIONS PRESENTED

- Whether the appeal concerning the priority of competing annexations could be decided before the Montgomery County Circuit Court resolved the validity of the City's earlier April 2005 annexation.
- Whether the Court should consider matters disclosed for the first time in an application for rehearing.

HOLDINGS

1. The appeal was premature because its outcome depended on issues, including the validity of the City's April 2005 annexation, that remained pending in the circuit court; the appeal was therefore stayed pending entry of a final judgment in that action.
2. As a general rule, the Court does not consider matters raised for the first time in an application for rehearing.

KEY QUOTATIONS

“However, it is now apparent that the outcome of this appeal depends on the resolution of issues that must still be determined by the circuit court, including the validity of the April 2005 annexation.” (57 So. 3d at 694)

“Until those issues are resolved, the Court cannot decide the case. The appeal is therefore stayed.” (57 So. 3d at 694)

FACTUAL BACKGROUND

The City of Montgomery and the Town of Pike Road pursued competing annexations of a 700-acre tract in Montgomery County. The parties initially represented that the tract was unincorporated and subject to either annexation, but on rehearing the City disclosed that it claimed to have annexed the tract in April 2005. The validity of that earlier annexation was pending in a Montgomery County Circuit Court action, which also came to encompass the issues raised in the appeal.

PROCEDURAL HISTORY

The Court had previously decided an appeal concerning competing annexations of a 700-acre tract by the City of Montgomery and the Town of Pike Road. On rehearing, the City disclosed an earlier April 2005 annexation and a pending Montgomery Circuit Court action challenging that annexation; the Town confirmed the pending action and amended its complaint to include the issues presented in the appeal. The Court granted rehearing, withdrew its prior opinion, substituted the present opinion, and stayed the appeal pending a final judgment in the circuit-court action.

DISPOSITION

other

REMAND INSTRUCTIONS

The appeal was stayed. The parties were instructed to notify the clerk of the Alabama Supreme Court when a final judgment was entered in the Montgomery County Circuit Court action.

CASES CITED

- Morgan Keegan & Co. v. Cunningham, 918 So. 2d 897, 908 (Ala. 2005)

OPINION

NABERS, J.

On Application for Rehearing NABERS, Chief Justice. The opinion of May 12, 2006, is withdrawn and the following is substituted therefor. On May 12, 2006, this Court decided an appeal involving competing efforts by the City of Montgomery and the Town of Pike Road to annex a 700-acre tract of land located in Montgomery County.

The parties represented to this Court that the facts were undisputed and that the issue for decision was which of two annexations — the City of Montgomery’s annexation by election (initiated in August 2005) or the Town of Pike Road’s annexation by petition (initiated in September 2005)— was entitled to priority.

On the basis of those representations and the certified documents filed by each party in its respective annexation proceeding, this Court understood it to be undisputed that the 700-acre tract was in an unincorporated area in Montgomery County and was subject to annexation by either party.¹ *694In its application for rehearing, the City of Montgomery argued that the 700-acre tract was actually not located in unincorporated territory.

The City of Montgomery advised the Court for the first time that it claimed to have annexed the tract in April 2005—four months before its annexation by election that was the subject of this appeal. Also for the first time, the City of Montgomery disclosed the existence of a pending circuit court action to decide the validity of the April 2005 annexation. Those statements in the City’s application for rehearing suggested that the appeal in this case was premature.

Accordingly, the Court ordered the Town of Pike Road to respond to the City’s application for rehearing. The Town of Pike Road’s response confirmed that the City of Montgomery had attempted to annex the tract in April 2005 and that the Town of Pike Road is challenging the April 2005 annexation in a pending action in the Montgomery Circuit Court.

The Town of Pike Road’s response also showed that the Town of Pike Road has amended its complaint in the circuit court action to include the same issues that are the subject of this appeal. After reviewing both the City’s application for rehearing and the Town of Pike Road’s response to that application, we hold that the appeal was premature.

As a general rule, the Court does not consider matters raised for the first time in an application for rehearing. *Morgan Keegan & Co. v. Cunningham*, 918 So.2d 897, 908 (Ala.2005). However, it is now apparent that the outcome of this appeal depends on the resolution of issues that must still be determined by the circuit court, including the validity of the April 2005 annexation.

Until those issues are resolved, the Court cannot decide the case. The appeal is therefore stayed. The parties shall notify the clerk of this Court when a final judgment has been entered in the action

pending in the Montgomery County Circuit Court.² APPLICATION GRANTED; OPINION OF MAY 12, 2006, WITHDRAWN; OPINION SUBSTITUTED; APPEAL STAYED. SEE, HARWOOD, STUART, and BOLIN, JJ., concur..

The City of Montgomery filed in the Montgomery County Probate Court a certified resolution stating that the property sought to be annexed "lies within the County of Montgomery, and the boundary of the said real property is contiguous and adjacent to, and borders on, the corporate limits of the City.

The said real property does not lie within the corporate limits of any other municipality.” The Town of Pike Road filed a certified copy of an ordinance stating: "The said real property lies within the County of Montgomery, and the boundary of the said real property is contiguous and adjacent to, and borders on, the corporate limits of the Town.

The said real property does not lie within the corporate limits of any other municipality.”. The parties regrettably failed to present a complete or accurate description of the relevant facts to this Court on original submission.

As a result, the parties effectively asked the Court to issue an advisory opinion, apparently hopeful that it would create a tactical advantage or facilitate a settlement in the action pending in the circuit court. The parties’ arguments to this Court thus resulted in a significant and unnecessary waste of judicial resources.