

SUPREME COURT OF TENNESSEE

The Metropolitan Government of Nashville and Davidson County, Tennessee v. The Board of Zoning Appeals of Nashville and Davidson County, Tennessee

477 S.W.3d 750 (Tenn. 2015) · No. M2013-01283-SC-R11-CV · Decided November 10, 2015

SUMMARY

The Tennessee Supreme Court held that the Metropolitan Government of Nashville and Davidson County has standing under Tennessee Code Annotated section 27-9-101 to seek judicial review of a decision by its Board of Zoning Appeals. The Court concluded that Metro qualifies as an entity that may be aggrieved when a zoning decision interferes with its ability to enforce its ordinances or adversely affects it in its corporate capacity. The Court affirmed the Court of Appeals and remanded the case to the chancery court for further proceedings.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Jeffrey S. Bivins; Sharon G. Lee; Cornelia A. Clark; Gary R. Wade; Holly Kirby
JURISDICTION	Tennessee
DECIDED	November 10, 2015
DOCKET	M2013-01283-SC-R11-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Tennessee Supreme Court granted permission to appeal under Tennessee Rule of Appellate Procedure 11 from the Court of Appeals' reversal of a chancery court dismissal of Metro's petition for a writ of certiorari. The appeal concerned Metro's standing to challenge its Board of Zoning Appeals' decision and Metro's authority to file the petition.
STANDARD OF REVIEW	A Rule 12.02(6) dismissal tests the legal sufficiency of the petition; the court accepts relevant and material allegations as true and should dismiss only if the plaintiff cannot prove facts supporting the claim and relief. Appellate review of dismissal for failure to state a claim is de novo with no presumption of correctness.

PRECEDENTIAL VALUE	Published Tennessee Supreme Court opinion; binding precedent in Tennessee.
PARTIES	CBS Outdoor, Inc., Felix Z. Wilson II Revocable Living Trust, Equitable Trust Company v. The Metropolitan Government of Nashville and Davidson County, Tennessee

TOPICS

municipal law

zoning

writ of certiorari

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Metro had standing under Tennessee Code Annotated section 27-9-101 to seek judicial review by writ of certiorari of a decision by its own Board of Zoning Appeals.
2. Whether Metro was an aggrieved party because the BZA decision allegedly interfered with Metro's ability to enforce its zoning ordinances.
3. Whether Metro had authority to file the petition for a writ of certiorari.

HOLDINGS

1. The term "anyone" in section 27-9-101 includes Metro, a public corporation, and the Board of Zoning Appeals is a board or commission functioning under state law. Metro therefore is not categorically barred from seeking judicial review of its own BZA's decision.
2. Metro established that it was an aggrieved party within the meaning of section 27-9-101 by alleging that, if the BZA decision stood, Metro would be unable to enforce certain zoning ordinances.
3. The court declined to decide whether Metro had authority to file the petition because the issue was not raised in the trial court and the record lacked sufficient proof and argument to resolve it.
4. The argument was waived because it was not raised in the motion to dismiss.

KEY QUOTATIONS

"Section 101 refers to "anyone," and we conclude that Metro, a public corporation, falls within the scope of the term "anyone."" (477 S.W.3d at 758)

"We hold that it is possible for Metro to be "aggrieved" by a decision of the BZA." (477 S.W.3d at 760)

"We hold that, in this proceeding, Metro has established that it is "aggrieved" by its allegation that, if the BZA ruling is allowed to stand, it will be unable to enforce certain of its ordinances." (477 S.W.3d at 762)

FACTUAL BACKGROUND

CBS Outdoor applied for permits to replace a static billboard with a digital billboard and to add a digital display to an existing static billboard. The Davidson County Metropolitan Department of Codes and Building Safety denied the permits, but the Board of Zoning Appeals overturned that decision and granted them. Metro alleged that the permits violated zoning-code spacing requirements and that the BZA's decision interfered with Metro's ability to enforce its ordinances.

PROCEDURAL HISTORY

CBS applied for permits to replace or modify static billboards with digital displays. After the Zoning Administrator denied the permits, the Board of Zoning Appeals reversed and granted them. Metro petitioned the Davidson County Chancery Court for a writ of certiorari, but the chancery court dismissed for lack of standing. The Court of Appeals reversed, and the Tennessee Supreme Court affirmed that judgment, holding that Metro had standing and remanding for further proceedings.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The matter was remanded to the Davidson County Chancery Court for further proceedings consistent with the opinion. The BZA should be given an opportunity to seek independent legal counsel.

CASES CITED

- Knierim v. Leatherwood, 542 S.W.2d 806 (Tenn. 1976)
- Webb v. Nashville Area Habitat for Humanity, Inc., 346 S.W.3d 422 (Tenn. 2011)
- Leach v. Taylor, 124 S.W.3d 87 (Tenn. 2004)
- Doe v. Sundquist, 2 S.W.3d 919 (Tenn. 1999)
- SunTrust Bank, Nashville v. Johnson, 46 S.W.3d 216 (Tenn. Ct. App. 2000)
- Lynch v. City of Jellico, 205 S.W.3d 384 (Tenn. 2006)
- Wood v. Metropolitan Government of Nashville and Davidson County, 196 S.W.3d 152 (Tenn. Ct. App. 2005)
- Federal Election Commission v. Akins, 524 U.S. 11 (1998)
- State v. Harrison, 270 S.W.3d 21 (Tenn. 2008)
- West v. Schofield, 2015 WL 4035399 (Tenn. July 2, 2015)
- Allen v. Wright, 468 U.S. 737 (1984)
- City of Memphis v. Hargett, 414 S.W.3d 88 (Tenn. 2013)
- Osborn v. Marr, 127 S.W.3d 737 (Tenn. 2004)
- Lee Medical, Inc. v. Beecher, 312 S.W.3d 515 (Tenn. 2010)
- Larsen-Ball v. Ball, 301 S.W.3d 228 (Tenn. 2010)
- Mills v. Fulmarque, Inc., 360 S.W.3d 362 (Tenn. 2012)

- *City of Brentwood v. Metropolitan Board of Zoning Appeals*, 149 S.W.3d 49 (Tenn. Ct. App. 2004)
- *Fallin v. Knox County Board of Commissioners*, 656 S.W.2d 338 (Tenn. 1983)
- *Demonbreun v. Metropolitan Board of Zoning Appeals*, 2011 WL 2416722 (Tenn. Ct. App. June 10, 2011)
- *Hoover, Inc. v. Metropolitan Board of Zoning Appeals*, 924 S.W.2d 900 (Tenn. Ct. App. 1996)
- *Gregory v. Metropolitan Board of Zoning Appeals of the Metropolitan Government of Nashville and Davidson County*, 1991 WL 17174 (Tenn. Ct. App. Feb. 15, 1991)
- *411 Partnership v. Knox County*, 372 S.W.3d 582 (Tenn. Ct. App. 2011)
- *Board of Supervisors of Fairfax County v. Board of Zoning Appeals*, 604 S.E.2d 7 (Va. 2004)
- *Ex parte City of Huntsville*, 684 So. 2d 123 (Ala. 1996)
- *City of Burley v. McCaslin Lumber Co.*, 693 P.2d 1108 (Idaho Ct. App. 1984)
- *Reichard v. Zoning Board of Appeals*, 290 N.E.2d 349 (Ill. App. Ct. 1972)
- *Crosby v. Town of Belgrade*, 562 A.2d 1228 (Me. 1989)
- *City of Reno v. Harris*, 895 P.2d 663 (Nev. 1995)
- *Commco, Inc. v. Amelkin*, 465 N.E.2d 314 (N.Y. 1984)
- *Lower Paxton Township v. Fieseler Neon Signs*, 391 A.2d 720 (Pa. Commw. Ct. 1978)
- *City of East Providence v. Shell Oil Co.*, 290 A.2d 915 (R.I. 1972)
- *City of East Point v. Crosby & Stephens, Inc.*, 160 S.E.2d 839 (Ga. Ct. App. 1968)
- *Common Council of Michigan City v. Board of Zoning Appeals*, 881 N.E.2d 1012 (Ind. Ct. App. 2008)
- *Sabourin v. Town of Essex*, 505 A.2d 669 (Vt. 1985)
- *Dick Broadcasting Co. of Tennessee v. Oak Ridge FM, Inc.*, 395 S.W.3d 653 (Tenn. 2013)
- *Dye v. Witco Corp.*, 216 S.W.3d 317 (Tenn. 2007)
- *Civil Service Merit Board of Knoxville v. Burson*, 816 S.W.2d 725 (Tenn. 1991)

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