L. Gutsell

13-1243

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

RECEIVED
NOV 27 2013 MD
JEFFERSON COUNTY
CIRCUIT CLERK

GARY L. CAPRIOTTI,
EDWARD R. MOORE,
EDWARD DUNLEAVY,
SHEPHERDSTOWN BATTLEFIELD PRESERVATION ASSOCIATION, INC.
Petitioner,

v. **Civil Action No. 11-C-325**

JEFFERSON COUNTY PLANNING COMMISSION,
A public body,
Respondent.

v.

FAR AWAY FARM, LLC,
Intervenor.

SUPPLEMENTAL ORDER TO ORDER GRANTING JEFFERSON COUNTY PLANNING COMMISSION'S "MOTION TO RECONSIDER"

I. BACKGROUND

On November 8, 2013, this Court entered an order titled "ORDER GRANTING JEFFERSON COUNTY PLANNING COMMISSION'S "MOTION TO RECONSIDER." It appears from a letter received by one of the parties and filed with the Court that this order left one issue unresolved. The remaining issue to be resolved is whether or not the Respondent abided by the requirement of W.Va. Code § 6-9A-4(11), herein referred to as "Exception 11." The particular requirement in question demands that the Respondent report and enter into its minutes the terms of the settlement that was approved or considered in closed session "within a reasonable time after the settlement" was concluded.

II. ANALYSIS

In the November 8, 2013 order, this Court noted that "summary judgment as to this particular issue was improper." Upon revisiting the issue, it appears that while summary judgment in favor of Petitioner was improper, as mentioned in the November 8 order, a determination on the issue should be made in favor of the petitioner in light of the arguments put forward by all parties.

In the Defendant's Motion to Reconsider and Set Aside Partial Summary Judgment filed on August 20, 2013, the Jefferson County Planning Commission ("JCPC") argued that the Court had improperly granted summary judgment on the issue of whether the JCPC had disclosed its minutes "within a reasonable time after the settlement [was] concluded" for two reasons: 1) the issue of timeliness was not raised in the civil complaint and 2) the "sparse record" supports the existence of a genuine issue of material fact as to when the settlement itself had concluded. Defendant's Motion to Reconsider and Set Aside Partial Summary Judgment, 7. The JCPC also argued that the clear language of both the "Exceptions" and the "Minutes" sections of the Act "do not apply to proceedings which qualify under section four, the 'Exceptions' section of the OMA." Defendant's Motion to Reconsider and Set Aside Partial Summary Judgment, 12-13. Thus the JCPC is of the mindset that the Court "erred when it ignored Exceptions 11 & 12 and imposed notice, agenda, and minutes requirements." Defendant's Motion to Reconsider and Set Aside Partial Summary Judgment, 13.

However, in the Petitioner's Response to the Planning Commission's Motion to Reconsider and Set Aside Partial Summary Judgment filed on August 30, 2013, the Petitioner persuasively posits that not only was this issue of timely disclosure "put before the Court," but that the JCPC even "helped to keep it there." Petitioner's Response to the Planning

Commission's Motion to Reconsider and Set Aside Partial Summary Judgment, 13. Accordingly, this Court will now determine whether the JCPC did in fact abide by the requirement of Exception 11, notwithstanding the JCPC's argument that the reporting requirements do not apply given the facts of this case.

In Petitioners' Motion and Memorandum of Law for Partial Summary Judgment filed on April 3, 2012, the Petitioner stated that "Although our Supreme Court has never determined precisely what satisfies the 'reasonable time' requirement, Petitioners assert that a delay of more tha[n] three months in reporting its settlement of Civil Action No. 11-C-125 not only fails to satisfy the Act's requirement, but is offensive to the very policy and purpose of the Act." Petitioners' Motion and Memorandum of Law for Partial Summary Judgment, 9. In its own Order Granting Petitioners' Motion for Partial Summary Judgment, the Court adopted much of the same conclusory language, given the concession that this was a gray area of the law.

Yet upon revisiting this particular issue, this Court is convinced by the arguments set forth in Far Away Farm's Opposition to Petitioners' Motion for Partial Summary Judgment and Cross-Motion for Summary Judgment, filed on April 20, 2012. The Intervenor first argues that the reporting requirements were met because "the terms were disclosed in the public record of this Court after this Court signed the Order." Far Away Farm's Opposition to Petitioners' Motion for Partial Summary Judgment and Cross-Motion for Summary Judgment, 21. Even if it is assumed that the settlement was concluded not upon the signing of the order, but on July 26, 2011, the terms of the settlement were made public on August 3, 2011, only eight days later. This does not smack of an unreasonable time after concluding the settlement, whatever that measurement may be. Furthermore, the Intervenor argues that a "copy of the Agreed Order containing the complete terms of the settlement" was received by counsel for Petitioner on

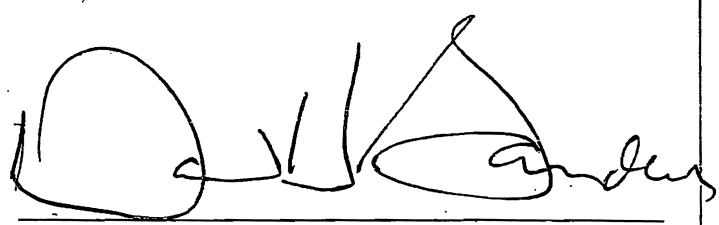
August 8, 2013. Far Away Farm's Opposition to Petitioners' Motion for Partial Summary Judgment and Cross-Motion for Summary Judgment, 21-2. Given that the terms of the settlement were disclosed to the public well before the official publication of the meeting minutes on October 11, 2011, this latter date ought to be analyzed within this context, and not within a vacuum, as to the question of reasonable time. Therefore, this Court finds that the Respondent did not violate the reporting requirements, if they do apply on these facts, found in the OMA.

III. CONCLUSION

WHEREFORE, this Court **GRANTS** Respondent's Rule 60(b) Motion / Motion for Relief from a Judgment or Order, i.e. "Motion for Reconsideration," to reconsider summary judgment on the issue of whether the Respondent disclosed the terms of the settlement in its minutes "within a reasonable time after the settlement [was] concluded." This Court further **GRANTS** summary judgment on the issue in the Respondent's favor.

It is further ORDERED that the Clerk of this Court shall retire this matter from the Docket and transmit an attested copy of this Order, once entered, to all parties and counsel of record. This is a **FINAL ORDER**, which either party may appeal to the West Virginia Supreme Court of Appeals pursuant to the Rules of Appellate Procedure. The deadline for filing notice of appeal is 30 days and the time to perfect the appeal is four months. See W. Va. R. App. P. 5.

ENTERED: 11/26/13



DAVID H. SANDERS, JUDGE OF THE 23RD JUDICIAL CIRCUIT, WEST VIRGINIA

A TRUE COPY
ATTEST:

LAURA E. STORM
CLERK, CIRCUIT COURT
JEFFERSON COUNTY, W.VA.

BY B. Crouse
DEPUTY CLERK

L. Gutsell
S. Groh
R. Gay
J.C. Plann. Comm
Far Away Farm, LLC c/o R. Gay
G. Capriotti
E. Moore
E. Dunlevy
C. Atkins Pres. Comm 12.2.13 BC