2013 IL App (2d) 13-0472-U
No. 2-13-0472
Order filed November 27, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE *ex rel*. R and D OLSON LIMITED PARTNERSHIP, ARON OLSON, THE BRUNO and LILLIAN MORETTI FAMILY LIMITED PARTNERSHIP, CHICAGO TITLE LAND TRUST COMPANY as Successor Trustee under Trust No. 20131, SUZANNE CECCHIN as Trustee under the Suzanne Cecchin Trust Dated October 26, 1995, and GRABER CONCRETE PIPE COMPANY,	)	Appeal from the Circuit Court of Du Page County.
Plaintiffs-Appellees,	)	
v.	)	No. 12-CH-5085
THE VILLAGE OF GLENDALE HEIGHTS,	)	Honorable Bonnie M. Wheaton,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order granting summary judgment in favor of plaintiffs in this *quo warranto* action was reversed where defendant met its burden of demonstrating that it properly exercised valid authority to annex the subject territory. The cause was remanded with directions to enter summary judgment in defendant's favor.

¶ 2 In this *quo warranto* case, plaintiffs, owners of property in unincorporated Du Page County, challenged the authority of defendant, the Village of Glendale Heights (Village), to annex the subject territory. The Village appeals from the trial court's order granting plaintiffs' motion for summary judgment and denying the Village's cross-motion for summary judgment. The court's order returned the subject territory to its previous unincorporated status. For the following reasons, we reverse.

¶ 3 BACKGROUND

¶ 4 On August 22, 2012, pursuant to section 7-1-13(b) of the Illinois Municipal Code (Code) (65 ILCS 5/7-1-13(b) (West 2012)), the Village provided notice to the taxpayers of record that it contemplated annexing territory containing property owned collectively by plaintiffs in unincorporated Du Page County. The notice indicated that the Village intended to consider an ordinance authorizing the annexation of the subject territory at a meeting on September 6, 2012, at 7 p.m. Pursuant to section 7-1-8 of the Code (65 ILCS 5/7-1-8 (West 2012)), on September 5, 2012, at 4:10 p.m., five of the plaintiffs (R and D Olson Limited Partnership; Aron Olson; the Bruno and Lillian Moretti Family Limited Partnership; Chicago Title Land Trust Company, as successor trustee under Trust No. 20131; and Suzanne Cecchin, as trustee under the Suzanne Cecchin Trust Dated October 26, 1995) filed petitions with the clerk of the Village of Bloomingdale (Bloomingdale), requesting that Bloomingdale annex the subject territory "in accordance with the terms of an Annexation Agreement to be negotiated." On September 6, 2012, at 10:12 a.m., plaintiff, Graber Concrete Pipe Company, filed a substantially similar petition with Bloomingdale. Sometime after 7 p.m. on September 6, 2012, the Village passed its Ordinance No. 2012-56, annexing the subject territory. On September 12, 2012, the Village recorded a certified copy of its ordinance with its plat of annexation in the Du Page County Recorder's Office.

¶ 5 By letters dated October 4, 2012, plaintiffs (through their attorney) submitted requests to the Illinois Attorney General's Office and to the Du Page County State's Attorney's Office to file a *quo warranto* suit (735 ILCS 5/18-101 *et seq*. (West 2012)) against the Village on behalf of the People of the State of Illinois. On October 12, 2012, after those requests were declined, plaintiffs filed in the trial court an application for leave to file a complaint in *quo warranto*. On December 13, 2012, the trial court granted plaintiffs leave to file their *quo warranto* complaint *instanter*, which they did.

¶ 6 The parties subsequently filed cross-motions for summary judgment, in which they argued the effect of plaintiffs' filing of petitions in Bloomingdale, framing the issue as one of priority of annexation. On April 19, 2013, the trial court heard argument and agreed with plaintiffs that the Bloomingdale annexation proceeding had priority over the Village's proceeding. Accordingly, the court granted plaintiffs' motion for summary judgment and denied the Village's motion for summary judgment. The court's order stated that the subject territory was disconnected and returned to unincorporated status; it directed the Village to record a plat of disconnection. The Village timely appealed.

¶ 7 ANALYSIS

¶ 8 Summary judgment is proper only where "the pleadings, depositions, and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2012); *Adames v. Sheahan*, 233 Ill. 2d 276, 295 (2009). Parties filing cross-motions for summary judgment invite the court to decide the issues as a matter of law. *Trannel v. Prairie Ridge Media, Inc.*, 2013 IL App (2d) 120725, ¶ 13. Our review is *de novo*. *Trannel*, 2013 IL App (2d) 120725, ¶ 13.

¶ 9 "A *quo warranto* proceeding is the proper means by which to challenge an annexation that

has been accomplished." *People ex rel. T-Mobile, Inc. v. Village of Hawthorn Woods*, 2012 IL App (2d) 110192, ¶ 28. In a *quo warranto* proceeding, the defendant bears the burden of justifying the exercise of jurisdiction over territory. *Village of Mundelein v. Village of Long Grove*, 219 Ill. App. 3d 853, 867 (1991). The term jurisdiction in this context is synonymous with "power" or "authority." *People ex rel. Hathorne v. Morrow*, 181 Ill. 315, 322 (1899). The only issue to be determined is whether the defendant had statutory authority to annex. *People ex rel. First National Bank of Chicago v. City of North Chicago*, 158 Ill. App. 3d 85, 104 (1987). Thus, to justify its annexation, the defendant bears the burden of demonstrating that it complied with the relevant statute. *Village of Mundelein*, 219 Ill. App. 3d at 868.

¶ 10 The Code provides for several methods of annexation. *People ex rel. Village of Northbrook v. Village of Glenview*, 194 Ill. App. 3d 560, 565 (1989). Relevant in the instant case are section 7-1-8, under which plaintiffs proceeded, and section 7-1-13, under which the Village proceeded. Section 7-1-8 permits a voluntary annexation upon the filing of a petition with the municipal clerk by all owners of record and 51% of the electors residing in the subject territory and upon the subsequent majority vote by the corporate authorities. 65 ILCS 5/7-1-8 (West 2012); *Village of Northbrook*, 194 Ill. App. 3d at 565. Section 7-1-13 provides for an involuntary annexation of territory that contains 60 acres or less and is wholly bounded by, *inter alia*, one or more municipalities. 65 ILCS 5/7-1-13(a) (West 2012); *Village of Mundelein v. Village of Long Grove*, 219 Ill. App. 3d 853, 860 (1991). Subsection (b) of section 7-1-13 contains notice requirements imposed upon the corporate authorities seeking to involuntarily annex territory, including: a 10-day notice by publication in a newspaper; a 15-day written notice to the taxpayers of record; and, if the territory lies within a township, a 10-day written notice to the township supervisor. 65 ILCS 5/7-1-13(b) (West 2012). Subsection (c) of

section 7-1-13 provides that, when notice is given pursuant to subsection (b), "no other municipality may annex the proposed territory for a period of 60 days from the date the notice is mailed or delivered to the taxpayer of record unless that other municipality has initiated annexation proceedings or a valid petition" as described in, *inter alia*, section 7-1-8, prior to the publication and mailing of the notices required in subsection (b). 65 ILCS 5/7-1-13(c) (West 2012).

¶ 11 Here, the parties do not dispute the facts; rather, they dispute the legal effects of those facts. It is undisputed that the subject territory met the requirements of section 7-1-13(a), and that the Village complied with the notice requirements of section 7-1-13(b). After the Village gave notice on August 22, 2012, but before it passed its annexation ordinance on September 6, 2012, plaintiffs filed their section 7-1-8 petitions in Bloomingdale. The Village passed its annexation ordinance after plaintiffs filed their petitions in Bloomingdale, but within the 60-day period during which section 7-1-13(c) prohibited Bloomingdale from annexing the subject territory. We conclude from the undisputed facts that the Village complied with section 7-1-13. Thus, in this *quo warranto* suit, the Village met its burden of justifying its annexation. See *Village of Mundelein*, 219 Ill. App. 3d at 868 (explaining that a *quo warranto* defendant bears the burden of justifying its annexation by showing that it complied with the relevant statute).

¶ 12 Notwithstanding the Village's statutory compliance, plaintiffs contend that the Village lost authority to proceed with its annexation when plaintiffs filed their section 7-1-8 petitions in Bloomingdale. According to plaintiffs, their filing of the petitions gave Bloomingdale priority over the Village's proceeding.

¶ 13 In cases adjudicating the rights of two entities that have completed annexations of the same territory, courts explain that priority refers to "the well-established concept that multiple overlapping

annexation proceedings must generally be considered and completed in the order in which they were initiated." *Village of Mundelein*, 219 Ill. App. 3d at 858-59. Because "two annexation proceedings involving the same territory cannot legally be pending at the same time, *** priority is afforded to the proceeding 'initiated' first in time." *People ex rel. City of Leland Grove v. City of Springfield*, 166 Ill. App. 3d 943, 946 (1988) (adjudicating the rights of the parties, where both had completed annexations of the same territory); see also *Village of Mundelein*, 219 Ill. App. 3d at 868 (same, and noting that, once the defendant justified its exercise of authority, the burden shifted to the plaintiff to prove that its annexation had been proper). It is well settled that a section 7-1-8 proceeding is considered legally initiated upon the filing of the petition by the landowners. *Village of Mundelein*, 219 Ill. App. 3d at 859 (citing *People ex rel. Village of Worth v. Ihde*, 23 Ill. 2d 63, 67-68 (1961)). The issue of when a section 7-1-13 proceeding is legally initiated was decided for the first time in *Leland Grove*, where the court held that initiation occurs when the municipality passes its annexation ordinance—not when the municipality gives notice of its intent to annex. *Leland Grove*, 166 Ill. App. 3d at 946-49; see also *People ex rel. Village of Orland Hills v. Village of Orland Park*, 316 Ill. App. 3d 327, 337-38 (2000) (citing *Leland Grove* for the same proposition); *Village of Mundelein*, 219 Ill. App. 3d at 859 (same).

¶ 14 The Village points out that, following *Leland Grove* and its progeny, the legislature enacted Public Act 95-931 (eff. Jan. 1, 2009), which amended section 7-1-13. In the amendment, the legislature created the 15-day notice requirement to the taxpayers in subsection (b). Also, the legislature added subsection (c), providing the 60-day prohibition on annexation by any other entity (that did not initiate an annexation proceeding prior to notice being given) when a municipality has given notice of its intent to involuntarily annex the territory. The Village contends that the plain

language of section 7-1-13, as amended post-*Leland Grove*, compels the conclusion that the Village's annexation proceeding had priority over plaintiffs' initiation of the Bloomingdale annexation proceeding. The Village reasons that, based on the 60-day waiting period in subsection (c), during which Bloomingdale could not annex the territory, the Village could annex under subsections (a) and (b), so long as the Village's notice preceded plaintiffs' initiation in Bloomingdale. Thus, according to the Village, the legislature intended to create a new method of determining priority in section 7-1-13 cases. Plaintiffs counter that the plain language of section 7-1-13 reveals no legislative intent to establish a new method of determining priority and that *Leland Grove* is still good law. Plaintiffs maintain that, under *Leland Grove*, priority attached to the Bloomingdale proceeding, rendering the Village without authority to pass its annexation ordinance.

¶ 15 We disagree with the parties' characterization of the issue as one of priority. Even assuming *arguendo* that plaintiffs are correct that Bloomingdale obtained priority when plaintiffs initiated that proceeding by filing their petitions, it would have had no legal effect in the factual scenario presented here. Priority becomes relevant only when two entities have annexed the same territory; here, there was only one completed annexation—the Village's. Plaintiffs' petitions constituted a request that Bloomingdale annex the territory. Plaintiffs themselves cannot annex their property to Bloomingdale; they have no right to be annexed; and they enjoy no right of priority in themselves. Plaintiffs' *quo warranto* action was simply a challenge to the Village's authority to annex the subject territory, calling for an adjudication of whether the Village acted within its statutory authority. Bloomingdale was not a party; therefore, any rights that Bloomingdale might have had simply were not at issue.

¶ 16 Indeed, deciding the issue of priority on these facts would require us to speculate that

Bloomingdale will annex the territory in the future. Given that Bloomingdale is not a party in the case before us, rendering a decision as to whether Bloomingdale would have priority if it were to annex the territory in the future would result in an advisory opinion. See *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 20 ("An opinion is advisory if it is impossible for this court to grant effectual relief to either party." (Internal quotation marks omitted.)). "Advisory opinions are to be avoided." *Oliveira v. Amoco Oil Co.*, 201 Ill. 2d 134, 157 (2002); see also *Smart Growth Sugar Grove, LLC v. Village of Sugar Grove*, 375 Ill. App. 3d 780, 789-90 (2007) (declining to render an advisory opinion regarding whether a mere proposed action would violate the plaintiff's rights). Accordingly, we do not reach the issue of the legislature's intent regarding priority in section 7-1-13.

¶ 17 Given our conclusion that priority was not an issue, we need not address the parties' arguments regarding whether Bloomingdale lost priority by abandoning its proceedings.

¶ 18 Plaintiffs point out that Illinois public policy favors voluntary annexations over involuntary annexations. See *Village of Northbrook*, 194 Ill. App. 3d at 565 ("There is strong public policy that the land owners of the property to be annexed have the ultimate decision."). Still, acting within the bounds of its authority, our legislature saw fit to enact section 7-1-13, providing for involuntary annexations, such as occurred here. *In re Petition to Annex Certain Territory to Village of North Barrington*, 144 Ill. 2d 353, 361 (1991) ("It is well established that the legislature alone has the authority to allow or require the alteration of municipal boundaries by annexation or otherwise."). While this statutory provision may appear unfair to individual landowners, we are bound by the law. Plaintiffs make no argument that the involuntary annexation provision is invalid. Moreover, plaintiffs' complaint that the Village did nothing to ameliorate their dissatisfaction with the Village's zoning ordinances has no bearing on the legality of the Village's actions.

¶ 19 In sum, the undisputed facts show that plaintiffs' section 7-1-8 initiation of the Bloomingdale annexation proceeding occurred after the Village's section 7-1-13(b) notice to the taxpayers of record. Under section 7-1-13(c), Bloomingdale was prohibited from annexing the subject territory for 60 days from the date of notice. When the Village passed its annexation ordinance within those 60 days, it had the statutory authority to do so. Plaintiffs raised no legally relevant argument to invalidate the Village's authority. Accordingly, the Village was entitled to judgment as a matter of law in plaintiffs' *quo warranto* action, and we reverse the trial court's decision.

¶ 20 For the foregoing reasons, we reverse the judgment of the circuit court of Du Page County and remand for entry of summary judgment in favor of the Village.

¶ 21 Reversed and remanded with directions.