IN THE COURT OF APPEALS OF IOWA

FILED
MAY 8 1985
CLERK SUPREME COURT

BIRD CHEVROLET COMPANY; PATRICK C. and NANCY L. CHEW; FIRST NORTHWESTERN TRUST COMPANY OF SOUTH DAKOTA, as Trustee of the Common Stock Trust of ELLIS L. LEVITT; ALFRED and EDNA MARY HAMMERAND; HOLIDAY OIL DISTRIBUTING, INC.; KEY CITY INVESTMENT CO.; LYLE F. and GRACE M. KOPP; MARION REALTY CO.; MIDWEST DEVELOPERS, INC.; R & S INVESTMENT CORPORATION; JEROME P. and PATRICIA L. SCHILTZ; DANIEL L. and MARY JANE DRISCOLL; SIEG-DUBUQUE COMPANY; and THOMAS D. and MARIAN WAIS,

Plaintiffs-Appellants,

vs.

THE CITY OF DUBUQUE, IOWA,

Defendant-Appellee.

Filed May 28, 1985

5-64
84-1043

Appeal from the Iowa District Court for Dubuque County - Thomas H. Nelson, Judge.

Plaintiffs appeal from judgment on the pleadings granted to defendant in an action to enjoin defendant from collecting special assessment for road improvement project. AFFIRMED.

Robert M. Bertsch and Chad C. Leitch of O'Connor & Thomas, P.C., Dubuque, for plaintiffs-appellants.

Barry A. Lindahl, City Solicitor, Dubuque, for defendant-appellee.

Heard by Snell, P.J., and Schlegel and Sackett, JJ.

PER CURIAM

On April 20, 1984, the plaintiffs, owners of property located adjacent to John F. Kennedy Road in Dubuque, filed a petition seeking an injunction against the city. The petition alleged that in 1979 the Dubuque city council voted for improvements to be made on John F. Kennedy Road, with the cost of the project to be paid by federal and municipal funds and not by special assessment. The plaintiffs asserted that the city council and various representatives of the city agreed with the plaintiffs that in exchange for the right to split the project into two stages, the city would not specially assess the adjacent properties for either stage. The first stage was completed with no special assessment imposed. On April 16, 1984, the city council voted for the second stage to be partially paid by special assessment. The plaintiffs asserted that they relied on the prior agreement to their detriment. They alleged that the special assessment was void and illegal on the grounds that it: (1) was inequitable treatment of property owners as taxpayers; (2) violated due process; (3) was arbitrary, capricious and unreasonable so as to constitute an unconstitutional taking; (4) was unequal apportionment of the tax burden; (5) was discriminatory taxation; (6) constituted fraud; and (7) was ultra vires. They sought to enjoin the city from collecting the assessment.

The city answered and admitted resolutions passed regarding the road improvement. The answer stated that the special assessment would pay for one-half of the project cost. Attached to the answer were copies of the council's resolutions. In the first section of its answer the city denied the agreement not to impose a special assessment on either stage. The second section of the answer hypothetically admitted the agreement as permitted by Iowa R. Civ. P. 69(b).

Subsequently, the city moved for judgment on the pleadings with regard to its second defense.

On May 29, 1984, the district court entered its decree. The court found that it had no jurisdiction to restrain the action of the city council by injunction unless

the action was absolutely void. The court noted that the 1984 city council was comprised of different members and organized under different statutory authority than the 1979 council. The court concluded that the 1979 council could not bind the 1980 council and that the plaintiffs presented no facts to support their allegation of detrimental reliance. The city's motion for judgment on the pleadings was sustained and the plaintiffs' petition was dismissed.

On June 5, 1984, the plaintiffs filed a motion for leave to amend their petition. The motion was denied on June 19, 1984.

On appeal, plaintiffs assert that: (1) the trial court erred by granting defendant's judgment on the pleadings when only one of the several theories asserted was uncontroverted; (2) the judgment on the pleadings was inappropriate due to the insufficient factual basis and the trial court's consideration of evidence which was not a part of the record; and (3) the trial court erred by ruling that it could not enjoin the city from imposing the special assessment.

This action was tried in equity. Our scope of review is de novo. Iowa R. App. P. 4.

After reviewing the record, we conclude that the trial court properly granted the motion for judgment on the pleadings.

Iowa Rule of Civil Procedure sets forth the requirements for a judgment on the pleadings: A judgment on the pleadings is appropriate only when the pleadings, taken alone, entitle a party to a judgment. Matters outside the pleadings should not be considered. Hurd v. Odgaard, 297 N.W.2d 355, 356 (Iowa 1980).

Appellants argue that the petition did present factual questions and that the trial court acted improperly in granting the motion. Appellants point to the following facts to support their argument: (1) the petition contained seven various theories entitling them to relief; (2) under notice pleading they need only provide "fair notice" of their claims; (3) as a matter of law estoppel may be applied to a municipality and there is a factual issue of whether it should apply in this case. If

this were an action for damages, these arguments would probably render a judgment on the pleadings improper. However, the plaintiffs here are seeking an injunction to enjoin the city from imposing the special assessment. The sole issue then is whether the plaintiffs are entitled to any relief from the special assessment imposed by the 1984 city council. Specifically, the issue is whether the assessment may be imposed by the 1984 city council when the paving project was approved by the 1979 city council without requiring funding by special assessment and the first half of the project was completed without a special assessment being imposed. We rule that the plaintiffs are not entitled to the relief sought.

The city council, in enacting the resolution requiring the special assessment, was acting in its legislative capacity. Iowa Code § 384.51 (1983); Slater v. Incorporated Town of Adel, 324 N.W.2d 482, 487 (Iowa 1982). It is a well established rule that in legislative matters a town council cannot bind its successors." Hanna v. Rathje, 171 N.W.2d 876, 880 (Iowa 1969). "One council may not by an ordinance bind itself or its successors so as to prevent free legislation in matters of municipal government." Id.

Therefore, even if the 1979 city council had told the plaintiffs that there would be no special assessment, its actions are not binding on itself or on the 1984 council.

We find that the trial court acted properly in taking judicial notice of the fact that the composition of the Dubuque City Council had changed between 1979 and 1984. Iowa Rule of Evidence 201(c) allows the trial court discretion to take judicial notice of facts which are "not subject to reasonable dispute" because they are either "(1) generally known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned." Iowa R. of Evid. 201(b). We conclude there was no abuse of discretion in taking judicial notice of the change in the composition of the Dubuque City Council.

The findings of the trial court are affirmed.

AFFIRMED.