IN THE COURT OF APPEALS OF IOWA

No. 8-355 / 97-1506

FRANCIS J. PRUSS,

Petitioner-Appellant,

vs.

CITY DEVELOPMENT BOARD,

Respondent-Appellee.

FILED
AUG 28 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, Lynne E. Brady, Judge.

Petitioner appeals from the district court's ruling dismissing his petition for judicial review. **AFFIRMED.**

Francis J. Pruss, Cedar Rapids, pro se.

Thomas J. Miller, Attorney General, and Christie J. Scase, Assistant Attorney General, for appellee.

Considered by Cady, C.J., and Vogel and Mahan, JJ.

MAHAN, J.

Francis Pruss appeals the district court's decision to dismiss his petition for judicial review. Pruss argues the district court erred when it determined the decision by the City Development Board (CDB) to table the City of Hiawatha's petition for involuntary annexation was not a final agency action. We affirm.

This case involves four applications for voluntary annexation and one petition for involuntary annexation:

1) application for voluntary annexation of territory to the City of Cedar Rapids;
2) petition for involuntary boundary change (involuntary annexation) from City of Hiawatha;
3) a second application for voluntary annexation to the City of Cedar Rapids;
4) an application for voluntary annexation to the City of Robins; and
5) an application for voluntary annexation to the City of Hiawatha.

The various proposals had areas of common territory. In January 1997, the CDB scheduled hearings on the voluntary applications for February, and tabled action on the involuntary petition pending action on the voluntary applications.

In March 1997, the CDB approved Cedar Rapids' first application, which included a significant portion of the territory included in Hiawatha's involuntary petition. In April 1997, Pruss filed a motion to dismiss the Hiawatha petition with the CDB. Later in April, the CDB voted unanimously to continue tabling the Hiawatha petition until the competing voluntary annexations were finalized. In May 1997, the CDB heard arguments from Pruss in support of his motion and voted unanimously to deny the motion to dismiss.

Pruss next filed a petition for judicial review with the district court. The district court, upon motion by the CDB, dismissed the action. In making its ruling, the district court stated:

> A district court does not conduct interlocutory judicial review of preliminary procedural decisions of administrative agencies. In this case there has not been a final agency action. Therefore, this case is now dismissed. The Court has no subject matter jurisdiction.

I. STANDARD OF REVIEW. Our scope of review in this case is limited by Iowa Code sections 17A.19, 17A.20, and 368.22 (1997). *City of Waukee v. City Development Bd.*, 514 N.W.2d 83, 85 (Iowa 1994). Section 368.22 provides:

> The court's review on appeal of a decision is limited to questions relating to jurisdiction, regularity of proceedings, and whether the decision appealed from is arbitrary, unreasonable, or without substantial supporting evidence. The court may reverse and remand a decision of the board or a committee, with appropriate directions. The following portions of section 17A.19 are not applicable to this chapter:
>
> . . . .
>
> 3. Subsection 8.

We strictly construe statutes delineating a court's appellate jurisdiction with regard to administrative appeals. *City of Waukee*, 514 N.W.2d at 85. Thus, our review is limited to questions relating to jurisdiction, regularity of proceedings, and whether the decision appealed from is arbitrary, unreasonable, or without substantial evidence. *Id.* Our review of the district court is limited to the sole question of whether the district court correctly applied the law. *Des Moines v. City Development Bd.*, 473 N.W.2d 197, 199 (Iowa 1991). The district court may not address the issue presented by Pruss if there is no final agency action. Iowa Code § 17A.19(1).

II. FINAL AGENCY ACTION. Pruss argues the CDB is under a legislative directive to initiate appropriate proceedings on an involuntary petition within ninety days of its filing or dismiss the petition. Pruss further contends once the CDB refused to direct the appointment of local representatives and ninety days had expired following the filing of Hiawatha's involuntary annexation petition, the only decision left for the CDB to make was to dismiss Hiawatha's petition.

Under the Iowa Administrative Procedure Act, the term "agency action" includes a decision not to act or the failure to act or perform a duty. Iowa Code § 17A.2(2). When a petition for an involuntary annexation is submitted, "Within ninety days of receipt of the petition, the board shall *initiate appropriate proceedings or dismiss the petition.*" Iowa Code § 368.11 (emphasis added). However section 368.12 provides:

> The board may dismiss the petition *only if it finds* that the petition does not meet the requirements of this chapter, or that substantially the same . . . boundary adjustment has been disapproved by a committee formed to consider the proposal, or by the voters within the two years prior to the date the petition is filed with the board, or that the territory to be annexed or a portion of that territory had been voluntarily annexed under section 368.7.

An annexation is complete under section 368.7 "when the board has filed and recorded copies of applicable portions of the proceedings as required by subsection 368.2, subsection 2."

> Upon proper filing and expiration of time for appeal, the [annexation] is complete. *However*, if an appeal to any of the

> proceedings is pending, completion does not occur until the appeal is decided, unless a subsequent date is provided in the proposal.

Iowa Code § 368.20 (emphasis added).

While the territory in the applications for voluntary annexation included some of the territory in the petition for involuntary annexation, the land has not yet been annexed. The CDB has approved the annexations and performed the appropriate filings; however, under section 368.20, the annexations are not complete because appeals have been filed. Until the appeal process is completed, the only option for the CDB is to initiate appropriate proceedings. The voluntary annexation, annexing a portion of the territory included in Hiawatha's petition, is not complete, and Pruss makes no allegation the petition is insufficient, nor does he allege substantially the same annexation has been disapproved by a committee or voters within the last two years. There is a deficiency in the Code with regard to this particular situation. Thus, the CDB cannot dismiss the petition. Because the CDB cannot dismiss the petition, we deem the decision to table is an appropriate proceeding; it is not inaction, and it is clearly not a final decision. Thus, judicial review is not appropriate.

For these reasons, we find the district court correctly applied the law and affirm the decision of the district court.

AFFIRMED.