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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MAX V. WALKER, et al, Appellants,	)	Filed September 9, 1977
v.	)	
DES MOINES COUNTY, IOWA, LESTER HAMILTON, ROBERT GERDNER, and MERLE KELLY, as members of the BOARD OF SUPERVISORS OF DES MOINES COUNTY, IOWA, Appellees.	)	99 2-57439

Appeal from Des Moines County District Court - D. B. Hendrickson, Judge.

Appeal from annulling of writ of certiorari which attacked jurisdiction of Board of Supervisors to vacate a road instead of rebuilding a bridge. AFFIRMED.

Terry D. Loeschen and Scott Power of Cray, Walter, Cray & Loeschen, of Burlington, for appellants.

Steven Hoth, Assistant County Attorney, for appellees.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

SNELL, J.

Plaintiffs, adjacent landowners to a road leading to a bridge, appeal the court's ruling annulling plaintiffs' writ of certiorari. Plaintiffs claimed defendants acted illegally in vacating the road thereby avoiding the necessity of rebuilding a bridge which had been removed in order to raise certain levees for flood protection. At issue is whether §306.10 and §455.118, The Code, are conflicting and if so, whether §455.118 is controlling. We affirm.

Prior to 1966, the United States Army Corps of Engineers determined that certain levees needed to be raised for flood protection purposes. A bridge crossing a creek had to be raised to clear the levees. When the work on the levees commenced, the bridge was removed and has not been replaced. After requesting defendants to reconstruct the bridge, plaintiffs filed an action on April 13, 1971, seeking a writ of mandamus, to command defendants pursuant to §455.118 to rebuild the bridge.

Subsequently, defendants gave notice of intent to vacate the county road which served as an approach to the bridge. Plaintiffs then filed a petition for temporary injunction to enjoin the defendants from further action pending the outcome of the litigation on the writ of mandamus previously filed. The injunction was denied because defendants had done nothing more than give notice of intent to vacate and plaintiffs had a remedy under chapter 306, The Code.

On June 22, 1973, defendants passed a resolution vacating the road. Plaintiffs then filed a second petition seeking a temporary injunction to enjoin defendants from proceeding further with the vacation until after the mandamus suit was heard. The injunction was again denied. Thereafter an application for permission to appeal was denied by the Supreme Court. Plaintiffs then filed a motion for leave to amend the mandamus petition and the petition for injunction to include a division seeking a writ of certiorari. The amendment was allowed and the writ was issued.

The trial court annulled the writ of certiorari on the ground §306.11, The Code, provided the remedy for vacation of the road and that the defendants did not exceed their jurisdiction or act illegally. Thereafter, plaintiffs took this appeal

although there never has been any hearing or final ruling on the initial petition for writ of mandamus which is now in three divisions.

I. Appellee initially argues the annulling of the writ of certiorari is not a final judgment, and since no permission to appeal the interlocutory ruling was obtained, this court is without jurisdiction to hear this appeal. Appellees argument is correct only if the trial court's ruling is not a final judgment. A final judgment is one that finally adjudicates the rights of the parties; a ruling or order is interlocutory if it is not finally decisive of the case. Johnson v. Iowa State Highway Commission, 257 Iowa 810, 812, 134 N.W.2d 916, 917 (1965).

Although the trial court ruled only on the certiorari issue, the effect of that ruling was a denial of the mandamus remedy. Plaintiffs' petition sought to compel the Board of Supervisors pursuant to §455.118 to rebuild the dismantled bridge. When plaintiffs lost on the writ of certiorari, the ruling was decisive of the cause and the judgment was final for the purposes of appeal.

Appellees' second contention is that plaintiffs' application for writ of certiorari was untimely and therefore, the trial court's ruling was correct, even if for the wrong reason. The vacation of the road by defendants occurred on June 22, 1973. At that time, plaintiffs had six months in which to file their petition for writ of certiorari under rule 319, Rules of Civil Procedure. Effective July 1, 1973, rule 319 was amended to shorten the period in which a petition for writ of certiorari could be filed from six months to thirty days from the date of the act complained of. Plaintiffs amended their petition to seek a writ of certiorari on November 1, 1973. Although this was within the old six month limitation, it was beyond the new thirty day limitation period.

The period within which to file a petition for writ of certiorari to review a decision of a board of supervisors begins to run on the date the resolution was adopted. Boomhower v. Cerro Gordo County Board of Supervisors, 173 N.W.2d 95 (Iowa 1969). Therefore, the period of limitations began to run on June 22, 1973. At that time, plaintiffs had six months to petition for the writ. Even though the time period was subsequently changed from six months to thirty days, plaintiffs nevertheless had six months within which to petition for certiorari. Since the

petition was filed within the six month period, it was timely.

II. Plaintiffs contend a conflict exists between §306.10 and §455.118, The Code, and that the latter controls because it is a specific rather than a general statute and was later enacted. We do not apply those rules since we agree with the trial court that the statutes are not in conflict. Section 455.118 requires a board of supervisors to build bridges over levees, drains and ditches when they are crossed by a public highway. Section 306.10 permits a board to alter, vacate or close public highways.

In Ruffcorn v. Chatburn, 166 Iowa 611, 147 N.W. 1110 (1914), plaintiff petitioned for a writ of mandamus to compel the board of supervisors to construct a bridge over a drainage ditch under the predecessor of §455.118. In holding that the board could not by inaction effect a vacating of the highway, the Supreme Court noted: "If it would vacate, alter, or change the highway, it must do so in a lawful way and not by indirection." **Ruffcorn**, supra, 166 Iowa at 616-17.

In the instant case, defendants vacated the portion of the highway in a lawful way pursuant to §306.10, The Code. There is no claim that defendants proceeded illegally. Since the highway has been lawfully vacated where it crosses the levees, defendants have no responsibility under §455.118 to reconstruct the bridge. The judgment annulling the writ of certiorari is therefore affirmed.

Affirmed.

All judges concur except Donielson, J. who dissents.

DONIELSON, J. (dissenting)

The effect of the majority decision is to render §.455.118, The Code, a nullity, for whenever a board of supervisors does not wish to build or rebuild a bridge, ditch, or drain, it may simply avoid doing so by vacating only that portion of a public highway which crosses a levee, ditch, or bridge. Section 306.10, The Code, 1973. Section 455.118 requires that the board shall build or rebuild any bridge, ditch or drain that crosses a public highway. Here, the board merely vacated 708.2 feet of a road because, according to the terms of the resolution passed by the board, funds could be better used in other road projects.

Although no evidence was taken in this regard, I believe that the actions taken by the board of supervisors approach "bad faith," in that the board attempted to utilize the terms of § 306.10 as a shield against the plain mandate of § 455.118. Similarly, although I do not believe that these two statutes conflict on their face, I do believe that a conflict resulted in this case because the board attempted to utilize § 306.10 to circumvent § 455.118. Because an effective conflict resulted, I would adhere to the rule of statutory construction that where a general and a specific statute deal with the same subject matter and are in conflict, the more specific statute is to prevail. Llewellyn v. Iowa State Commerce Commission, 200 N.W.2d 881, 884 (Iowa 1972).

An analysis of these two statutes reveals that the general discretion conferred under § 306.10 must give way to the specific mandatory duty imposed on the board under § 455.118. I would hold that, because of the actions of the board in this case, these two statutes do, in effect, conflict, and § 455.118, the more recent and specific statute, should control. The judiciary should not be a party to a circumvention of the clear legislative enactment of § 455.118. Therefore, I would reverse the trial court.