9-17-2015

Coalition for Agriculture's Future v. Canyon County Appellant's Reply Brief Dckt. 42756

BEFORE THE
SUPREME COURT
OF THE STATE OF IDAHO

Docket No. 42756-2014
Case No. CV-2013-7693 (Canyon County, Idaho)

COALITION FOR AGRICULTURE'S FUTURE,
an Idaho unincorporated nonprofit association,
PLAINTIFF / APPELLANT;

vs.

COUNTY OF CANYON and **CANYON COUNTY BOARD OF COMMISSIONERS,**
a political subdivision of the State of Idaho,
DEFENDANT / RESPONDENT.

On appeal from the
Third Judicial District of the State of Idaho,
in and for the County of Canyon

Honorable Molly J. Huskey, District Judge, presiding

REPLY BRIEF FOR THE APPELLANT

Submitted by:
David P. Claiborne
[Idaho State Bar No. 6579]
SAWTOOTH LAW OFFICES, PLLC
Golden Eagle Building
1101 W. River St., Ste. 110
P.O. Box 7985
Boise, Idaho 83707
Telephone: (208) 629-7447
Facsimile: (208) 629-7559
E-Mail: david@sawtoothlaw.com

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I. ARGUMENT[1]

Canyon County argues that the district court correctly held that a comprehensive plan does not give rise to a legally cognizable right. While it may be true that one cannot bring a cause of action seeking strict adherence to the particular decisions and components of a comprehensive plan, it is clearly the law that the adoption of a comprehensive plan is a **condition precedent to the validity of a zoning ordinance**. Dawson Enters., Inc. v. Blaine County, 98 Idaho 506, 508-09 (1977) (emphasis added). A valid plan requires a future land use map, and without it a plan is invalid. Bone v. City of Lewiston, 107 Idaho 844, 849, n. 7 (1984); Sprenger, Grubb & Assocs. v. City of Hailey, 133 Idaho 320, 322 (1999). This law is important to this case because the Coalition alleged in its complaint (allegations that must be taken as true based on the procedural posture before the district court) that Canyon County adopted a comprehensive plan without any future land use map. The Coalition further alleged that confusion existed in the community as to that issue, and therefore sought declaratory relief to determine whether Canyon County had a valid comprehensive plan upon which it could make land use planning decisions. Resolving such confusion and ambiguity in the status of law laws and ordinances is a unique and statutory obligation of the judiciary conferred upon it by the *Uniform Declaratory Judgment Act*, Chapter 12, Title 10, IDAHO CODE. Harrison v. Bannock County, 68 Idaho 463, 468 (1948);

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[1] The Coalition adopts and incorporates herein all argument previously set forth in the Brief for the Appellant, filed May 26, 2015. Much of the argument therein is responsive to the argument of Respondent, and in the interests of brevity is not restated herein.

McCuskey v. Canyon County, 123 Idaho 657, 660-661 (1993); Ciszek v. Kootenai County Bd. of Comm'rs, 151 Idaho 123, 130 (2011).

Here, the district court failed to understand the applicable legal principles and apply them properly in the context of affording declaratory relief, instead taking a myopic, single-minded focus on whether the district court could invalidate past land use decisions. The district court determined that even if the 2020 Plan was found invalid, it would not be a basis to afford the Coalition its ultimate relief - invalidation of past land use decisions. R., Vol. 1, p. 403. That conclusion by the district court was made presumptively without regard to a close reading of the Coalition's complaint. While the Coalition did seek relief in the form of invalidating past land use decisions, it was by no means the sole, exclusive or ultimate and only relief sought by the Coalition. More importantly, the Coalition sought the following relief—

- A declaration that Canyon County had failed to duly and properly adopt a comprehensive plan on May 31, 2011;
- A declaration that Canyon County had failed to duly and properly amend its purported comprehensive plan on August 3, 2011; and
- A declaration that Canyon County had failed to duly and properly amend, *nunc pro tunc*, its purported comprehensive plan on July 17, 2013.

R., Vol. 1, p. 145. This was the actual relief sought first and foremost by the Coalition, as it would resolve the confusion and ambiguity that existed and would assist in guiding their actions relative to future land use applications. The district court erred by completely ignoring this aspect of the action.

The Coalition clearly sought declaratory relief on a matter of great concern and the resolution of the issue presented would effect legal rights and relations of the members of the Coalition vis-a-vis Canyon County. The issue of standing then relates to the following issues: (1) injury in fact, (2) causal connection between the injury and conduct complained of, and (3) redressability of the injury. Coeur d'Alene Tribe v. Lawrence Denney, 2015 Opinion No. 88, at 4-5 (Idaho Sept. 10, 2015).

As to the injury in fact, the injury must be one not suffered alike by all citizens in the jurisdiction.[2] Id. at 5. As previously argued, the Coalition contends its members are threatened by injuries not suffered alike by all members. See *Brief of the Appellant* at 29-31. However, even if the district court disagreed, it still should have exercised jurisdiction over that aspect of the claim seeking declaratory relief. This Court recognizes that there are exceptions where a court can nonetheless exercise jurisdiction even where the injury complained of is suffered by all citizens. Coeur d'Alene Tribe, 2015 Opinion No. 88 at 5. One such circumstance relates to petitions seeking extraordinary relief concerning matters of a constitutional nature. Id. Another relates to proceedings seeking a public officer to perform its non-discretionary functions. Id. at 5-6. Most recently, the Court relaxed the standing requirement to allow a petition for writ of mandamus relating to application of the executive veto power. Id. at 5-7. In so reasoning, the Court recognized the importance of resolving matters of great public importance to ensure

[2] Canyon County argues that the word "all" can be read to mean a large number of citizens, but the relevant cases consistently use the term "all citizens in the jurisdiction."

government follows its legal commands, and further that the standing requirement should be relaxed where its strict adherence could effectively nullify requirements of law.

At issue in this case, the Coalition sought to determine whether Canyon County had followed LLUPA in adopting a comprehensive plan, and in so doing, sought a decision that Canyon County had not properly adopted a comprehensive plan, thereby requiring Canyon County to suspend land use decision-making until a plan was properly adopted. A county's obligation to adopt a comprehensive plan is not discretionary - it is a mandatory requirement of law. IDAHO CODE § 67-6508. The district court's reasoning, and the argument advanced by Canyon County, is that although Canyon County is required to follow certain legal processes in order to adopt a plan precedent to zoning decisions, no citizen can challenge the validity of the process by which the plan is adopted until a zoning decision is made. To accept this argument effectively means the government could never be brought to task on unlawful procedures, and it allows confusion and ambiguity to run rampant.

If a penal statute is unconstitutional, or adopted through improper legislative process, must a citizen first test the waters, commit the offense, get arrested, and subject his liberty to jeopardy before seeking assistance from the judiciary as to whether the statute is lawful in the first place? The *Uniform Declaratory Judgment Act* allows otherwise, and here the district court completely ignored the responsibilities imposed upon the court by that act. The prior argument of the Coalition firmly shows that the *Uniform Declaratory Judgment Act*, and standing requirements imposed incident to its application, allow for the exercise of jurisdiction by the district court in this action to determine whether, in the first instance, Canyon County even has a comprehensive plan

upon which to base its land use decisions. See *Brief of the Appellant* at 17-20. The Act is clear—"[a]ny person . . . whose rights, status or other legal relations are affected by a statute [or] municipal ordinance . . . may have determined any question of construction or validity arising under the instrument . . . and obtain a declaration of rights, status or other legal relations thereunder." IDAHO CODE § 10-1205. The members of the Coalition think they have a right to object to Canyon County land use processes based on the invalidity of its comprehensive plan. Canyon County disagrees. The Coalitions seeks to determine the rights, status and legal relations of its members in that regard. That is a precise purpose of the Act, which the district court simply ignored.

As to the issue of causality and redressability, the Coalition shows that its members own property in Canyon County, thereby subjecting those members to the land use decisions of Canyon County, and the Coalition illustrates potential threats posed by those decisions.[3] Certainly, invalidation of the current plan will eliminate potential injury as Canyon County will be without authority to conduct land use planning until it adopts a valid plan. That future, presumably valid, plan would be an object of new legislative action and whether injury is threatened by it can only be speculated upon at this point, but in any event is no basis to avoid redressing the current potential injury threatened by current invalid plan. Resolving the issue of validity of the current

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[3] Canyon County argues that the threatened injury of spot zoning is not concrete enough insofar as the Coalition can point to no instance of spot zoning having actually occurred. See *Respondent's Brief* at 4. While allegations are sufficient and taken true at this point, together with all reasonable inferences, the argument actually ignores the record, as Robin Lindquist provided an affidavit establishing that the land adjacent to her was subject to spot zoning. R., Vol. 1, pp. 319-322.

plan will have the further benefit of redressing confusion and ambiguity presently surrounding the plan.

In essence, the district court in this action failed to appreciate the import of the declaratory relief sought by the Coalition, and to correctly utilize and apply the *Uniform Declaratory Judgment Act* in determining the standing of the Coalition and proceeding to resolve the action on its merits. Reversal and remand is therefore necessary to allow a full presentation of the facts and to have properly resolved and determined the question of whether Canyon County presently has a valid comprehensive plan.

II. ATTORNEY FEES ON APPEAL

The Coalition makes no request for an award of attorney fees on appeal, unless the County pursues this action frivolously or without foundation. IDAHO CODE §§ 12-107, 12-114, 12-119, 12-121. Heretofore, the Coalition makes no assertion that Canyon County has acted frivolously in this action. The Coalition does, however, request an award of costs on appeal should it prevail on appeal. IDAHO CODE §§ 12-101, 12-107, 12-114, 12-119.

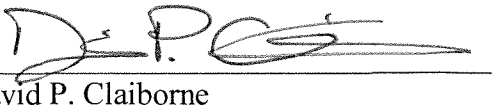
As to Canyon County's request for an award of attorney fees on appeal, Canyon County properly recognizes that no such award can be made without a determination that this appeal was pursued frivolously or without foundation in law or fact. The Coalition asserts that all of its argument has been well supported by the law and facts, or by reasonable arguments for the extension of existing law based on the facts of this action. Even the district court, who dismissed this action, did not award Canyon County fees and, as such, this Court should not award Canyon County fees even if it rules in favor of Canyon County.

III. CONCLUSION

For the foregoing reasons, the Coalition respectfully requests that this Court **REVERSE** the district court's dismissal of the Coalition's Complaint, determine that the Coalition does indeed have standing to pursue the claims raised in the Coalition's Complaint, and **REMAND** this matter to the district court for further proceedings.

RESPECTFULLY SUBMITTED this 17th day of September, 2015.

SAWTOOTH LAW OFFICES, PLLC

By: 

David P. Claiborne
Attorney for Appellant
Coalition for Agriculture's Future

CERTIFICATE OF SERVICE

I hereby certify that two (2) true and correct copies of the foregoing brief were served on the following on this 17th day of September, 2015 by the following method:

ZACHARY J. WESLEY
CANYON COUNTY PROS. ATTY.
1115 Albany Street
Caldwell, ID 83605
Telephone: (208) 454-7391
Facsimile: (208) 454-7474
E-Mail: zwesley@canyonco.org
Attorneys for Respondent(s) on Appeal

[_X_] U.S. First Class Mail, Postage Prepaid
[__] U.S. Certified Mail, Postage Prepaid
[__] Federal Express
[__] Hand Delivery
[__] Facsimile
[_X_] Electronic Mail or CM/ECF

TODD M. LAKEY
BORTON LAKEY LAW OFFICES
141 E. Carlton Ave.
Meridian, Idaho 83642
Telephone: (208) 908-4415
Facsimile: (208) 493-4610
E-Mail: todd@borton-lakey.com
Attorneys for Respondent(s) on Appeal

[_X_] U.S. First Class Mail, Postage Prepaid
[__] U.S. Certified Mail, Postage Prepaid
[__] Federal Express
[__] Hand Delivery
[__] Facsimile
[_X_] Electronic Mail or CM/ECF

David P. Claiborne