

ANNEXATION

Annexation

Board of County Commissioners v. City of Cocoa,
953 So. 2d 8 (Fla. 5th Dist. App. 2007)

In *Board of County Commissioners*, the majority denied certiorari, finding there was not a miscarriage of justice after the City of Cocoa's involuntary annexation of land within Brevard County. However, the majority did not disagree with the dissent's analysis that Section 171.043 of the Florida Statutes was not properly interpreted, allowing an involuntary annexation in contravention of the statute.

FACTS AND PROCEDURAL HISTORY

The City of Cocoa (City) involuntarily annexed 10 parcels of land totaling 757.29 acres, which accounted for 99.7% of the total annexation area. Nine of the ten landowners consented to the annexation. Under Brevard County's (County) land-use plan, the annexed area was scheduled for urban development.

The Brevard County Circuit Court, sitting in its appellate capacity, denied the County's appeal of the involuntary annexation. The County then petitioned the Fifth District Court of Appeal for certiorari review.

ANALYSIS

The Fifth District Court of Appeal denied certiorari because the County failed to establish that the proposed annexation was "a miscarriage of justice sufficient to warrant the exercise of [the Court's] discretionary certiorari jurisdiction." *Board of County Commissioners*, 953 So. 2d at 9. However, the court noted that it did not disagree with the dissent's analysis of Section 171.043 of the Florida Statutes.

As a threshold matter, Judge Evander's dissent began by establishing that a district court may grant certiorari review when an improper interpretation of a statute results in a miscarriage of justice by violating an established principle of law. Therefore, the petition for certiorari review hinged on whether Section 171.043 permitted a municipality to involuntarily annex undeveloped

property where no developed property was included in the annexation. Section 171.043 allows municipalities to involuntarily annex property if it meets the requirements of subsection one *and* meets the requirements of subsections two *or* three.

Section 171.043(1) provides that the “total area to be annexed must be contiguous to the municipality’s boundaries . . . and no part of the area shall be included within the boundary of another incorporated municipality.” Section 171.043(2) requires that “[p]art or all of the area to be annexed must be developed for urban purposes,” as defined in the section. Section 171.043(3) provides that “[i]n addition to the area developed for urban purposes, a municipal governing body may include in the area to be annexed any area which does not meet the requirements of subsection (2) if such area” satisfies one of two scenarios. Section 171.043(3) allows a municipality to annex land that is not presently developed for urban purposes when its probable future purpose is urban.

The County conceded that Section 171.043(1) was satisfied. Similarly, the City conceded that Section 171.043(2) was not satisfied. Thus, the determinative issue was whether the requirements of Section 171.043(3) were satisfied. Section 171.043(3) begins with the phrase, “[i]n addition to the area developed for urban purposes.” Thus, the statute creates the requirement that developed property be included in the annexation. The dissent asserted that because no urban area was included in the annexation, the annexation did not meet the requirements of Section 171.043(3). Therefore, the involuntary annexation was statutorily prohibited, creating a miscarriage of justice sufficient to warrant certiorari review.

The dissent further asserted that the majority’s opinion was inconsistent with the court’s decision in *County of Volusia v. City of Deltona*, 925 So. 2d 340 (Fla. 5th Dist. App. 2006), which interpreted Section 171.031(11) of the Florida Statutes. *County of Volusia* granted certiorari when only 350 feet of more than 20,000 feet of the annexed property met the requirements of Section 171.031(11) of the Florida Statutes (stating that a substantial portion of the boundary of the annexed property be coterminous with the municipality’s boundary).

SIGNIFICANCE

The inconsistency between *County of Volusia* and this decision leaves considerable doubt as to the circumstances under which second-tier certiorari will be granted in annexation cases.

RESEARCH REFERENCES

- *Baldwin v. Jacksonville*, 610 So. 2d 95 (Fla. 1st Dist. App. 1992).
- Bryon L. Sparber, Carl H. Cofer & Thomas A. Ritchie, *South-east Transaction Guide*, vol. 16, § 304.42 (Lexis 2007) (available at Lexis, 16-304 SE Transaction Guide § 304.42).

Miguel R. Roura

Annexation

***City of Center Hill v. McBryde*,**
952 So. 2d 599 (Fla. 5th Dist. App. 2007)

A municipality may only annex property that is reasonably compact, and property is not reasonably compact when its annexation will create a “pocket” of unincorporated property. Whether a parcel constitutes a “pocket” does not depend on the absolute size of the parcel, but rather on the size and configuration of the parcel relative to the surrounding municipal property.

FACTS AND PROCEDURAL HISTORY

Sumter Cement Company (SCC)—owner of 1,235 acres of land in unincorporated Sumter County—petitioned the City of Center Hill (City) to annex the property and to rezone it to permit the operation of a lime rock quarry and a cement plant. Two owners of nearby properties in unincorporated Sumter County, Clyde McBryde and William Sander, opposed the annexation due to noise, pollution, and traffic concerns. Despite their opposition, the City, after proper notice and a public hearing, approved the annexation ordinance and the rezoning petition. McBryde and Sander petitioned the circuit court for certiorari review of the annexation ordinance, arguing that the annexed property was not “reasonably compact” as required by Section 171.044(1) of the Florida Statutes because the annexation created a 100-acre

“pocket” of unincorporated territory surrounded by hundreds of acres of incorporated property. The City and SCC opposed the petition for certiorari review, contending that the annexation did not create a “pocket.”

The circuit court granted certiorari and quashed the annexation ordinance, holding that the annexed property was not reasonably compact because the annexation created an impermissible 100-acre “pocket” of unincorporated property. The City and SCC sought certiorari review of the circuit court’s decision in the Fifth District Court of Appeal.

ANALYSIS

Section 171.044(1) of the Florida Statutes provides that a municipality may annex property that is contiguous and reasonably compact. Section 171.031(12) of the Florida Statutes defines “compactness” as the “concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or finger areas in serpentine patterns.” However, Section 171.031 does not define “pockets.” A “pocket,” in the context of annexation compactness, was defined in *City of Sanford v. Seminole Co.* as “a small isolated area or group.” 538 So. 2d 113, 115 (Fla. 5th Dist. App. 1989).

The City and SCC argued that the annexation did not create a “pocket,” as defined in *City of Sanford*, because the 100-acre parcel was neither “small” nor “isolated.” Thus, they contended that the annexed property was reasonably compact and that the annexation was permissible. The Fifth District disagreed with the City and SCC and denied their petition for certiorari. The court reasoned that the purpose of the statutory prohibition on “pockets” was “to [e]nsure that no vestiges of unincorporated property be left ‘in a sea of incorporated property.’” *McBryde*, 952 So. 2d at 603 (citation omitted). Accordingly, the court stated that whether a parcel is “small” and “isolated” depends on the size and configuration of the parcel relative to the surrounding municipal property, not the absolute size of the parcel.

The court concluded that the 100-acre parcel was “small” and “isolated” and was, therefore, an impermissible pocket. The court reasoned that the 100-acre parcel, while large in absolute terms, was small relative to the entire 1,235-acre annexation. The court further reasoned that the 100-acre parcel was isolated because,

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given the configuration of the properties, the parcel “look[ed] like a balloon on a string.” *Id.* at n. 3. Thus, the court held that the annexation impermissibly created a pocket of unincorporated property.

SIGNIFICANCE

McBryde clarifies the definition of “pockets” in the context of annexation compactness. A municipality may not annex property when its annexation will create a “pocket” of unincorporated property surrounded by incorporated property. This decision clarifies that a “pocket” is a parcel of land that is small and isolated relative to the size of the overall annexation and the configuration of the properties.

RESEARCH REFERENCE

- 12A Fla. Jur. 2d *Counties and Municipal Corporations* § 43 (2007).

Benjamin Harney

Annexation

Pinellas County v. City of Largo,
964 So. 2d 847 (Fla. 2d Dist. App. 2007)

A charter county may provide an exclusive method of voluntary municipal annexation; however, the exclusive method of voluntary municipal annexation must be contained in the charter itself, not in a separate ordinance.

FACTS AND PROCEDURAL HISTORY

In November 2000, voters in Pinellas County (County) approved Ordinance 00-66 (Charter Ordinance), which mandated that all voluntary annexations must adhere to the requirements presented in a separate county voluntary annexation ordinance. The County commission concurrently adopted the separate county voluntary annexation ordinance, Ordinance 00-63 (Voluntary Annexation Ordinance). In 2002, the County commission adopted Ordinance 02-48 (Contraction Ordinance) to contract various municipalities located within the County.

The City of Largo and the City of Seminole (Cities) challenged the validity of the Charter Ordinance, the Voluntary Annexation Ordinance, and the Contraction Ordinance. The trial court invalidated the three ordinances because Section 171.044(4) of the Florida Statutes prohibited the County from adopting an exclusive method of voluntary municipal annexation. In addition, the trial court held that the Charter Ordinance violated general law because it granted the authority to voluntarily annex by ordinance rather than by county charter. The County appealed.

ANALYSIS

Article VIII, section 2(c) of the Florida Constitution states that “[m]unicipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law.” The Legislature, however, may share the annexation power with municipalities. In 1974, the Florida Legislature enacted the Municipal Annexation or Contraction Act (Act), which provided the following two methods of annexation: annexation by referendum and voluntary annexation. Voluntary annexation allows a municipality to annex certain unincorporated territory when all the property owners in the unincorporated territory petition the municipality for annexation. Fla. Stat. § 171.044 (2005).

The Second District Court of Appeal first addressed whether the County, as a charter county, had authority to adopt an exclusive method of voluntary annexation. The court relied on Section 171.044(4) to hold that the County had the authority to provide an exclusive method of voluntary annexation in its charter. The court noted that “[o]n its face, the statute contemplate[d] that a charter county may provide for its own exclusive method of voluntary annexation.” *City of Largo*, 964 So. 2d at 852. Moreover, in Section 171.21 of the Florida Statutes, the Legislature subsequently stated that a charter provision adopted under Section 171.044(4) is not affected by the statutory preference for annexation by referendum.

The Cities argued that the County had no authority to regulate voluntary annexation because the Legislature had preempted the entire field of annexation. They contended that the Legislature clearly stated its intent to preempt counties’ authority to regulate voluntary annexation in Section 171.022(2) of the Florida

Statutes, which provides that “any special act or municipal charter relating to the adjusting of municipal boundaries . . . are repealed except as otherwise provided herein.” The court found that Section 171.022 did not preempt counties’ authority to regulate voluntary annexation. The court reasoned that interpreting Section 171.022 to preempt the counties’ authority would conflict with Section 171.044(4), which clearly contemplated counties’ involvement in regulating voluntary annexation.

The court also rejected the Cities’ argument that allowing counties to provide an exclusive method of voluntary annexation would give charter counties too much authority in creating a method for voluntary annexation. The court noted that charter counties are restricted by constitutional and general law in the arena of annexation. Moreover, the Act imposes various restrictions and requirements on annexation proceedings.

The court then addressed whether the County’s decision to place the exclusive method of voluntary municipal annexation in the Voluntary Annexation Ordinance rather than the charter was valid. The court again referenced the plain meaning of Section 171.044(4) to conclude that the method of annexation must be set forth in the charter itself, not in a separate ordinance. The legislative intent articulated in Section 171.21 reflected that the county charter must contain the method of annexation. Accordingly, the court invalidated the Voluntary Annexation Ordinance because the ordinance, not the County charter, set forth the exclusive method of annexation.

SIGNIFICANCE

This case clarifies the extent of charter counties’ authority to provide an exclusive method of voluntary municipal annexation. Charter counties have the authority under Section 171.044(4) to provide an exclusive method of voluntary municipal annexation. However, charter counties may not place an exclusive method of voluntary municipal annexation in an ordinance; such a method must be contained in the county charter.

RESEARCH REFERENCE

- 12A Fla. Jur. 2d *Counties* § 49 (2005 & Supp. 2008).

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