

NO. A06-1594

State of Minnesota
In Court of Appeals

City of Wyoming and Wyoming Township,
Appellants,

v.

Minnesota Office of Administrative Hearings,
 City of Chisago City and City of Stacy,
Respondents.

RESPONDENT CITY OF STACY'S BRIEF

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STATEMENT OF ISSUES

1. Is Appellants' action an annexation of the entire Township which requires a hearing under Minn. Stat. § 414.031, subd. 1(a)(4) and subd. 3 and Minn. Stat. § 414.09?

The parties stipulated and the District Court found that the City of Wyoming and Wyoming Township filed a joint resolution designating annexation of the entire town of Wyoming to the City of Wyoming, but the District Court did not rule on whether the action was a merger and consolidation under Minn. Stat. § 414.031, subd. 1(a)(4).

Apposite authority:

Minn. Stat. § 414.031, subd. 1 (a)(4)

Minn. Stat. § 414.031, subd. 3

Minn. Stat. § 414.09

2. Do Stacy and Chisago City have a right to a hearing on their annexation petitions under Minn. Stat. § 414.031?

The District Court found that Stacy and Chisago City have a right to a hearing on their annexation petitions under Minn. Stat. § 414.031. The District Court also held that the Office of Administrative Hearings is required to conduct a hearing on competing annexation petitions.

Apposite authority:

Minn. Stat. § 414.031

Minn. Stat. § 414.09

Ashbacker Radio Corp. v. Fed. Communications Comm'n, 326 U.S. 327 (1945)

STATEMENT OF THE CASE

The City of Wyoming and Wyoming Township (“Appellants”) filed a joint resolution designating annexation of the entire Wyoming Township to the City of Wyoming (“Wyoming Agreement”). Appellants filed the Wyoming Agreement with the Office of Administrative Hearings / Municipal Boundary Adjustment Unit (the “OAH”) on December 7, 2005. On January 4, 2006 the City of Chisago City filed an annexation resolution with the OAH under Minn. Stat. § 414.031 petitioning to annex 3,300 acres of Wyoming Township. On January 5, 2006 the City of Stacy filed an annexation resolution with the OAH under Minn. Stat. § 414.031 petitioning to annex 777.6 acres of Wyoming Township.

On February 23, 2006 the OAH opened the hearing record for the Chisago City and Stacy petitions pursuant to Minn. Stat. §§ 414.031, subd. 3 and 414.09, subd. 1 and referred the matter to an Administrative Law Judge to conduct further proceedings. On March 2, 2006 the OAH issued an order consolidating the Chisago and Stacy petitions for the purposes of a hearing under Minn. Stat. § 414.01, subd. 5 and staying a decision on the Wyoming Agreement pending resolution of the Chisago and Stacy petitions.

Appellants petitioned the Ramsey County District Court for a writ of mandamus compelling the OAH to order the annexation of the entire Township to the City of Wyoming. Chisago City and Stacy intervened. The Ramsey County District Court, Judge Michael T. De Courcy, denied Appellants’ mandamus petition on August 1, 2006.

STATEMENT OF FACTS

Appellants filed the Wyoming Agreement with the OAH on or about December 7, 2005. A. 107. The Wyoming Agreement designates all of Wyoming Township for

annexation. A. 1. Stacy filed a petition for annexation pursuant to Minn. Stat. § 414.031, subd. 1(a)(1) with the OAH, seeking to annex 777.6 acres of land in Wyoming Township, on January 5, 2006. A. 99-100, 107. The Chisago City filed its petition to annex 3,300 acres of Wyoming Township on January 4, 2006. A. 7.

The OAH found that the Wyoming Agreement designated the “entire Town of Wyoming” for annexation. A. 107. The OAH consolidated the petitions of Stacy and Chisago City and declined to order the annexation covered by the Wyoming Agreement until after the contested case proceedings on Stacy’s and Chisago City’s petitions.¹ A. 107-10, 121-22. The OAH Order for Consolidation was based on its determination that the consolidated hearing would “provide all parties an opportunity to participate in resolution of matters of conflict.” A. 121-22.

On February 21, 2006, Appellants filed a petition for writ of mandamus with the Ramsey County District Court, requesting the court order the OAH to approve their orderly annexation agreement merging the Township and the City of Wyoming. A. 115-20, 124. Both Stacy and Chisago City intervened in the mandamus action pursuant to the consent of all parties. A. 124. The District Court denied Appellants’ petition in its entirety on August 1, 2006. R. A. 2.

¹ Consistent with its January 20, 2006 Memorandum, on March 2, 2006, the OAH issued an Order for Consolidation, consolidating Stacy’s and Chisago City’s petitions and staying further proceedings on the Wyoming Agreement pending the outcome of the contested case hearing.

ARGUMENT

I. Standard of Review

The District Court decided this case as a matter of law based on stipulated facts before the court. Because the District Court's decision was based solely on its legal determination, this Court's review is de novo. Nolan & Nolan v. City of Eagan, 673 N.W.2d 487, 493 (Minn. Ct. App. 2003), review denied (Minn. Mar. 16, 2004).

II. Appellants' action is an annexation of the entire Township for which a hearing is required under Minn. Stat. § 414.031 and Minn. Stat. § 414.09.

Appellants seek, by their actions, to avoid all hearing, review or oversight of their attempt to redraw municipal boundaries by the consolidation of the City of Wyoming and Wyoming Township. Such cavalier disregard for necessary review and oversight by the OAH is not consistent with either the letter or the spirit of annexation law in Minnesota. Minnesota Statutes § 414.031 sets out the procedure to annex an entire township to a municipality. Under Minn. Stat. § 414.031, subd. 1(a)(4), a township and municipality may jointly initiate an annexation proceeding by submitting "a resolution of the municipal council together with a resolution of the township board stating their desire to have the entire township annexed to the municipality" to the executive director of the Minnesota Municipal Board. Following submission and before any action on the request, a hearing must be held in which surrounding cities are parties. In other words, annexation of an entire township to a municipality may be initiated through the

cooperative action of a city and township, but may be completed only after the hearing process. Minn. Stat. § 414.031.²

Minn. Stat. § 414.031, subd. 1(a)(4) squarely applies to the Wyoming Agreement, which is a merger and consolidation of the entire Wyoming Township. By the plain language of the statute, this provision applies when the annexation of an “entire township” is at issue. Minn. Stat. § 414.031, subd. 1(a)(4). Here, there is a resolution of the Wyoming City Council together with a resolution of the Wyoming Town Board. A. 1. The joint resolution states that a “consolidation” of the town and city is being sought. A. 1. The joint resolution designates “the entire territory of the Town” as the area to be annexed immediately. A. 1. The Joint Plan and Analysis for the Annexation of the City of Wyoming and Wyoming Township describes this action as a merger of the entire township with the city. A. 12. The letter to the editor by a member of the Township’s Board of Supervisors also describes the Wyoming annexation as a “consolidation.” A. 60. Moreover, the OAH found that the Wyoming Agreement designated the entire area of the Township for annexation. A. 107.

Appellants acknowledge that Minn. Stat. § 414.031 requires a hearing when an annexation petition designates “large portions of a township.” Appellants’ Br. at 2. At the same time, Appellants attempt to limit the application of Minn. Stat. § 414.031 to adversarial proceedings. Appellants’ Br. at 2. But Appellants’ characterization is

² The factors considered by the OAH to evaluate a petition for annexation of part of a township and a petition for annexation of an entire township are the same under Minn. Stat. § 414.031, subds. 1 and 4.

inaccurate. There is nothing in Minn. Stat. § 414.031, subd. 1(a)(4) that requires adversarial proceedings. The statute is just the opposite. The plain language of Minn. Stat. § 414.031, subd. 1(a)(4) applies when there is a resolution from a municipal council and a town board “stating their desire to have the entire township annexed.” Id. (emphasis added). The statute requires more than cooperative action. When a city and township bring a joint petition to annex large portions or all of a township, as is the case here, a hearing is always required. Minn. Stat. §§ 414.031, subds. 1(a)(4) and 3.

Appellants attempt to couch the Wyoming Agreement under Minn. Stat. § 414.0325 instead of Minn. Stat. § 414.031. Minn. Stat. § 414.0325 applies to “annexations within a designated area;” something less than the whole township. Minn. Stat. § 414.031, subd. 1(a)(4) applies when the whole township is at stake. Although the Wyoming Agreement specifically characterizes the action as an orderly annexation agreement under Minn. Stat. § 414.0325, this declaration does not change what is being done. A. 1. Simply stating that an action is subject to one statute, to the exclusion of another, does not make it so. Contrary to Appellants’ labeling, the annexation of the “entire territory of the Town” is an annexation of the entire township under Minn. Stat. § 414.031 subd. 1(a)(4). See A. 1. An attempt to characterize the resolution as something other than an annexation of an entire township to avoid the procedural implications of Minn. Stat. § 414.031, and proceed under the procedures of Minn. Stat. § 414.0325, is strained at best. Because the Appellants have sought annexation of the entire township, as opposed to an area of a township, Minn. Stat. 414.031, with its attendant hearing process, applies.

Following a petition under Minn. Stat. § 414.031 subd. 1(a)(4), such as the Wyoming Agreement, all of the affected parties (including adjacent cities) are afforded the opportunity to participate in a hearing on the propriety of the merger of a town and city. Minn. Stat. § 414.031, subd. 3; Minn. Stat. § 414.09. In other words, when the drastic step of merging an entire township and a city is proposed, the annexation statutes direct the OAH to conduct a hearing so that all interested parties can present information, such as the appropriate and cost effective way to provide public services, projected population of the subject area, and the physical features of the land to be annexed, among other factors. Minn. Stat. § 414.031, subd. 4. Based on that criteria and the information elicited at the hearing, the OAH makes a determination of the appropriate disposition of the territory of the former township. See Minn. Stat. § 414.01, subd. 1. An immediate merger by agreement between two parties, without hearing to weigh the appropriate disposition of an entire township, is not contemplated by the annexation statutes in Minnesota. The interest that Appellants have in convenient and economically beneficial consolidation (A. 12) does not preempt the statutory rights and remedies held by neighboring communities. In short, Appellants' attempt to circumvent the notice and hearing requirements by using an orderly annexation agreement ignores the plain language of the statute, is illegal, and should not be considered.

Regardless of whether Appellants' action is a merger of an entire township, Stacy and Chisago City still retain a statutory right to a hearing on their annexation petitions.

III. Stacy has a statutory right to a hearing on its annexation petition.

Stacy filed its resolution for annexation of 777.6 acres of Wyoming Township with the OAH under Minn. Stat. § 414.031. The Stacy resolution was filed less than 30 days after Appellants filed the Wyoming Agreement.³ Under Minn. Stat. § 414.031 subd. 3, Stacy is entitled to a hearing on its annexation resolution as set forth in Minn. Stat. § 414.09.

Appellants argue that the OAH was required to disregard the Stacy resolution, and the provisions of Minn. Stat. §§ 414.031 and 414.09, and order the annexation covered by the Wyoming Agreement. Both Minn. Stat. § 414.0325, subd. 1(g) and Minn. Stat. § 414.031, subd. 3 contain mandatory language which conflicts when there are competing petitions for the same area of a township.⁴ Appellants claim that the language of Minn. Stat. § 414.0325, subd. 1(g) is more specific than the “general” hearing requirement of Minn. Stat. § 414.031, subd. 3 and that this entitles them to have their annexation ordered by the OAH despite the fact that it would effectively nullify Stacy’s statutory hearing right. But Minn. Stat. § 414.0325, subd. 1(g), directing the OAH to order an annexation under an orderly annexation agreement within 30 days, does not trump the Minn. Stat. § 414.031, subd. 3 hearing requirement for Stacy’s petition.

This same conflict was addressed by the Ramsey County District Court in Township of Winona v. Minnesota Municipal Board and the City of Winona, C3-95-4981

³ The Stacy petition was filed January 5, 2006, 29 days after the Wyoming Agreement was filed on December 7, 2005.

⁴ Minn. Stat. § 414.0325 and Minn. Stat. § 414.031 are only in conflict if the competing annexations are for an area that is less than the entire township.

(July 12, 1995). R.A. 161-167. The township sought a writ of mandamus ordering the Minnesota Municipal Board to act on its orderly annexation agreement filed under Minn. Stat. § 414.0325 to the exclusion of petitions filed under Minn. Stat. § 414.031. Id. In denying the township's request for mandamus, the Honorable Gordon Schumacher held that the Ashbacker doctrine requires the Minnesota Municipal Board to conduct a hearing when "there are two bona fide applications which are mutually exclusive, the grant of one application, without a hearing to both, deprives the loser of the opportunity to a hearing which the legislature intended to provide." R.A. 166 (citing Ashbacker Radio Corp v. Fed. Communications Comm'n, 326 U.S. 327 (1945)). The Court further held that the Ashbacker doctrine favored a hearing because if the township's writ were granted and the annexation ordered, the city would be deprived of its statutory hearing right. R.A. 166.

Like the Winona case, the OAH cannot order the Wyoming annexation as Appellants demand without denying Stacy and Chisago City their right to a hearing. R.A. 164. But the OAH can hold a hearing on Stacy and Chisago City's petitions and still consider the Wyoming Agreement. Id. If the Wyoming annexation were ordered as demanded by Appellants, the property Stacy seeks to annex would automatically be made part of the City of Wyoming. A grant of Appellants' writ would nullify Stacy's petition for annexation and deprive Stacy of its statutory right to a hearing on its petition.

Reading the administrative decision as a whole, it is evident that the OAH intended to deal with all three petitions, to the extent the annexation petitions overlap, in the consolidated hearing. A-122. The OAH's order states:

After due consideration, the Director has determined not to order the Wyoming annexation pursuant to the joint resolution at this time. Further, the Director has consolidated the annexation petitions of the Cities of Chisago and Stacy for hearing, thereby providing all three cities the opportunity to make their respective cases for annexation as they have petitioned.

A. 107. While the decision on the Wyoming Agreement was stayed, the OAH Order of Consolidation provided “all parties an opportunity to participate in the resolution of matters of conflict.” A. 122. The OAH provided the consolidated hearing as an opportunity for all parties to be heard, stating that “it is entirely appropriate for the hearing officer to consider whether some or all of the disputed property might be better served by annexation to Wyoming.” The OAH’s opinion is consistent with statutory hearing requirements under Minn. Stat. § 414.031, subs. 1(a)(4) and 3. A-109.

The fact that Stacy filed its petition after Appellants filed the Wyoming Agreement does not alter the application of the Winona case. The Minnesota Supreme Court has held that the first in time is not necessarily first in right. Village of Farmington v. Minn. Mun. Comm’n, 170 N.W.2d 197 (Minn. 1969).⁵ In the Farmington case, the Minnesota Supreme Court considered conflicting petitions for consolidation of a township with a village and the annexation of a portion of the township to an adjoining municipality. The court held that the Minnesota Municipal Board (the predecessor to the OAH) had jurisdiction to consider and act upon the conflicting annexation and consolidation petitions in any sequence it deemed appropriate to carry out its administrative function and underlying purpose of Minn. Stat. ch. 414 regardless of

which petition was filed first. 170 N.W.2d at 202. Farmington examined Minn. Stat. ch. 414 as a whole; the section changes cited by Appellants do not invalidate the court's interpretation of the purpose and operation of the OAH. Here, the OAH has determined the appropriate sequence for consideration of the filings. Accordingly, as in Farmington, the OAH has jurisdiction to hear Stacy's and Chisago City's petitions.

Furthermore, Appellants' statutory construction argument based on Minn. Stat. § 414.0325, subd. 6 ("Subd. 6") is unfounded for several reasons. First, it is apparent from a reading of Subd. 6 that it relates only to the parties to an orderly annexation agreement.

Subd. 6 provides:

An orderly annexation agreement is a binding contract upon all parties to the agreement and is enforceable in the district court in the county in which the unincorporated property in question is located. The provisions of an orderly annexation agreement are not preempted by any provision of this chapter unless the agreement specifically provides so. If an orderly annexation agreement provides the exclusive procedures by which the unincorporated property identified in the agreement may be annexed to the municipality, the municipality shall not annex that property by any other procedure.

(Emphasis added). The statute specifically states that it is binding only upon the parties to the agreement. Subd. 6 cannot be used as a mechanism to preclude Stacy, a non-party, from pursuing its statutory right to a hearing on its petition for annexation.

Second, Appellants claim that the second sentence of Subd. 6 means that the Wyoming Agreement must be ordered regardless of Stacy's statutory right to a hearing under a different provision of the same chapter. Appellants' Br. at 16, 20. The second

⁵ Farmington overruled the court's previously adopted "first-in-time-first-in-right" rule. 284 Minn. at 202, 170 N.W.2d at 131-32.

sentence does no such thing. It simply provides that once the parties enter into an orderly annexation agreement, the other provisions of Minn. Stat. ch. 414 do not apply to the subsequent actions of the parties to the agreement. It does not and cannot preclude the statutory rights of entities that are not parties to the agreement.

Third, Subd. 6 provides limitations only as to the parties to an orderly annexation agreement. The final sentence of Subd. 6 provides that if an orderly annexation agreement provides the exclusive procedures by which property subject to the agreement may be annexed by the municipality that is a party to the agreement, that is the only way that municipality can annex the agreed upon property. There is nothing that limits or impacts non-parties to the agreement.

Finally, Subd. 6 does not conflict with Minn. Stat. § 414.031. Subd. 6 pertains to the enforceability of specific terms in an orderly annexation agreement. Subd. 6 allows parties to override statutory provisions that would otherwise control the agreement.⁶ But because Minn. Stat. § 414.031 does not pertain to orderly annexation agreements, as opposed to Minn. Stat. § 414.0325, there is no ability to override the terms of the statute. Rather, the conflicting provisions in question are the hearing requirement of § 414.031, and the automatic order of the annexation covered by an orderly annexation agreement in § 414.03251(g). Because Subd. 6 is not irreconcilable with § 414.031, the canon of statutory construction that the later-enacted law prevails is not applicable.

⁶ For example, orderly annexation agreement terms relating to town roads would not be modified as to the parties by Minn. Stat. § 414.038 unless the agreement specifically allows the statutory modification.

Based on the courts decisions in the Ashbacker, Farmington, and Winona cases, Stacy cannot be deprived of its statutory right to a hearing.

IV. Appellants are not entitled to mandamus.

In order to be entitled to mandamus, Appellants must demonstrate that: (1) the OAH failed to perform an official duty clearly imposed by law; (2) as a result, the petitioner suffered a public wrong specifically injuring the petitioner; and (3) there is no other adequate legal remedy. Northern States Power v. Metropolitan Council, 684 N.W.2d 485, 491 (Minn. 2004) (emphasis added). Here, Appellants claim that they are entitled to mandamus as a result of the OAH's failure to act on the Wyoming Agreement. Because Appellants cannot meet the required elements, Appellants' request must be denied.

A. Duty imposed by law.

Appellants have not demonstrated that the OAH, in deferring its decision on the Wyoming Agreement until after the required hearing on Stacy's petition, failed to perform an official duty clearly imposed by law. The OAH was called upon to make a decision involving statutory interpretation. In short, it exercised its judgment and discretion. Obviously, that judgment cannot be a duty imposed by law, which can be controlled by mandamus. It is contrary to both the letter and spirit of Minn. Stat. ch. 414 to deprive one party's right to a hearing in favor of another party. See Ashbacker, 362 U.S. at 333 ("We only hold that where two bona fide applications are mutually exclusive the grant of one without a hearing to both deprives the loser of the opportunity which Congress chose to give him.") The OAH properly exercised its judgment and discretion

to reconcile competing annexation petitions and competing statutory directives by affording all parties an opportunity to be heard.⁷ Because the OAH was exercising discretion, by definition there is no “duty” and mandamus can not lie. See generally In re Stuart, 646 N.W.2d 520, 523-24 (Minn. 2002) (explaining that where “the act the court is charged with is a discretionary one, the petitioner must establish that failure to perform it ‘was so arbitrary and capricious as to constitute a clear abuse of discretion.’”) (quoting McIntosh v. Davis, 441 N.W.2d 115, 118 (Minn.1989)). Here there is no, nor could there be, any claim that the action was a clear abuse of discretion.⁸

B. Public Wrong.

Appellants argue that “[b]ecause the OAH has failed to act, the City of Wyoming and the Township have suffered a public wrong specifically injurious to them. When the OAH failed to order the annexation, the City and the Township were denied their contractual and statutory rights to the orderly annexation of the Township.” Appellants’ Br. at 24. However, Appellants have failed to demonstrate how the OAH’s decision to defer the order on the Wyoming Agreement until after the mandatory hearing on Stacy’s petition results in any harm. Contrary to Appellants’ argument, if the OAH had ignored the requirement for a hearing on Stacy’s petition and had ordered the Wyoming Agreement, Stacy would have been harmed in that its petition would have been nullified and it would be deprived of its statutory right to a hearing. The OAH did the only thing it

⁷ Appellants’ attack is on a discretionary decision by the OAH to stay proceeding on the Wyoming Agreement until hearings can be held to resolve the competing annexation requests of all parties.

could do; afforded all parties a hearing opportunity. Because a hearing provides all parties (including the Wyomings) an opportunity to present evidence and testimony regarding their respective interests, the deprivation of such a hearing would be unjust.

C. Legal Remedies.

Mandamus is only appropriate where there is no other adequate legal remedy. Minn. Stat. § 586.02; Pole v. Trudeau, 516 N.W.2d 217 (Minn. Ct. App. 1994). Here there is an obvious remedy for the Wyomings consistent with Minnesota annexation law; participate in the hearing on Stacy's and Chisago City's petitions.

Appellants rely on City of Waite Park v. Minn. Office of Admin. Hearings, WL 1985457 (Minn. App. 2006) to support their claim that mandamus is appropriate in this case. Appellants' reliance is misplaced. Unlike here, there were no competing annexation petitions at issue in City of Waite Park. Id. at *1. In Waite Park, the city and township adopted a joint resolution for orderly annexation under Minn. Stat. § 414.0325. Id. at *1. Despite the fact that the joint resolution stated no consideration by the director was necessary, and there were no competing petitions, the OAH ordered a hearing. Id. at *2. In City of Waite Park, this Court found that the OAH had a legal duty to order the annexation under Minn. Stat. § 414.0325. But the Court's holding in City of Waite Park does not apply to this case for two reasons. First, as argued above, Appellants' agreement is not an orderly annexation agreement under Minn. Stat. § 414.0325. Second,

⁸ The conclusion that there is no "clear abuse of discretion" is supported by the District Court's agreement with the OAH's decision.

unlike City of Waite Park, two competing petitions were filed with the OAH.

Consequently, City of Waite Park does not support Appellants' theory in this case.

The OAH does not have a clear legal duty to act on Appellants' petition to the exclusion of Stacy's and Chisago City's petitions. A properly ordered OAH hearing will provide Appellants the ability to present their argument as to why the interest of the entire Township would be better served by merger with the City of Wyoming than annexation to Stacy. Through the hearing on Stacy's and Chisago City's petitions, all parties will have the opportunity to be heard. On the other hand, a grant of mandamus will eviscerate Stacy's statutory right to a hearing. Due to the unique nature of the conflicting statutory rights in the case at hand, the contested case proceeding is required and provides Appellants with an adequate legal remedy.

Conclusion

The OAH properly exercised its authority to provide all parties an opportunity to present evidence in an annexation hearing under Minn. Stat. § 414.031. The District Court acted within its discretion to deny Appellants' petition for writ of mandamus, which would effectively bypass any hearing on Stacy's and Chisago City's petitions. The City of Stacy respectfully requests that this Court affirm the District Court's denial of Appellants' mandamus petition and uphold the District Court's finding that the OAH is required to hold a consolidated annexation hearing.

Dated: 10/30/06



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