

FILED  
DOUGLAS COUNTY  
COURT  
IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS

Scenic Riverway Community  
Association, *et al.*,

Plaintiffs,

BY \_\_\_\_\_

City of Lawrence, Kansas,  
Defendant,

Case No. 2008CV622  
Consolidated with 2008CV768  
and 2008CV371  
Div. No. 1

### MEMORANDUM OF DECISION

This matter comes before the court on the defendant's motion for judgment on the pleadings.

#### Nature of the Case

The plaintiffs sue the City of Lawrence (hereinafter referred to as the *City*) alleging that the City acted unreasonably and illegally in adopting three ordinances involved in the annexation of approximately 155 acres of land and the rezoning of the land from agricultural to general industrial. The plaintiffs ask the court to declare the City's actions to be null and void and to set aside the ordinances in question.

#### Standard of Review

As defendant points out, a motion for judgment on the pleadings is the functional equivalent to a motion to dismiss. In deciding a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to 60-212(b)(6) the court should follow the following rules:

"When a motion to dismiss under K.S.A. 60-212(b)(6) raises an issue concerning the legal sufficiency of a claim, the question must be decided from the well-pleaded facts of plaintiff's petition. The

motion in such case may be treated as the modern equivalent of a demurrer." Syl. ¶ 1.

"Disputed issues of fact cannot be resolved or determined on a motion to dismiss for failure of the petition to state a claim upon which relief can be granted. The question for determination is whether in the light most favorable to plaintiff, and with every doubt resolved in plaintiff's favor, the petition states any valid claim for relief. Dismissal is justified only when the allegations of the petition clearly demonstrate plaintiff does not have a claim." Syl. ¶ 2.

"In considering a motion to dismiss for failure of the petition to state a claim for relief, a court must accept the plaintiff's description of that which occurred, along with any inferences reasonably to be drawn therefrom. However, this does not mean the court is required to accept conclusory allegations on the legal effects of events the plaintiff has set out if these allegations do not reasonably follow from the description of what happened, or if these allegations are contradicted by the description itself." Syl. ¶ 3. *Bruggeman v. Schimke*, 239 Kan. 245, 257 (1986), quoting *Knight v. Neodesha Police Dept.*, 5 Kan. App. 2d 472 (1980). See also, *Blevins v. Board of Douglas County Comm'rs.*, 251 Kan. 374 (1992). K.S.A. 60-212 (c) provides as follows:

### **Findings of Fact**

1. Mastercraft Corporation (hereinafter to as *Mastercraft*) is the owner of 155 acres of land near the intersection of Douglas County Roads 1800 N and 900 E.
2. The individual plaintiffs are owners of property adjacent to or located within ½ mile of the land owned by Mastercraft.
3. On September 8, 2008, defendant published notice that it had adopted Ordinance No. 8285, annexing the Mastercraft land into the City of Lawrence. Hereinafter the Mastercraft tract shall be referred to as the *Annexed Land*.

4. As required by statute the Board of County Commissioners of Douglas County consented to the City's annexation of the Annexed Land prior to the City adopting the ordinance annexing the land.
5. The plaintiffs filed suit against Douglas County seeking to set aside the County's consent to the City's annexation of the Annexed Land. This suit is Case Number 2008CV371 with which this case has been consolidated.
6. On September 2, 2008, the City adopted Ordinance No. 8293 and notice of the adoption was published on September 9, 2008. This ordinance changed the zoning of the Annexed Land from agricultural to general industrial.
7. The City later adopted Ordinance No. 8350 which repealed Ordinance No. 8293 and reenacted the identical provisions with a new effective date.
8. Plaintiffs filed the petition in this case alleging in Count I that the City's actions in adopting Ordinance No. 8350 and Ordinance No. 8293 were unreasonable, arbitrary, and capricious and that the City acted illegally and without authority. The Petition alleges in Count II that the City's annexation of the Annexed Land was unreasonable and illegal.

#### **Conclusions of Law**

In its motion for judgment on the pleadings and memorandum in support of the motion the City contends that Count II of the plaintiffs' petition should be dismissed because the plaintiffs filed their petition pursuant to K.S.A. 12-760,

which statute does not give plaintiffs standing to challenge the City's annexation of the Annexed Land. Plaintiffs contend that they also challenge the annexation pursuant to K.S.A. 60-2101(d) in their petition filed in Case No. 2008CV768 and that since the cases have been consolidated the court should read the petitions together and deny the City's motion for judgment on the pleadings.

Chapter 12, Article 7, of the Kansas Statutes Annotated is entitled "Planning and Zoning." It sets forth the procedures to be followed by cities in establishing and implementing regulations for planning, zoning and subdividing the property within the city. Section 760 of that article is entitled, "**Same; appeals to district court.**" That section provides:

- (a) Within 30 days of the final decision of the city or county, any person aggrieved thereby may maintain an action in the district court of the county to determine the reasonableness of such final decision.
- (b) The provisions of this section shall become effective on and after January 1, 1992.


The placement of this section within the planning and zoning article of the chapter relating to cities and municipalities would indicate that the section is intended to apply to decisions of the city or county that arise out of matters covered within Article 7 of Chapter 12. This conclusion is bolstered by the caption of the section quoted above. The "**same**" contained in the statute makes reference to the caption in K.S.A. 12-741 that begins with the phrase "**Planning and zoning in cities and counties.**" Each section thereafter contains the word "**same**" followed by phrases further defining the subject matter of the section. For these reasons the court concludes that the procedure contained in K.S.A. 12-760

applies only to decisions of the city commission made pursuant to Article 7 of Chapter 12.

Count II of plaintiff's petition concerns the City's annexation of the Annexed Land. The annexation was accomplished pursuant to the provisions of K.S.A. 12-521. The annexation provisions of the statutes are contained in Chapter 12, Article 5, not Chapter 12, Article 7. The provisions of K.S.A. 12-760 do not apply to decisions made under K.S.A. 12-519, *et seq.*

For this reason, Count II of plaintiff's petition fails to state a claim upon which relief can be granted. Defendant's motion for judgment on the pleadings as to Count II is granted.

This memorandum of decision constitutes a journal entry and judgment is entered in accordance with the findings hereinabove made. This memorandum is dated and effective this 15<sup>th</sup> day of May, 2009.



Robert W. Fairchild  
District Judge

cc: Kaup & Schultz, LC  
Toni Ramirez Wheeler  
Ronald Schneider  
Barber Emerson, LC  
Evan Ice

In re Appeal of the Annexation  
Of Land by the City of Lawrence  
Kansas

# MEMORANDUM OF DECISION

## Nature of the Case

### Standard of Review

"When a motion to dismiss under K.S.A. 60-212(b)(6) raises an issue concerning the legal sufficiency of a claim, the question must be decided from the well-pleaded facts of plaintiff's petition. The motion in such case may be treated as the modern equivalent of a demurrer." Syl. ¶ 1.

"Disputed issues of fact cannot be resolved or determined on a motion to dismiss for failure of the petition to state a claim upon which relief can be granted. The question for determination is whether in the light most favorable to plaintiff, and with every doubt resolved in plaintiff's favor, the petition states any valid claim for

relief. Dismissal is justified only when the allegations of the petition clearly demonstrate plaintiff does not have a claim." Syl. ¶ 2.

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5. The plaintiffs filed suit against Douglas County seeking to set aside the County's consent to the City's annexation of the Annexed Land. This

suit is Case Number 2008CV371 with which this case has been consolidated.

6. On September 2, 2008, the City adopted Ordinance No. 8293 and notice of the adoption was published on September 9, 2008. This ordinance changed the zoning of the Annexed Land from agricultural to general industrial.
7. The City later adopted Ordinance No. 8350 which repealed Ordinance No. 8293 and reenacted the identical provisions with a new effective date.
8. Plaintiffs filed an appeal of the City's decision to annex the Annexed Land.

### **Conclusions of Law**

In this action plaintiffs appeal the decision of the City to annex the Annexed Land, which decision was memorialized in Ordinance No. 8285. The City moves to dismiss the appeal on the ground that the City's annexation of the Annexed Land is not a decision that is subject to appeal.

Plaintiff contends that the appeal is authorized by K.S.A. 60-2101(d), which provides as follows:

- (d) A judgment rendered or final order made by a political or taxing subdivision, or any agency thereof, exercising judicial or quasi-judicial functions may be reversed, vacated or modified by the district court on appeal. If no other means for perfecting such appeal is provided by law, it shall be sufficient for an aggrieved party to file a notice that such party is appealing from such judgment or order with such subdivision or agency within 30 days of its entry, and then causing true copies of all pertinent proceedings before such subdivision or agency to be prepared and filed with the clerk of the district court in the county in which such judgment or order was entered. The clerk shall thereupon docket the same as an action in the district court, which court shall then proceed to review the same, either with or without additional



pleadings and evidence, and enter such order or judgment as justice shall require. A docket fee shall be required by the clerk of the district court as in the filing of an original action.

Defendant contends that by annexing the Annexed Land under the terms of K.S.A. 12-520c the city acted in a legislative capacity, not a judicial or quasi-judicial capacity.

K.S.A. 12-520 sets forth seven alternative conditions that support a city's annexation of land. None of the conditions set out in that statutory section apply to the case at hand because the Annexed Land is not platted, does not adjoin the City, is not held in trust for the city and no part of the property lies within the city.

Subsection 12-520(h) provides a procedure by which an owner of land annexed under that section may challenge the annexation procedure and the authority of the city to annex the land.

In this case, the City utilized K.S.A. 12-520c to annex the Annexed Land. This section applies to so-called "island annexations," such as is involved in this case. This provision only applies if the property owner consents to the annexation. K.S.A. 12-521 establishes procedures for annexing land that does not meet the requirements of either K.S.A. 12-520 or K.S.A. 12-520c. The city commission's role is much more limited when the K.S.A. 12-520c procedure applies than it is when the procedure of K.S.A. 12-521 is utilized.

When the annexation takes place under K.S.A. 12-521, the governing body of the city must file a petition with the county commission asking it to hold a public hearing on the advisability of the annexation. The city is required to furnish a report concerning the present and proposed boundaries of the city, the present and proposed streets and utilities; and the general land use pattern in the areas to be annexed. A plan for providing services to the area must also be furnished. Adjoining landowners must be notified of the public hearing and the board of county commissioners must hear testimony from the city and interested parties. The statute

specifically provides that the action of the board of county commissioners is quasi-judicial in nature. The board must make specific written findings of fact and conclusions concerning whether the proposed annexation causes manifest injury to the owners of any land proposed to be annexed or to the owners of nearby or adjacent land. The statute sets forth criteria to be considered by the board of county commissioners in arriving at a decision. If the board of county commissioners grants the city's petition to annex the land in question, the city may annex the property.

When a city annexes property pursuant to K.S.A. 12-520c, the City is not required to give notice to the community; conduct a public hearing; or apply established criteria to the facts of the case. The Kansas Supreme Court held in *Heckert Construction Co. v. City of Fort Scott*, 278 Kan. 223, 224, 91 P.3d 1234 that:

A decision of a legislative body is quasi-judicial if a state or local law (1) requires notice to the community before the action, (2) requires a public hearing pursuant to notice, and (3) requires the application of criteria established by law to the specific facts of the case."

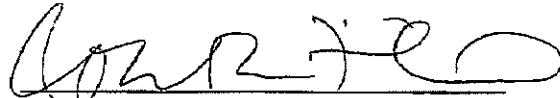
The Supreme Court has also held that, in making a decision under K.S.A. 12-521, the board of county commissioners "wears two hats: When it determines *advisability*, it acts in a legislative capacity, but when it determines *manifest injury*, it acts in a quasi judicial capacity." *In re Appeal of the City of Lenexa*, 232 Kan. 568, 575, 657 P.2d 47 (1983).

When the Lawrence City Commission considered the annexation in this case after receipt of the County Commission's permission to annex, the only decision it made concerned the advisability of the annexation. Thus, in adopting the ordinance to annex the Annexed Land, the City acted in a legislative capacity. Plaintiffs cannot appeal the legislative decision of the City under the

authority of K.S.A. 60-2101(d) because that statute applies only to appeals of quasi-judicial decisions of the City.

Defendant's motion to dismiss appeal is granted.

This memorandum of decision constitutes a journal entry and judgment is entered in accordance with the findings hereinabove made. This memorandum is dated and effective this 15<sup>th</sup> day of May, 2009.



Robert W. Fairchild  
District Judge

cc: Kaup & Schultz, LC  
Toni Ramirez Wheeler  
Ronald Schneider  
Barber Emerson, LC  
Evan Ice