ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

STAGECOACH TRAILS MHC, L.L.C.
v. CITY OF BENSON
CV-12-0241 PR

PARTIES:

Petitioner: Stagecoach Trails MHC, L.L.C.

Respondent: City of Benson, a municipal corporation

FACTS:

Petitioner is a limited liability company that operates a mobile home park (the "Park") in Respondent City of Benson. The Park has operated continuously since at least the early 1970s and is currently home to fifty mobile home units.

The Benson mobile home regulations are found in Section 16 of the Benson zoning regulations; they were extensively amended in 1998 (as amended, "Section 16"). Prior to 1998, the zoning regulations established minimum size and setback requirements for mobile home parks, but not for each mobile home space within a park. As amended in 1998, Section 16 established specific size and setback requirements for each space within a mobile home park. Between 1998 and 2010, Respondent did not enforce the provisions of Section 16 against any mobile home parks built prior to the amendment of Section 16 in 1998.

Petitioner purchased the Park in 2003 and began improving the property. Between 2003 and 2010, Respondent issued thirty-four permits authorizing Petitioner to remove and replace a mobile home unit on an existing space within the Park, even though none of the thirty-four new units complied with Section 16.

In late 2009, Respondent notified all mobile home park owners in Benson that it would begin enforcing the provisions of Section 16, including against parks it had previously treated as exempt. Respondent indicated that it would not apply Section 16 retroactively against currently installed units, but would enforce its provisions in reviewing all future permit applications for installing new units.

In January 2010, when space 27 within the Park became vacant, Petitioner applied for a permit to install a new mobile home unit in the space. On January 25, the Benson Zoning Administrator sent Petitioner a letter denying the application, explaining that space 27 did not comply with certain portions of Section 16 (the "January Letter"). Petitioner appealed the permit denial to the Benson Board of Adjustment (the "Board"), arguing that the entire Park is a nonconforming use under A.R.S. § 9-462.02 and that none of the spaces within the Park need to comply with Section 16.

On April 5th and April 13th, the Board held hearings to consider the matter and discussed a number of issues. Ultimately, the Board voted to affirm the denial of a permit for space 27.

In May, 2010, Petitioner filed a special action complaint in the superior court. The complaint sought mandamus relief under A.R.S. § 12-2021, arguing that Section 16 was void because when it was adopted, Respondent had failed to comply with the notice and hearing procedures set forth in A.R.S. § 9-462.04. As relief, the complaint requested an order granting the permit for space 27 and attorneys' fees under the mandamus fees statute, A.R.S. § 12-2030. The complaint also appealed the Board of Adjustment's decision pursuant to A.R.S. § 9-462.06(K). It alleged that even if Section 16 had been validly enacted, it could not apply to Petitioner because the Park was a legal nonconforming use under A.R.S. § 9-462.02.

While the litigation was ongoing, the Benson Zoning Administrator sent a second letter to Petitioner (the "July Letter"). The July Letter stated that the permit application for space 27 had been reconsidered, this time "without regard to the requirements of Section 16." The July Letter again denied the permit application for space 27.

In August, the superior court granted partial summary judgment to Petitioner. The court held that the amendments to Section 16 were void because their enactment failed to comply with the notice requirements of A.R.S. § 9-462.04.

On September 14th, Petitioner sought leave to file a supplemental special action complaint in order to challenge the July Letter. The new complaint argued that the July Letter, like the January Letter, was insufficient to justify denying the space 27 permit application; it also requested that the court direct the Zoning Administrator to issue the permit.

The following day, September 15, 2010, the Zoning Administrator sent Petitioner a third letter denying the space 27 permit application (the "September Letter"). Unlike the January and July Letters, the September Letter invited Petitioner to apply for a variance if it was unable to comply with the contents of the September Letter.

On September 23rd, Petitioner filed a second supplemental special action complaint in the superior court challenging the September Letter. In November, Respondent filed a motion to dismiss both of the supplemental special action complaints filed by Petitioner. The superior court ultimately granted Petitioner leave to file both supplemental special actions, finding that they were permissible supplemental pleadings pursuant to Rule 15(d) of the Arizona Rules of Civil Procedure.

On December 21, 2010, the superior court held an evidentiary hearing. At the hearing, Respondent argued that the court's review was limited to the record that was before the Board of Adjustment when it made its decision in April; it also argued that the July and September Letters were outside the scope of the superior court's review because the Board had not yet considered them. Petitioner argued that Respondent had waived its right to raise any reasons to deny the permit other than those set forth in the January Letter and the April Board hearings.

On December 29th, the superior court issued its decision. The court affirmed its prior ruling that Section 16 had been invalidly amended. It also found that the hearings before the Board

included the issues contained in the July and September Letters; thus, the court had authority to consider the matters raised in those letters and Petitioner did not need to present those issues to the Board in the first instance. Consequently, it denied Respondent's motion to dismiss both of the supplemental special action complaints filed by Petitioner. The court also found that Respondent's failure to raise the matters contained in the July and September Letters earlier meant that Respondent had waived its right to raise those issues. Additionally, the court found that the Park was a permissible nonconforming use under A.R.S. § 9-462.02. It concluded that Respondent was obligated to issue a permit for space 27 because Petitioner had a due process right to continue its nonconforming use. The court granted Petitioner a writ of mandamus, directed the Zoning Administrator to grant the permit for space 27, and granted Petitioner its attorneys' fees and costs.

The court of appeals reversed the decision of the superior court. *Stagecoach Trails MHC, L.L.C. v. City of Benson*, 229 Ariz. 536, 278 P.3d 314 (App. 2012). The court held that the superior court's review of the record should have been limited to "the record before the board when the board made [its] decision." *Id.* at 539 ¶ 15, 278 P.3d at 317 (quotation and citation omitted). Once the superior court invalidated Section 16 in August by granting partial summary judgment to Petitioner, "it reached the limits of its jurisdiction and had no authority to consider additional bases for the [Z]oning [A]dministrator's denial of the permit that had not been presented to the [B]oard." *Id.* at 540 ¶ 17, 278 P.3d at 318. "[B]ecause the superior court reached the limit of its jurisdiction when it reviewed the [B]oard of [A]djustment decision and invalidated Section 16," the court of appeals did not "reach the question of whether [Respondent] could reevaluate the permit application for space 27." *Id.* at 541 ¶ 20, 278 P.3d at 319. The court determined that the invalidation of Section 16 made it so that Respondent "may have [had] the authority, if not a continuing duty as it asserts, to reevaluate the permit application to determine whether it complies with whatever provisions [of the Benson zoning regulations] remain in effect." *Id.*

The court of appeals' opinion also reversed the trial court's grant of attorneys' fees. The court noted that this case involves a statutory special action because A.R.S. § 9-462.06(K) expressly authorizes the action. *Id.* at 542 ¶ 23, 278 P.3d at 320. Nothing in A.R.S. § 9-462.06(K) permits the superior court to issue a writ of mandamus; it "only authorizes a [trial] court to affirm, reverse, or modify the board of adjustment's decision." *Id.* ¶ 23. "Accordingly, A.R.S. § 12–2030, which provides for attorney-fee awards in mandamus actions, [wa]s not applicable to this statutory special action." *Id.*

The court rejected Petitioner's argument that *Motel 6 Operating Ltd. Partnership v. City of Flagstaff*, 195 Ariz. 569, 991 P.2d 272 (App. 1999), permits an award of attorneys' fees in this case. *Motel 6* was inapplicable because it did "not appear to have involved an administrative appeal or a statutory special action pursuant to § 9-462.06(K)." *Id.* n.7. Also, *Motel 6* has failed "to address or even acknowledge" two cases that come to the opposite conclusion: *Circle K Convenience Stores v. City of Phoenix*, 178 Ariz. 102, 103, 870 P.2d 1198, 1199 (App. 1993), and *U.S. Parking Systems v. City of Phoenix*, 160 Ariz. 210, 213, 772 P.2d 33, 36 (App. 1989). *Id.*

In sum, the court of appeals reversed the superior court's denial of Respondent's motion to dismiss the two supplemental special action complaints, "reverse[d] the grant of mandamus relief, and vacate[d] the award of attorney fees." *Id.* at 543 ¶ 27, 278 P.3d at 321. It affirmed "the superior court in all other respects, including its finding that [Section 16] is invalid." *Id.*

ISSUES:

1. Where a court determines that a municipal zoning administrator wrongfully denied a zoning permit based upon a void zoning ordinance, is the administrator entitled to raise new reasons to deny the same permit a second time, even though the new reasons would otherwise be legally time-barred?

2. By raising new reasons to deny the permit a second time, can the administrator unilaterally divest the trial court of jurisdiction over the permit application, including jurisdiction to consider a pending request for equitable relief and to determine whether the new reasons are time-barred or lack a good faith basis?

3. When an applicant successfully challenges a permit denial by demonstrating that it was based upon an ordinance that is void, invalid, or inapplicable under state law, may the applicant obtain a writ of mandamus and recover attorneys' fees under A.R.S. § 12-2030?

DEFINITIONS:

1. Mandamus: A writ issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly.

2. Nonconforming Use: Land use that is impermissible under current zoning restrictions but that is allowed because the use existed lawfully before the restrictions took effect.

STATUTES:

A.R.S. § 12-2030(A)

A court shall award fees and other expenses to any party other than this state or any political subdivision of this state which prevails by an adjudication on the merits in a civil action brought by the party against the state, any political subdivision of this state or an intervenor to compel a state officer or any officer of any political subdivision of this state to perform an act imposed by law as a duty on the officer.

A.R.S. § 9-462.02(A)

The municipality may acquire by purchase or condemnation private property for the removal of nonconforming uses and structures. The elimination of such nonconforming uses and structures in a zoned district is for a public purpose. Nothing in an ordinance or regulation authorized by this article shall affect existing property or the right to its continued use for the purpose used at the time the ordinance or regulation takes effect, nor to any reasonable repairs or alterations in buildings or property used for such existing purpose.

A.R.S. § 9-462.06

. . .

C. A board of adjustment shall hear and decide appeals from the decisions of the zoning administrator, shall exercise such other powers as may be granted by the ordinance and adopt all rules and procedures necessary or convenient for the conduct of its business.

. . .

G. A board of adjustment shall:

1. Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the zoning administrator in the enforcement of a zoning ordinance adopted pursuant to this article.

. . .

3. Reverse or affirm, wholly or partly, or modify the order, requirement or decision of the zoning administrator appealed from, and make such order, requirement, decision or determination as necessary.

. . .

K. A person aggrieved by a decision of the legislative body or board or a taxpayer, officer or department of the municipality affected by a decision of the legislative body or board may, at any time within thirty days after the board . . . has rendered its decision, file a complaint for special action in the superior court to review the legislative body or board decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed, but the court may, on application, grant a stay and on final hearing may affirm or reverse, in whole or in part, or modify the decision reviewed.