THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

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SC Court of Appeals

Case No. 2018-CP-10-0846
Case No. 2018-CP-10-2131
Case No. 2018-CP-10-2539
Appellate Case No. 2019-000903

City of Charleston, Appellant,

v.

City of North Charleston and Millbrook Plantation LLC, Respondents.

AND

Millbrook Plantation, LLC, Plaintiff,

v.

City of Charleston Defendant.

AND

City of Charleston Plaintiff,

v.

City of North Charleston and Millbrook Plantation, LLC, Defendants.

FINAL REPLY BRIEF OF APPELLANT CITY OF CHARLESTON TO THE BRIEF OF RESPONDENT MILLBROOK PLANTATION, LLC

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

COURT RULES

SECONDARY SOURCES

Appellant City of Charleston ("Charleston") reaffirms the Statement of the Case, Facts, and Statement of Issues on Appeal set forth in its Appellant's Brief.

ARGUMENT IN REPLY

I. THE CIRCUIT COURT ERRED IN HOLDING THAT CHARLESTON DID NOT HAVE STANDING TO CONTEST ORDINANCE 2017-083, ADOPTED UNDER THE AUSPICES OF SECTION 5-3-150(3) OF THE SOUTH CAROLINA CODE, KNOWN AS THE 100% PETITION METHOD OF ANNEXATION.

Both Respondent Millbrook Plantation, LLC ("Millbrook") and the circuit court misread the interplay between Quinn v. City of Columbia, 303 S.C. 405, 401 S.E.2d 165 (1991), and St. Andrews Pub. Serv. Dist. v. City Council, 349 S.C. 602, 564 S.E.2d 647 (2002). In Quinn, the Supreme Court of South Carolina established a rule regarding standing to contest a 100% annexation under section 5-3-150(3) of the South Carolina Code. That rule provided that a stranger could contest a 100% annexation on the grounds that the annexation was "'absolutely void,' i.e. *not authorized by law* . . . ." Quinn, 303 S.C. at 407, 401 S.E.2d at 166-67 (emphasis in original).

In St. Andrews, the Supreme Court revisited the rule established in Quinn. The St. Andrews Court made clear that only a party who could demonstrate that a 100% annexation infringed on its own proprietary interests or statutory rights had *statutory* standing to contest the annexation. Id. at 604, 564 S.E.2d at 648. The Court stated:

> The Court of Appeals held that respondent lacked statutory standing to challenge the annexation of these parcels. We agree. Under the 75% method, the challenger must be a municipality or one of its residents, or reside or own property in the annexed area. An SPD is neither a municipality nor a property owner for purposes of this provision. Tovey, supra; St. Andrews Public Serv. Dist. v. City of Charleston, 294 S.C. 92, 362 S.E.2d 877 (1987). *Further, the Court of Appeals held that respondent had 'not alleged a sufficient infringement of its proprietary interests or statutory rights' to meet the statutory standing test for challenges to 100% annexations. We agree.*

Id. at 604-05, 564 S.E.2d at 648 (emphasis added).

As to Quinn, the St. Andrews Court abrogated the rule that a stranger to an annexation could establish standing on the basis of an allegation that the annexation was not authorized by law. In such instances, standing was accorded to only the Attorney General, acting in the public interest. The Court explained:

> Despite the lack of statutory standing, the Court of Appeals found respondent had standing under our decision in Quinn v. City of Columbia, supra. In Quinn, we adopted a rule that permitted a "stranger" to the annexation to challenge that proceeding if the annexation ordinance was "'absolutely void', i.e. *not authorized by law* . . . ." Id. at 407, 401 S.E.2d at 166-167. Nine years later, we held that "The State, providing it is acting in the public interest, has standing to bring a quo warranto action challenging the annexation of property it does not own." State ex rel. Condon v. City of Columbia, 339 S.C. 8, 528 S.E.2d 408 (2000).
>
> We now overrule Quinn, and hold that the only non-statutory party which may challenge a municipal annexation is the State, through a quo warranto action. In our view, the better policy is to limit "outsider" annexation challenges to those brought by the State "acting in the public interest." Therefore, we reverse the Court of Appeals' holding that respondent has standing to challenge these annexations.

Id. at 605, 564 S.E.2d at 648.

Thus when all is said and done, St. Andrews amounts to a restatement of the rules for statutory standing and establishes a new rule for non-statutory standing. Under the 100% annexation method, the method applicable in this case, statutory standing requires a demonstration of an infringement of one's own proprietary interests or statutory rights. Absent statutory standing, the appropriate party to contest an annexation is the State, acting in the public interest. See Ex parte State ex rel. Wilson, 391 S.C. 565, 572, 707 S.E.2d 402, 406 (2011) ("Notably, residents of the annexing municipality are not permitted to challenge a 100% petition annexation. Rather, '[i]n order to challenge a 100% annexation, the challenger must assert an infringement of its own proprietary interests or statutory rights.'").

Here, Charleston has alleged that North Charleston Ordinance 2017-083 infringes on Charleston's proprietary interests and statutory rights by including territory previously annexed by Charleston *and* territory over which Charleston took the first public procedural step toward annexing. St. Andrews reaffirmed this standard as the test for statutory standing to contest a 100% annexation. The holding of the circuit court to the contrary was error and should be reversed.

II. THE CIRCUIT COURT ERRED IN HOLDING THAT THE SUPREME COURT OF SOUTH CAROLINA HAS DECLINED TO ADOPT THE "PRIOR PENDING PROCEEDINGS" RULE.

Contrary to what Millbrook alleges and the circuit court held, the Supreme Court of South Carolina has *not* declined to adopt the prior pending proceedings rule. City of Columbia v. Town of Irmo, 316 S.C. 193, 193, 447 S.E.2d 855, 856 (1994), did not eschew the rule. Instead, the Court "decline[d] to reach the issue of whether the 'prior pending proceedings' rule should be adopted" because there was no showing in the record that Irmo "commenced *valid legal* proceedings prior to" the City of Columbia. Id. at 196, 447 S.E.2d at 857 (emphasis in original).

Such is not the situation here. The allegations, taken in a light most favorable to Charleston, unequivocally demonstrate that, on December 19, 2017, the City Council of Charleston accepted a petition to annex property under the 75% petition method, including the portion of Millbrook's property not previously annexed by Charleston in 2005, and notified the world of its intent to hold a public hearing on the annexation petition. (R. p. 111, ¶¶ 15-16). These acts by City Council are statutorily required in order to annex under the 75% petition method. See S.C. Code § 5-3-150(1)(6) (establishing requirement for public notice and hearing on annexation petition under 75% method). The allegations also unequivocally reveal that these acts by the City Council of Charleston were accomplished prior to Respondent City of North Charleston ("North Charleston") taking any valid, public procedural step toward annexing any portion of Millbrook's property. (R. pp. 111-112, ¶¶ 15, 16, 19). It is not credible to contend that Charleston had not initiated any valid

legal proceedings when it undertook the very acts required by statute to commence an annexation under the 75% petition method.

For the first time on appeal, Millbrook asserts that Millbrook "was already in discussion with North Charleston regarding 100% annexation several weeks before Charleston accepted the 75% annexation petition without any notice to Millbrook." (Millbrook Br. p. 9, note 3). Millbrook relies solely upon the map attached to North Charleston Ordinance 2017-083, which is dated November 30, 2017. (Millbrook Br. p. 9, note 3). This map, which includes property annexed by Charleston in 2005, does not evince the commencement of a *valid* legal proceeding to annex any portion of Millbrook's property. (R. p. 305). There is also no evidence or allegation of any public procedural step taken by North Charleston or Millbrook prior to December 21, 2017, when North Charleston gave first reading to Ordinance No. 2017-083, including territory previously annexed by Charleston. See 2 McQuillin, Municipal Corporations § 7.39 (3d ed. 2006) ("The taking of the first mandatory public procedural step in the statutory process for incorporation or annexation of territory ordinarily fixes the date of the commencement of the proceedings, for the purpose of the rule as to jurisdictional priority.").

Millbrook's argument that the prior pending proceedings rule somehow interferes with private property rights is unsupportable. The General Assembly has seen fit to allow property to be annexed without the consent of a property owner, under specific circumstances. See S.C. Code Ann. § 5-3-150(1); S.C. Code Ann. § 5-3-300 (setting forth general annexation procedure by petition and election). If Millbrook has an issue with this premise, that is a matter for the legislature, not the courts. The prior pending proceedings rule, a rule of widespread application, simply provides a standard for establishing prior jurisdiction between municipalities competing for the same property. As explained in Argument II of Charleston's brief, this rule ensures stability

and predictability in the annexation process. See Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule, 63 N.C.L. Rev. 1260, 1265 (Aug. 1985) ("Perhaps the most significant attribute of the prior jurisdiction rule is that it enhances the predictability and order of annexation proceedings.").

Because the Supreme Court of South Carolina has *not* declined to adopt the prior pending proceedings rule, and because the City Council of Charleston had taken the first valid public procedural steps required to annex Millbrook's property under the 75% petition method prior to North Charleston commencing valid legal proceedings to annex any portion of Millbrook's property, this Court should reverse the circuit court on this issue and adopt the prior pending proceedings rule, or alternatively, remand the issue to the circuit court with instructions as to how the rule should be applied.

III. THE CIRCUIT COURT ERRED IN HOLDING THAT ORDINANCE 2017-083 DID NOT ATTEMPT TO ANNEX THE 100' WIDE TRACT OF LAND THAT HAD BEEN ANNEXED BY CHARLESTON IN 2005.

Millbrook contends that Ordinance 2017-083 did not include the 100' wide portion of Millbrook's property that abuts Ashley River Road and which had been annexed by Charleston in 2005. Curiously, North Charleston has conceded otherwise: "North Charleston's boundary description contained a factual error – it described the Parcel 006 boundary line as reaching Ashley River Road, and in that sense overlooked Parcel 006-1." (North Charleston Br., p. 6).

Millbrook hangs its hat on the number of times that Ordinance 2017-083 references a Tax Map Sequence ("TMS") number, i.e. TMS No. 361-00-00-006. Regardless of the TMS number cited, the fact remains that the legal description of the property purportedly annexed under Ordinance 2017-083 describes the boundaries of the annexed property as reaching and running along the right-of-way of Ashley River Road. (R. pp. 303-306). On its face, the description

includes the 100' wide portion of Millbrook's property that Charleston had annexed some 12 years earlier. (R. pp. 303-306). As explained in Argument V of Charleston's Appellant's Brief, the reference in North Charleston's ordinance to TMS No. 361-00-00-006 includes the entire Millbrook property because, at the time, the Millbrook property had not been designated with separate TMS numbers.

For reasons set forth in Argument II of Charleston's Appellant's Brief, Charleston contends the defect in the property description of Ordinance 2017-083 is substantive, incapable of being cured by way of corrective ordinance. See Bostick v. Beaufort, 307 S.C. 347, 350, 415 S.E.2d 389, 391 (1992) (characterizing irregularities in the description of the property to be annexed as a "substantive defect" that may not be corrected through a subsequent ordinance). For the same reasons, Charleston has standing to challenge North Charleston's 2018 ordinance attempting to correct the error of the property description in Ordinance 2017-083.

IV. CHARLESTON HEREBY ADOPTS BY REFERENCE ITS REPLY BRIEF TO NORTH CHARLESTON'S RESPONDENT'S BRIEF.

Pursuant to Rule 208(b)(6), SCACR, Millbrook has adopted by reference North Charleston's Respondent's Brief. To come full circle and cover all squares, Charleston adopts by reference herein its Reply Brief to North Charleston's Respondent's Brief.

CONCLUSION

For the reasons set forth in Charleston's Appellant's Brief, as supplemented by this Reply Brief and Charleston's Reply Brief to North Charleston's Respondent's Brief, Charleston respectfully requests that the circuit court's order of dismissal be reversed.

The case should be remanded with instructions that the prior pending proceedings rule applies under the facts alleged herein. In the alternative, the matter should be remanded with instructions as to the application of the prior pending proceedings rule.

Respectfully Submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

February 18, 2020

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