STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
DEC 07 2016
SC Court of Appeals

Appeal from Richland County
Tanya A. Gee, Circuit Court Judge
Case No. 2015-CP-40-03357

Appellate Case No. 2015-002532

Christ Central Ministries,..Respondent

Vs.

City of Columbia Board of Zoning Appeals.........................Appellant

---

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS APPEAL

BACKGROUND

Respondent is the owner of property located on the corner of Main Street and Elmwood Avenue in the City of Columbia. On April 16, 2014, Respondent appointed Hal W. Stevenson to be its agent for the purpose of replacing a fixed display billboard with a changeable copy billboard on Respondent's property. (Stevenson affidavit ¶4) The City of Columbia zoning administrator denied Respondent's application for a permit to construct the changeable copy sign, and the City's Board of Zoning Appeals upheld the denial. (R.O.A. pp. 31-32) Respondent appealed the decision of the Board of Zoning Appeals to the Court of Common Pleas. (R.O.A. pp. 25-28) The Court of Common Pleas entered an order on November 12, 2015, reversing the Board of Zoning Appeals and ordering that Respondent be "granted a permit to erect a

changeable copy billboard, including a replacement metal sign support structure on its property." (R.O.A. pp. 3-9) Thereafter, on December 7, 2015, Appellant filed its Notice of Appeal from the November 12, 2015 order.

Significantly for purposes of ruling on this motion, Appellant issued to Respondent, through Respondent's agent Stevenson Development, L.L.C., a zoning permit on February 19, 2016, and a building permit on March17, 2016, to allow the construction of the changeable copy billboard and replacement metal support structure that is the subject of this appeal. (Exs. A and B to Stevenson affidavit) Following receipt of the zoning and building permits, Stevenson Development, L.L.C. on behalf of Respondent erected the changeable copy billboard and replacement metal support structure at a cost of One Hundred Forty-three Thousand Three Hundred and 50/100 ($143,300.50) Dollars and the payment to Respondent as rental for its site Thirty-six Thousand ($36,000.00) Dollars. (Stevenson affidavit ¶¶ 12-14)

ARGUMENT

Appellant's appeal is moot. The relief sought by Appellant is a reversal of an order of the Court of Common Pleas that it grant to Respondent a permit to erect a changeable copy billboard and replacement metal support structure on its property. Appellant has issued both a zoning permit and a building permit allowing the construction of the changeable copy billboard and replacement metal support structure. Pursuant to those permits issued during the pendency of this appeal, the construction of the changeable copy billboard and replacement metal support structure was undertaken and completed.

The circumstance that now obtains is analogous to the circumstance in *Mathis v. S.C. State Highway Dept.,* 260 S.C. 344, 195 S.E.2d 713 (1973). In that case the Highway Department was ordered by the trial court to revoke its suspension of Mathis' driving license

"and reinstate his driving privilege." *Id.,* 195 S.E.2d at 714. The Highway Department appealed the trial court order, and when the appeal came to be heard by the Supreme Court the period of suspension had passed thus entitling Mathis to the return of his license. The Court held that Mathis' entitlement to the return of his license rendered the appeal of the Highway Department moot, stating:

> Upon the call of the case, we were advised that the respondent would be entitled to the return of his driver's license on March 23, 1973. This date now having passed, and the respondent being entitled to the return of his driver's license, has rendered the issues made by this appeal, moot and academic. There remains no actual controversy between the parties. We have held that this Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy. [citation omitted] A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for reviewing Court to grant effectual relief. Such is the situation here.

Mathis, 195 S.E.2d at 714.

Appellant, having issued permits to Respondent for construction of the changeable copy billboard, there is no effective remedy this court could grant as Appellant has already done that which it is asking the court to excuse. Appellant's issuance of the zoning and building permits intervened to deprive the court of an opportunity to grant effective relief.

From the obverse perspective, the Supreme Court of South Carolina found moot an appellant's contention that it suffered a denial of procedural due process when the City of Folly Beach delayed, but ultimately approved property for development of a subdivision. The Supreme Court held that the city's grant of subdivision approval was an intervening event that would render the grant of effectual relief impossible. *Seabrook v. Knox,* 369 S.C. 191, 631 S.E.2d 907 (2006). In the within case, a ruling by this court that Appellant was not required to

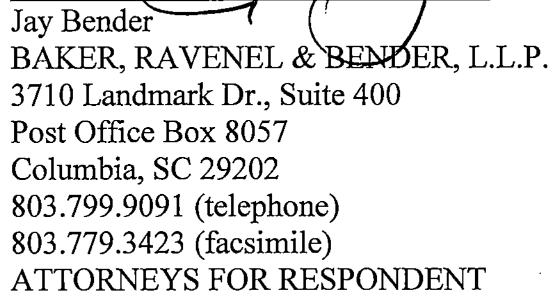
do that which it has done would be merely advisory, the action having already been taken. South Carolina courts do not decide academic or moot questions. *Id.*

CONCLUSION

Appellant asked this court to reverse the trial court order requiring it to issue a permit, but during the pendency of the appeal, Appellant issued the very permit it claims it should not have been ordered by the trial court to issue. Even if this court were to rule that the trial court erred, it could not grant effective relief by holding that Appellant had no obligation to do that which it has already done. This appeal should be dismissed as moot.

Columbia, South Carolina

December 7, 2016



Jay Bender
BAKER, RAVENEL & BENDER, L.L.P.
3710 Landmark Dr., Suite 400
Post Office Box 8057
Columbia, SC 29202
803.799.9091 (telephone)
803.779.3423 (facsimile)
ATTORNEYS FOR RESPONDENT