

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-002149-MR

CITY OF SPARTA, KENTUCKY

APPELLANT

v. APPEAL FROM GALLATIN CIRCUIT COURT  
HONORABLE JOSEPH F. BAMBERGER, JUDGE  
ACTION NO. 00-CI-00041

KENTUCKY SPEEDWAY, LLC, A  
LIMITED LIABILITY COMPANY;  
AND WILLIAM JEFFREY STEWART

APPELLEES

OPINION  
AFFIRMING

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BEFORE: COMBS AND DYCHE, JUDGES; AND POTTER,<sup>1</sup> SPECIAL JUDGE.

DYCHE, JUDGE: The City of Sparta appeals from a judgment of the Gallatin Circuit Court invalidating, *ab initio*, its attempted annexation of 2100 acres of realty; the size of the city without the new territory is 579 acres. We affirm.

Kentucky Revised Statutes (KRS) 81A.400-.470 set out the methods for annexation by cities other than those of the

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<sup>1</sup>Senior Status Judge John Woods Potter sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

first class; these sections are applicable to Sparta, a city of the sixth class. KRS 81.010(6), 81A.400. Those statutes allow annexation by two methods: by the unanimous consent of all the property owners in the area proposed to be annexed (KRS 81A.412); and without the consent of the affected landowners (KRS 81A.420).

It is uncontradicted from the record that the City of Sparta advertised that it was enacting a consent ordinance annexing the disputed territory. It is also uncontradicted that the city had obtained no consent from any landowner, much less the unanimous consent of all. It is also uncontradicted that the city failed to comply, in any substantial manner, with the two-step procedure for annexation in the absence of unanimous consent.

The testimony of the mayor and clerk of the city establishes these facts, and the city cites us to no affidavits or other evidentiary matter which indicate otherwise. In the face of a properly supported summary judgment (CR 56) motion, it is incumbent on the opposing party to present something more than bald assertions to present issues of genuine material fact. Despite much protest that the summary judgment was improvidently granted, the city has cited us to no evidence which would create such an issue. The city failed to comply, strictly or otherwise, with the applicable statutes. Strict compliance is necessary. City of Louisville v. Fiscal Court of Jefferson County, Ky., 623 S.W.2d 219, 225 (1981).

The city grasps at the Asubstantial compliance@and Amaterial prejudice@provisions of the notice statute, KRS 81A.425(7), asserting that this controls the entire process, and sets the standard of review for the entire statute. This is simply not correct. That subsection applies to the notice provisions in its section only.

In the face of such egregious disregard for the orderly statutory process, any defect in notice, or a purported error by the trial court concerning same, is, at worst, harmless error. CR 61.01. The trial court was not required to make findings of fact on the summary judgment motion. But, as the operative facts are not in controversy, the findings are helpful to this court, and are adopted as our own.

The judgment of the Gallatin Circuit Court is affirmed.

ALL CONCUR.

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BRIEF FOR APPELLEES KENTUCKY  
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