RENDERED: May 27, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002475-MR

NOAH JOHNSON — APPELLANT

v.

APPEAL FROM MADISON CIRCUIT COURT
HONORABLE JULIA HYLTON ADAMS, JUDGE
ACTION NO. 99-CI-00860

MADISON COUNTY PLANNING COMMISSION — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: MINTON AND TACKETT, JUDGES; HUDDLESTON, SENIOR JUDGE.[1]

TACKETT, JUDGE: Noah Johnson appeals from an order of the Madison Circuit Court dismissing his appeal from an adverse decision of the Madison County Planning Commission. The Commission denied Johnson's application for a waiver from the

[1] Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

subdivision regulations for a mobile home park. The circuit court relied on the case of Sizemore v. Madison County Fiscal Court, 58 S.W.3d 887 (Ky. App. 2000), which held that a mobile home park was a subdivision for the purposes of the statutory scheme for planning and zoning. Johnson argues that the court improperly applied this case retroactively. We disagree, and affirm the decision.

Johnson bought a 7.59 acre tract in September 1996, which he subdivided into three smaller lots, one measuring 5.59 acres. This plat was submitted to the planning commission and approved after revision. In March 1997, Johnson applied to the state Department of Housing, Buildings and Construction for a permit for a mobile home park on the 5.59 acre tract, to be called the Symoan Mobile Home Park. The property was inspected by the Cabinet for Human Resources in 1998 and the Cabinet for Health Services in 1999. In June 1999, the Madison County Code Enforcement officer sent an order to Johnson to cease and desist further development. At the time of the order, Johnson had already started operation of the mobile home park and had more than two homes on it, and a new street was used for access. The Cabinet for Health Services issued a permit on June 24, 1999, but on July 20, the planning commission denied the proposed plat and development plan. Johnson filed this action in the circuit court, which affirmed the planning commission's judgment,

holding that the record reflected that Johnson's initial approach to county authorities did not disclose his intent to operate a mobile home park or install a new street, and the court held that he was required to obtain a subdivision plat in accordance with Kentucky Revised Statute (KRS) Chapter 100. This appeal followed.

On appeal, Johnson claims that the court gave the Sizemore case above improper retrospective application, and argues that he was told, apparently informally, by the Madison County Judge-Executive that fiscal court approval was not required. Johnson then began going through state channels for approval for his mobile home park, without consulting county planning authorities. We do not agree with Johnson's contentions.

The doctrines on retroactivity do not apply here. When legislation is changed between the time of conduct and the time of a judicial decision, the conduct will be evaluated under the law as it existed at the time. Landgraf v. USI Film Products, 511 U.S. 244 (1994). Similarly when the applicable case law changes between conduct and judicial action, the law at the time applies. The distinction that Johnson fails to see is that where a case only interprets existing law, the doctrine of retroactivity is inapplicable. Sizemore by no means changed the applicable law. The statute, KRS 100.111(22), dealing with the

definition of "subdivision", was unchanged between the time of the conduct and the time of the circuit court's decision. All Sizemore did was provide an interpretation of existing law. For that reason, Johnson's argument that the circuit court should not have applied Sizemore must fail. Sizemore is directly on point and controlling. The facts are strikingly similar, and Johnson's attempt to distinguish it unavailing. In Sizemore, the landowner contacted the same county judge/executive by letter and received a letter in response that stated that county regulations would not affect the developer if the developer owned the lot and/or the mobile homes, and that only on the transfer of a lot or parcel would he be subject to the county subdivision regulations. The developer began the permit process with the state authorities but did not submit a subdivision plat to the county authorities. The fiscal court thereafter sought an injunction against the developer due to his failure to obtain planning commission approval. Sizemore argued that he did not have to seek approval because he was not dividing the land into lots for the purpose of sale, but this Court held that the above statute applied and that he must seek approval from the appropriate county authorities. This case is very similar to Sizemore. The distinctions drawn by Johnson are superficial ones, and the cases are fundamentally the same.

Neither is Johnson entitled to invoke the equitable doctrines of estoppel and laches. Johnson argues that he relied on the county judge/executive's representation that the county had no interest in whether he developed the tract into a mobile home park, and therefore the county authorities should be estopped from applying the subdivision regulations against him, or in the alternative, the doctrine of laches should apply. We disagree. As in Sizemore, there is no evidence that the county judge/executive induced Johnson to do anything by his representation. Further, the alleged "representation", as in Sizemore, merely amounts to an incorrect interpretation of the law by one public official. There are no special or exceptional circumstances here that demand application of the equitable doctrine of estoppel. Likewise, laches is completely inapplicable, as laches only applies where a party neglects to assert its rights to file a claim for an unreasonable length of time and the other party relies to its detriment on the lack of assertion, and is prejudiced thereby. Wiggington v. Commonwealth, 760 S.W.2d 885 (Ky. App. 1988). There is absolutely no evidence that indicates that laches should apply here.

For the foregoing reasons, the judgment of the Madison Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

James T. Gilbert
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