



NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

JUN 29 2016

MICHAEL S. RICHIE
CLERK

GUTHRIE PUBLIC WORKS)
AUTHORITY, an Oklahoma Public)
Trust,)

Plaintiff/Appellant,)

vs.)

KAREN SCHANDORF &)
PATTY HAZELWOOD,)

Defendants/Appellees.)

Case No. 114,939

APPEAL FROM THE DISTRICT COURT OF
LOGAN COUNTY, OKLAHOMA

HONORABLE PHILLIP CORLEY, TRIAL JUDGE

AFFIRMED

Randel Shadid
Edmond, Oklahoma

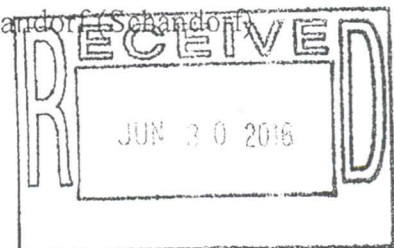
For Plaintiff/Appellant

Phillip P. Owens, II
CHRIS HARPER, INC.
Edmond, Oklahoma

For Defendants/Appellees

OPINION BY KEITH RAPP, JUDGE:

The Plaintiff, Guthrie Public Works Authority (GPWA), appeals a trial court
Order dismissing its action against the Defendants, Karen Schandorf, Schandorf,



and Patty Hazelwood (Hazelwood). The Defendants have moved for summary disposition or dismissal of the appeal. The Oklahoma Supreme Court deferred the decision on Defendants' Motion to the decisional stage.

FACTS RELATED TO SUMMARY DISPOSITION/DISMISSAL MOTION

The present case is the third appeal associated with GPWA and objections to an initiative petition circulated by the defendants.¹

The Defendants had circulated an initiative petition seeking a Guthrie city charter amendment to require a public vote before water and sewer rates could be increased. After obtaining signatures, the Defendants filed the initiative petition with the City of Guthrie, but the City of Guthrie refused to call an election for several reasons.

GPWA filed a declaratory judgment action against Defendants. GPWA alleged that it was a separate and independent authority from the City of Guthrie. Therefore, GPWA sought a declaratory judgment to determine the rights, status and legal relationship between it and the City of Guthrie "as effected (sic) by the proposed initiative petition filed by the Defendants against the City of Guthrie."² The trial court dismissed GPWA's action.

¹ *GPWA v. Schandorf and Hazelwood*, Cause No 110,588, decided September 6, 2013, (cert. denied) (unpublished) ("*GPWA I*"); *In re: Initiative Petition Filed Sept. 7, 2008*, 2015 OK CIV APP 79, 358 P.3d 946 ("*Initiative*").

² *GPWA I*, Opinion, p. 3.

In *GPWA I*, GPWA appealed the dismissal of its declaratory judgment action. The Court of Civil Appeals (COCA) ruled that, although GPWA and the City of Guthrie were separate entities, the action was “not ripe for a judicial determination because Defendants’ initiative petition has not been enacted. Thus, how and whether the initiative process might affect the rights of and the relationship between City and Authority is a hypothetical question we will not answer.”³ COCA affirmed the dismissal on that ground.

In *Initiative Petition* the Defendants here were the plaintiffs and appellants in an action against the City Clerk, Treasurer and Mayor of Guthrie because their initiative petition had been denied. The trial court denied the petition on the ground that it was unconstitutional “because it would cause such an undue hardship on the City of Guthrie and the Guthrie Public Works Authority that it would destroy the City’s ability to engage in the business of operating a utility.”⁴ COCA reversed.

Again, the initiative had not been enacted. The City defendants in *Initiative* conceded that they had the burden to prove the hardship contention. “The evidence that voters would not approve a rate increase consisted of testimony of city council members of historically low turnout at elections and multiple school

³ *GPWA I* Opinion, p. 7.

⁴ *Initiative* Opinion, p. 1.

bond elections that voters rejected. Council members testified that in their opinion voters do not favor increases in taxes or utility rates and could be expected to disapprove a rate increase if given the opportunity at an election.” *Initiative*, 2015 OK CIV APP 79 ¶ 15, 358 P.3d at 950.

COCA reversed and ruled:

Unless the City can show that Plaintiffs’ initiative clearly and manifestly violated the Oklahoma or United States Constitution, the initiative is legally sufficient. The City’s evidence was that if the initiative was presented to the voters, and if they passed it, and if the voters subsequently disapproved a rate increase, then the Guthrie Public Works Authority could potentially fail to meet its financial obligations. The City’s witnesses speculate that the voters would never approve a rate increase. That evidence does not meet the standard that the initiative clearly and manifestly violates Art. 18 §6.

Initiative, 2015 OK CIV APP 79 ¶ 17, 358 P.3d at 950-51 (citation omitted).

Here, GPWA has filed another declaratory judgment action against Defendants alleging that it was decided in *GPWA I* that GPWA is a separate and independent authority from the City of Guthrie. GPWA alleged that the Initiative, if passed, would have no effect on GPWA and requested that the trial court “determine the rights, status or other legal relationships between the City of Guthrie, a municipal corporation, and the Guthrie Public Works Authority, a public trust, as relates to the initiative petition for which Defendants seek an election, the Plaintiff claiming that said election would be of “no effect on the Guthrie Public Defendants”

Works Authority.”⁵ GPWA requested that the trial court order that an election not be held on the initiative petition “as it would result in a costly and unnecessary election.”

At all relevant times, there has not been an election on the initiative petition. Schandorf and Hazelwood moved to dismiss the petition.⁶ They cited the prior appeals in support of their motion. The trial court agreed and dismissed the action as a hypothetical question. GPWA appealed.

GPWA’s allegation of costly and unnecessary election was litigated in the trial court in the *Initiative* appeal. COCA ruled that the evidence was insufficient to establish the allegation as the allegation was based upon speculation about the outcome of an election. GPWA offers no new evidence and, in fact, the speculation remains as there has not been an election.

Next, GPWA’s request of this Court to adjudicate the relationship between it and the City of Guthrie and the effect on the relationship of the petition was adjudicated in *GPWA I*. In *GPWA I*, COCA ruled that this was a hypothetical question because no election had been held on the initiative petition. Again, the circumstance of no election exists. Thus, the ruling in *GPWA I* applies here.

⁵ Petition, Record Tab 1, p.2.

⁶ This includes the time to the date of Defendants summary disposition/dismissal motion was filed.

This Court concludes that this appeal may be disposed of by summary adjudication pursuant to the Oklahoma Supreme Court Rules. Therefore, there is no error of law by the trial court dismissing this action as presenting a hypothetical question. This appeal is summarily affirmed pursuant to Okla.Sup.Ct.R. 1.202(d), 12 O.S.2015, Ch. 15, app. 1 (“the opinion and conclusion of law adequately explain the decision.”)

Defendants have requested in their motion that this Court imposed unspecified sanctions against GPWA and its attorney for filing a frivolous appeal. 12 O.S.2011 § 995.⁷ The dissent in *State ex rel Moshe Tal v. City of Oklahoma City*, 2000 OK 70, 19 P.3d 268 (Watt, J. dissenting), would have the trial court hear and decide any motions for sanctions.

The criteria for ascertaining that an appeal is frivolous are set out in *TRW/Reda Pump v. Brewington*, 1992 OK 31, ¶ 14, 829 P.2d 15, 22-23. The entire appeal must be objectively examined and all doubts resolved in favor of the appellant. A “frivolous appeal,” has no reasonable or legitimate legal or factual basis in support of the appeal. The appeal is one where the result is obvious or

⁷ Section 995 reads:

The Oklahoma Supreme Court or Court of Civil Appeals shall dismiss an appeal that is frivolous, and may impose sanctions against the appellant, the appellant’s attorney, or both. The sanctions that may be imposed may include the reasonable expenses incurred because of the filing of the appeal, including a reasonable attorney’s fee. The court shall dismiss a cross-appeal or an original proceeding that is frivolous and may impose sanctions as provided by this section.

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denied. I would hold that GPWA's appeal was frivolous and would return it to the trial court for a determination of costs and attorney fees to be imposed.

June 29, 2016

IN THE DISTRICT COURT OF LOGAN COUNTY
STATE OF OKLAHOMA

IN RE: INITIATIVE PETITION)
FILED SEPTEMBER 7, 2008, FOR)
PROPOSED ORDINANCE TO THE)
CITY OF GUTHRIE, OKLAHOMA, and)

✓ KAREN SCHANDORF AND)
PATTY L. HAZLEWOOD)

PETITIONERS,)

v.)

WANDA CALVERT, CITY CLERK,)
CITY OF GUTHRIE, and)

CHARLES BURTCHEER, MAYOR OF)
CITY OF GUTHRIE, OKLAHOMA)

DEFENDANTS.)

Case No. CJ-2009-3 ✓

ORDER

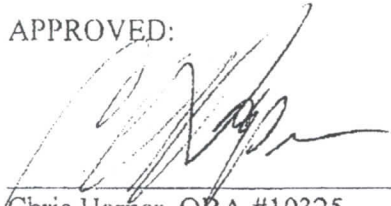
✓ NOW ON THIS 19th day of February, 2016, this matter comes on for hearing on Petitioners' Motion to Enter and Enforce Judgment. Petitioners appeared by and through counsel, Chris Harper, Inc. Defendants appeared by and through counsel, Randel Shadid. The Court, having reviewed the briefs and the file, entertained oral argument, and being otherwise fully advised in the premises, finds and orders as follows:

Petitioners' Motion to Enter and Enforce Judgment is hereby GRANTED. Defendants are hereby ORDERED to place Petitioners' Initiative Petition on the ballot for public vote on the first available election date in the City of Guthrie.

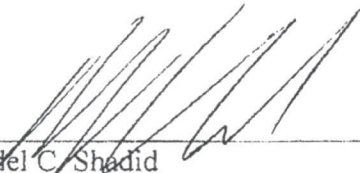
IT IS SO ORDERED.

THE HONORABLE PHILLIP C. CORLEY
JUDGE OF THE DISTRICT COURT

APPROVED:



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