IN THE COURT OF APPEALS

9/9/97

OF THE

STATE OF MISSISSIPPI

NO. 96-CA-00023 COA

CITY OF LAUREL, MISSISSIPPI APPELLANT

v.

DAP CORPORATION APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. MICHAEL L. CARR, JR.

COURT FROM WHICH APPEALED: JONES COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANTS: WILLIAM SYLVESTER MULLINS

ATTORNEY FOR APPELLEE: JOHN L. JEFFRIES

NATURE OF THE CASE: ZONING - JURISDICTION

TRIAL COURT DISPOSITION: DECLARED ZONING ORDINANCE VOID AND AWARDED NO DAMAGES OR ATTORNEYS FEES.

MANDATE ISSUED: 9/30/97

BEFORE BRIDGES, C.J., HINKEBEIN, AND KING, JJ.

BRIDGES, C.J., FOR THE COURT:

On December 8, 1995, the Chancery Court of Jones County declared void for insufficient notice two ordinances passed by the City of Laurel (the City) relating to the rezoning of certain properties owned by the DAP Corporation (DAP) and Robert Lester Chandler (Chandler). The court further enjoined the City of Laurel from enforcing these ordinances. The City appeals arguing that the chancery court did not have subject matter jurisdiction and that the notice given for the rezoning hearing was sufficient. DAP cross-appealed alleging that the chancellor erred in not awarding it damages, including attorney's fees. Finding no error, we affirm.

FACTS

Chandler and DAP own contiguous parcels of property in Laurel, Mississippi. Both parcels were zoned as residential according to the zoning maps of the City. Chandler had a contract with the Farm Bureau to sell his land contingent upon its being rezoned to commercial. In order to facilitate his sale, Chandler filed a request with the City to have his property rezoned as commercial. Notice of the hearing was published in the *Laurel Leader-Call* on both May 31 and June 15, 1993. The notice contained the following description of Chandler's property:

Gen. Descrip. Sec. 19, T9N, R11W, City Tax Parcel No. 10796900000, being located on State Highway 15 N. . . .

An ordinance was adopted reclassifying Chandler's property from residential to commercial on June 22, 1993. The same ordinance also erroneously rezoned DAP's contiguous property from residential to commercial. On August 3, 1993, the City adopted another ordinance rezoning DAP's property back to residential.

On August 11, 1993, DAP filed a complaint in the Chancery Court of Jones County alleging, among other things, that both ordinances were void for insufficient notice of hearing and seeking an injunction preventing their enforcement. DAP also sought compensation from the City for all damages it had sustained. The City filed a motion to dismiss alleging that the court did not have subject matter jurisdiction because DAP's exclusive remedy was an appeal to the circuit court as prescribed by Section 11-51-75 of the Mississippi Code of 1972. The motion was granted, but DAP was allowed to amend its complaint to adequately plead the factual allegations which supported its claim that the notice given by the City of the rezoning hearing was so grossly inadequate so as to constitute no notice at all. DAP amended its complaint, and the matter was heard by the court. The

court ruled that it had jurisdiction, that the notice was so defective as to render the ordinance void, and that an injunction was the proper remedy. No damages were awarded.

ARGUMENT AND DISCUSSION OF LAW

I. WHETHER THE CHANCERY COURT LACKED SUBJECT MATTER JURISDICTION.

The City's first issue on appeal is that the chancery court did not have subject matter jurisdiction because DAP had yet to exhaust its administrative remedies. We disagree. We find that in this case, since DAP was seeking to have the ordinance declared void, its appeal to chancery court was proper. "An injunction is a proper remedy to declare void city ordinances. . .". *Smith v. State of Mississippi*, 242 So. 2d 692, 695 (Miss. 1970).

We further find the case of *Brooks v. City of Jackson* 51 So. 2d 274 (Miss. 1951). to be on point and controlling. *Brooks* is factually similar to the case *sub judice*. In *Brooks*, a landowner sought to enjoin a church from having its property rezoned from residential to commercial. *Id.* at 275 The supreme court opined that the case had been properly brought in chancery court, saying:

In view of the conclusions which we have reached, we address this opinion only to the question raised as to the validity of the ordinance, since, if the ordinance is void and its provisions are about to be or are being enforced, and appellants are injuriously affected thereby, either in person or in the use of their property, they are entitled to a court of equity to have the enforcement of the ordinance enjoined.

Id. at 276. We agree with the court in *Brooks* and agree with the chancellor in the case *sub judice* that the chancery court had subject matter jurisdiction. Accordingly we find no merit to this issue.

II. WHETHER THE CHANCERY COURT ERRED IN FINDING THAT THE ORDINANCE WAS VOID DUE TO INSUFFICIENT NOTICE OF THE PUBLIC HEARING.

The City next argues that the notice of hearing, specifically the description of the property to be rezoned, given in the *Laurel Leader-Call* was sufficient to satisfy the requirements of Section 17-1-15 of the Mississippi Code of 1972. We disagree. Section 17-1-15 does not specifically speak to the specificity with which property to be rezoned must be described. The chancellor, therefore, must decide if the description of the property is sufficient to give notice to nearby property owners so that they may object. "This Court reviews an order for an injunction to see if the chancellor has committed manifest error or lacks substantive evidence to support his judgment." *Bosarge v. State of Mississippi*, 666 So. 2d 485, 489 (Miss. 1995).

The chancellor found that the description was not sufficient to enable its readers to ascertain whether their property may be affected by the rezoning and that there was no metes and bounds description or other monument to aid average readers in finding the property. Furthermore, the chancellor found that owners within one hundred and sixty feet[(1)] of Chandler's property would not be adequately apprized of the location of the property to be rezoned. These owners would have a statutory right to

object to the rezoning. We find the chancellor's findings to be supported by substantive evidence, and accordingly, we find no merit in this issue.

III. WHETHER THE CHANCELLOR ERRED BY NOT AWARDING DAMAGES TO DAP.

In its cross-appeal, DAP argues that the chancellor erred by not awarding it damages with regard to the dispute in this case. In our attempt to resolve this issue, we are perplexed by the structure of the cross appeal that has been presented to this Court. It appears that the appellant, the City, in the third issue of its *initial brief* argued in response to an argument that had yet to be made to this Court. Because of this, the appellee/cross-appellant was forced to respond to the argument it had not even presented to this Court, instead of fully developing its initial cross-appeal argument on its own. This unorthodox course results in confusion for this Court in that the issue may not ever get fully developed.

Furthermore, we have searched the record in this case for some clue as to how the issue of damages was argued at trial. We are not able to find any guidance. There is discussion of a bifurcated trial, but our review of the record reveals no part of the trial that is dedicated to the issue of damages. This Court finds it difficult to consider this issue fully without having a full record of what went on at trial. We can only consider the chancellor's findings with regard to damages. The following has been said about our standard of review of a chancellor's findings:

Our review of a chancellor's findings is well settled and very familiar. This Court will not disturb the findings of a chancellor when supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was applied.

Griffin v. Armana, 687 So. 2d 1188, 1192 (Miss. 1996). DAP fails to show this Court any reason why the judgment of the chancellor with regard to damages should be reversed. Without more, we must defer to the judgment of the chancellor. Accordingly, we find no merit to this issue.

THE JUDGMENT OF THE CHANCERY COURT OF JONES COUNTY IS HEREBY AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

THOMAS, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR. MCMILLIN. P.J., NOT PARTICIPATING.

1. This requirement is pursuant to Section 17-1-17 of the Mississippi Code of 1972.

(Rev. 1995).