IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY FLORIDA

MARY JO REED,
Petitioner,

v.

VILLAGE OF TEQUESTA, and
PALM BEACH COUNTY
Respondents.
_____/

APPELLATE DIVISION (CIVIL): "AY"
Case No.: 502012CA014210XXXXMB

Opinion filed: AUG - 1 2013

Petition for Writ of Certiorari from an Interlocal Agreement between the Village of Tequesta and Palm Beach County

For Petitioner: William S. Wood, Esq., P.O. Box 3365, Tequesta, FL 33460 williamswoodatty@gmail.com

For Respondents: Robert Banks, Esq., 301 North Olive Ave., Suite 601, West Palm Beach, FL 33401, rbanks@pbcgov.org
Keith Davis, Esq., 1111 Hypoluxo Rd. Ste. 207, Lantana, FL 33462, keith@cwd-legal.com

Petitioner, Mary Jo Reed, filed a Petition for Writ of Certiorari ("Petition") seeking review of an Interlocal Agreement between the Respondents, Village of Tequesta and Palm Beach County, that annexed her property from unincorporated Palm Beach County to the Village of Tequesta. Reed argues that her property does not meet the statutory definition of an enclave and therefore is not subject to annexation. We agree and therefore grant her Petition.

Reed owns property ("the Property") located in an unincorporated area of Palm Beach County, Florida. The Property is bordered on three sides by the Village of Tequesta, and one side by County Line Road, which separates Palm Beach County and Martin County. On May 21, 2012, Respondent, Village of Tequesta ("Tequesta") notified Reed that the Village Council of Tequesta ("Village Council") was contemplating adopting an agreement with Palm Beach County to annex property located in unincorporated areas of Palm Beach County that met the

statutory definition of "enclave." Tequesta stated that Reed's property fell within that definition and would be annexed if the agreement was adopted. In the notification, Tequesta stated that the Village Council would consider the agreement on Thursday, June 14, 2012, 6:00 p.m. at the Village Council Chambers, located at 345 Tequesta Drive. Reed did not attend the meeting. On July 10, 2012, Tequesta and Palm Beach County entered into an agreement entitled "Interlocal Agreement for Enclave Annexation," which annexed the Property. On August 2, 2012, Reed filed the instant Petition for Writ of Certiorari.

Standing

As a preliminary matter, Tequesta argues that Reed lacks standing to bring this petition since she failed to object to her property being annexed either prior to or at the meeting where Tequesta and Palm Beach County entered into the agreement to do so, thereby failing to properly preserve this issue on appeal. We disagree, as neither statutory authority nor case law require a party to object to the annexation of property in order to have standing.

> Any party affected who believes that he or she will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in this chapter for annexation or contraction or to meet the requirements established for annexation or contraction as they apply to his or her property may file a petition in the circuit court for the county in which the municipality or municipalities are located seeking review by certiorari. The action may be initiated at the party's option within 30 days following the passage of the annexation or contraction ordinance or within 30 days following the completion of the dispute resolution process in subsection (2). In any action instituted pursuant to this subsection, the complainant, should he or she prevail, shall be entitled to reasonable costs and attorney's fees.

§ 171.081(1), Fla. Stat. (2012) (emphasis added). "Parties affected" is defined as "any persons or firms owning property in, or residing in, either a municipality proposing annexation or contraction or owning property that is proposed for annexation to a municipality or any governmental unit with jurisdiction over such area. § 171.031(5), Fla. Stat. (2012). Under

sections 171.031(5) and 171.081(1), standing is provided for three classes of parties (1) persons or firms owning property in the municipality; (2) persons or firms residing in the municipality; and (3) persons or firms owning property that is proposed for annexation. *City of Tallahassee v. Kovach*, 733 So. 2d 576, 578 (Fla. 1st DCA 1999). Contrary to Tequesta's assertion, section 171.081(1), Florida Statutes, and case law do not require that a person object at a city meeting or similar gathering in order to be allowed to file a petition for writ of certiorari. In order to have standing, one only needs to fall within one of the three classes of parties outlined in *Kovach, supra.* Reed falls under the third class of parties: she owns property that was proposed for annexation. Therefore, Reed has standing to bring this Petition.

Procedural Due Process

Reed argues she was denied procedural due process. Procedural due process requires notice and an opportunity to be heard. *Keys Citizens for Responsibility Government, Inc. v. Florida Keys Aqueduct Authority*, 795 So. 2d 940, 948 (Fla. 2001). Reed attached to her Petition a letter from Tequesta that gave her notice of its intent to consider adopting an agreement that would annex her property. The notice also listed the date, time, and location that the Tequesta's Village Council planned to meet to discuss the proposed agreement, as well as contact information in the event Reed had questions concerning the meeting or agreement. The letter gave Reed notice of Tequesta's plans and informed her of the meeting and persons she may contact regarding such, which constituted her opportunities to be heard. Since Reed received notice and an opportunity to be heard, Tequesta afforded Reed procedural due process.

Statutory Definition of Enclave

Reed argues that her property does not meet the definition of an "enclave" and therefore is not subject to annexation. Section 171.046, Florida Statutes, (2012), authorizes the annexation of property that meets the definition of "enclave." "Enclave" is defined as follows:

> (a) Any unincorporated improved or developed area that is enclosed within and bounded on all sides by a single municipality; or
>
> (b) Any unincorporated improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.

§ 171.031(13), Fla. Stat. (2012).

To meet the definition of an enclave under subsection (a) Reed's property must be bordered on all sides by Tequesta. In order to meet the definition of an enclave under subsection (b) Reed's property must:

> (1) Be bordered by a single municipality and an obstacle (either natural or manmade), and
>
> (2) Due to such obstacle, the only way to access the property by vehicle is to drive through the municipality.

Tequesta asserts two alternate theories that qualify Reed's property as an enclave: (1) Since the part of County Line Road directly north of the Property is part of Tequesta, her property is bordered on all sides by Tequesta and therefore satisfies subsection (a) of the statute, and (2) even assuming that the part of County Line Road directly north of Reed's property is not part of Tequesta, Reed's property satisfies subsection (b) because she must cross through Tequesta to access her property. The Court addresses these assertions in turn.

Applicability of section 171.031(13)(a)

It is unclear exactly what evidence Tequesta relied on to determine that the part of County Line Road directly north of Reed's property is part of Tequesta. No deeds or surveys

were submitted to the Court for review. Such items would clearly indicate property, county, and municipality boundaries and would constitute competent, substantial evidence. Tequesta submitted a map[1] that highlights the unincorporated enclave areas in blue, and the present boundaries of Tequesta in yellow. The map shows the Property surrounded by yellow, indicating that it is bordered by Tequesta. However, Tequesta did not state who prepared this map and how the boundary lines were determined. Without verification of who made this map and its authenticity, a faint, fuzzy, yellow line on this map is not competent, substantial evidence the portion of County Line Road north of the Property is part of Tequesta. Therefore, there is no competent, substantial evidence in the record to support a finding that Reed's property qualifies as an enclave under section 171.031(13)(a).

Applicability of section 171.031(13)(b)

It appears to be undisputed that the Property is bordered by Tequesta to the East, South, and West. County Line Road borders the Property to the North and runs East to West. County Line Road is divided into a "northern half" and "southern half." The northern half is the roadway for traffic travelling west, and the southern half is the roadway for traffic travelling east. It appears to be undisputed that the northern half of County Line Road (the west-bound lane) is part of Martin County, however, there is no evidence of that fact in the record. As discussed supra, there is no evidence in the record indicating the property, county, and municipality boundaries that are relevant to this case. Therefore, it is unclear where Reed's northern property line is in relation to County Line Road (i.e., whether Reed's property includes County Line Road, or whether Reed's property ends at County Line Road).

Tequesta argues that even assuming that the portion of the southern half of County Line Road (the east-bound lane) directly north of the Property is not a part of Tequesta, the southern

[1] Respondents' Appendix B.

half of County Line Road directly east and west of the Property is, therefore Reed must cross through Tequesta to access her home via County Line Road. Thus, Tequesta argues that if Reed must cross through Tequesta when either entering or exiting her property, then her property meets the definition of an enclave under subsection (b).

Assuming that Reed's Property ends at County Line Road, and the portion of County Line Road directly north of her property is not part of Tequesta, then it is clear that Reed's Property would not constitute an enclave under subsection (b) because she would have to travel through unincorporated Palm Beach County whenever she entered or exited her property to the north.

Assuming instead that Reed's Property includes the southern half of County Line Road, there are still scenarios in which Reed can enter or exit her Property without traveling through Tequesta. Tequesta argues "that the only way to enter and exit her property without crossing through the Village of Tequesta would be to never exit to the east on County Line Road."[2] This argument implicitly acknowledges that when Reed exits her property to the west on County Line Road - or enters her property from the east on County Line Road - she is not traveling through Tequesta. In order to qualify as an enclave under subsection (b), Reed must be able to access her property only through Tequesta. *See* § 171.031(b) ("that allows the passage of vehicular traffic to that unincorporated area only through the municipality") (emphasis added). The statute requires exclusive access to property through a municipality, and the possibility of entering or exiting the property without going through Tequesta removes Reed's property from the definition of an enclave.

There is nothing in the record that shows that Reed must travel only through Tequesta to access her property. Therefore, there is not competent, substantial evidence to show that County

[2] Response, page 10.

Line Road only allows access to her property through Tequesta and that her property qualifies as an enclave under subsection (b).

Accordingly, Reed's Petition for Writ of Certiorari is GRANTED. There is not competent, substantial evidence to determine that her property meets the statutory definition of an enclave subject to annexation by the Interlocal Agreement. Therefore, the Interlocal Agreement is QUASHED.

Reed's Motion for Attorney's Fees pursuant to section 171.081(1) is GRANTED and this matter is referred to a special magistrate to determine the amount thereof. *See* Fla. R. App. P. 9.190(d)(2).

COX, J. MARX, SASSER, JJ., concur.