SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1670-16T3
A-1681-16T3

GLASSBORO GUARDIANS, A New Jersey Nonprofit Corporation,

Plaintiff-Respondent,

v.

BOROUGH OF GLASSBORO,

Defendant-Appellant.

GLASSBORO GUARDIANS, A New Jersey Corporation,

Plaintiff-Appellant,

v.

BOROUGH OF GLASSBORO,

Defendant-Respondent.

Argued February 27, 2018 – Decided April 18, 2018

Before Judges Fisher and Fasciale.

On appeal from Superior Court of New Jersey, Law Division, Gloucester County, Docket No. L-1073-11.

Gary M. Marek argued the cause for Borough of Glassboro, appellant (in A-1670-16) and respondent (in A-1681-16) (Gary M. Marek and Timothy D. Scaffidi, attorneys; Gary M. Marek and Timothy D. Scaffidi, on the briefs).

Gary E. Fox argued the cause for Glassboro Guardians, respondent (in A-1670-16) and appellant (in A-1681-16) (Fox & Melofchik, LLC, attorneys; Gary E. Fox, on the brief).

PER CURIAM

In these appeals, we consider whether the trial judge erred in finding a 2004 ordinance, which required all rental properties within the municipality to "provide a minimum of one off-street parking space for every one authorized occupant 18 years of age or more," to be arbitrary and capricious. Because we agree the record fails to disclose a rational reason for the ordinance, we affirm.

Glassboro Guardians, a non-profit corporation comprised of individuals who own rental properties within the municipality, challenged Ordinance No. 379-5(I), adopted on July 27, 2004, which declares in subsection (1):

> Every rental facility shall provide a minimum of one off-street parking space for every one authorized occupant 18 years of age or more, as approved by the Housing Officer pursuant to the following requirements. For owner-occupied rental facilities, such requirements shall be in addition to those spaces required for residential use other than the rental facility portion of the premises. Said parking spaces shall be a minimum of 10 feet by 20

> feet. Parking areas must be maintained and configured so as not to create a safety hazard to the tenants using the areas or to any drivers or pedestrians on the public right-of-way, and in such a manner that does not cause inconvenience to the occupants.

We previously vacated a summary judgment entered in Guardians' favor and remanded for further consideration as to whether there was a rational basis for the ordinance's adoption. Glassboro Guardians v. Borough of Glassboro, No. A-4001-12 (App. Div. Nov. 5, 2014).

On remand, Guardians claimed the ordinance: (1) was arbitrary, capricious, and unreasonable; (2) was improperly enacted under the municipality's police power; (3) violated the equal protection clause of the New Jersey Constitution as well as the New Jersey Civil Rights Act, N.J.S.A. 10:6-2; and (4) was void due to the alleged involvement of a councilman with a conflict of interest. The trial judge ruled, based on factual findings made at the conclusion of a three-day trial, that, among other things, "[t]here has been adduced no reason which was articulated contemporaneous with the governmental action" and, consequently, the ordinance was arbitrary, capricious, and unreasonable.

In appealing, the municipality argues:[1]

> I. THE TRIAL COURT ERRED IN DECLARING THE ORDINANCE VOID AND UNENFORCEABLE ON THE BASIS

[1] We have renumbered the municipality's arguments.

> THAT IT WAS ARBITRARY, CAPRICIOUS, AND UNREASONABLE.
>
> II. [GUARDIANS] DID NOT MEET ITS HEAVY BURDEN OF DEMONSTRATING THE ABSENCE OF ANY RATIONAL BASIS FOR THE ORDINANCE.
>
> III. [THE MUNICIPALITY] ESTABLISHED THE CONTEMPORANEOUS RATIONAL BASIS FOR THE ORDINANCE THROUGH THE TESTIMONY OF ITS COUNCIL MEMBERS AND HOUSING INSPECTION OFFICIALS.
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> IV. THE TRIAL COURT ERRED IN CONCLUDING THAT THE ORDINANCE IS INHERENTLY UNREASONABLE BECAUSE IT REQUIRES A PARKING SPACE FOR EVERY TENANT AND DOES NOT PROVIDE A MEANINGFUL METHOD TO OBTAIN RELIEF FROM THE REQUIREMENT.

In a separate appeal, Guardians questions the trial judge's failure to find the ordinance invalid on the other challenged grounds. Guardians contends:

> I. THE [TRIAL COURT] ERRED IN CONCLUDING THAT IT WAS APPROPRIATE FOR THESE PARKING REGULATIONS FOR PRIVATE PROPERTY IN THE RENTAL HOUSING ORDINANCE TO BE PLACED IN A GENERAL POLICE POWER ORDINANCE AND NOT IN A ZONING ORDINANCE.
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> II. THE [TRIAL COURT] ERRED IN CONCLUDING THAT THE RENTAL PARKING ORDINANCE DID NOT VIOLATE THE NEW JERSEY EQUAL PROTECTION CLAUSE AND THE NEW JERSEY CIVIL RIGHTS ACT.
>
> III. THE [TRIAL COURT] ERRED IN CONCLUDING THAT THE RENTAL HOUSING ORDINANCE SHOULD NOT BE INVALIDATED BECAUSE OF THE ACTIONS OF COUNCILMAN D'ALESSANDRO.

Because we affirm the trial judge's determination that the ordinance is arbitrary, capricious, and unreasonable, we need not reach the alternative grounds suggested by Guardians.

Our standard of review counsels that we not interfere with a trial judge's fact findings when supported by adequate, substantial and credible evidence, unless the findings would work an injustice. Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 483-84 (1974). We grant such deference to judge-made findings because the trial judge has the opportunity to hear and see all the witnesses and to review all evidence in the first instance, thus allowing for a better "feel" of the case than we can gain from a static record. Twp. of W. Windsor v. Nierenberg, 150 N.J. 111, 132-33 (1997). For this reason, credibility determinations are entitled to particular deference. Ibid.

We also start with the premise that municipal ordinances are presumed valid; consequently, a challenger has a heavy burden in seeking to overturn them. Quick Chek Food Stores v. Twp. of Springfield, 83 N.J. 438, 447 (1980); see also Berk Cohen Assocs. at Rustic Village, LLC v. Borough of Clayton, 199 N.J. 432, 445-47 (2009). To overturn an ordinance, a challenger must clearly show the ordinance is arbitrary, capricious or unreasonable, Bryant v. City of Atlantic City, 309 N.J. Super. 596, 610 (App. Div. 1998), because "the underlying policy and wisdom" of an

ordinance is assumed to reside with the governing body, not the courts, which are strangers to the controversy, Quick Chek, 83 N.J. at 447.

For these reasons, an ordinance will not be set aside if any set of reasonable facts justifies the ordinance. Ibid. In considering a challenge, a court must examine "the relationship between the means and ends of the ordinance." Pheasant Bridge Corp. v. Twp. of Warren, 169 N.J. 282, 290 (2001). Although a court will not inquire into a municipality's motives when the ordinance is valid on its face, a court will weigh evidence about the legislative purpose "when the reasonableness of the enactment is not apparent on its face." Riggs v. Long Beach Township, 109 N.J. 601, 613 (1988).

Reviewing the ordinance facially, the trial judge observed the lack of any "introductory language" or "statement of reasons" justifying or even just explaining why it was enacted. Because of the lack of such an explanation, the trial judge examined its legislative history but found that work session and council meeting minutes also offered "no statement of reasons, elucidation of issues raised or problems sought to be solved . . . virtually no discussion of substance of the parking ordinance, no public comment by council members and no comment from the public." The record does show the discussion of the ordinance in one instance: a May

6, 2004 council meeting where a councilperson drew a distinction between how the ordinance would affect "college rental" and "family rental" parking, stating that a college rental needs one space per tenant while a family rental could obtain a "parking decal" to park on the street.[2]

As additional evidence that the ordinance was enacted without a reasonable basis, Guardians presented the testimony of two representatives — rental property owners in Glassboro — and an expert. The trial judge accepted as credible the representatives' testimony which suggested the ordinance was enacted to control college student renters. The trial also judge found credible testimony that in various conversations the witnesses had with municipal officials no parking problem was ever mentioned as a reason for the ordinance's enactment. The judge relied on testimony regarding conversations the witnesses had with council members and administrators where a parking problem was never identified or discussed as a reason for the ordinance's enactment. In addition, the trial judge found credible references to: the municipality's claimed intent to control "animal houses"; a "stack of police reports" relating to college renters; residents' complaints about

[2] Even though there was a dispute about the identity of the speaker of these comments, no one disputes the comments were made by a member of the municipal council.

college renters; and the "inadequate 'strictness' of the state rental code" as reasons for the enactment of the parking ordinance as the means for gaining control of college student renters. The judge found this testimony credible because it was corroborated, "albeit reluctantly," by the municipality's witnesses.

The municipality relied on the testimony of an expert and numerous town officials. The expert testified there was a "parking problem" in the municipality based upon his personal observations. And the expert extrapolated the reasons for the ordinance, citing an increased enrollment at Rowan University, an increased number of vehicles in town, and alleged safety concerns and tenant convenience.[3] The judge rejected this testimony because it was uncorroborated by any reference in the record. The judge also found testimony by council members serving when the ordinance was enacted to be unhelpful to the municipality's position because those council members claimed "no recollection of why [the ordinance] was passed or what problem they were trying to solve [and] . . . recalled no public outcry or even a whimper that prompted their action."[4] The trial judge noted there was only a

[3] The expert testified that the population has fluctuated around 19,000 residents over since 2000.

[4] One council member testified the ordinance was to ensure the "environment was not overflowing with cars and that cars would not

"general denial" that the ordinance was enacted to "constrict college rentals." The municipality also argued the reasons for enacting the current ordinance are set out in its preceding 1972 ordinance,[5] but that ordinance only states that it was enacted "after much study" without explanation as to what that study involved or what it revealed. Finding an absence of a purpose for the ordinance — and, if there was a purpose, it was more than likely to combat concerns about college renters — the judge concluded the ordinance was arbitrary, capricious and unreasonable. We agree, concluding that the jduge's findings were supported by credible, adequate, and substantial evidence in the record.

The municipality additionally challenges the fact that the trial judge applied a standard that required a contemporaneous reason be given for municipal action. This argument misapprehends the trial judge's holding. The judge, in concluding the ordinance's adoption was arbitrary, capricious, and unreasonable, found the record lacked any reason or purpose "articulated contemporaneous

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be parking on the streets" but does not recall any member of the public coming to council meetings to complain about parking issues in the town.

[5] Similar to the current ordinance, the 1972 ordinance required every residential unit have one parking spaces for every three occupants seventeen years or older.

with the governmental action." But the judge did not create a standard imposing such a requirement; rather, the judge found the lack of any contemporaneous reasoning as evidence that discredited the municipality's witnesses assertion that there was a reason and as giving rise to an inference that the ordinance lacked a rational basis and was merely a means to unlawfully limit college renters in the municipality. As the judge determined, the "explanations" offered by the municipality were "not grounded in any facts of record and in fact, are at odds with the inability of any witness to recall or relate the actual basis for the government action." The trial judge also explained that the legal arguments and expert testimony presented by the municipality would not be "the least bit objectionable if there had been some antecedent reference to those concerns" but the record lacked "any reasons for the enactment . . . at the time it was enacted." In essence, the trial judge rejected the testimony of the municipality's witnesses and expert as not credible because there was nothing in the record prior to trial corroborating the fact that there was an alleged parking problem in the municipality and concluded that such reasoning was invented for this litigation. These are determinations based on the evidence presented and are deserving of our deference.

It is also enlightening that the municipality previously tried to limit college renters by requiring rentals in certain areas to be occupied by "traditional family units" or a functional equivalent. The Supreme Court ruled that college students satisfying stability and permanency requirements satisfied the "single housekeeping unit" standard. Glassboro v. Vallorosi, 117 N.J. 421, 431-32 (1990). In that ordinance, the municipality included a statement of purpose which explained its desire to control "groups of individuals whose living arrangements, although temporarily in the same dwelling unit, are transient in nature and do not possess the elements of stability and permanency which have long been associated with single family occupancy" and that "[Rowan University] maintains substantial dormitory and apartment facilities for students . . . [meaning] ample housing exists within the Borough for college students . . . ." Id. at 423-24.[6] Thus, where the municipality may have said too much last time, it certainly said too little this time. In any event, we defer to the

[6] In dicta, the Court observed that "[t]raffic congestion can appropriately be remedied by reasonable, evenhanded limitations upon the number of cars which may be maintained at a given residence." Vallorosi, 117 N.J. at 433 (quoting State v. Baker, 81 N.J. 99, 111 (1979)). As the trial judge recognized, if some credible evidence was presented to explain that the municipality enacted the ordinance for the purpose of combatting traffic congestion, or parking issues, it would be upheld so long as it was implemented in an evenhanded manner.

trial judge's determination that there is insufficient persuasive evidence in the record to support the ordinance's enactment.

Affirmed.