06/21/02 "See News Release 052 for any concurrences and/or dissents."

SUPREME COURT OF LOUISIANA

No. 01-C-2658

INGUS M. HOLLINGSWORTH AND DOROTHY ROBERSON HOLLINGSWORTH

versus

CITY OF MINDEN

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
SECOND CIRCUIT, PARISH OF WEBSTER

VICTORY, J.

We granted a writ in this case to consider whether the plaintiffs have a right to take a devolutive appeal under La. R.S. 33:174 and 175 to a judgment of the trial court declaring an annexation by the City of Minden (the "City") to be reasonable. After reviewing the facts and the applicable law, we find that the plaintiffs do have a right to take a devolutive appeal and, because we did not grant this writ to review the merits of the court of appeal's judgment denying the City's motion for summary judgment, we deny the City relief and remand the case to the trial court for further proceedings in accordance with the ruling of the Second Circuit Court of Appeal.

FACTS AND PROCEDURAL HISTORY

On June 15, 1999, the governing body of the City adopted Ordinance No. 851, annexing a large tract of property located east of the city's municipal limits. Plaintiffs, Ingus and Dorothy Hollingsworth, own property included in the annexation. On July 13, 1999, plaintiffs timely sued to invalidate the ordinance, on the ground that the annexation was not reasonable under La. R.S. 33:174B(1).[1] In

[1] La. R.S. 33:174 provides in pertinent part as follows:

(continued...)

response, the City filed a motion for summary judgment in which it argued that the annexation was reasonable. Following a hearing, the trial court granted the City's motion for summary judgment and sustained the ordinance. The trial court's written judgment dismissing plaintiffs' suit was filed into the record on July 5, 2000. After plaintiffs' motion for new trial was denied on October 13, 2000, plaintiffs filed on November 30, 2000 a motion seeking a devolutive appeal, which the trial court granted. The court of appeal subsequently reversed the trial court's judgment, on the ground that issues of fact as to the reasonableness of the annexation precluded

---

[1](...continued)

> A. Any interested citizen of the municipality or of the territory proposed to be annexed thereto may, within the thirty-day period before the ordinance becomes effective, file suit in the district court having jurisdiction over the municipality, to contest the proposed extension of the corporate limits. "Interested", as used in this Section, means a real and actual personal stake in the outcome of the contest of the extension of the corporate limits.
>
> B. The sole questions to be presented to the court in a contest of a proposed extension of the corporate limits shall be as follows:
>
> (1) Whether the proposed extension is reasonable.
>
> (2) Whether, prior to the adoption of an ordinance enlarging the boundaries of a municipality, a petition was presented to the governing body of a municipality, and prior to the adoption of said ordinance, certificates were obtained from the parish assessor and parish registrar of voters showing that the said petition contained the written assent of a majority of the registered voters and a majority in number of the resident property owners as well as twenty-five percent in value of the property of the resident property owners within the area proposed to be included in the corporate limits.
>
> (3) Whether the municipality complied with its own requirements for the adoption of ordinance in adopting the annexation ordinance.
>
> C. If the extension of boundaries is adjudged reasonable, the ordinance shall go into effect ten days after the judgment is rendered and signed unless a suspensive appeal therefrom has been taken within the time and manner provided by law. If the proposed extension is adjudged invalid, the ordinance shall be vacated and the proposed extension shall be denied, and no ordinances proposing practically the same extension shall be introduced for one year thereafter. A similar right of appeal from the judgment of the district court annulling the ordinance shall be granted the municipality or any interested citizen as hereinabove provided.

summary judgment for the City. ***Hollingsworth v. City of Minden***, 34,943 (La. App. 2 Cir. 8/22/01), 793 So. 2d 1265. We granted the City's writ application to consider whether the plaintiffs timely filed their appeal under La. R.S. 33:174 and 33:175. ***Hollingsworth v. City of Minden,*** 01-2658 (La. 1/4/02), 805 So. 2d 1198.

DISCUSSION

The City argues that plaintiffs no longer have the right to appeal because the only appeal allowed is a suspensive appeal and the plaintiffs did not take a suspensive appeal. The City's argument is based on La. R.S. 33:174C, which provides in part that: "If the extension of boundaries is adjudged reasonable, the ordinance shall go into effect ten days after the judgment is rendered and signed unless a suspensive appeal therefrom has been taken within the time and manner provided by law." Under La. C.C.P. art. 2123, the time for filing a suspensive appeal, "except as otherwise provided by law," is thirty days from "the date of the mailing of notice of the court's refusal to grant a timely application for a new trial . . . ." Instead of filing a suspensive appeal, plaintiffs filed a motion for devolutive appeal on November 30, 2000, some forty-four days later. La. R.S. 33:175 provides in part that "if no appeal is taken within the legal delays from a judgment of the district court sustaining the ordinance, same shall then become operative and cannot be contested or attacked for any reason or cause whatsoever. (Emphasis added)." The City argues that under La. R.S. 33:175, the ordinance has already become "operative and cannot be contested or attacked for any reason or cause whatsoever" because plaintiffs did not timely file a suspensive appeal under La. R.S. 33:174. Accordingly, the City urges the court to reinstate the trial court's judgment declaring the ordinance reasonable.[2]

---

[2] Alternatively, the city argues on the merits that it met its burden of proving the ordinance (continued...)

Plaintiffs contend there is nothing in La. R.S. 33:174 or any other law which precludes them pursuing a devolutive appeal, and, if the City's argument is adopted, devolutive appeals will not be available in annexation cases. They argue that if it were intended that only one type of appeal were available, the statute would have clearly stated so, and that La. R.S. 33:174 simply provides that the ordinance goes into effect unless a suspensive appeal is filed within ten days of the judgment. Plaintiffs explain that after the motion for new trial was denied in the trial court, they had to decide whether to seek a suspensive or devolutive appeal. They acknowledge that if they chose the suspensive appeal, the ordinance would not have gone into effect, but they would have had to post a bond; on the other hand, if they chose a devolutive appeal, the ordinance would have gone into effect, but they would still have been able to pursue their timely-filed devolutive appeal. Under La. C.C.P. art. 2087, the delay for filing a devolutive appeal in this case is sixty days from "[t]he date of the mailing of notice of the court's refusal to grant a timely application for a new trial . . . ." Thus, if a devolutive appeal is allowed in annexation cases, plaintiffs' appeal was timely.

Thus, the narrow issue presented in this case is whether a person who fails to take a suspensive appeal of a judgment declaring an annexation reasonable loses any right to seek appellate review of that judgment under La. R.S. 33:174C and La. R.S. 33:175. Under our long-standing rules of statutory construction, where it is possible, courts have a duty in the interpretation of a statute to adopt a construction which harmonizes and reconciles it with other provisions dealing with the same subject

---

[2](...continued)
was reasonable, and that the trial court did not abuse its discretion in granting the city's motion for summary judgment. We did not grant this writ to address that issue.

matter. ***ABL Management, Inc. v. Board of Supervisors***, 00-0798 (La. 11/28/00), 773 So. 2d 131; ***Killeen v. Jenkins***, 98-2675 (La. 11/05/99), 752 So. 2d 146; La. C.C. art 13 ("Laws on the same subject matter must be interpreted in reference to each other"). Further, courts are bound to give effect to all parts of a statute and cannot give a statute an interpretation that makes any part superfluous or meaningless, if that result can be avoided. ***Langlois v. East Baton Rouge Parish Sch. Bd.***, 99-2007 (La. 5/16/00), 761 So. 2d 504.

La. R.S. 33:174, entitled "Suit to contest reasonableness of proposed extension of corporate limits," provides the procedure for contesting proposed annexations. Under the statute, any interested citizen of the municipality or territory proposed to be annexed may file suit to contest the proposed annexation within the 30 day period before the ordinance becomes effective. If the trial court determines that the extension of boundaries is reasonable, subsection C provides that "the ordinance shall go into effect ten days after the judgment is rendered and signed unless a **suspensive appeal** therefrom has been taken within the time and manner provided by law." [emphasis added].

La. R.S. 33:175, entitled "Prescription of right to attack ordinance," provides that "if no **appeal** is taken within the **legal delays** from a judgment of the district court sustaining the ordinance, same shall become operative and cannot be contested or attacked for any reason." [emphasis added]. Nothing in La. R.S. 33:175 refers to a suspensive appeal.

La. R.S. 33:174C and La. R.S. 33:175 can be harmonized, as they are not in conflict. La. R.S. 33:174C refers to when the ordinance becomes effective. If the party wishes to prevent the ordinance from becoming effective, the party must post

a bond and take a suspensive appeal, within the legal delays for suspensive appeals. It is logical that for the legislature to refer only to "suspensive" appeals here because that is the only type of appeal which suspends the operation of a judgment. However, nothing in La. R.S. 33:174C indicates that the mere fact that the ordinance has become effective precludes further review. Rather, La. R.S. 33:175, the specific statute referring to **prescription**, indicates that if no "appeal" is taken within the legal delays, the judgment of the district court finding the ordinance reasonable becomes operative and cannot be contested or attacked for any reason. The fact that the legislature did not specify "suspensive" appeal in this statute, as it had in the preceding statute, and the fact that it refers to "legal delays," indicates that the prescription statute applies to both devolutive and suspensive appeals.

Further, we do not find it to be the legislative intent that "[a]ny interested citizen" has the right to file suit to contest the proposed annexation under La. R.S. 33:174(A), but limiting this right to appeal only to those citizens who can afford to post a suspensive appeal bond.

Finally, a review of the statutory law of this State reflects that the legislature is perfectly capable of explicitly stating if only a suspensive or devolutive appeal will be allowed, or if either will be disallowed, as it has in numerous other statutes. *See* La. R.S. 4:158; La. R.S. 4:214; La. R.S. 9:2336 ("No devolutive appeal may be taken from a judgment rendered pursuant to this Part. Any interested party may prosecute a suspensive appeal . . ."); La. R.S. 9:3184 ("No party to any expropriation proceeding shall be entitled to or granted a suspensive appeal . . . The whole of the judgment, however, may be subject to the decision of the appellate court on review under a devolutive appeal"); La. R.S. 13:5033; La. R.S. 15:85; La. R.S. 15:566.2; La.

R.S. 19:13; La. R.S. 19:114; La. R.S. 22:658.1; La. R.S. 26:106; La. R.S. 26:920; La. R.S. 30:557; La. R.S. 32:851; La. R.S. 40:2009.7; La. R.S. 42:1262; La. R.S. 42:1383; La. R.S. 47:1435; La. R.S. 47:1574; La. R.S. 51:130; La. C.C.P. art. 2252; La. C.C.P. art. 2642; La. C.C.P. art. 3307; La. C.C.P. art. 3308 ("Only a suspensive appeal as provided in Article 2123 shall be allowed from a judgment homologating a tableau of distribution"); La. C.C.P. art. 5125.

DECREE

Because we find that plaintiffs timely filed their devolutive appeal under La. R.S. 33:175, we deny the City relief and remand the case to the trial court for further proceedings in accordance with the ruling of the Second Circuit Court of Appeal.

RELIEF DENIED; REMANDED.