Supreme Court of Ohio Clerk of Court - Filed November 03, 2014 - Case No. 2013-0984

IN THE SUPREME COURT OF OHIO

CITY OF INDEPENDENCE	:	Case No. 2013-0984
	:	
Appellee,	:	On Appeal from the Cuyahoga County
	:	Court of Appeals, Eighth District
v.	:	
	:	Case No. 97167
OFFICE OF THE CUYAHOGA	:	
COUNTY EXECUTIVE, et al.	:	
	:	
Appellant.	:	

APPELLANT'S MOTION FOR RECONSIDERATION AND JOINT MEMORANDUM IN SUPPORT OF AMICUS CURIAE, COUNTY ENGINEERS' ASSOCIATION OF OHIO

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Request for Reconsideration:

Defendant-Appellant, Office of the Cuyahoga County Executive ("the County") requests that this Court reconsider and clarify its decision in *Independence v. Cuyahoga Cty. Exec.*, Docket No. 2013-0984, Slip Opinion No. 2014-Ohio-4650 ("Slip Op.") released on October 23, 2014. *S.Ct.Prac. R. 18.02(B)(4).* Amicus Curiae, County Engineers Association of Ohio supports this request. *S.Ct.Prac. R. 18.02(C).* "[The Rules of Practice] allow[] a motion for reconsideration of a decision on the merits of a case. *State v. Hood*, 135 Ohio St.3d 137, 2012-Ohio-6208, 984 N.E.2d 1057, ¶ 1. No attempt will be made to reargue the merits of this appeal. Rather, the authority to reconsider allows the Court to "correct decisions which, upon reflection, are deemed to have been made in error." *State ex rel. Shemo v. Mayfield Hts.*, 96 Ohio St.3d 379, 2002-Ohio-4905, 775 N.E.2d 493, ¶ 5 (Internal quotations omitted).

Decision in *Independence v. Cuyahoga County Exec.*:

In resolving this appeal, this Court *unanimously* recognized that *every* court below "**erroneously** refer to the relevant inquiry as whether the…**bridge** is a bridge of general and public utility." Slip Op. at ¶ 11. (Emphasis supplied), Id. at ¶¶ 49-50 (O'Donnell, J., dissenting). This is not surprising because that was exactly what Independence asked the initial fact-finder and the courts to do.[1] At every stage of these proceedings Independence admitted that the relevant portion of Old Rockside Road was vacated in 1967 "leav[ing] the roadway as a *municipal* street." Id. at ¶43 (O'Donnell, J., dissenting, Italics in original). *See also*, Independence Supp. Record at Ex. A. Independence has consistently admitted to every court, including this one, it is our street, we

[1] See Independence's Merit Brief at p. 6, ¶ 2. ("On September 29, 2010, Independence submitted a request … that the Commissioners determine the status of the Bridge.") citing Supp. Record at Ex. K: ("Independence is requesting that the [BOCC] determine that the Old Rockside Road Bridge ("Bridge") to be a bridge of general and public utility."

assumed ownership of it as a municipal street in 1967.[2] That is precisely where the courts should stop the analysis. "A bridge is part of the road in which it is located." *Van Scyoc v. Roth*, 2 Ohio Misc. 155, 160, (1964) citing *Hanks v. Board of Comms. Of Adams County*, 35 Ohio App. 246, 249,172 N.E. 423 (4th Dist. 1929) ("[B]y statute a bridge is a part of the road."). See also, Ohio Jur. 3d Highways, Streets, and Bridges § 5 ("A bridge connecting public highways and erected for the general use and accommodation of the public is itself a public highway and is usually treated as constituting a part of the highways with which it is connected.").

Independence's litigation strategy was to ask for something unavailable under Ohio law: for the courts to find that the Old Rockside Road **Bridge** is a "bridge of general and public utility." Slip. Op. at ¶ 12. This Court's majority opinion recognized, there is no such thing and the lower courts "misstate[] the issue[.]" Id. Unfortunately, the majority's decision grants a judicial pardon for the lower courts' fundamental errors by finding, "On the facts of this particular case, utility of the bridge and…road cannot be separated…" Id. (Underscore supplied). The majority's decision insulates the trial court's failure to apply the proper test and law from any meaningful review because this Court "decline[s] to reweigh the evidence." Slip Op. at ¶ 33. This ruling deprives the County of having any opportunity for appropriate review of correct "road or street" inquiry at the critically important first-level of judicial review. Compounding that error, it saddles County taxpayers with replacing a bridge estimated to cost $5.3 million dollars, instead of Independence having to pay approximately $1.3 million for its replacement.[3] The reduced cost to Independence is because, after the case was argued to the Court of Appeals, the City successfully obtained grant

[2] See Independence's Merit Brief at p. 4, ¶ 1. (The road that was vacated included the portion of Old Rockside Road that traverses the Bridge.")

[3] In addition to the lower courts' failure to ask the appropriate question and apply the correct law, it would seem there are four million additional reasons for remand under these circumstances.

funding which everyone admits is unavailable to the County. Amicus Appx. at 2, also available at http://www.noaca.org/index.aspx?page=211.

Broader implications of this holding if *Independence* is not reconsidered:

Instead of attempting to divine what the trial court meant, Cuyahoga County and its amicus, County Engineers' Association of Ohio[4] respectfully implore this Court to remand this case back to the trial court to explicitly address Old Rockside Road. Otherwise, the majority's decision gives incentive to trial courts across the state that hear countless administrative appeals to disregard decisions of a board or agency, and do whatever they may feel is right – without regard to the standards established by law.

CONCLUSION

In order to avoid providing a road-map for trial courts hearing administrative appeals to fashion their own sense of justice with limited opportunity for those decisions to be substantively reviewed, this Court should reconsider its decision in accordance with S. Ct. Prac. R. 18.04 and order that this case be remanded to the Court of Common Pleas for further proceedings consistent with this Court's opinion.

[4] Pursuant to S.Ct.Prac.R. 18.02(C), Amicus curiae joins in this request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to S.Ct.Prac.R. 3.11(B)(1), I certify that a copy of the foregoing Motion for Reconsideration and Joint Memorandum in Support of Amicus Curiae, County Engineers' Association of Ohio was served by Electronic Mail at the addresses so indicated this 3rd day of November, 2014, upon the following counsel:

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