Werner v. *Development Officer et al*, 2007 NWTSC 77

Date: 2007 09 24
Docket: S-1 CV 2007000059

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HARVEY WERNER

Appellant

- and -

DEVELOPMENT OFFICER and TOWN COUNCIL
OF THE TOWN OF HAY RIVER

Respondents

Judgment on Application for Leave to Appeal.

Heard at Hay River, NT on September 4, 2007.

Reasons filed: September 24, 2007

REASONS FOR JUDGMENT OF THE HONOURABLEJUSTICE V.A. SCHULER

The Appellant appeared in person.
Counsel for the Respondent Town of Hay River: Jonathan Rossall
Counsel for the Hay River Development Appeal Board: Cayley Thomas

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REASONS FOR JUDGMENT

[1] The Appellant seeks leave to appeal a decision issued by the Development Appeal Board for the Town of Hay River ("the Board") on February 6, 2007 in which it upheld the issuance of a development permit. By order of Richard J. dated April 20, 2007, the application for leave to appeal and the issue of the Appellant'sstatus to bring the application were scheduled to be argued on September 4, 2007. This decision is the result of that hearing.

(i) Background

[2] I will deal with the issue of status, or legal standing, first. The Respondent Town of Hay River argues that the Appellant does not have status to appeal the issuance of the development permit. The Board takes no position on this issue. The relevant background facts are as follows.

[3] A development permit, subject to certain conditions, was issued by the Town's Development Officer to one Leon Nason to move a mobile home trailer onto a lot in a

mobile home park. The Appellant appealed the issuance of the permit, stating as follows in his letter of appeal to the Board:

> I Harvey Werner Will appeal to the development appeal board. H.R.M.H.P. [the mobile home park] is not zone for a trailer park as it was rezoned to R4 multi family housing and is no longer a trailer park. A copy of the new zoning is attached. I will produce other documents to prove that the town has no authority to have a used mobile home set up in the trailer park.

[4] The Board heard the appeal on January 17, 2007. The Appellant appeared in person. The Board had before it an unsworn document entitled "Development Officer's Evidence" which included the statement, "Mr. Werner is not claiming to be affected and is not affected by this Development". The Appellant was not provided with a copy of that document.

[5] Notwithstanding the document, the Board invited the Appellant to present his reasons for opposing the permit and he did so, referring to alleged deficiencies in the permit application and a sketch that he contended had changed the zoning of the mobile home park. At the end of his submissions, the Board's chair asked the Appellant how he was affected. The Appellant responded as follows:

> ... I'm affected and generally every by-law in this town affects me because I have to live by them. Everybody has to live by them. Why I'm particular, in this particular one, if the Town would have done their job and forced Hay River Mobile Home Park to follow the sketch that was proved by MACA my house and my car would not have been hauled to the dump two years ago because they would have no right, they had no right in the first place, by they would have had special no right because it was sitting on the road right-of-way. And that's why in the by-laws it says that the Town will supply lots for mobile homes for lease or rental. And they have failed to do it for the last six years they talk about it. Until they do that those people in the trailer park, Sir, are people faced with no home. They can be evicted, taken off there, and their trailer moved off there because the Town will not do nothing about it. That's why I am involved in this particular one. And every by-law, when they put a notice up there, anybody that has a concern, it doesn't mean you have to live next door. My concerns are that the proper procedures are followed and the protected, the next one that comes up tonight will be as good an example of it because that's the way it is.

> I believe in by-laws. I follow them all the time. I've never been found guilty of violation of by-law. But I lost my home and trailer just because the town - and when my trailer was hauled away, Sir, the Town never fined the person for hauling it away. I got a letter saying they were fined $500. That was a lie. That's a lie. The mobile home park didn't pay a dime for taking my car and trailer.

[6] The Board issued its decision on February 6, 2007, upholding issuance of the permit. It also stated that the Appellant could not demonstrate how he was affected by the decision to approve the permit.

[7] Before this Court, on the preliminary point as to whether he has standing, the Appellant submitted that various things were done wrong by the Development Officer or the Board and that although most people in Hay River do not get involved, he has concerns arising out of the Board not following proper procedures. He also has concerns arising out of the incident when his car and trailer were hauled from the trailer park some years ago. He takes the position that because no one in Hay River cares what the Town does, the Town tries to "sneak things through" and therefore this Court should decide whether the Town and its Development Officer have done things properly.

(ii) Statutory provisions

[8] The relevant provisions of the *Planning Act*, R.S.N.W.T. 1988, c. P-7, are as follows (they refer to the Board as the "appeal board"):

> 23(1) A person claiming to be affected by a decision of a development officer or a council made under a zoning by-law may appeal to the appeal board by serving written notice of appeal to the appeal board ...
>
> 50 In the conduct of hearings under section 23, an appeal board is not bound by the technical rules of evidence, but shall
>
> ...
>
> (b) provide every person concerned with the opportunity to be heard, to submit evidence and to hear the evidence of and cross-examine others; ...

> 51(1) Subject to subsection (2), an appeal on a question of jurisdiction or on a question of law lies to the Supreme Court from a decision of an appeal board made under section 23 or an order of the Minister made under section 40.
>
> (2) Leave to appeal must be obtained from a judge of the Supreme Court on
>
> (a) application made within 30 days after the making of the order or decision sought to be appealed from;
>
> (b) notices to the parties affected; and
>
> (c) hearing such of the parties affected as appear and wish to be heard.
>
> ...
>
> 52. On the hearing of an appeal by the Supreme Court,
>
> (a) the party who made the order or decision appealed from and any other party affected is entitled to be represented by counsel or otherwise and to be heard on the argument;
>
> ...

(iii) Analysis

[9] It has been said that the threshold for standing in municipal matters is relatively low: see cases cited in *5142 NWT Ltd. v. Hay River (Town)*, [2007] N.W.T.J. No. 53 (S.C.) at paragraph 31. Nevertheless, there must be some threshold, both for "a person claiming to be affected" under s. 23(1) and a person "affected" under s. 52(a).

[10] As I said in *5142 NWT Ltd.*, the group of people who fall within the description "affected" must be narrower than the group who fall within the description "claiming to be affected". Still, the legislation would be completely unworkable and the burden on the Board excessive if everyone who made any claim to be affected could appeal to it. Ontario legislation (the *Building Code Act*, 1992, s. 25) grants a right of appeal from the issuance or non-issuance of a building permit to "any person who considers themselves aggrieved", which has been interpreted as "any person who reasonably considers themselvesaggrieved": *York Region CondominiumCorp. No. 890 v. Toronto (City)*, [2005] O.J. No. 873 (S.C.J.). Under the Ontario statute, the appeal is to the Superior Court. The reason for requiring a threshold for standing to appeal to the

Court was described in *Rotstein v. Oro-Medonte (Township),* [2002] O.J. No. 4990 (S.C.J.) thus: "Though the section appears on its face to express a purely subjective test, the court requires some threshold to be applied in order to maintainthe integrityof the process, focus scarce judicial resources, and ensure that the appealprocedure is not open to misuse by those who simply have some personal axe to grind and "feel" aggrieved without any nexus of interest or effect to the decision." The same considerations should, in my view, apply when the appeal is to a development board rather than a court.

[11] Similarly, in dealing with the word "affected" as qualifying who may appealth e issuance of a permit in the context of property development legislation, the Alberta Court of Appeal stated that, "in using such a broad word the Legislature has made the [statute] difficult to administer, if not unworkable, if the word is not interpreted in a reasonable manner": *Pension Fund Properties Ltd. v. Calgary (City)* (1981), 127 D.L.R. (3d) 477.

[12] The concerns referred to in the foregoing cases also apply to the rights of appeal under the *Planning Act.* In my view, s. 23(1) should be read as allowing for an appeal to the Board by a person reasonably claiming to be affected by a developmentofficer's decision. In the context of an application for leave to appeal to this Court, under s. 51, the Court must be satisfied that the appellant can reasonably be said to be affected by the decision at issue.

[13] In *5142 NWT Ltd.*, I held that one of the requirements for standing for a s. 51 appeal is that the appellant is adversely affected by the decision to grant or refuse a permit. Being adversely affected is equivalent to being "aggrieved". In relation to the latter term, Slatter J., as he then was, said in *Alberta Liquor Store Assn. v. Alberta (Gaming and Liquor Commission),* [2006] A.J. No. 1597 (Q.B.) at paragraphs 9 and 10*:*

> The courts have always weighed a number of factors in determining whether a party is "aggrieved". An important factor is the "relationship between the applicant and the challenged decision" or how directly the challenged administrative act will affect the legally-recognized interests of the applicant. ...
>
> It is in this context ... that the courts have examined whether the applicant has an interest in the legality of the challenged administrative act that is greater than the interest of the public at

> large. To the extent that the applicant's interest is no different than that of any other citizen, the applicant is unlikely to be "aggrieved" ...

[14] At paragraph 13 in the *Alberta Liquor Store Assn.* case, one finds the following, which in my view is particularly relevant in this case: "If those who are most directly affected by the administrative decision are content to live with it, the court is disinclined to allow more vigilant inter-meddlers to bring applications for judicial review. If, on the other hand, those most directly impacted or "aggrieved" are inclined to challenge the administrative decision, it is they who should be allowed to carry the proceedings, and not the curious busybody."

[15] There is no evidence that the Appellant has any legal interest in the issuance of the permit in this case. He has not shown that his property or his rights are affected by this particular permit. It is noteworthy that no one other than the Appellant appealed the permit. If there were shortcomings in the procedure followed in applying for or issuing the permit, a point that I need not decide, it appears that those most directly affected, i.e. the Town and the permit applicant, are content to live with them. Others who might be affected, such as other residents of the mobile home park, would appear to be content as well. The Town and the permit holder should be permitted to pursue the work authorized by the permit in an orderly and efficient fashion and not be held up by someone, such as the Appellant, who does not have a direct interest in the matter.

[16] Although the Appellant claims to be more interested in the issuance of the permit in question than other citizens, there is no evidence that he has any greater legally recognized interest than the ordinary citizen.

[17] The Appellant argues that s. 50(b) of the *Planning Act* provides a broader ground for standing because it requiresthe Board to provide "everyperson concerned", in the sense of having concerns, with the opportunity to be heard. When read in context, however, the reference in s. 50(b) to "every person concerned" has to do with the presentation of evidence and not standing; in my view it cannot serve to move the threshold lower than a person reasonably claiming to be affected per s. 23(1). Moreover, whatever the term "concerned" may mean in the context of an appeal to the Board, it does not apply on an appeal to this Court as sections 51 and 52 refer only to parties "affected".

[18] The Appellant also complains that the Board heard him as to the merits of his appeal before questioning him as to how the issuance of the permit affects him. Although it may be preferable from the point of view of efficiency for the Board to deal with the issue of standing first, in my view nothing turns on the fact that it did not do so in this case. The Board reserved its decision on both standing and the merits of the appeal and dealt with both in its written decision.

[19] The Appellant also complains about the document entitled "Development Officer's Evidence", referred to above. In stating that, "Mr. Werner is not claiming to be affected and is not affected by this Development", the document may have been referring to the letter of appeal to the Board, in which the Appellant does not say whether or how he is affected by the development. Ultimately, it was for the Appellant to present the grounds upon which he claimed to be affected. As the grounds he presented to the Board did not substantiate any reasonable claim to be affected, the Development Officer's document cannot have made any difference in the Board's decision on that point.

[20] Finally, the fact that the Appellant was permitted to participate at the hearing and argue the merits of his appeal before the Board does not mean that he should be granted standing before this Court or leave to appeal. Even if he had been granted standing by the Board, which he was not, that would only be relevant to, but not determinative of, standing on an appeal to this Court: *Alberta Liquor Store Assn. v. Alberta (Gaming and Liquor Commission).*

[21] The Appellant appears to consider himself the only person in Hay River willing to challenge the Town to make sure it does everything in accordance with its bylaws and other procedures, or at least in accordance with the Appellant'sinterpretationof its bylaws and procedures. This is not sufficient to give the Appellant standing in this case. While there may be other avenues by which the Appellant can address his concerns about how the Town conducts its business, appealing a development permit in which he has no legal or direct interest is not one of them.

[22] Nor does the past dispute with the Town over the hauling away of the Appellant's car and trailer provide a basis to grant standing. The Appellant has not shown any connection between that incident and the development permit under appeal except that both involve the mobile home park. It is clear that the Appellant feels that he was poorly treated by the Town and therefore wishes to challenge what the Town

has done in issuing the permit in this case. However, he has not shown any reason why he should be given leave to do that, inevitably causing delay for those directlyaffected.

[23] In my view, for the above reasons, the Appellant has not shown that he is a person affected by the decision to issue the permit. This finding is sufficient to deny leave to appeal. In the circumstances, I need not deal with the other issues argued.

[24] The application for leave to appeal is accordingly dismissed.

V.A. Schuler
J.S.C.

Dated at Yellowknife, NT, this
24th day of September 2007

The Appellant appeared in person.
Counsel for the Respondent Town of Hay River: Jonathan Rossall
Counsel for the Hay River Development Appeal Board: Cayley Thomas

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