

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MIAMI COUNTY

STATE EX REL. JILL S.
TANGEMAN

Relator

v.

MIAMI COUNTY BOARD OF
COUNTY COMMISSIONERS

Respondent

C.A. No. 2022-CA-13

**DECISION AND FINAL JUDGMENT
ENTRY**

PER CURIAM:

{¶ 1} Petitioner-Relator Jill S. Tangeman (“Tangeman”), agent for a group of Bethel Township landowners, filed a verified petition seeking a peremptory writ of mandamus against Respondent Miami County Board of County Commissioners (the “Commissioners”). The landowners seek to compel annexation of their properties to the City of Huber Heights (“Huber Heights”). Tangeman alleges that, despite her compliance with all seven of the statutory requirements of R.C. 709.023(E), the Commissioners have unlawfully denied her annexation petition. We denied Tangeman’s request for a peremptory writ but ordered the parties to submit their evidence and brief the legal issues. Tangeman and the Commissioners have filed their briefs. Accordingly, this matter is now ripe for our consideration.

Factual Background

{¶ 2} The relevant facts are undisputed, and the parties have stipulated to the evidence in this case. Tangeman is the agent of a group of Miami County landowners that own, all together, nearly 260 acres of undeveloped land in Bethel Township. Bethel Township was historically, and remains to this day, a predominantly rural community. Huber Heights is a growing suburban bedroom community contiguous to Bethel Township.

{¶ 3} The landowners are unanimous in their desire to annex their properties to Huber Heights by means of a “type-2” annexation under R.C. 709.023. Type-2 annexation provides an expedited means for consenting township landowners to annex their property to a municipality. A board of county commissioners must approve a type-2 annexation, provided that the annexation petition complies with seven enumerated conditions. See R.C. 709.023(F); *see also* R.C. 709.023(E) (listing conditions). If the petition does not comply with all seven conditions, the board of county commissioners must reject annexation.

{¶ 4} On February 28, 2022, Tangeman filed her annexation petition with the Commissioners. On March 8, 2022, Huber Heights passed a resolution, pursuant to R.C. 709.023(C), providing notice of the services it had agreed to provide to the annexed territory. The services include:

Police and fire protection; paramedic and ambulance services; professional engineering staff; park and recreation programming; maintenance of any and all public streets and alleyways falling within the jurisdiction and control of the City of Huber Heights and keeping the same open, in repair, and free

from nuisance; street lighting in accordance with any Citywide plan/policy for streetlights; planning and development services; fire inspections; and any and all other services provided at the discretion of the City of Huber Heights.

{¶ 5} On the same date, March 8, 2022, the Bethel Township Board of Trustees objected to the annexation petition. Subsequently, on April 14, 2022, the Commissioners held a public hearing on the petition. The Commissioners heard testimony from Tangeman's attorney who spoke in favor of the annexation petition and a Bethel Township trustee who opposed the petition. Immediately after the public hearing concluded, the Commissioners approved a resolution denying the annexation petition.

{¶ 6} The Commissioners denied Tangeman's petition because they determined that, although the petition met six of the seven conditions for type-2 annexation, it did not meet the condition set forth in R.C. 709.023(E)(6). According to the Commissioners, the services resolution's failure to make a provision for water and sewer services was a fatal defect. The Commissioners reasoned that:

Without proper knowledge of the demand for water and sewer services or negotiation between Miami County, the City of Huber Heights, Bethel Township and/or the development corporation regarding the provision of water and sewer services, the Board does not believe that adequate water and sewer services can or will be provided to the territory proposed to be annexed.

{¶ 7} Following the Commissioners' denial of her annexation petition, Tangeman filed her mandamus petition.¹

Elements of a Mandamus Claim

{¶ 8} This court has original jurisdiction over an action seeking a writ of mandamus. Ohio Constitution, Article IV, Section 3(B)(1)(b). However, "[a] writ of mandamus is an extraordinary remedy that only applies in a limited set of circumstances." *State ex rel. Parisi v. Heck*, 2d Dist. Montgomery No. 25709, 2013-Ohio-4948, ¶ 4. To prevail on her mandamus claim, Tangeman must establish (1) a clear legal right to the requested relief, and (2) a clear legal duty on the part of the respondents to provide it. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6. Tangeman need not prove that she lacks an adequate remedy at law:

[b]ecause R.C. 709.023(G) states that there is no appeal in law or equity from any resolution of the commissioners regarding an expedited annexation but that 'any party may seek a writ of mandamus to compel the board of county commissioners to perform its duties under this section.'

State ex rel. Xenia v. Greene Cty. Bd. of Commrs., 160 Ohio St.3d 495, 2020-Ohio-3423, 159 N.E.3d 262, ¶ 7, quoting *State ex rel. Natl. Lime & Stone Co. v. Marion Cty. Bd. of Commrs.*, 152 Ohio St.3d 393, 2017-Ohio-8348, 97 N.E.3d 404, ¶ 26. Tangeman must establish each of the elements of her claim by clear and convincing evidence. *Spaeth* at ¶ 13.

¹ After Tangeman filed her petition in May 2022, some of the landowners transferred their properties to a third party. Neither Tangeman nor the Commissioners have identified the legal significance, if any, of these transfers with respect to her mandamus claim.

Analysis

{¶ 9} With respect to a type-2 annexation, the law is clear. “A board of county commissioners must grant a petition that satisfies all the conditions and must deny a petition that does not.” *State ex rel. Xenia v. Greene Cty. Bd. of Commrs.*, at ¶ 4; R.C. 709.023(F). The Commissioners admit in their answer to Tangeman’s petition that they have a clear legal duty to grant a conforming petition under the law. The dispute is whether Tangeman has a clear legal right to the Commissioners’ approval of her petition, i.e., whether it satisfies all seven conditions of R.C. 709.023(E).

{¶ 10} Here, the Commissioners agree that Tangeman’s annexation petition satisfies R.C. 709.023(E)(1), (2), (3), (4), (5), and (7). Thus, the only remaining question is whether R.C. 709.023(E)(6) has been satisfied. The condition in that division of the statute is satisfied when: “The municipal corporation to which annexation is proposed has agreed to provide the territory proposed for annexation the services specified in the relevant ordinance or resolution adopted under R.C. 709.023(C).” R.C. 709.23(E)(6). Therefore, we must determine whether the services resolution approved by Huber Heights must make specific provision for water and sewer services under the law.

{¶ 11} We conclude that R.C. 709.023(C) does not require a services resolution to require a municipality to provide any particular service to a territory proposed for type-2 annexation. An unambiguous statute must be applied in a manner consistent with the plain meaning of the statutory language – a court cannot simply ignore or add words. *Portage Cty. Bd. of Commrs. v. City of Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, 846 N.E.3d 478, ¶ 52, citing *State ex rel. Burrows v. Indus. Comm.*, 78 Ohio St.3d 78, 81, 676 N.E.2d 519 (1997). We find that the statute at issue is unambiguous. It reads:

Within twenty days after the date that the petition is filed, the legislative authority of the municipal corporation to which annexation is proposed shall adopt an ordinance or resolution stating what services the municipal corporation will provide, and an approximate date by which it will provide them, to the territory proposed for annexation, upon annexation. The municipal corporation is entitled in its sole discretion to provide to the territory proposed for annexation, upon annexation, services in addition to the services described in that ordinance or resolution.

R.C. 709.023(C). Thus, the statute plainly states that a municipal corporation must agree to provide “what services,” if any, are specified in the relevant ordinance or resolution to the territory proposed for annexation. In other words, the resolution may specify that a municipality will provide all, some, or perhaps none of its services to the annexed territory. If the municipality has approved a services resolution under R.C. 709.023(C), the condition in R.C. 709.023(E)(6) is satisfied.

{¶ 12} Our reading of the statute is consistent with that of the Eleventh District Court of Appeals, which held: “R.C. 709.023(E)(6) does not require a board of county commissioners to deny an expedited type-2 annexation when a municipal corporation has resolved that it does not intend to provide services to the territory proposed to be annexed.” *State ex rel. Young v. Ducro*, 2020-Ohio-5471, 163 N.E.3d 1124, ¶ 46 (11th Dist.). In this case, although Huber Heights resolved to provide many of its municipal services to the proposed annexation territory, it did not elect to provide sewer and water services. If, as in *Ducro*, a board of county commissioners cannot deny a type-2 annexation petition when a municipality provides none of its services to a proposed

annexation area, then the Commissioners cannot reject Tangeman's petition because Huber Heights does not agree to provide a particular category of services. Regardless of the burden a services resolution places on other governmental entities, R.C. 709.023(C) plainly permits a municipality to pick and choose the services it will offer the annexed territory. A board of county commissioners may not exercise veto power over the substance of a municipal corporation's services resolution. Thus, we find Tangeman's annexation petition complies with R.C. 709.023(E)(6).

{¶ 13} Opposing the writ, the Commissioners have failed to cite a single case in support of their legal position. The Commissioners' opposition to Tangeman's annexation petition is based solely on pragmatic (non-legal) considerations. The Commissioners indicate that the territory to be annexed lacks a water and service provider and that development of the land into "residential property containing several hundred or more units and residents" is imminent. The Commissioners state that "no negotiations had taken place between Bethel Township, the City of Huber Heights and the Miami County Facilities Planning Area to allocate the responsibility for providing water and/or sewer service." The Commissioners reason that if Huber Heights does not provide water and sewer service to the land, "then it will have to be provided by Bethel Township or some other governmental body, such as the Miami County Facility Planning Area." To be sure, this court understands and appreciates the difficulties that await the Commissioners if annexation occurs. Nevertheless, the Commissioners' concerns, reasonable as they are, do not constitute a legally sufficient basis for denying a type-2 annexation.

{¶ 14} Therefore, this court finds that Tangeman's annexation petition satisfies all seven conditions specified in R.C. 709.023(E). She possesses a clear legal right to have her annexation petition granted by the Commissioners.

Conclusion

{¶ 15} For all the foregoing reasons, petitioner-relator Jill S. Tangeman's petition for a writ of mandamus is GRANTED.

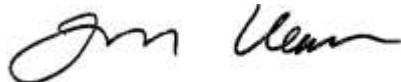
{¶ 16} SO ORDERED.



MICHAEL L. TUCKER, PRESIDING JUDGE



MARY E. DONOVAN, JUDGE



JEFFREY M. WELBAUM, JUDGE

To The Clerk: Within three (3) days of entering this judgment on the journal, you are directed to serve on all parties not in default for failure to appear notice of the judgment and the date of its entry upon the journal, pursuant to Civ.R. 58(B)



MICHAEL L. TUCKER, PRESIDING JUDGE