1997

Jones v. Chagrin Falls: Muddying the Statutory Waters of Ohio's Administrative Law Appeal Process

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JONES v. CHAGRIN FALLS: MUDDYING THE STATUTORY WATERS OF OHIO'S ADMINISTRATIVE LAW APPEAL PROCESS

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I. INTRODUCTION

The common-law doctrine of failure to exhaust administrative remedies has generally been held to be a prerequisite to judicial review in statutorily defined administrative law appeal processes.[2] Similarly, the United States Supreme Court in interpreting the federal administrative law appeal process, and the case law on Ohio's administrative law appeal process, have found that the doctrine of exhaustion is a jurisdictional bar to a declaratory judgment action except while challenging the constitutionality of a municipal or administrative decision.[3] Beware! According to the holding in *Jones v. Chagrin Falls*, this may

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[2]OHIO REV. CODE ANN. § 2506.01 (Banks-Baldwin 1997). Section 2506.01 states in pertinent part:

> Every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the subdivision is located . . .
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> A "final order, adjudication or decision" means an order, adjudication or decision that determines rights, duties, privileges, benefits or legal relationships of a person . . . .

[3]*See* Darby v. Cisneros, 113 S. Ct. 2539 (1993) (holding that in cases a plaintiff must exhaust the administrative appeals review process prior to judicial review when exhaustion is required by the relevant statute or agency rule); Driscoll v. Austintown Associates, 328 N.E.2d 395 (Ohio 1975) (holding that the availability of an alternative

no longer be the case in Ohio.[4] The issue before the court in *Jones* was whether the trial court lacked jurisdiction to entertain a declaratory judgment action when the Plaintiff-Appellee failed to exhaust all available administrative remedies before seeking judicial review.[5] A nearly unanimous court held the doctrine of failure to exhaust administrative remedies is not a jurisdictional defect to an action for declaratory judgment.[6] Rather, the court found that the doctrine of failure to exhaust administrative remedies constitutes an affirmative defense which is waived if not timely asserted and maintained.[7] In effect, a plaintiff in Ohio is not required to exhaust the administrative appeals process prior to judicial review even when the process of appealing an administrative decision has been spelled out in section 2506 of the Ohio Revised Code.[8] Thus, the *Jones* holding may have far-reaching consequences for Ohio administrative law.

II. FACTUAL AND PROCEDURAL HISTORY

In *Jones*, Plaintiff-Appellee owned a vacant parcel of land located in the southwest corner of the intersection of East Washington Street and Senlac Hills Drive in the Village of Chagrin Falls.[9] Jones proposed to build a bank that would include an outside automated teller machine, or ATM.[10] On June 4, 1993, Jones gave an option to National City Bank to develop and relocate its banking business from the Village's central district to the parcel of land which was within an area zoned "office district."[11] Counsel for the optionee, National City Bank, acting in behalf of Plaintiff-Appellee, discussed with the Village's Chief Administrative Officer the potential use of the property in question as a bank branch.[12] Plaintiff-Appellee, through his optionee, was informed that a bank

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remedy under section 2506.01 of the Ohio Revised Code does not preclude a plaintiff from bringing a declaratory judgment action challenging the constitutionality of a zoning restriction). *But see* Schomaeker v. First Nat'l Bank of Ottawa, 421 N.E.2d 530 (Ohio 1981) (holding that where the constitutionality of a zoning restriction was not in question, the existence of an administrative remedy under section 2506.01 of the Ohio Revised Code was a jurisdictional bar precluding the plaintiff-landowner from bringing a declaratory judgment action).

[4] Jones v. Chagrin Falls, 674 N.E.2d 1388, 1390 (Ohio 1997).

[5] *Id.*

[6] *Id.* at 1392.

[7] *Id.*

[8] *Id.*

[9] *Jones*, 674 N.E.2d at 1390.

[10] *Id.* at 1388.

[11] *Id.*

[12] *Id.*

branch was not a permitted use in an "office district."[13] The Village's Chief Administrative Officer interpreted the zoning ordinance as restricting bank branches to "retail business districts."[14]

Counsel for National City Bank subsequently appealed to the Village's Board of Zoning Appeals for an interpretation of the zoning ordinance.[15] In a quasi-judicial proceeding, the Board considered the decision of the Village's Chief Administrative Officer at a hearing during its regular meeting attended by representatives of the bank and its counsel.[16] The issue before the Board was whether only banks with drive-through ATMs were restricted to the Village's retail business district or whether all banks, because of the flow of pedestrian traffic, are restricted to the retail business district.[17] The board unanimously determined that allowing any bank in the office district was contrary to the language of the Code and would violate the intent of the Planning Commission.[18] In a subsequent appeal, Chagrin Falls Village Council upheld the decision of the Board of Zoning Appeals.[19]

Plaintiff-Appellee did not attend nor was he represented by counsel at any of the zoning proceedings before the Chief Administrative Officer, the Board of Zoning Appeals or the Village Council.[20] Also, neither Plaintiff-Appellee nor his optionee took an administrative appeal from the decisions to the Cuyahoga County Court of Common Pleas as permitted by section 2506 of the Ohio Revised Code.[21] Instead, Plaintiff-Appellee filed a declaratory judgment action in the Common Pleas Court seeking "a determination that he was entitled to build a bank in the office district under the Village's zoning ordinance."[22] In effect, Jones was seeking an independent interpretation of the Village's zoning ordinance.

The Village answered the declaratory judgment action and raised the affirmative defense that the complaint failed to state a cause of action.[23] The Village also argued that the court lacked subject matter jurisdiction and Jones

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[13] *Id.*

[14] *Jones*, 674 N.E.2d at 1388.

[15] *Id.*

[16] Brief of Appellee at 2, Jones v. Chagrin Falls, 674 N.E.2d 1388 (Ohio 1997) (No. 95-1458) (hereinafter "Brief of Appellee").

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] Brief of Appellee at 2, *Jones* (No. 95-1458).

[22] *Id.*

[23] *Jones*, 674 N.E.2d at 1388.

failed to exhaust his administrative remedies.[24] Both parties filed cross-motions for summary judgment. However, the Village's motion for summary judgment did not raise the issue of failure to exhaust administrative remedies.[25] The trial court found for Plaintiff-Appellee Jones and, contrary to the decision of the Board of Zoning Appeals and the Village Council, it held "that a bank or savings and loan is a financial office and as such is a permitted use in the Office District of the Village of Chagrin Falls."[26]

During oral arguments in the appeal from that judgment to the Eighth District Court of Appeals of Cuyahoga County, the Court raised the question *sua sponte* as to whether the trial court had subject matter jurisdiction to entertain the Jones declaratory judgment action.[27] Following supplementary briefs on the issue of subject matter jurisdiction, the Court of Appeals held that the trial court did not have original jurisdiction to decide zoning issues de novo without deferring to the Village's administrative zoning process.[28] The question whether the Village's zoning ordinance allowed the use of Plaintiff-Appellee's property was at issue.[29] According to the court of appeals, the issue had to be decided first by the Village's Board of Zoning Appeals and its Village Council, with the court of common pleas receiving authorization under section 2506 of the Ohio Revised Code, which permits review of municipal court decisions.[30]

The court of appeals relied on two Ohio Supreme Court rulings in arriving at its decision. In *Karches v. Cincinnati*,[31] the supreme court determined that judicial review of a final administrative decision denying a variance to a property owner is properly filed through a section 2506 appeal to the common pleas court of the county in which the municipality is located.[32] In contrast, the Ohio Supreme Court held that "a declaratory judgment action challenges the constitutionality of an existing zoning ordinance."[33] In addition, the court of

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[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] Brief of Appellant at 5. Jones v. Chagrin Falls, 674 N.E.2d 1388 (Ohio 1997)(No. 95-1458) (hereinafter "Brief of Appellant"). Section 2506 of the Ohio Revised Code calls for an administrative appeal from the decision of the Village.

[28] *Id.* at 7.

[29] Jones v. Chagrin Falls, Journal Entry and Opinion, Court of Appeals, Eighth District, Cuyahoga County, page 8.

[30] Brief of Appellee at 11, *Jones* (No. 95-1458).

[31] 526 N.E.2d 1350 (Ohio 1988).

[32] *Id.*

[33] *Karches*, 526 N.E.2d at 1354. In *Karches*, the Ohio Supreme Court tried to buttress its decision in *Driscoll* by pointing out instances in which the ruling in a section 2506 of the Ohio Revised Code appeal and in a declaratory judgment appeal could differ in de-

appeals also relied on the Ohio Supreme Court ruling in *Schomaeker v. First National Bank*,[34] in which a plaintiff who failed to challenge the constitutionality of a zoning ordinance was denied declaratory judgment relief.[35] The *Schomaeker* court stated:

> We further hold that plaintiff was not entitled to declaratory judgment relief in the Common Pleas Court because such an action does not lie when a direct appeal to the Common Pleas Court pursuant to R.C. Chapter 2506 is available. In any event, Plaintiff was collaterally estopped from raising the propriety of a use variance, given a prior judgment necessarily adjudicating the issue.[36]

III. COURT OPINION AND RATIONALE

Chief Justice Moyer delivered the majority opinion in *Jones v. Chagrin Falls*.[37] The court began its analysis by defining the issue as whether the failure to exhaust administrative remedies is a jurisdictional defect that may not be waived, or whether said failure is an affirmative defense that may be waived.[38] Looking to Ohio's Declaratory Judgment Act, § 2701.02 of the Ohio Revised Code, the court held that a declaratory judgment is not precluded by "[t]he existence of another appropriate remedy."[39] The court reasoned that the broad powers of original jurisdiction conferred on courts under the Declaratory Judgment Act did not exempt municipal ordinances from the reach of a declaratory judgment action by persons affected by such ordinance.[40] The court emphasized:

> Nothing in R.C. Chapter 2721 exempts zoning ordinances from the subject matter jurisdiction of courts of common pleas to decide declaratory judgment actions. Nor have we found any other statutory language depriving the trial court of jurisdiction in this case. Therefore, if the court of common pleas lacked jurisdiction in this case, as the court of appeals held, the legal underpinnings for such a holding must be found in the case law.[41]

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termining the constitutionality of a zoning ordinance. *Id.* *See also* Driscoll, 328 N.E.2d at 395.

[34] *Schomaeker*, 421 N.E.2d 530.

[35] *Id.*

[36] *Id.* at 537.

[37] 674 N.E.2d at 1390.

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.*

After reviewing Ohio precedent, the Court held that failure to exhaust administrative remedies was not a jurisdictional bar depriving the trial court of the power to decide a declaratory judgment action. "Indeed, neither our case law nor that of other jurisdictions supports so sweeping a response to the issue before us."[42] The court noted that the declaratory judgment action in *Driscoll* determined the constitutionality of a zoning ordinance.[43] The court, however, stated that *Driscoll* did not limit the availability of a declaratory judgment action under section 2506 of the Ohio Revised Code to challenges of the constitutionality of an administrative review process.[44] The court pointed out that in upholding the validity of the declaratory judgment in *Driscoll*, the failure to exhaust administrative processes was an affirmative rather than jurisdictional bar.[45] No distinction was made between declaratory judgment actions reviewing constitutional issues and those considering "simple statutory interpretations."[46]

The court also distinguished its holding from *Schomaeker* in several ways. First, the court noted that *Schomaeker* involved a plaintiff who participated with counsel throughout the administrative review process while challenging the grant of a use variance.[47] In *Jones*, the court noted that Plaintiff-Appellee failed to participate in the administrative review process.[48] Secondly, the court noted that the language of the *Schomaeker* holding was consistent with the position that the common-law doctrine of failure to exhaust administrative remedies was not a jurisdictional bar to a declaratory judgment; the doctrine constituted an affirmative defense.[49] In *Schomaeker*, the court emphasized:

> we held that the plaintiff was entitled to appeal the grant of a variance, and was 'not entitled to a declaratory judgment where failure to exhaust administrative remedies is asserted and maintained.' If failure to exhaust remedies deprived the trial court of subject matter jurisdiction, the 'asserted and maintained' language would amount to mere surplusage.[50]

Declaring that its holding was not intended as a rejection of the common-law doctrine of failure to exhaust administrative remedies,[51] the court reiterated its

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[42] 674 N.E.2d at 1390.

[43] 674 N.E.2d at 1391.

[44] *Id.* at 1391-93.

[45] *Id.* at 1392.

[46] *Id.* at 1391.

[47] *Id.*

[48] 674 N.E.2d at 1392.

[49] *Id.*

[50] *Id.*

[51] *Id.*

support for the *Myers* decision that "no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted."[52] According to the court, an affirmative defense that must be pleaded or else waived would serve the policy of protecting the judiciary from an erosion of its expressly granted powers of review.[53] "Our decision today simply clarifies that under our adversarial system of justice it is the responsibility of the party seeking to benefit from the doctrine to raise and argue it."[54]

The dissent, lead by Justice Cook, failed to see such clarity in the majority's opinion. Rejecting the majority's attempt to clarify *Driscoll*, Justice Cook contended that according to *Driscoll* the administrative remedies under section 2506 of the Ohio Revised Code provided the exclusive means of reviewing an administrative decision.[55] The dissent argued that where the legislature had enacted a complete, comprehensive and adequate statutory scheme for reviewing administrative decisions, "the sounder legal approach . . . is to treat the administrative remedy available to Jones as his exclusive remedy."[56] The dissent noted that the pursuit of the administrative remedies available to Jones would culminate in a final judgment, which ordinarily would preclude a declaratory judgment action.[57] "To date," the dissent asserted, "this court has failed to provide a proper analysis of whether, and to what extent, R.C. Chapter 713 and 2506 represent a landowner's exclusive remedy for challenging municipal zoning determinations."[58]

IV. ANALYSIS

The *Jones* decision raises questions about the future of section 2506 of the Ohio Revised Code, which provides for judicial review of virtually any and all final actions of municipal government agencies or entities.[59] The Ohio Supreme Court, for instance, allowed the City of Willoughby Hills to appeal the decision of its own zoning board after the lower courts determined that the city lacked

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[52] *Id.* at 1392. *See* Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 50-51 (1938).

[53] 674 N.E.2d at 1393.

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.* at 1394.

[58] 674 N.E.2d at 1394.

[59] City of Willoughby Hills v. C.C. Bars Sahara, Inc., 591 N.E.2d. 1203 (1992). The court applied section 2506 of the Ohio Revised Code to a city's appeal of a decision of its own zoning board after the lower courts held that the city lacked standing to appeal its zoning board decision. *Id.* The court held the statutory grant of a right of judicial appeal was sufficient to confer standing on the city. *Id.*

standing to sue.[60] The *Jones* decision appears to turn a simple route of securing judicial review into one that may become more complex as case law develops. Under the Ohio Administrative Procedure Act, appeals are first reviewed by the court of common pleas and then by the court of appeals before a review and final action by the Ohio Supreme Court.[61] The appeal process is inherently "cumbersome, expensive and time-consuming."[62] The *Jones* decision creates the dangerous possibility that it may undermine the integrity and justice of the very administrative law appeal process it seeks to improve. Such a result would make the administrative law appeal process not only cumbersome, expensive, and time-consuming, but also ineffective.

Through its holding in *Jones*, the Ohio Supreme Court has seriously undermined the quasi-judicial powers of municipal and administrative bodies, as it pursued the policy rationale of protecting judicial review. Unless the *Jones* decision is clarified, distinguished, or overruled, nothing prevents an Ohio plaintiff from pursuing an administrative claim by proxy in a quasi-judicial setting. If an unfavorable decision appears imminent, said plaintiff might opt to bring an action for declaratory judgment. This lucky plaintiff gets two bites of the same apple, with the advantage of two entirely independent reviews of the same claim (one quasi-judicial and the other judicial). Unfortunately, either route could have the force of law.

The *Jones* decision muddies the statutory waters of the administrative appeal process by blurring the distinction as to when a quasi-judicial proceeding has terminated or reached a final, definitive position. As a result, *Jones* pits the doctrine of failure to exhaust administrative remedies directly against the doctrine of finality. The doctrine of finality refers to the process by which an administrative, quasi-judicial proceeding arrives at a final resolution of an issue.[63] Although the two doctrines sometimes overlap in the administrative appeal process, the finality doctrine considers "whether the initial decision maker has arrived at a definitive position on the issue that inflicts an actual, concrete injury."[64] In contrast, the doctrine of failure to exhaust administrative remedies asks whether the plaintiff pursued all the channels for seeking redress of the "actual, concrete injury."[65] If finality is not a prerequisite of an administration appeal process, the plaintiff loses the incentive to reach that "actual, concrete injury" before heading to the next level of review at the trial court.

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[60] *Id.*

[61] Howard N. Fenton III, *Survey of Ohio Administrative Law 1992-1993*, 20 OHIO N.U. L. REV. 379 (1993).

[62] *Id.*

[63] KENNETH C. DAVIS, ADMINISTRATIVE LAW TREATISE 20.08, at 101 (2d ed. 1982). *See also* Williamson Co. Regional Planning v. Hamilton Bank, 473 U.S. 172, 192 (1985).

[64] *Williamson*, 473 U.S. at 192.

[65] *See generally* DAVIS, *supra* note 64.

At the trial court level, counsel for the administrative agency could raise the doctrine of failure to exhaust administrative remedies as an affirmative defense. But the whole premise of subject matter jurisdiction is that its importance renders it necessary to have everyone in the action—the parties, the trial court and any reviewing courts—responsible for ensuring there are no jurisdictional bars to the action.[66] If failure to exhaust administrative remedies is not a jurisdictional bar but an affirmative defense, it loses clout because it can be waived. With an affirmative defense, it is solely the responsibility of the party asserting the defense to claim it or lose it.[67] For instance, both parties may elect to skip a statutorily required level of review and go directly to the court of common pleas. What if the city council objects? Ohio's administrative appeal process would become even more complex.

Furthermore, allowing a declaratory judgment grants the plaintiff an even stronger "trump card," as it bypasses the statutory process of an administrative law appeal. The *Jones* dissent alluded to this "trump card" in reminding the Court of its distinction between a declaratory judgment action and an appeal under section 2506 Ohio Revised Code.[68] In a section 2506 appeal, the court reviews the issues only in light of the proposed specific use sought by the plaintiff who wanted, say, a zoning variance.[69] If the reviewing court determines the restriction is validly applied, it ends its inquiry. "In making such a limited determination, it is possible that the existing zoning could be unconstitutional, but the zoning would not be declared unconstitutional because the prohibition against the specific proposed use is valid."[70] In a declaratory judgment action, the court is not so limited. Thus, a declaratory judgment action is more suited to reviewing the constitutionality of a zoning ordinance than the validity of a zoning decision.[71] As the *Jones* dissent reminded the majority: "[A] legitimate government interest for retaining the zoning classification will defeat [a] constitutional attack on an administrative determination and [a] constitutional attack on the zoning ordinance itself. Thus, there appears to be no reason to permit a declaratory judgment action for any as-applied constitutional challenge."[72]

V. CONCLUSION

Ohio administrative law and procedure is not well-served by the Court's decision in *Jones*. The cumbersome and confusing judicial review process found

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[66] *Id.* at 468-69.

[67] *Jones*, 674 N.E.2d at 1392.

[68] *Id.*

[69] *Id.*

[70] *Id.* at 1394.

[71] *Id.*

[72] 674 N.E.2d at 1394.

in administrative law, now tinged by even more uncertainty, will suffer as parties in the administrative law process take advantage of the *Jones* decision. Now, nothing bars collusion between parties as a means of allowing a governmental agency to bypass review of its decision by another agency. Under *Jones*, both parties could bypass any step in the administrative law process by initiating a declaratory judgment action.[73] The "reviewing" court would be precluded from raising the question of failure to exhaust administrative remedies because it lacks the protective aura of subject matter jurisdiction.[74] The court is going to have to revisit the issues raised by *Jones*, if only to clear the sediment it has stirred up in the statutory waters of Ohio administrative law process.

[73] *Id.* at 1395.

[74] *Id.*