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McTiernan v. Scott, 31 P.3d 749 (Wyo. 2001)

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WISCONSIN

***In re Annexation of the Smith Prop. v. City of La Crosse*, 634 N.W.2d 840 (Wis. App. 2001)** (holding contiguous requirement in property annexation did not require physical contact between dry land).

The Town of Campbell (“Town”) challenged four City of La Crosse (“City”) ordinances, which annexed certain properties from the Town to the City. The trial court granted summary judgment to the Town.

In 1996 and early 1997, the City annexed four different properties from the Town. The Black River separates the Town’s properties from the City. At no point do the dry lands of the City and the annexed properties meet. The trial court determined Wisconsin Stat. § 66.021(2)(a) governed the annexations. The statute requires the annexed property be contiguous to the City. The trial court determined the annexed properties and the City were neither touching nor close enough to be contiguous to validate the four annexations.

The City argued the trial court erred in granting the Town’s motion for summary judgment because the borderline separating the City and the Town lies at the center of the riverbed and the contiguity requirement does not mean dry land must meet dry land. The Town argued the body of water destroyed contiguity. In the absence of statutory definition, the court relied on Webster’s Dictionary to define the term “contiguous.” The court concluded “contiguous” included properties in physical contact with one another and as such, the annexing and annexed properties were in physical contact along the riverbed.

The Town argued the state ownership of the submerged land beneath navigable waters up to the high water mark caused a separation between the City and the Town properties and therefore could not be considered contiguous. The court disagreed. Thus, while the state held this land in trust, it was subject to a riparian’s ownership of the center of the riverbed to the bank.

Jon Hyman

WYOMING

***McTiernan v. Scott*, 31 P.3d 749 (Wyo. 2001)** (holding the State Board of Control’s decision that Scott abandoned water rights in 14.8 acres of his property was not supported by substantial evidence, and the Board did not have authority to order Scott to file a petition to change the point of diversion and means of conveyance absent appropriate findings of fact).

Scott and McTiernan are adjoining landowners whose properties were once owned in common. Both parties held water rights in Smith Creek. Scott's water right was a territorial right with a priority date of May 1882 and has number three priority on Smith Creek. McTiernan's priority was number four.

In 1996, McTiernan filed a petition with the State Board of Control ("Board") seeking an order that Scott had abandoned a portion of his water right. After a contested hearing in 1997, the Board concluded that Scott had abandoned 14.7 acres of the Shellcross parcel. Scott appealed to the district court. On certification from the district court, the Wyoming Supreme Court held the Board's factual findings regarding the irrigated acreage on the Shellcross parcel were insufficient and remanded the matter to the Board. On remand, the Board concluded that Scott had abandoned 14.8 acres of the Shellcross parcel and ordered Scott to file a petition for change of the point of diversion and means of conveyance with the Board. Scott again appealed to the district court, which independently reviewed the evidence. The district court concluded there was not substantial evidence to support the Board's conclusion that 14.8 acres of the Shellcross parcel had been abandoned, and found instead that only 9.2 acres had been abandoned. Furthermore, the district court found there were no basic findings of fact to support the Board's order requiring Scott to file a petition to change his point of diversion and means of conveyance. McTiernan appealed to the supreme court.

The first issue presented to the supreme court concerned the existence of substantial evidence. To find substantial evidence, the supreme court must review the entire record to determine if there is relevant evidence that a reasonable mind might accept in support of the agency's decision. The standard requires there be more than a scintilla of evidence, although it does not require that the proof support only one conclusion to the exclusion of all others. Furthermore, for evidence to be sufficient to allow a "reasonable mind" to accept an agency's conclusion, there must appear in the record evidence that allows either a definitive conclusion or a reasonable extrapolation based on the surrounding circumstances.

The supreme court's review of the record led it to conclude that the district court's decision regarding the abandoned acreage was correct. Although the Supreme Court will defer to the Board's specialized knowledge and expertise regarding water and irrigation, it will overturn an agency's decision when it is clearly contrary to the overwhelming weight of the evidence on record. Occasionally, the review process requires the reviewing court to assess the facts gathered during the administrative hearing, but that assessment usually does not involve reweighing or reconsidering basic facts found by the agency. However, because of that process, the court may arrive at a different conclusion from the agency. Such was the situation in this case.

After reviewing the record, the supreme court concluded the evidence in the record did not support the Board's conclusion. It found that the Board had ignored key evidence of irrigation activity on

the Shellcross parcel showing extensive irrigation efforts by Scott during July and August of 1996. As the supreme court stated, the Board may have found this testimony not credible and unpersuasive, but if so, it was incumbent upon it to articulate its reasoning in the order. Ignoring relevant evidence adduced at a contested case proceeding constitutes an arbitrary and capricious action. Thus, the supreme court affirmed the district court's finding that 9.2 acres had been abandoned.

The second issue involved the Board's order to Scott to file the necessary petitions with the Board for changing the point of diversion and means of conveyance and to identify the lands actually irrigated under the appropriation. The Supreme Court affirmed the district court finding that such an order required basic findings of fact regarding when and who made changes in diversions and means of conveyance. Without such information, the district court held that Scott would not know how to respond to the Board's order. The district court noted that if the Board simply meant Scott to identify his point of diversion and means of conveyance without formal petition, it had the power to require that action.

John A. Helfrich