5-30-2018

Christopher Quick v. Township of Bernards

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-2808

CHRISTOPHER QUICK;
LORETTA QUICK,
Appellant

v.

TOWNSHIP OF BERNARDS;
BERNARDS TOWNSHIP COMMITTEE;
BERNARDS TOWNSHIP PLANNING BOARD

On Appeal from the United States District Court for the
District of New Jersey
(Civ. Action No. 3-17-cv-05595)
District Judge: Honorable Michael A. Shipp

Submitted Under Third Circuit L.A.R. 34.1(a)
April 19, 2018

Before: GREENAWAY, JR., RENDELL, and FUENTES, *Circuit Judges*

(Opinion filed: May 30, 2018)

OPINION*

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* This disposition is not an opinion of the full Court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

FUENTES, *Circuit Judge*.

Christopher and Loretta Quick appeal the denial of their motion to preliminarily enjoin a public hearing of the Bernards Township Planning Board (the "Board") that occurred on August 8, 2017. We will dismiss the appeal as moot.

I.

Because we write for the parties, we recount only the essential facts. The Quicks live in Bernards Township, New Jersey. At the August 8 hearing, the Board weighed a proposal to build a mosque near the Quicks' home. The rules governing the August 8 hearing, which were outlined in a settlement agreement reached in a related lawsuit, directed that "[n]o commentary regarding Islam or Muslims [would] be permitted" at the hearing.[1] The settlement agreement further provided that "[i]n no event shall the proceedings extend beyond one (1) single . . . hearing."[2]

The Quicks wanted to address the Board at the August 8 hearing. However, the Quicks feared "adverse legal consequences" if they violated the above commentary prohibition.[3] Based on these concerns, the Quicks moved to preliminarily enjoin the hearing on First and Fourteenth Amendment grounds.

On August 8, 2017, the District Court held a hearing on the Quicks' preliminary injunction motion. At the end of the hearing, the District Court denied preliminary injunctive relief, reasoning that the Quicks failed to show a likelihood of success on the

[1] JA 57.

[2] JA 55.

[3] JA 31.

merits. Later that day, the August 8 hearing went forward and the Board approved construction of a mosque near the Quicks' home. This appeal followed.

II.

The District Court had jurisdiction under 28 U.S.C. §§ 1331 and 1343. While the denial of a preliminary injunction is normally appealable under 28 U.S.C. § 1292(a)(1), "[i]f developments occur" that "prevent a court from being able to grant the requested relief, the case must be dismissed as moot."[4] In this regard, it is settled that "when the event sought to be enjoined in a preliminary injunction has occurred, an appeal from the order denying the preliminary injunction is moot."[5] It is undisputed that the August 8 hearing that the Quicks sought to enjoin has already occurred. As such, their appeal is moot and we lack jurisdiction to consider it.[6]

In response, the Quicks contend that this case satisfies the "capable of repetition, yet evading review" exception to mootness. This argument fails. That exception applies only where "there is a reasonable expectation that the same complaining party will be subject to the same action again."[7] Here, the Quicks have no expectation—let alone a reasonable one—that the Board will hold another public hearing because the settlement agreement expressly provided that there would be only one hearing on the proposed site

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[4] *Blanciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 698–99 (3d Cir. 1996).

[5] *Scattergood v. Perelman*, 945 F.2d 618, 621 (3d Cir. 1991).

[6] *See Clark v. K-Mart Corp.*, 979 F.2d 965, 967 (3d Cir. 1992) (noting that "mootness is a jurisdictional issue").

[7] *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016) (quoting *Spencer v. Kemna*, 523 U.S. 1, 17 (1998) (brackets omitted)).

plan. Further, even if there is another hearing, it is not clear that the commentary prohibition in question would apply.[8]

III.

For the foregoing reasons, we dismiss the appeal as moot.

[8] On appeal, the Quicks also ask that the Board's decision at the August 8 hearing be vacated. However, because they did not seek such relief from the District Court, that request is waived. *See In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 261 (3d Cir. 2009) ("Absent exceptional circumstances, this Court will not consider issues raised for the first time on appeal." (citation and quotation marks omitted)).