

Bond Case Briefs

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ZONING & LAND USE - INDIANA

John C. & Maureen G. Osborne Revocable Family Trust v. Town of Long Beach

Court of Appeals of Indiana - May 30, 2017 - N.E.3d - 2017 WL 2333703

After protesters filed administrative appeals of building permits which allowed homeowners to construct seawalls, and stop work orders were issued halting seawall construction, homeowners and contractor filed complaint for declaratory and injunctive relief against town, town council, town building commission, town advisory plan commission, town board of zoning appeals, and protesters.

The Superior Court denied defendants' motion to dismiss, and later issued order denying motions for injunctive relief and declaratory judgment. Homeowners and protesters both appealed, and appeals were consolidated.

The Court of Appeals held that:

- Order denying homeowners' "Motions for Injunctive Relief and Declaratory Judgment" constituted a final appealable judgment, and
- Homeowners' failure to fully participate in town board of zoning appeals administrative decision appeal process required dismissal for failure to exhaust administrative remedies.

Order denying homeowners' "Motions for Injunctive Relief and Declaratory Judgment" in action regarding seawall construction disposed of all claims as to all parties and thus constituted a final appealable judgment, although it was styled as a denial of a motion and referred to preliminary injunction standard of review. Order, along with accompanying order denying certification to appeal denial of anti-SLAPP motions to dismiss as "irrelevant," indicated that the trial court intended to address and deny the claims of the homeowners' complaint, not the relief sought in their application for preliminary injunction and temporary restraining order.

Due to failure to exhaust administrative remedies, homeowners' failure to fully participate in town board of zoning appeals administrative decision appeal process required dismissal of subsequent action for declaratory and injunctive relief regarding right to construct seawalls, which had been halted after protesters had filed administrative appeals of homeowners' building permits; protesters' appeals were not an improper collateral attack on earlier view variances obtained by homeowners, which were not at issue, protesters had complied with process for appealing zoning board decisions, and purported conflicts of interest in the part of board members did not render any administrative appeal futile.