

[J-158A&B-2008] [MO: Baer, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA, : No. 14 MAP 2007
OFFICE OF ATTORNEY GENERAL BY :
THOMAS CORBETT, JR., ATTORNEY : Appeal from the Order and Opinion of the
GENERAL, : Commonwealth Court Dated January 25,
: 2007 at No. 358 MD 2006

Appellant

v.

LOCUST TOWNSHIP AND LOCUST : ARGUED: December 2, 2008
TOWNSHIP BOARD OF SUPERVISORS, :

Appellees

COMMONWEALTH OF PENNSYLVANIA, : No. 22 MAP 2007
OFFICE OF ATTORNEY GENERAL BY :
THOMAS CORBETT, JR., ATTORNEY : Appeal from the Order and Opinion of the
GENERAL, : Commonwealth Court Dated January 25,
: 2007 at No. 358 MD 2006

Appellee

v.

LOCUST TOWNSHIP AND LOCUST : ARGUED: December 2, 2008
TOWNSHIP BOARD OF SUPERVISORS, :

Cross Appellant

CONCURRING AND DISSENTING OPINION

MADAME JUSTICE GREENSPAN

DECIDED: April 29, 2009

I join in the first part of the Majority Opinion authored by Justice Baer, which holds that the Commonwealth Court has jurisdiction over the Attorney General's (AG's) action

against Locust Township and the Locust Township Board of Supervisors (Locust Township) under 3 Pa.C.S. § 315(a) and 42 Pa.C.S. § 761(a)(4). Respectfully, I dissent from the second part of the Majority Opinion and the result. In the second part of the opinion, the Majority holds that the AG's action was ripe, reverses the order of the Commonwealth Court, and remands the case for resolution on the merits. As explained herein, I would hold that where the unauthorized ordinance predates the adoption of Chapter 3 of the Agriculture Code, Section 313 of the Code confers the AG standing to challenge such an ordinance only where the township seeks to enforce it. Accordingly, I would affirm the judgment of the Commonwealth Court in its entirety.

The crux of the question before us is not whether the AG's action is ripe but whether the AG has standing to challenge Locust Township's ordinance. Generally, "to have standing to challenge an official order or action, a party must be aggrieved by the action or order." In re Administrative Order No. 1-MD-2003, Appeal of Troutman, 936 A.2d 1, 7-8 (Pa. 2007). In the alternative, the General Assembly can create a cause of action and standing for a party, like the AG here, by legislative fiat. 3 Pa.C.S. § 315.

To be aggrieved under general justiciability principles, a party must show, *inter alia*, that it has a present interest in the litigation. Pittsburgh Palisades Park, LLC v. Commonwealth, 888 A.2d 655, 659-60 (Pa. 2005). This Court has held that a party has standing "[w]here the effect of the challenged regulations upon the industry regulated is direct and immediate, the hardship thus presented suffices to establish the justiciability of the challenge in advance of enforcement." Arsenal Coal Co. v. Commonwealth, 477 A.2d 1333, 1339 (Pa. 1984). Id. at 1339. In Arsenal Coal, a coal company sued the Commonwealth's Department of Environmental Protection in order to enjoin the department's regulations before they were enforced. Id. at 1339-40. This Court held that the plaintiff had standing under general principles of standing, i.e. the plaintiff was an aggrieved party. Id.

Here, however, the AG filed its action under Chapter 3 and does not argue that it is an aggrieved party with standing under general principles of justiciability. As a result, common law principles regarding standing and ripeness are not applicable here. Instead, this Court must look only to the language of the statute conferring standing (Chapter 3 of the Agriculture Code) to determine whether the AG has standing to sue Locust Township.

Chapter 3 of the Agriculture Code addresses the local regulation of normal agricultural operations via “unauthorized local ordinances.” 3 Pa.C.S. §§ 311, 312. Section 312 defines the types of local ordinances that are “unauthorized” while Section 313 of Chapter 3 describes what *types* of local *actions* are subject to challenge under the chapter. 3 Pa.C.S. §§ 312, 313.

Sections 314 through 316 provide the procedure for challenging “unauthorized” local ordinances. 3 Pa.C.S. §§ 314-316. Specifically, Chapter 3 places a duty on the AG to investigate local ordinances referred by local farmers and believed to be unauthorized and, more importantly, creates standing for the AG to sue local governments in order to invalidate or enjoin the enforcement of unauthorized local ordinances. 3 Pa.C.S. §§ 314, 315. The remaining sections of Chapter 3 provide for the appointment of masters by the Commonwealth Court, the payment of legal fees, and reports to the General Assembly. 3 Pa.C.S. §§ 316-318.

According to Section 313(b), the Chapter 3 procedure applies “to the enforcement of local ordinances existing on the effective date of this section and to the enactment or enforcement of local ordinances enacted on or after the effective date of this section.” 3 Pa.C.S. § 313(b). In other words, where an unauthorized ordinance predates the enactment of Chapter 3, the AG may proceed under Chapter 3 only if the local government is *enforcing* the unauthorized ordinance. 3 Pa.C.S. § 313(b). Here, Locust Township adopted its unauthorized ordinance before the effective date of Chapter 3 and did not seek

to enforce it. According to the plain language of Chapter 3, the AG does not have standing to challenge Locust Township's ordinance. 3 Pa.C.S. § 313(b).

Respectfully, I believe that the Majority ignores the unambiguous language of the statute "under the pretext of pursuing its spirit." 1 Pa.C.S. § 1921(b). The Majority appears to rely heavily on section headings for disposition, contrary to well-established rules of statutory construction. 1 Pa.C.S. § 1924. Thus, the Majority argues that Section 313 simply restrains the actions of local government while Sections 314 and 315 empower the AG to investigate the actions of the local government and bring legal action. On this basis, the Majority holds that the language of Section 313 is not binding in the interpretation of Sections 314 and 315. In my opinion, this holding distorts not only the purpose of Chapter 3 (to create a procedure for challenging well-defined local ordinances) but also the language of Section 313, which, to reiterate, states:

This chapter shall apply to the enforcement of local ordinances existing on the effective date of this section and to the enactment or enforcement of local ordinances enacted on or after the effective date of this section.

3 Pa.C.S. § 313(b) (emphasis added). In other words, the procedure described in Sections 314 through 318 is available only in the circumstances defined in Section 313(b). The Majority, however, reads Chapter 3 too broadly to create standing for the AG in circumstances other than those described with particularity by the General Assembly. Respectfully, I believe that if the General Assembly had intended to allow the AG to challenge unauthorized local ordinances predating the adoption of Chapter 3 that local governments do not try to enforce, the General Assembly would have said so. Instead, the General Assembly gave the AG power to act only when a local government *seeks to enforce* a local ordinance predating the enactment of Chapter 3.

The Majority's interpretation of Chapter 3 also leads to an untenable position. The Majority agrees that a municipality is prohibited only from enforcing an unauthorized

ordinance predating Chapter 3. However, the Majority would nonetheless allow the AG to challenge not only this prohibited enforcement *but also the mere existence on the ledgers* of an unauthorized ordinance predating Chapter 3. In other words, the Majority would allow the AG to sue a township that is not engaging in an act prohibited by Chapter 3.

I recognize several policy reasons that support the General Assembly's limited grant of standing to the AG to interfere with local government, including preservation of the Commonwealth's resources and judicial economy. Specifically, it would be a waste of taxpayer money for the AG to prosecute cases merely to strike off local ledgers ordinances that townships do not and never intend to enforce. The General Assembly clearly did not intend to create incentives for the AG to seek out townships with unauthorized local ordinances predating the effective date of Title 3 and sue them. See 3 Pa.C.S. § 314(a). The fact that only a limited number of individuals may refer "unauthorized local ordinance" cases to the AG for investigation illustrates this policy choice. Only "[a]n owner or operator of a normal agricultural operation may request the Attorney General to review a local ordinance believed to be an unauthorized local ordinance." 3 Pa.C.S. § 314(a). Finally, a broader interpretation of the AG's powers contravenes this Commonwealth's general policy of limited interference with the legislative actions of local government.¹ See Mazur v. Trinity Area School Dist., 961 A.2d 96, 105 (Pa. 2008).

¹ Respectfully, this Court's decision in Arsenal Coal is inapposite. Under Arsenal Coal, a Locust Township farmer would be able to challenge Locust Township's unauthorized local ordinance and obtain an injunction. Arsenal Coal, 477 A.2d at 1339; 3 Pa.C.S. § 315(b). According to that decision, even an ordinance that is not enforced may present an *immediate* harm to a party that is *directly* injured. Arsenal Coal, 477 A.2d at 1339. Here, however, we have a different procedural posture. Here, the AG does not claim that he is facing a direct or immediate harm. Thus, unlike in Arsenal Coal, the question before us does not require the Court to interpret what constitutes "immediate" harm under general standing principles. Instead, the question before us is simply whether the General Assembly, in creating standing for the AG by legislative fiat, intended the AG to be able to challenge unauthorized local ordinances predating Chapter 3 that the adopting municipality (continued...)

For these reasons, I respectfully dissent.

Mr. Chief Justice Castille joins in this opinion.

(...continued)

does not seek to enforce. For this reason, any reliance on this Court's previous decisions regarding common law standing principles is misplaced. Here, we address standing derived solely from a Pennsylvania statute.