Hutchins v Town of Colton

[*1] Hutchins v Town of Colton 2004 NY Slip Op 51889(U) Decided on August 31, 2004 Supreme Court, St. Lawrence County Demarest, J. Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on August 31, 2004
Supreme Court, St. Lawrence County

Ernest and Betty Hutchins, WILLIAM LYNCH, STEPHEN AND BETTY STOWE, WILLIAM AND HARRIET SPENCER, MARY LACOMB, RICHARD HAMMILL and RONALD AND DORIS WATSON, Petitioners/, Plaintiffs,

against

Town of Colton, SUNDAY ROCK ATV CLUB, Respondents/, Defendants.

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Conboy, McKay, Bachman & Kendall, LLP (Scott B. Goldie, Esq. of counsel), attorneys for Petitioners/Plaintiffs; Cappello Linden & Ladouceur (Roger B. Linden, Esq., of counsel), attorneys for Respondent/Defendant Town of Colton; Tobin and Dempf, LLP (William H. Reynolds, Esq., of counsel), attorneys for Respondent/Defendant Sunday Rock ATV Club.

David R. Demarest, J.
In this Article 78 special proceeding, Petitioners request an

Order from the Court declaring Town of Colton Local Law No. 1 of 2004 (and its predecessor, Local Law No. 2 of 1999) null and void as violative of the provisions of the New York Vehicle and Traffic Law and the requirements of the State Environmental Quality Review Act. The relief is opposed by Respondents. The Court entertained oral arguments at its May 7, 2004, Special Term and has reviewed the parties' submissions.

The statute at issue is New York Vehicle and Traffic Law §2405. Prior to the Legislature reclassifying the operating rules for all-terrain-vehicles (ATVs) in the Vehicle and Traffic Law (VTL) in 1986, they were codified at Parks, Recreation and Historic Preservation Law (PRHPL). In connection with the recodification legislation, the "Memorandum of State Department of Motor Vehicles" states: "With the exception of transfer from Office of Parks, Recreation and Historic Preservation to Department of Motor Vehicles involvement, there is no substantial change from Parks, Recreation and Historic Preservation provisions." However, Respondents argue the deletion of certain language referred to by them as the 'necessary travel clause' from the original PRHPL text is notable.

At issue in this lawsuit is the meaning of the language at subsection "1. Highways" of VTL §2405 which permits a municipality, either by local law or ordinance, to: [*2] "...designate and post any such public highway or portion thereof as open for travel by ATVs when in the determination of the [municipality] concerned, it is otherwise impossible for ATVs to gain access to areas or trails adjacent to the highway. *** "(Emphasis added) Petitioners cite this Court's prior Decisions in another similar ATV case entitled Brown v. Town of Pitcairn, St. Lawrence County Index No.114295 (August 2003), as well as a Franklin County Supreme Court Decision in Santagate v. Franklin County, Franklin County Index #99-23 (1999), for the proposition that the municipality need first make a determination that it was otherwise impossible for ATVs to gain access to areas or trails adjacent to the

highways. Brown is further cited by Petitioners in support of their position that the local law be premised upon the existence of a public trail, state trail or state forest trail: "....generic finding[s] that an ATV 'area' and/or legally opened and approved trails exist in other townships, does not meet the statute's burden that it be '...otherwise impossible for ATVs to gain access to areas or trails adjacent to the highway'. Absent a finding of 'impossibility' and that the area or trail lies 'adjacent to the highway' there is no statutory basis for opening the road to such travel." Brown v. Town of Pitcairn. It is argued, then, that the opening of 34 of the municipality's 47 Town roads totaling 50 of 55 miles (or 90.9%) of road surface for ATV travel without any such factual finding is fatal.

To the contrary, Respondents argue Petitioners are precluded from arguing this issue in the present special proceeding since they did not exhaust their administrative remedies by raising this very issue during the public meetings which pre-dated the local law. Moreover, Respondents argue the Legislature deleted the 'necessary travel clause' when it reclassified the law from the PRHPL to the VTL. For this reason, Respondents take issue with the Court having imposed such a factual inquiry as in Brown since the law no longer qualifies the "impossibility of access" language with the 'necessary travel clause'. To this end, Respondents emphasize the difference between the above-cited VTL statutory language and its predecessor's statutory language: "ATVs may be operated on the following portions of [town roads] which have been designated and posted as access areas as provided in this section, when necessary to travel from one off-highway trail or use area to another when in the determination of the [municipality] it is otherwise impossible for ATVs to gain access to areas or trails adjacent to the highway." PRHPL §26.11 (emphasis added)

There is no blanket prohibition against ATVs using highways which have not been designated by local law pursuant to VTL §2405. To this end, the law permits ATV [*3]operators

to make direct right-angle crossings where they can be made safely over any highway (excepting interstate and controlled access highways) regardless of the fact they are not designated for ATV use by VTL §2405. If the owner or lessee consents, ATV access between privately-owned parcels of land on opposite sides of a highway by safe, direct crossing thereof is also permitted. What is not permitted are unsafe direct crossings, indirect highway crossings, and direct highway crossings to access either public lands which have not been designated and posted for ATV travel, or private property with no owner or lessee's consent.

Arguing against Petitioners' objections to the Local Law conferring private benefits, Respondents must be able to demonstrate the Local Law's result is for the common good and is public in nature. Notably, §2405(3)(a), (b) requires municipalities to erect signs or markers, at its own expense, on such designated highways (or designated lands). Seemingly, it would be an inappropriate use of the public fisc to benefit a private landowner's access from his private land to other noncontiguous private land lying on the opposite side of highway, without any proof that either access thereto is generally permitted to the general public, or, that all similarly situated private landowners are afforded the same rights.

Respondents contend that properly designated highways under New York VTL §2405 permit ATV operators to travel extensively the full length of such highways, regardless of whether they intend to access any public or private property permitting ATV use: "The removal of necessity of connecting trails as the touchstone for lawful designation of public roads for ATV use arguably allows local government to permit even unnecessary or gratuitous use. *** [T]he Town of Colton could indeed designate public roads as ATV routes simply for the convenience, or even the caprice, of ATV users." [Respondent's counsel's Affidavit, sworn to April 29, 2004 at pars. 18-19]. Taken to its logical extreme, Respondents would urge this Court to hold that if adjoining municipalities throughout the State passed local laws permitting ATV use,

a St. Lawrence County ATV operator could lawfully drive his/her ATV over such designated highways from the Town of Colton to such distant locales as, for example, Buffalo, New York, on sheer whim. For this reason, Respondents would contend the legislative intent was for designated paved highway surfaces to be substituted, in whole, for non-existent adjacent off-road trails. Respondents claim support for this interpretation can be found in VTL §2402(5) wherein ATVs which are being operated on a highway are defined as "motor vehicles" and are subject to the rules of the road. Any after-the-fact legislative interpretation which supports a reading of the statute which would provide municipalities with wholesale permission to designate the entirety of its paved highway surfaces for use in lieu of ATV trails/areas fails to address the fact that ATV manufacturers regularly warn against operation of these types of wheeled devices on paved surfaces. The fact that these vehicles are designed, primarily, for off-road use supports a reading of the statute which would limit their operation on paved surfaces to discrete areas/sections necessary to permit access to ATV-appropriate riding trails or areas.

It is important to note that while no statutory definition of ATV "areas and trails" exists, Respondents' expert provides an expansive definition therefor: "any linear or circuitous [*4]pathway or travelway of notable length, managed or used as a route along which ATVs are or may be ridden." [C. Alexander Ernst Affidavit, sworn to April 28, 2004, at par. 10]. Seemingly, the abundance of riding trails/areas tends to deflate Respondents' argument of the need to substitute paved highway surfaces for non-existent trails/areas. Regardless of the existence of "trails or areas," the Court notes that ATV operation on private property is prohibited unless done so with the owner's consent. It is on this basis that Respondents ascribe meaning to the statutory concept of impossibility of access: "...the impossibility of access to trails and areas adjacent to the public roads means nothing more than that there must not be an alternative off-road route available to the ATV operator.*** [T]he true test is

whether there exists areas or trails adjacent to the designated roads that would obviate use of those roads by ATVs."Id. at pars. 32-33.

Relying on the express repeal of PRHPL Article 26 and legislative history, Respondents urge the Court not to adopt Petitioner's narrow interpretation of VTL §2405, but rather to adopt an interpretation which grants more relaxed discretion to municipalities permitting usage of public roads by ATVs. While citing to other language contained within the 1986 Session Laws legislative memorandum authored by the State Department of Motor Vehicles, Respondents fail to acknowledge the following language which specifically addresses the statute's re-codification from PRHPL Article 26 to VTL Article 48-C: "With the exception of transfer from Office of Parks, Recreation and Historic Preservation to Department of Motor Vehicles involvement, there is no substantial change from Parks, Recreation and Historic provisions." Were the Court so inclined to credit Respondent's broad construction of the impossibility of access terms contained within the statute, they still fail to proffer predicate proof of 'impossibility' in the first instance. Nor may Respondent municipality be heard to foist its statutorily-imposed duties onto the attendees of the public hearing by alleging Petitioners failed to exhaust their administrative remedies by not raising this issue during the hearing's public comment period. Respondent's citation to Old Dock Associates v. Sullivan, 150 AD2d 695 (2d Dep't 1989), and Citizens for Hudson Valley v. NYS Board on Electric Generation Siting and Environment, 281 AD2d 89 (3d Dep't 2001), are inapposite to the facts of this case which involved the passage of a local law in the context of a public hearing, not any formalized hearing process. Regardless of whether a narrow or broad construction is given to the statute, the burden in the first instance fell upon the municipality to determine that it was "..otherwise impossible for ATVs to gain access to areas or trails adjacent to the highway."

Had the Legislature's intention been to the contrary, VTL

§2405 need not have contained any language requiring the municipality (or governmental agency) to make a determination that "...it is otherwise impossible for ATVs to gain access to areas or trails adjacent to the highway." Instead, the statute would simply read that: municipalities may, by local law, and state agencies may, by rule or regulation, designate and post its highways [*5](excepting interstate or controlled access highways) as open for travel by ATVs.

While this particular issue has yet to be decided by any other Court, Justice Lahtinen in Santagate v. Franklin County, Franklin County Index #99-23; RJI #16-1-99-0008, held that promulgation of a similar local law was made in violation of lawful procedures insofar as the record failed to establish respondent made any determination that it "was otherwise impossible for ATVs to gain access to areas or trails adjacent to the highway." The Court finds no compelling reason to vary from or abandon the rationale employed in its holdings in Brown v. Town of Pitcairn, Index #113023; RJI#44-1-2002-0815 (March 2003), and Brown v. Town of Pitcairn, Index #114295; RJI#44-1-2003-0350 (August 2003).

Petitioner's relief is granted. Town of Colton Local Law No. 1 of the year 2004 and its predecessor, Town of Colton Local Law No. 2 of 1999, are annulled as having been made in violation of lawful procedures which imposes an obligation upon the municipality to, preliminarily, make a determination that "...it is otherwise impossible for ATVs to gain access to areas or trails adjacent to the highway."

SO ORDERED DATED: August 31, 2004, at Chambers, Canton, New York.

DAVID DEMAREST, J.S.C. ENTER: {Decision & Order, and moving papers filed}