STATE OF WISCONSIN : CIRCUIT COURT : KENOSHA COUNTY

MICHAEL H. RIES, M.D., and

RIES PARTNERS, LIMITED PARTNERSHIP,

Plaintiffs,

DECISION

-vs-

Case No. 10 CV 1547

VILLAGE OF BRISTOL,

Defendant.

Dr. Michael Ries and Ries Partners seek to set aside the Village of Bristol's 2010 annexation of the unincorporated remnant of the Town of Bristol, alleging that the annexation violated the judicial Rule of Reason, and was therefore void. I do not agree, and dismiss their claim on its merits.

I begin by finding as facts established by the evidence in this case the "Undisputed Facts" found in pages 2 through 7 of the Village's brief, regardless of whether any or more of them is disputed or not.

I further observe that, for decision purposes, I assume, but do not conclude, that the Rule of Reason is applicable to this annexation.

The Ries plaintiffs first complain that the boundaries of the annexed area were arbitrarily set. There is no support for this claim.

The plaintiffs' expert, John Stockham, equated the irregularity of the proposed Village's northeastern boundary in sections 1, 2 and 3 with arbitrariness in the setting of the boundaries of

the area sought to be annexed. In addition to serving as the plaintiffs' expert witness, Mr. Stockham had a separate business relationship with the plaintiffs, whose goal was to maximize the profit which the Ries parties could derive from their property. There is certainly nothing improper or immoral about either their desire for gain or his service to them. But it is my impression that this relationship contributed to what I felt were highly opinion-driven conclusions in his report and testimony. This augmented an obvious tendency of Mr. Stockham towards strongly held and voiced opinions, sometimes about what the law is, and sometimes about what he thinks it ought to be. While he submitted an impressive and thorough report, and while there is nothing at all wrong with his having and expressing strongly held opinions, I have been unable to quiet my concerns that his relationship with the plaintiffs may have influenced his analysis and conclusions. Typical of this was his conclusion of arbitrariness by the village in the setting of the annexation boundaries.

"The issue of arbitrary boundary-drawing generally arises when land owners or electors opposed to annexation are excluded from the proposed area so as to insure the success of the annexation." ***Town of Medary v. City of LaCrosse***, 88 Wis. 2d 101, 115, 277 NW.2d 310 (Ct. App. 1978). Here, the evidence is absolutely clear that the opposite was true: the Village included *all* of the territory of the town remnant in the target area. Indeed, other than the small area in sections 1, 2 and 3 of the northeast corner of the remnant area whose irregularity was caused by an irregular annexation by what could fairly be described as a competing community, the boundaries of the area sought to be annexed are straight-line, and bear a reasonable and historical relationship to the community of Bristol. Mr. Stockham left no doubt of his preference for straight-line municipal boundaries, but it seems to me that in order to accomplish an ultimately straight-line boundary with the City of Kenosha, the village would have been required

to omit from the annexation a small island of territory in the town remnant, which would have left that tiny remainder as the surviving town, which unquestionably could not have functioned independently, and would have been forced into the arms of an adjacent municipality, which, if what Mr. Stockham loathfully calls "crazy quilt boundaries" are to be avoided, would have been the City of Kenosha. It strikes me that it would have been quite arbitrary for the village to omit the area, when no evidence save Mr. Stockham's unsubstantiated conclusions suggested that the "balloon on a string" which had been created by the City of Kenosha would be difficult for Bristol Village to serve. I would have to characterize this claim of arbitrariness by Mr. Stockham as pure grasping to justify his conclusion.

Similarly grasping was his trial testimony:

> Q What other boundaries did you look at in forming your opinion in this regard?
>
> A Well, postal areas, and postal areas by themselves -- what zip code you have is not extremely important, but that's how people identify. They often identify by what post office serves them, what their postal areas are. And in this case there is no relationship between the municipal boundary and the zip code or postal district boundaries.
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> Q Any other existing boundaries lines you looked at?
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> A We also looked at Wisconsin assembly districts. And, again, by themselves, I'm not here to state that that should be the driving force, but again we find no -- no convergence, no concurrence at all between the political boundaries of the Wisconsin assembly districts.

--Transcript, July 25, 2011 p. 164, line 13 to p. 165, l. 5.

First of all, I have never before heard the claim that people identify as a community by their zip code. In fact, what comment I have heard on that subject has been complaint: people, like those in Bristol's neighbor, Paddock Lake, who live in one community are forced by the postal service to use a different community's name as their address because that is the post office which serves them. In those cases, it seems to me, the people do not form an identity with the

community which hosts the post office which serves their residence, and are often annoyed that they cannot have their mail addressed to the community in which they live.

Second, Mr. Stockham's reliance on assembly districts is, in my opinion, shortsighted. The boundaries of legislative districts are guaranteed only until the next decennial reapportionment, and to employ them to fix municipal boundaries which are designed to survive indefinitely makes little sense. In fact, at the very time that Mr. Stockham was testifying, the Legislature was revising assembly district lines, and ironically, the new boundaries of the 61st Assembly include the entirety of the post-referendum Village of Bristol. Reliance on assembly district boundaries in this case would thus support, rather than diminish, the Village's position.

I accept Mr. Stockham's suggestion that school district lines are of importance in scrutinizing the claim of arbitrariness. But unlike him, I find that the boundaries here strengthen the case in favor of the annexation, rather than undermining it. When the percentages appearing in Table 4 of the Incorporation Application of August. 2008, p. 31, which reported on only the western one-half of the Bristol Township, are recalculated to include only the number of students at grade school level, it appears that 93% of the public grade school children in the western half of the original Town of Bristol were attending the Bristol Consolidated School. Examination of the School District Boundary Map provided by Mr. Stockham reveals that nearly the entire eastern half of the original town falls in the same district, with only a small fraction of the area falling into the Paris Consolidated District. Indeed, students living in the southeast corner of the town, at residences even more distant from the school building than the Ries property, attend the Bristol Consolidated School, which is located in the heart of the area quaintly denominated as the "Bristol Hamlet" by the Incorporation Review Board and Mr. Stockham. It seems to me that the fact that the overwhelming majority of the public school students in the entire former town

attend the same school is powerful evidence of the existence of a single community of interest, and overpowers Mr. Stockham's claim that the new village cannot "coherently function as a…village."

It seems to me that the approach of the plaintiffs and Mr. Stockham in this case is quite anachronistic. When Dr. Ries's parents bought the property in 1950 as a country retreat and to "grow baby carrots," the population of Bristol Township was 1564. By the time of the annexation, its population had tripled. The population of Kenosha County in 1950 was 75, 238; its population has now more than doubled, to 166,426. In spite of the changes in the composition of Bristol, the plaintiffs' image of Bristol seems frozen in an earlier era.

The modern Bristol is nothing like that. Over thirty years ago, all of Kenosha County, including Bristol Township, met the Census Bureau's criteria for inclusion and was added to the Chicago Metropolitan Statistical Area by the Census Bureau.[1] http://www.census.gov/popest/data/metro/totals/2011/index.html. By 1999, only about 17% of the Town of Bristol's employed residents worked within the Town. Town Incorporation Application, August, 2008, p. 19. The remaining 83% of the town's employed residents were employed in other communities, a majority of them in the State of Illinois. Over 40% of *all* Bristol residents who were employed outside their homes worked in Illinois. 7% of them worked in Cook County, which is a minimum distance of 30 miles from any residence in Bristol. Interestingly, it is the annexed area of the new village which is closest to I94, which is the

[1] "Metropolitan Statistical Areas are…associated with at least one urbanized area that has a population of at least 50,000. The metropolitan statistical area comprises the central county or counties or equivalent entities containing the core, plus adjacent outlying counties *having a high degree of social and economic integration with the central county or counties as measured through commuting*." [Italics added]. http://www.census.gov/geo/www/2010census/gtc/gtc_cbsa.html

principal artery into Chicago. If such large numbers of Bristol residents can daily travel those distances to their employment, one must wonder why, with a *maximum* distance of 12 miles (six mile square township with rectangular grid roadways) from any point in the village to the village hall (which was formerly the town hall) Bristol would be "unable to function coherently as a village."[2] The plaintiffs have failed to identify any municipal service which the village cannot "coherently" provide to the annexed area.

While it is true that there are significant portions of the town remnant which are primarily agricultural (many in the zone adjacent to I94), one must be cautious with conclusions about what is rural vs. what is suburban. There is no doubt that if the Bristol remnant were located in Florence County, it would be properly be described as "rural."

But much has changed since Dr. Ries's parents bought this land. The Norman Rockwell image of the family farm, with husband tending to the farm work and wife helping with that work and additionally performing homemaker duties is largely gone. There are an ever-decreasing number of traditional family farms. Vast numbers of farm families have one, and sometimes both spouses working full or part-time in non-farm related occupations in other communities. Many factors, including the availability of employer-provided group health insurance when employed off the farm versus the staggering cost of individual health care plans or the alternative risk of failing to insure for health care, have driven farm owners to employment beyond their land, and the work commute for many of them is often far less in time than that faced by their city cousins.

[2] The most distant location in Bristol is closer to the Village Hall than the most distant location in City of Milwaukee is to the Milwaukee City Hall.

In the reality of 2012, all of Kenosha County, particularly that abutting I94, is a suburban community in the greater Chicago area. The Village recognized this in its Application for Incorporation in August, 2008:

> Bristol's proximity to Interstate 94 has contributed to significant development over the past few decades. These forces are creating an increase in the value of land for residential and commercial uses, and this phenomenon will likely continue as planned transportation improvements are implemented. In addition, Bristol is experiencing significant development pressure due to unprecedented growth in northern Illinois. Incorporation Application of August. 2008, p. 1.

The Ries property is itself located less than 45 miles from O'Hare Airport, which can easily be reached at interstate highway speeds on I94.

It is noteworthy that in prescribing the characteristics necessary for a village seeking incorporation, § 66.0207(1)(a), Stats.[3] provides in part that "[A]n *isolated* municipality shall have a reasonably developed community center, including some or all features such as retail stores, churches, post office, telecommunications exchange and similar centers of community activity. " [Italics added]. Even for incorporation, the law does not require that a community which is *not* isolated have its own community center, stores, churches, etc. Here, Bristol abuts the City of Kenosha (population 100,000) and the Village of Pleasant Prairie (population 20,000). It is about 20 miles from Milwaukee County, and there is nothing isolated about it. Literally within minutes, residents can attend religious services, regional community events, and shop in nearby communities, as is common in urban and suburban areas. Those who prefer that their children attend religious schools can send them to nearby schools in adjacent communities. Bristol is *not* an isolated community.

The wealth of agricultural land in the new Village is a blessing in the twentieth-first century. Cities across the country are now encouraging urban farming, because it brings fresh

[3] Whose provisions do not apply to this annexation.

produce into areas where its cost is otherwise prohibitively high, reduces pollution by eliminating the need to transport goods from distant locations, employs local residents, and replaces blighted neighborhoods with agricultural tracts. The City of Detroit, whose population has fallen from over 1,850,000 to less than 750,000 in sixty years, has been active in this area, since its population decline has left it with 60,000 vacant lots, which can be converted to agricultural use.

Bristol today is a blended community of the future, with both suburban, commuter, and agricultural interests cohering in a single municipality.

It is in this respect that the election results, viewed so disdainfully by Mr. Stockham,[4] are of importance. While I am inclined to agree with the plaintiffs that they do not prove a "need" for the annexation, they do emphatically prove a desire by the people of the Bristol remnant to join with the Bristol Village, just as the leaders of the incorporation drive sensed. Not only is the 93% favorable vote for annexation remarkable; the fact that the vote in the original village area for incorporation was only 52% favorable leaves one wondering to what extent the "No" votes in the incorporation referendum were cast because the success of the referendum would split the township. It is clear that there was a palpable sentiment for unification of the former township, and courts ought to be cautious in setting aside what people clearly want in favor of what the judge thinks that they "need." It seems to me that the plaintiffs' position in this case is that it is the role of the court to overturn the overwhelming vote of the electors because what they have perceived to be a benefit to them isn't really what Wisconsin's appellate courts consider to

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[4] At his deposition, Mr. Stockham opined that the 93% of voters favoring annexation showed that "sometimes people make stupid decisions." He attempted to distance himself from these scornful remarks at the trial, but it is my impression that the deposition statement was but another manifestation of Mr. Stockham's difficulty with differentiating between verifiable facts and his "take" on them "…for his mouth speaks from the abundance of that which fills his heart." *Luke* 6:45 (NASB).

be a "need." The voters had the opportunity to educate themselves, to consider these very issues, and to make their choice; and it ill-becomes the judiciary to overturn their decision because what they wanted; what they thought to be of benefit to them; they really don't "need." I understand that there are rare instances when the judiciary must interfere with the electors' choice for constitutional reasons; even sometimes for statutory ones; but the plaintiffs have not persuaded me, to the burden imposed by law, that this is such a case.

Mr. Stockham notes, at item 3 of his "Summary of Findings" on p. 30 of his Rule of Reason Report – Bristol Annexation that the Village's proposed incorporation of the full western half "did not meet the [Incorporation Review Commission's] standard for 'compactness and homogeneity'" which, he continues, "requires a petitioned territory to be sufficiently compact and uniform to coherently function as a city or village." It is my impression that this conclusion as to whether a community "can coherently function as a city or village" is based upon a dated concept of what constitutes a village, and that a realistic view of the present leads to a different conclusion.

I conclude that the plaintiffs have failed to create even an arguable question that the boundaries of the annexation target were arbitrarily set.

The plaintiffs further claim that the Rule of Reason was violated by Bristol village because no "need" has been shown for the annexation of the territory. The principles which govern this analysis are:

> Rather than make a judicial determination whether the annexation would be in the City's future development interest, the circuit court merely review[s] whether the city evidenced an adequate basis *for its own finding* on the question of future need. ***Town of Delevan v. City of Delevan,*** 176 Wis. 2d 516, 540, 500 N.W.2d 268 (1993). [Emphasis added].

and

> The doctrine known as the "rule of reason" is applied by the courts to ascertain whether the power [to annex unincorporated territory] delegated to the cities and villages has been abused in a given case. When a challenge is made to an annexation ordinance based on the rule of reason, the ordinance enjoys a presumption of validity and the challenger has the burden of showing that the annexation violates the rule of reason. "The rule of reason does not authorize a court to inquire into the wisdom of the annexation before it or to determine whether the annexation is in the best interest of the parties to the proceeding or of the public. These matters are inherently legislative and not judicial in character." For this reason, "the circuit court is directed to be highly deferential to the actions taken by the City in annexing the property. ***Town of Campbell v. City of La Crosse***, 2003 WI App 247, 268 Wis. 2d 253, 673 N.W.2d 696.

I note that again, as at the time of the summary judgment motion, the plaintiff misstates the burden: "[N]one of the benefits cited by the [Village] are [sic] sufficient to satisfy the requirement that the Village of Bristol show a present or demonstrable future need for the Annexation." Plaintiffs' Post-Trial Brief, p. 26. The Village does not have to "show" anything. While it was necessary for the village to "*have* some reasonable present or demonstrable future need for the annexation," it is the burden of the *plaintiffs* to "show" that, in fact, the village had none.

Utilizing these principles, I conclude that the plaintiffs have failed to sustain their burden.

As I stated in the decision on the motion for summary judgment, I certainly do not agree with the plaintiff's stingy definition of "need," and I do not believe that there exists any authority for the proposition advanced by the plaintiffs that the "need" factors which have historically been cited by courts constitute an exhaustive list. Again, it is important that courts properly assess the world in which they live; not just how things were treated in 1959, or 1902, or 1850. The village claims that the annexation will save taxpayer money. To defeat the plaintiffs' arguments, it needn't prove itself right: it needs only to have had a reasonable belief that it is more economical to run one government than two. While the plaintiffs claim that this has not been

established, and that this would not be a "need" in any event, it certainly makes sense to me, and government at all levels (and courts, too), need to live in the real world. Government spending has been mounting incessantly for decades,[5] and the last several years have brought home to government that the public wants change. Government at all levels in this state has been seriously shaken in the past eighteen months by the enormity of the state's fiscal woes; hundreds of teachers have lost their jobs; government employees have sacrificed much, and will, over the next several years, lose ten percent or more of their take-home income in an effort to rein in the cost of government. The State Capitol was occupied for weeks by individuals incensed by cost-control legislation. The largest set of recall elections in the history of the United States are occurring this year in this state because of differing views on the subject of how state and local spending can be controlled. I emphatically, and without reservation, reject the suggestion that saving taxpayer money is not a governmental need.

In their Reply Brief, the plaintiffs remark that the village "asserts, yet did not support its claim with any evidence in the record, that the Annexation resulted in a cost savings to the residents of the Village and Town of Bristol." Plaintiffs' Reply Brief, p. 13. Again, the burden of proof did not demand that the village "prove" that it correctly concluded that money would be saved: it needed only to show that this was a reasonable conclusion for the Village Board to have reached. It would be a misuse of the court's role in the Rule of Reason and of the Doctrine of Separation of Powers for it to scrutinize the village's action to determine if the legislative body did its job well. The burden was on the plaintiffs to prove that the Board could not reasonably have reached this conclusion. That has not been done. Indeed, I conclude that most reasonable persons would believe that consolidation of the governmental operations would likely

[5] Government spending at all levels has more than quadrupled from 8% of GDP in 1929 to 36% in 2010. http://www.forbes.com/sites/joshbarro/2012/04/16/lessons-from-the-decades-long-upward-march-of-government-spending/

save money, and that the Board was not obliged to spend money on a study to attempt to show that fact prior to reaching that conclusion.

The village has recounted in its brief the many additional needs which its board concluded supported the annexation effort. I agree with the village that the need of the annexed area for municipal services amply qualifies as a "need" under the Rule of Reason. The Village of Bristol was under no continuing obligation to provide services to the town remnant, and the contractual relationship between the two units of government could have been terminated at any time. The plaintiffs seem to suggest that the village would have been obliged to provide these services in perpetuity, but of course, that is simply not true. Mr. Stockham says that those services translate into paying more taxes for the services, but first, that has not been shown to be the fact; second, for some reason people keep incorporating municipalities, so presumably voters see the services as a "good deal" at the presumed price; and third, and most importantly, the voters in this annexation presumably considered the balance, and decided that it was to their liking. Perhaps in the case of Dr. Ries and his family, the price was not deemed attractive, but community wide, it was viewed that way, and the majority decided in favor of the annexation.

The history of how the City of Los Angeles devoured its neighbors (except Beverly Hills) by refusing to provide them with water is legendary. As has been pointed out, Wisconsin's law is similar to what California's was, and would permit the Village of Bristol to deny services to the town remnant. ***Town of Sugar Creek v. City of Elkhorn,* 231 Wis.2d 473, 485, 605 N.W.2d 274 (Ct.App. 1999).** The plaintiffs, who have the burden of proof, have not shown where, and at what price, the remnant would have obtained those services if Bristol Village cut them off. Mr. Stockham observed that annexation meant that the village residents were paying twice for police service, but failed to compare the difference in the frequency and extent of police services which

would have existed without the town's participation in the Village's agreement with the Kenosha County Sheriff and that which exists under the dedicated Bristol patrol contracted by the Village with the Sheriff.

I struggle to understand Mr. Stockham's previously-noted "finding" that the "whole township" annexation could not function "coherently" as a village, since it has in the past, and now continues to provide municipal services at a level which induced the voters to overwhelmingly annex to the village.

The plaintiffs complain that the village's incorporation followed by annexation constituted an unlawful "end run." I see no authority for that claim. No statute prohibits it, and none has been enacted, or even proposed, by the legislature either after the Kronenwetter "whole town" annexation, or in the nearly two years since this annexation.

I do not find persuasive the plaintiffs' arguments about Art IV, Section 23 of the Wisconsin Constitution. First, as I have indicated above, I am not so certain what constitutes "rural territory" and what constitutes a "village." Village is defined in Dictionary.com as:

> ***noun***
> **1.** a small community or group of houses in a rural area, larger than a hamlet and usually smaller than a town, and sometimes (as in parts of the U.S.) incorporated as a municipality.

http://dictionary.reference.com/browse/village.

I do not suppose that the supreme court's use of the term "village" in ***State ex rel. Town of Holland v. Lammers,* 113 Wis. 393, 89 N.W. 501 (1902)**, would have encompassed the "a small community or group of houses in a rural area" called the Village of Menomonee Falls (population 32,000), or whether the dictionary definition above simply doesn't fit. But as I have indicated above, I believe that a realistic use of our language would result in the conclusion that the Village of Bristol, situated where it is, while certainly having extensive rural enclaves, cannot

properly be described as a "rural" community by 2012 standards. Second, 110 years ago, when the case upon which the plaintiffs rely was decided, most transportation between communities was either on foot or by one or another form of literal horse power. On foot, the good-weather travel time to and from the town hall from the most distant point in the town would have been a minimum of 6 hours. On a trotting horse, it would have been 3 hours. It is ridiculous, really, to equate that with today, when that journey could easily be made in less than 30 minutes.

The plaintiffs have failed to sustain their heavy burden to prove a violation of the Rule of Reason, and their case is dismissed upon its merits.

Kenosha, Wisconsin, Thursday, May 31, 2012.

BY THE COURT:

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Bruce E. Schroeder
Circuit Judge