FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-2227

THE BOARD OF COUNTY COMMISSIONERS, SANTA ROSA COUNTY, FLORIDA, a Political Subdivision of the State of Florida, and THE SCHOOL BOARD OF SANTA ROSA COUNTY, FLORIDA,

Appellants,

v.

HOME BUILDERS ASSOCIATION OF WEST FLORIDA, INC., a Florida not-for-profit Corporation; FLYNN BUILDING SPECIALISTS, LLC, etc., et al.,

Appellees.

On appeal from the Circuit Court for Santa Rosa County.
Darlene F. Dickey, Judge.

July 28, 2021

PER CURIAM.

Appellants, the Board of County Commissioners for Santa Rosa County (the Board of County Commissioners) and the School Board of Santa Rosa County (the School Board), seek review of an

order granting a temporary injunction in favor of Appellees, who are entities involved in the construction of residential property in Santa Rosa County. For the reasons discussed below, we affirm.

In the interest of raising funds to build school facilities to accommodate new growth in the county, the School Board retained Claude E. Boles, Jr., to determine the amount of impact fees that could be imposed on new residential construction. Mr. Boles prepared a report recommending different impact fee amounts for the northern and southern parts of the county based on certain differences between the two areas. The School Board presented Mr. Boles' findings to the Board of County Commissioners with the request that it enact an ordinance imposing impact fees consistent with Mr. Boles' recommendations. While the School Board's proposal was under consideration, Mr. Boles prepared a second report recommending the imposition of the same impact fee amounts countywide. The Board of County Commissioners voted to enact the Santa Rosa County Educational Facilities Impact Fee Ordinance, which imposed school impact fees on a countywide basis. Santa Rosa County, Fla., Ordinance 2020-01, art. III, §§ 5-96–5-108. Mr. Boles' second report was expressly incorporated into the ordinance.

Appellees sued for declaratory and injunctive relief, alleging that the ordinance was unconstitutional and invalid. They also filed a motion for a temporary injunction to prevent the collection of the school impact fees while the litigation was pending. After an evidentiary hearing, the trial court granted the motion.

A hybrid standard of review applies to trial court orders on requests for temporary injunctions. *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1258 (Fla. 2017). "To the extent the trial court's order is based on factual findings, we will not reverse unless the trial court abused its discretion; however, any legal conclusions are subject to de novo review." *Id.* (quoting *Fla. High Sch. Athletic Ass'n v. Rosenberg*, 117 So. 3d 825, 826 (Fla. 4th DCA 2013)). "[T]he trial court's factual determinations must be supported by competent, substantial evidence." *Planned Parenthood of Greater Orlando, Inc. v. MMB Props.*, 211 So. 3d 918, 926 (Fla. 2017). The petition must show a prima facie right to the relief requested:

> To demonstrate a prima facie case for a temporary injunction, the petitioner must establish four factors: (1) the likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) a substantial likelihood of success on the merits; and (4) that a temporary injunction would serve the public interest.

SunTrust Banks, Inc. v. Cauthon & McGuigan, PLC, 78 So. 3d 709, 711 (Fla. 1st DCA 2012). In this appeal, Appellants do not challenge the trial court's conclusions on the second and fourth prongs. Rather, their arguments focus on the trial court's findings on the first and third prongs—the substantial likelihood of success on the merits and the likelihood of irreparable harm. We will address these prongs separately below.

Substantial Likelihood of Success on the Merits

"A substantial likelihood of success on the merits is shown if good reasons for anticipating that result are demonstrated." *City of Jacksonville v. Naegle Outdoor Advert. Co.*, 634 So. 2d 750, 753 (Fla. 1st DCA 1994). To be valid, impact fees must satisfy constitutional and statutory requirements. First, to fall within the limits of a local government's authority, they must be true impact fees and not taxes. *See Home Builders & Contractors Ass'n of Palm Beach Cnty. v. Bd. of Cnty. Comm'rs of Palm Beach Cnty.*, 446 So. 2d 140, 144–45 (Fla. 4th DCA 1983); *Contractors & Builders Ass'n of Pinellas Cnty. v. City of Dunedin*, 329 So. 2d 314, 317 (Fla. 1976). To differentiate between a valid impact fee and an unconstitutional tax, courts use the dual rational nexus test. *See Save Our Septic Sys. Comm., Inc. v. Sarasota Cnty.*, 957 So. 2d 671, 673 (Fla. 2d DCA 2007). This test provides that:

> the local government must demonstrate a reasonable connection, or rational nexus, between the need for additional capital facilities and the growth in population generated by the subdivision. In addition, the government must show a reasonable connection, or rational nexus, between the expenditures of the funds collected and the benefits accruing to the subdivision.

Hollywood, Inc. v. Broward Cnty., 431 So. 2d 606, 611–12 (Fla. 4th DCA 1983).* And unlike taxes, fees "must confer a special benefit on feepayers in a manner not shared by those not paying the fee." *Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 135 (Fla. 2000).

Second, the Florida Impact Fee Act sets forth the minimum statutory requirements for a valid impact fee. § 163.31801(3), Fla. Stat. (2019). The Act requires impact fees to be based on the "most recent and localized data." § 163.31801(3)(a), Fla. Stat.

Here, during the hearing on the motion for temporary injunction, Appellants presented the testimony of two experts (including Mr. Boles) and the Santa Rosa County School District's assistant superintendent to show that the impact fees satisfied the legal requirements. These individuals testified about how the maximum allowable impact fees were calculated, where the numbers came from, and the amount of fees ultimately imposed. To dispute the fees' validity, Appellees presented the expert testimony of L. Carson Bise, II. Mr. Bise opined that the impact fees failed the dual rational nexus test because they did not account for the differences between the northern and southern parts of the county. This resulted in impact fees that were disproportionate to the growth in these geographical regions. Furthermore, Mr. Bise testified that fee payers would not receive a special benefit that would not be received by those who were not paying the fees. Mr. Bise also questioned whether the report reflected the most recent and localized data and whether the calculations were accurate.

The trial court gave great weight to Mr. Bise's testimony based on his expertise in the calculation of school impact fees. Mainly based on his testimony, the flaws in Mr. Boles' testimony, and an analysis of Mr. Boles' two reports, the trial court determined that Appellees had shown a substantial likelihood of success on the merits. The trial court's factual findings are

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* This test was ultimately codified in section 163.31801(3)(f)–(g), Florida Statutes, which has since been renumbered as section 163.31801(4)(f)–(g).

supported by competent and substantial evidence. Given the record before this court, we cannot conclude that the trial court abused its discretion.

Irreparable Harm

Irreparable harm is "a material injury that continues for the remainder of the case and cannot be corrected on appeal." *Fla. Gas Transmission Co. LLC. v. City of Tallahassee*, 230 So. 3d 912, 914 (Fla. 1st DCA 2017). Below, the trial court determined that irreparable harm was presumed based on the existence of a constitutional violation. The trial court also found irreparable harm because Appellants would be protected by sovereign immunity from a suit seeking compensatory damages.

As discussed above, where an impact fee is actually an unauthorized tax, it is unconstitutional. "[T]he law recognizes that a continuing constitutional violation, in and of itself, constitutes irreparable harm." *Fla. Dep't of Health v. Florigrown, LLC*, 44 Fla. L. Weekly D1744, 2019 WL 2943329, at *4 (Fla. 1st DCA July 9, 2019), *quashed on other grounds by* 46 Fla. L. Weekly S146, 2021 WL 21439362 (Fla. May 27, 2021). Here, the trial court determined that Appellees showed a substantial likelihood of success on the merits of their claim that the impact fees are, in fact, an unconstitutional tax. Under these circumstances, the trial court did not err in finding a likelihood of irreparable harm.

Conclusion

Given this information, Appellants' challenge to the first and third prongs of the trial court's temporary injunction analysis fails. As the trial court properly exercised its discretion in granting Appellees' motion for a temporary injunction, we affirm.

LEWIS, RAY, and JAY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

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