

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13958

MIKE BORDELON,
BREEZY SHORES, LLC,

Plaintiffs-Appellees,

versus

BALDWIN COUNTY, AL,
BALDWIN COUNTY PLANNING AND ZONING DIRECTOR,

Defendants-Appellants,

BALDWIN COUNTY COMMISSION DISTRICT 4 PLANNING
AND ZONING BOARD OF ADJUSTMENT, et al.,

Defendants.

Appeal from the United States District Court
for the Southern District of Alabama
D.C. Docket No. 1:20-cv-00057-C

Before WILSON, GRANT, and LAGOA, Circuit Judges.

PER CURIAM:

This case concerns a zoning dispute between Baldwin County's zoning leadership and Mike Bordelon, a property owner within the county. Baldwin County's Zoning Department prohibited Plaintiffs-Appellees Mike Bordelon and Breezy Shores, LLC (collectively, Plaintiffs) from constructing a three-story duplex as originally permitted. After the local Board of Adjustment denied Plaintiffs' request for a variance, Plaintiffs filed a notice of appeal in the Circuit Court of Baldwin County, which was removed to the Southern District of Alabama, Southern Division. Relevant to this appeal, Plaintiffs challenged the zoning decision pursuant to Alabama's vested rights jurisprudence and the Fifth Amendment of the U.S. Constitution. The district court¹ granted Plaintiffs' request for a variance and concluded that (1) Baldwin County temporarily took Plaintiffs' property without just compensation, (2) Plaintiffs

¹ U.S. District Judge William H. Steele referred all proceedings to and ordered entry of judgment with U.S. Magistrate Judge William E. Cassady in accordance with 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73 after all parties consented to Judge Cassady's jurisdiction.

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Opinion of the Court

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held a vested right to construct their duplex as originally permitted, and (3) as a result, Baldwin County is both enjoined from prohibiting the duplex's originally-permitted construction and ordered to pay \$746,289.00 in just compensation.

On appeal, Baldwin County argues that Plaintiffs lack vested rights under Alabama law because, among other things, the district court's interpretations of the zoning ordinance contravene its plain language and deference is due to the County's interpretations. Second, the County maintains that its acts do not amount to a temporary regulatory taking under *Penn Central Transportation Company v. City of New York*, 438 U.S. 104 (1978). Third, and in the alternative, Baldwin County contends that the district court erred in its just compensation calculations which resulted in an unjust windfall.

After careful consideration of the record and the parties' briefs, and with the benefit of oral argument, we find no reversible error in the district court's judgment. Accordingly, we affirm the district court's reasoned decision in favor of Plaintiffs.

AFFIRMED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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January 26, 2024

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 22-13958-JJ

Case Style: Mike Bordelon, et al v. Baldwin County, AL, et al

District Court Docket No: 1:20-cv-00057-C

Electronic Filing

All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website.

Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Pursuant to Fed.R.App.P. 39, costs taxed against the appellants.

Please use the most recent version of the Bill of Costs form available on the court's website at www.ca11.uscourts.gov.

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OPIN-1A Issuance of Opinion With Costs