



**W. FRANK CRAWFORD, JUDGE**  
**DAVID R. FARMER, JUDGE**

The plaintiffs filed a complaint on August 19, 1997, for declaratory judgment and for the writ of certiorari to review administrative decisions of the Board of Appeals for the City of Lakeland respecting the erection of a McDonald's sign.

On June 6, 1997, the Board of Appeals approved McDonald's application for a sign permit; four days later, the Board reconvened and denied the application. This litigation ensued.

On February 4, 1998, the controversy was settled by agreement of the parties, whereby McDonald's obtained the blessing of the city to erect the sign subject to conditions not here material. A consent order was entered on February 18, 1998.

On February 4, 1998 five residents of Lakeland, having learned of the agreement, filed a petition to intervene in the Chancery action, alleging that the enjoyment of their property in proximity to McDonald's will be lessened if the sign is erected.

Before the petition was acted upon, the petitioners filed a response to the complaint of McDonald's, alleging that the proposed sign would violate unnamed ordinances and regulations of the City of Lakeland, and that the application was properly denied.

On March 6, 1998, the petition to intervene was denied as untimely, with the Chancellor observing that the petitioners had the right to file a separate action if they chose.<sup>1</sup>

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<sup>1</sup>Two of the petitioners filed an independent action on April 28, 1998, to enjoin the construction of the sign or for its removal.

The proposed intervenors appeal,<sup>2</sup> questioning the propriety of the denial of their petition.

Our review of the findings of fact made by the trial Court is *de novo* upon the record of the trial Court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. TENN. R. APP. P., RULE 13(d); *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26 (Tenn. 1996).

Where there is no conflict in the evidence as to any material fact, the question on appeal is one of law, and the scope of review is *de novo* with no presumption of correctness accompanying a chancellor's conclusions of law. *Enochs v. Nerren*, 949 S.W.2d 686 (Tenn. App. 1996).

The thrust of the argument of the proposed intervenors is that the City of Lakeland violated its own ordinances, which forbade the erection of the traditional McDonald's sign, by the settlement of the lawsuit, and that they had the right to intervene for the purpose of protecting their property interests.

The parties to the litigation, all of whom designate themselves as the appellees, argue that (1) the Chancellor did not abuse his discretion in denying the petition to intervene, (2) because the dismissal of the action pursuant to the settlement did not impair or impede the proposed intervenors' rights to protect their interest; (3) the petitioners impermissibly seek to join an original action challenging the settlement as ultra vires with a certiorari appeal of an administrative action of the Board of Appeals.

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Intervention in ongoing litigation is regulated by Rule 24 T.R.C.P. Proposed intervenors must satisfy four criteria before intervention by right will be permitted:

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<sup>2</sup>The brief filed on behalf of the proposed intervenors incorrectly refers to the plaintiffs as the appellants.

(1) the application must be timely; (2) the applicant must have a substantial legal interest in the subject matter of the pending litigation; (3) the applicant's ability to protect that interest must be impaired, and (4) the parties do not adequately represent the applicant's interest.

The complaint had pended for six months and had progressed to the point of negotiations for settlement. In this State, parties are encouraged, even exhorted, to settle litigation. The proposed intervenors were fully aware of the administrative actions taken, and the filing of the lawsuit. During its pendency for six months, they might have sought to intervene at an earlier time. Their lack of promptness cannot be justified, especially when superimposed upon the fact that they might have filed an independent action. We cannot find that the Chancellor abused his discretion in denying the intervention. *See, Grubbs v. Norris*, 870 F.2d 343 (6th Cir. 1989). It is pertinent to mention that the record reveals the Chancellor considered that the underlying action was one for certiorari, which required only that the Court determine whether there was material evidence to support the administrative action. And in this connection, the law in Tennessee is clear the Petitioners cannot join an original action challenging the validity of the settlement with a certiorari appeal of the administrative action, *Goodwin v. Metro Board of Health*, 656 S.W.2d 383 (Tenn. App. 1983); *State ex re; Bryan v. Brentwood*, 833 S.W.2d 500 (Tenn. App. 1991), keeping in mind that they do not seek a review of the administrative action but challenge the city's right to settle the lawsuit. Petitioners chose not to pursue the statutory remedy provided by T.C.A. § 13-7-208(a)(2) in a separately filed action, and sought no injunctive relief.

It is clear that the denial of intervention did not prejudice their rights. They may not intervene in a case as a matter of right unless their ability to protect their rights is impaired, and intervention, as stated, must be timely.

The judgment is affirmed, with costs assessed to the Petitioners.

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William H. Inman, Senior Judge

CONCUR:

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W. Frank Crawford, Judge

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David R. Farmer, Judge