

**IN THE COURT OF APPEALS OF TENNESSEE**  
**EASTERN SECTION AT KNOXVILLE**

STATE OF TENNESSEE ex rel.	)	
ROBERT J. EARHART, et al.	)	
	)	SULLIVAN CHANCERY
Plaintiffs/Appellants	)	
	)	
v.	)	
	)	NO. 03A01-9608-CH-00263
CITY OF BRISTOL, TENNESSEE	)	
	)	
Defendant/Appellee	)	AFFIRMED

David H. Hornick, Nashville, For the Appellants.

Jack W. Hyder, Bristol, For the Appellee.

**OPINION**

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INMAN, Senior Judge

**I**

On January 11, 1995, the Bristol City Council enacted 24 ordinances annexing various parcels of property abutting U.S. 11-E in Sullivan County.

Nineteen of these ordinances were challenged by an action *quo warranto* as provided by T.C.A. § 6-51-102.

The jury returned a verdict that fourteen of these ordinances were reasonable and five were unreasonable. A new trial was ordered as to nine (9) of the ordinances,<sup>1</sup> and a second jury found all nine annexations reasonable. Thus, all annexations were found to be reasonable.

These nine ordinances encompassed 13 parcels of property abutting U.S. 11-E, which highway had been annexed by Bristol in 1989.

The appellants insist that there is no material evidence to justify a finding of reasonableness of these nine annexations. They also question the validity of the

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<sup>1</sup>The remaining annexations (5) had been found reasonable by the jury. The trial judge approved the verdict as to them and final, unappealed judgment was entered.

1989 annexation of the highway, absent which the nine annexations would allegedly fail because the encompassed property would not adjoin existing corporate limits as required by T.C.A. § 6-51-102(a)(1). The trial judge declined to issue a declaratory judgments as sought.

The issues for resolution are:

(1) Whether the verdict is supported by material evidence; (2) Whether the trial judge abused his discretion in declining to issue a declaratory judgment that the 1989 annexation was invalid; (3) Whether evidence of the annexation of property adjacent to the plaintiffs' properties was properly admitted; and (4) whether a witness was properly qualified as an expert.

## II

Our review is limited to a determination of whether there is any *material evidence* to support the verdict. *Rule 13(d)*, TENN. R. APP. P.; *Poole v. Kroger Company*, 604 S.W.2d 52, 54 (Tenn. 1980). Material evidence is evidence from which a trier of facts, if inclined to believe it, could reach the stated conclusion. *Hohenberg Bros. Co. v. Missouri Pac. R.R. Co.*, 586 S.W.2d 117, 119-20 (Tenn. Ct. App. 1979).

It was the function of the jury to determine from all of the evidence and the guidance of the Court with respect to matters of law and procedure whether the annexations were reasonable or unreasonable. *Morton v. Johnson City*, 333 S.W.2d 924 (Tenn. 1960).

We agree with the argument of the appellee that this record is replete with material evidence which supports the verdict. Much of the evidence is typical of that usually presented in annexation cases. We cannot fail to note the uniqueness of the geographical location of Bristol.

The planning staff of the city identified areas and property suitable for annexation. A multi-phase annexation was recommended by consultants; the first phase would include properties whose owners requested annexation and commercial

properties already the recipients of city services and vacant properties suitable for development. The properties of the appellants were encompassed in Phase One.

There was evidence that the people residing or working in the annexed properties would receive better law enforcement from the City of Bristol than from the Sullivan County Sheriff's Department; better fire protection, cheaper fire insurance rates, more efficient emergency dispatch service, sewer service, water mains, codes enforcement and that the properties would be economically enhanced. These concepts were presented with considerable explanation, unnecessary here to be recited. Evidence was also presented that Bristol must expand its limits if it is to remain a viable municipality and that geographic and political considerations pose difficult handicaps to expansion. Years previously the government recognized that municipal growth would necessarily occur in the developing area southwardly along U.S. Highway 11-E, and the planning commission adopted long-range strategies to accommodate both the city and the affected properties.

### III

The plaintiffs collaterally attacked the 1989 ordinance which annexed U.S. Highway 11-E by seeking a declaratory judgment that the ordinance was invoked because a highway, without more, cannot be annexed under prior or existing law. Bristol counters that it passed the assailed ordinance five years ago and that a declaratory judgment procedure is not available to challenge it. On the face of it, this argument is meritorious because of settled law that an annexation ordinance may be challenged only by *quo warranto* prescribed by T.C.A. § 6-51-103. But as stated by Judge McMurray of this Court in *White v. City of Townsend*, No. 03A01-9410-CV-00392 (filed at Knoxville on May 19, 1995), the statute presupposes a valid ordinance, which, if void, can be challenged as any other void act of a municipality.

The trial judge, as we stated, declined the requested declaratory judgment. Appellants argue that such declination was an abuse of discretion. We cannot agree.

It is well settled in this jurisdiction that declaratory judgments are discretionary, *Hill v. Beeler*, 286 S.W.2d 868 (Tenn. 1956), and that courts have a "wide discretion"

which should be exercised with the “utmost caution,” *Tenn. Farmers Mut. Ins. Co. v. Hammond*, 290 S.W.2d 860, 862 (Tenn. 1956), and that the exercise of that discretion will not be disturbed on appeal unless the refusal is arbitrary. *Standard Accid. Ins. Co. v. Carvin*, 400 S.W.2d 235 (Tenn. 1966); *see also East Sevier County Utility Dist. v. Wachovia Bank & Trust Co.*, 570 S.W.2d 850 (Tenn. 1978). Upon a consideration of all the evidence in this case, including the unusual feature that the assailed ordinance was enacted in 1989, we find no abuse of discretion on the part of the trial judge in refusing a declaratory judgment.

#### IV

Appellants complain of the admission of evidence that property adjacent to the properties of the plaintiffs was annexed. *In limine*, the trial court ruled that such evidence was not admissible; but one of the plaintiffs, Mr. Kirk, testified on direct examination that annexation of his property was unreasonable because the city had singled out his parcel while skipping over other nearby properties.

This testimony was incorrect and misleading, and the trial judge quite properly revised his earlier ruling to allow the city a proper rebuttal, i.e., that no property had been “skipped over.”

This issue is without merit.

#### V

Appellants complain of the action of the trial court with respect to the allowance of Mark Sudheimer as an expert witness. He testified that, in his opinion, the annexations were reasonable from an economic development view.

This witness had many years of experience in the economic development of municipal areas, and the admission of his testimony was within the sound discretion of the trial judge. *State v. Brooks*, 909 S.W.2d 854, 861-62 (Tenn. Crim. App. 1995).

The judgment is affirmed at the costs of the Appellants.

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William H. Inman, Senior Judge

CONCUR:

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Don T. McMurray, Judge

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Charles D. Susano, Jr., Judge