

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1780-10T4

LEROY KNIGHT and PAUL A.
LOCKREY,¹

Plaintiffs-Appellants,

v.

TOWNSHIP OF SHAMONG,

Defendant-Respondent,

and

STATE OF NEW JERSEY and THE PINELANDS
COMMISSION,

Defendants,

and

INDIAN MILLS ATHLETIC ASSOCIATION,

Intervenor-Respondent.

Argued June 16, 2011 – Decided June 27, 2011

Before Judges Fisher and Grall.

On appeal from the Superior Court of New
Jersey, Law Division, Burlington County,
Docket No. L-390-10.

¹We were advised at oral argument that plaintiff Lockrey has passed away.

Ted M. Rosenberg argued the cause for appellants.

Douglas L. Heinold argued the cause for respondent (Raymond Coleman & Heinold, attorneys; Mr. Heinold, on the brief).

William E. Viss argued the cause for intervenor-respondent (Archer & Greiner, attorneys; Mr. Viss, on the brief).

PER CURIAM

Plaintiffs are residents of defendant Shamong Township, which owns recreational fields near plaintiffs' residences. The fields are located within the Pinelands area and, therefore, subject to the Pinelands Protection Act, N.J.S.A. 13:18A-1 to -58, which was enacted to protect the unique agricultural, environmental, and cultural resources of the Pinelands. To fulfill these purposes, the Legislature created the Pinelands Commission; any development in the Pinelands must be reviewed by the Commission to ensure its conformity with the Commission's comprehensive management plan.

In 2000, Shamong decided to expand its recreational fields by adding three softball fields and submitted an application to the Commission that was conditionally approved. Plaintiffs and other residents appealed and the matter was transferred to the Office of Administrative Law. While pending there, the residents and municipality resolved their differences. Their settlement agreement contained, among other things, Shamong's

representation that "it will not place lights at the facilities except for low-level lights of the type necessary for safe parking areas . . . and that the facilities' closing time will be 10 pm." On July 6, 2002, Administrative Law Judge John R. Tassini rendered an initial decision finding the settlement agreement reasonable. Later, the Commission passed a resolution approving Shamong's original application subject to the conditions contained in the settlement agreement.

In 2008, under the pressure of a threatened Title IX claim, Shamong decided to seek approval for the lighting of the girl's softball fields. Prior to taking any action, Shamong notified the residents who had been parties to the settlement agreement, suggesting that lighting could be provided without violating the spirit of the settlement agreement. Two of those four residents stated they had no objection, the other two -- plaintiffs here -- did not respond.

On January 13, 2009, the township committee approved the installation of additional lighting for the fields. Shamong also successfully applied to the Pinelands Commission for approval of the additional lighting.

After the lights were constructed, plaintiffs filed this action in lieu of prerogative writs, seeking an injunction prohibiting the use of the lighting and requiring removal of the

lighting structures. Shamong moved for summary judgment, relying on an expert report, which opined that no ambient light from the softball fields impacted plaintiffs' properties; Shamong argued that that plaintiffs' claim was without merit because they would not be damaged by the lighting. In opposition, plaintiffs asserted that "light pollution" impaired their ability to "enjoy the solitude of evening."² Judge Ronald E. Bookbinder determined that plaintiffs' claims that they were harmed by the lighting were insubstantial and granted summary judgment.

Plaintiffs appealed, arguing:

I. ON THE PLAINTIFFS' BREACH OF CONTRACT CLAIM, THE COURT BELOW ERRED BY VIEWING TOO NARROWLY THE CONSEQUENCES ARISING FROM SHAMONG'S BREACH OF THE SETTLEMENT AGREEMENT.

II. ALTHOUGH THE COURT ACKNOWLEDGED THE EQUITABLE NATURE OF PLAINTIFFS' CLAIMS, IT NONETHELESS FAILED TO ADDRESS THEIR CLAIMS FOR A FINAL INJUNCTION AND DID NOT WEIGH ANY OF THE EQUITIES INVOLVED AS REQUIRED BY THE CASE LAW.


²Plaintiff Knight acknowledges that his home is three-quarters of a mile from the softball fields in question.

We conclude that these arguments are without merit and affirm substantially for the reasons set forth in Judge Bookbinder's written opinions.³

We would add that the judge was not required to equate the settlement agreement in question with an agreement between private parties over a private matter. Here, the utilization of the property was also -- and remains -- subject to the jurisdiction of the Pinelands Commission. When the parties settled, they settled with the understanding that their agreement was subject to the approval of the Commission and that it could later be modified by the Commission, as occurred here. Thus, plaintiffs are mistaken in arguing that the judge mistakenly failed to enforce the agreement as would be expected in a matter seeking the enforcement of a private contract.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

³The opinion filed by the judge at the time he granted summary judgment was supplemented, pursuant to Rule 2:5-1(b), by a written opinion dated May 23, 2011.