IN THE MATTER OF DAVID AND DIANE FISH, MORRIS COUNTY AGRICULTURE DEVELOPMENT BOARD

STATE OF NEW JERSEY
OAL DKT. NO.: ADC 08330-14
AGENCY REF. NO.:SADC ID #1446

FINAL DECISION

FINDINGS OF FACT

This case arises from an appeal by David and Diane Fish ("Fish") of a decision by the Morris County Agriculture Development Board ("MCADB" or "board") that their property was not entitled to the protections of the Right to Farm Act, N.J.S.A. 4:1C-1, et seq. ("RTFA"). Fish owns a 56-acre parcel located at 206 Brookdale Road, Florham Park, NJ and designated on the borough tax map as Block 3201, Lot 22 (the "Fish property" or "farm property").

On April 10, 2014, the MCADB received a complaint via email from a lieutenant in the Florham Park police department stating that two (2) cows from the Fish property had entered onto adjoining residential properties. The email asserted that a neighboring homeowner had been kicked by a cow and transported to a local hospital, and that on several prior occasions cows had exited the farm property, migrated to nearby residential neighborhoods and caused traffic problems on area streets. The complaint did not allege that these incidents violated any state, county or municipal laws or regulations.

In April and May 2014, the board sought written proof that the Fish property was a commercial farm as defined in N.J.A.C. 4:1C-3. Fish submitted a letter dated May 29, 2014, in which he certified that the farm was in operation as of July 2, 1998, attaching a letter from a New Jersey certified forester dated April 24, 2014 which noted that since 1995 the farm property's primary activities were the pasturing, raising and selling of beef cattle; that corn, vegetable and mushrooms had been grown and sold; and that since 1995 the property had maintained a forestry management plan associated with the growing, harvesting and replanting of trees for timber sales.

The MCADB met on June 12, 2014 and determined, in Resolution in Resolution #2014-12 of same date, that the farm property satisfied the commercial farm eligibility criteria in N.J.S.A. 4:1C-3. However, the resolution also concluded that

> cows getting out of the Fish Farm property pose a direct threat to the health and safety

> of the residents and drivers in Florham Park. Accordingly, the Fish Farm does not meet the eligibility criteria pursuant to N.J.S.A. 4:1C-9, and is therefore ineligible for the protections of the Right to Farm Act.[1]

By "Notice of Appeal" dated June 20, 2014, Fish, represented by counsel, appealed the MCADB's June 12, 2014 resolution to the State Agriculture Development Committee ("SADC" or "Committee"). The SADC received the appeal on June 23, 2014 and transmitted it to the Office of Administrative Law (OAL) on July 1, 2014.

On October 6, 2014, Fish, the MCADB and Florham Park entered into a handwritten settlement in which the parties agreed to the following: (1) the number of cows on the farm property will be limited to no more than seven (7) at one time and, if a calf is born to one of those cows, the herd will be no more than seven (7) cows within 12 months of the calf's birth; (2) the number of farm personnel will be increased, and their names and phone numbers will be provided to borough officials; (3) perimeter fencing will be improved in the area where the cows left the farm property; (4) perimeter fencing will be inspected by borough officials within 30 days, with the officials providing Fish notice as to areas of the fence requiring improvement; (5) alarms and locks will be installed at farm entrances to alert Fish should third parties enter the farm property; (6) existing camera monitoring of the entire perimeter fencing shall be improved; (7) twice-daily inspections of the perimeter fencing shall occur, except on Fridays, by Fish or farm personnel, and there shall be weekly review of camera monitoring, to insure continuing fence integrity; (8) Fish shall repair the fencing within 30 days of borough notification that same is required; (9) "[a]ll future disputes generated from this agreement or as to farm operation shall be resolved at Borough municipal court"; (10) Fish withdraws the OAL appeal and "municipal action [is] dismissed"[2].

The attorneys for Fish, the MCADB and Florham Park signed the agreement on October 6, 2014 and, by Initial Decision dated October 7, 2014, the administrative law judge (ALJ or judge)

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[1] The Florham Park complaint appeared to allege a nuisance, so we understand the MCADB's conclusion to mean that Fish was not entitled to the RTFA's irrebuttable presumption that the farm operation did not constitute a public or private nuisance. See, N.J.S.A. 4:1C-10.

[2] There is nothing in the record indicating the nature and status of any "municipal action".

approved the settlement agreement. In approving the agreement and incorporating it in the Initial Decision, the ALJ concluded that the agreement complied with N.J.A.C. 1:1-19.1(b), finding that the settlement was voluntary, consistent with law, and fully dispositive of all issues in controversy.

CONCLUSIONS OF LAW

The Initial Decision by the ALJ recommends approval of the written and executed settlement agreement based on findings that the stipulation comported with N.J.A.C. 1:1-19.1. That regulation provides, in pertinent part, as follows:

> **1:1-19.1 Settlements**
>
> (a) Where the parties to a case wish to settle the matter, and the transmitting agency is not a party, the judge shall require the parties to disclose the full settlement terms:
>
> 1. In writing, by consent order or stipulation signed by all parties or their attorneys; or
>
> 2. Orally, by the parties or their representatives.
>
> (b) Under (a) above, if the judge determines from the written order/stipulation or from the parties' testimony under oath that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, the judge shall issue an initial decision incorporating the full terms and approving the settlement.

The SADC was not a party in this matter, and the stipulation was reduced to writing and signed by the parties' attorneys. N.J.A.C. 1:1-19.1(a)1. The ALJ determined that the safeguard requirements of N.J.A.C. 1:1-19.1(b) had been met and issued an Initial Decision incorporating and approving the settlement terms.

It is well established that the settlement of litigation is encouraged as a matter of public policy by courts and administrative agencies. Settlements permit litigants to resolve their disputes on mutually-acceptable terms rather than risk exposure to an adverse result, save the parties considerable time and expense, and facilitate the administration of justice by conserving government resources. DEG, LLC v. Township of Fairfield, 198 N.J. 242, 259 (2009). The settlement agreement in this matter contains several practical compliance elements designed to eliminate future instances of cows leaving the farm

property and migrating onto adjoining properties and municipal streets.

We were at first concerned with one aspect of paragraph (9), which states that "[a]ll future issues generated from this agreement *or as to* [the] *farm operation* shall be resolved at Borough municipal court." [Emphasis added]. The SADC concludes that it is reasonable, under the particular circumstances of this case, for disputes arising out of the settlement agreement itself to be heard in the Florham Park municipal court. Settlement agreements are contractual in nature, Brundage v. Estate of Carambio, 195 N.J. 575, 601 (2008), and issues of compliance with the practical aspects of the agreement, set forth in paragraphs (1) through (8), suggest that resolution at the municipal court level is appropriate in order to protect against threats to public health and safety which might occur from cows migrating into suburban residential areas of Florham Park. In addition, the SADC finds that paragraph (10), in which the OAL case and any pending municipal court actions are dismissed, is a reasonable component of the parties' overall resolution of the case.

But paragraph (9) went further. It appeared to require municipal court venue for *any and all other disputes* about the "farm operation". If that is so, then it is inconsistent with the RTFA requirement in N.J.S.A. 4:1C-10.1a. that

> [a]ny person aggrieved by the operation of a commercial farm shall file a complaint with the applicable county agriculture development board or the [SADC] in counties where no county board exists *prior to filing an action in court*. [Emphasis added].

Paragraph (9) could be construed to bypass the RTFA for zoning and nuisance disputes unrelated to the problems with Fish's cows that gave rise to the borough complaint. Further, the application of paragraph (9) to the "farm operation" may be so broad as to apply to future owners and/or operators of the farm property engaging in a variety of agricultural activities unrelated to raising and selling cows.

The transcript of the October 6, 2014 proceedings before the ALJ, at which the written settlement agreement was read into the record by Fish's counsel in the presence of the other parties' attorneys, raised questions as to what exactly was agreed to by the MCADB, the borough and Fish regarding paragraph (9).

Counsel recited paragraph (9) as follows:

> All future issues generated from this agreement or as to the farm operating [sic] concerning the integrity and security of the fencing shall be resolved at the Borough Municipal Court and [Fish] will not seek redress through the municipal -- through the Morris County Agricultural [sic] [Development] Board.
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> [T7-20 to T8-1].

This iteration of paragraph (9) differed from the written version by limiting municipal court jurisdiction to future issues arising from the agreement and from the fencing that enclosed Fish's cows.

When questioned by the ALJ, Fish exhibited an understanding of the distinction between municipal court jurisdiction over fencing issues, as expressed verbally in court by counsel, and jurisdiction over the "farm operation" in the written settlement agreement:

> FISH: Part of our -- half of our farm is in forests - this doesn't have anything to do with our forest.
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> MR. COLASANTI (Fish's attorney): This has to do with keeping the cows on the farm.
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> FISH: The part that's on the cows --
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> MR. COLASANTI: On the farm.
>
> FISH: Okay, I just wanted to make sure it wasn't the whole farm.
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> THE COURT: Right, because what -- it seems like from what I heard that you agreed to it has to do with the cows themselves.
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> FISH: Okay. Okay.
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> THE COURT: And the fencing around that area.
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> FISH: Area.
>
> THE COURT: Okay?
>
> FISH: Thank you.
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> [T12-23 to T13-14].

The remainder of the colloquy between the ALJ and Fish established that Fish knowingly and voluntarily entered into the settlement agreement as presented to the court and as clarified by the above exchange. The court also established that the MCADB and the borough freely consented to the terms of the agreement, including the dismissal of any pending municipal court cases the borough had filed against Fish.

The attorneys for the parties realized the discrepancy between the written agreement and the settlement placed on the record. On December 10, 2014, counsel for Fish provided the SADC with written clarification that Fish's consent to municipal court jurisdiction was limited to issues arising out of the agreement and that the MCADB would have jurisdiction over all other disputes regarding Fish's farm operation.[3] The letter confirms that the attorneys for the MCADB and Florham Park consented to the clarification. We are satisfied, and therefore **ADOPT**, the Initial Decision's findings that Fish knowingly and voluntarily agreed to the compliance measures set forth in paragraphs (1) through (8) and to dismissal of the OAL appeal set forth in paragraph (10) of the written agreement. The SADC also **ADOPTS** the finding in the Initial Decision that the borough's dismissal of any pending municipal court actions against Fish, also set forth in paragraph (10), was knowing and voluntary. With respect to paragraph (9), the SADC **MODIFIES** the Initial Decision by finding that, consistent with the letter dated December 10, 2014, all of the parties have knowingly and voluntarily agreed that municipal court jurisdiction extends only to disputes regarding compliance with paragraphs (1) through (8) of the written agreement, and that the MCADB has jurisdiction over all other farm-related issues, consistent with N.J.S.A. 4:1C-10.1a.

IT IS SO ORDERED.

Dated: December 11, 2014

Douglas H. Fisher, Chairman,
State Agriculture Development
Committee

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[3] We understand counsel's reference to the "Morris SADC" in the December 10, 2014 letter to mean the MCADB.