

40TH JUDICIAL DISTRICT COURT
FOR THE PARISH OF ST. JOHN THE BAPTIST
STATE OF LOUISIANA

NO.: C-77305

DIVISION "C"

**THE DESCENDANTS PROJECT,
JOYCYNTIA BANNER, AND JOYCEIA BANNER**

VERSUS

**ST. JOHN THE BAPTIST PARISH,
THROUGH ITS PARISH PRESIDENT
JACLYN HOTARD, ET AL**

FILED: _____

DEPUTY CLERK

JUDGMENT ON MOTION FOR NEW TRIAL

This matter came before the Court on December 14, 2023, pursuant to a *Motion for New Trial* filed by St. John the Baptist Parish on August 15, 2023, that same day a separate *Motion for New Trial* was filed by Greenfield Louisiana, LLC.

Present: Samuel J. Accardo, on behalf of St. John the Baptist Parish
Paul Adkins & Clare M. Bienvenu, on behalf of intervenor, Greenfield Louisiana, LLC
Pamela Spees, on behalf of The Descendants Project

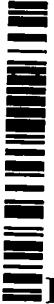
In both motions for new trial, St. John the Baptist Parish and Greenfield Louisiana, LLC (hereafter Defendants) make two arguments in favor of granting the new trial, that the previous ruling was clearly contrary to the law, specifically as to interpretation of the Code of Ordinance and St. John Home Rule Charter and alternatively that the court should have severed the amendment to Ordinance 90-27.

FACTUAL AND PROCEDURAL HISTORY

This action stems from a 1990 rezoning ordinance that the St. John the Baptist Parish Council passed unanimously with one recusal, on April 19, 1990. The Council enacted Ordinance 90-27, which set forth various zoning restrictions, namely:

1. Property proposed to be rezoned from B-1 to B-2.
2. Property proposed to be rezoned from C-1 and R-1 to I-3.

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3. & 4. Property proposed to be rezoned from R-1 to I-3.
5. Property proposed to be rezoned from C-1 to I-1.
6. Property proposed to be rezoned from R-1 to I-1.

In addition, prior to passing the ordinance an amendment was introduced by Councilmen Haston Lewis to place a 300 foot I-1 buffer whenever an I-3 district abuts an R-1 district.¹ This amendment would end up being the catalyst to the present litigation, as it was submitted outside of the formal submission process and was not provided to the planning commission for review and recommendation prior to being voted on.

In 2021, Greenfield purchased property affected by the zoning requirements of Ordinance 90-27, intending to build a grain elevator upon the property. On November 9, 2021, Plaintiffs filed a *Writ of Mandamus* followed by two amended petitions, to prevent Greenfield from building the grain elevator. This Court issued a judgment and written reason on August 4, 2023, in favor of Plaintiffs and declaring Ordinance 90-27 null and void *ab initio* due to the Parish Council's failure to submit Ordinance 90-27's amendment to the Planning Commission for review and recommendation². Notice was issued on August 7, 2023. St. John the Baptist Parish and Greenfield both timely filed motions for new trial on August 15, 2023, within the delay period prescribed by law³ bringing this matter back before this Court.

STANDARD FOR GRANTING A MOTION FOR NEW TRIAL

A timely motion for new trial is one of three methods by which a party can substantially alter the substance of a final judgment⁴ and is reviewed on a case-by-case basis⁵. The Louisiana Code of Civil Procedure provides two bases upon which to grant a motion for new trial, peremptory and discretionary grounds. La. C.C.P. Art. 1972-1973. A new trial on peremptory grounds is required when: a) the verdict or judgment is clearly contrary to the law and evidence, b) when the party has discovered, since the trial, evidence important to the cause which could not, with due diligence, be obtained before or during the trial, or c) when the jury was bribed or behaved improperly so that impartial justice has not been done⁶.

A showing that any of the peremptory grounds are met, obligates a trial court to hold a new trial. *Succession of Chisholm*, 53,771 (La.App. 2 Cir. 3/3/21); 314 So.3d 1056. The test for granting

¹ Plaintiff's *Cross-Motion for Summary Judgment* Exhibit P-2.

² *Written Reasons for Judgment* p.1 (August 4, 2023)

³ La. C.C.P. Art. 1974.

⁴ *NFT Group, L.L.C. v. Elite Pools and Spas, L.L.C.*

⁵ *Gaddy v. Taylor Seidenbach, Inc.*, E.D.La.2020, 446 F.Supp.3d 140, reconsideration denied 2020 WL 1848058, affirmed 838 Fed.Appx. 822, 2020 WL 7379389

⁶ La. C.C.P. Art. 1972

a new trial is far less stringent than for a JNOV, as it does not deprive a party of their right to have disputed issues resolved by a jury. *Pitts v. Louisiana Med. Mut. Ins. Co.*, 2016-1232 (La. 3/15/17); 218 So.3d 58 (citing *Martin v. Heritage Manor S. Nursing Home*, 00-1023 (La. 4/3/01), 784 So.2d 627, 631). In determining whether to grant the motion for new trial a court may evaluate the evidence without favoring either party and draw its own inferences and conclusions of fact. *Pollard v. Schiff*, 2013-1682 (La. App. 4 Cir. 2/4/15). A motion for new trial may be granted on discretionary grounds when there is good ground therefor.⁷

“Louisiana jurisprudence does not favor new trials especially when the judgment is supported by the record.” *Fletcher v. Langley*, 631 So.2d 693, 695 (La. Ct. App. 1994), writ denied, 635 So.2d 1139 (La. 1994) (citing *Brown v. State Through DOTD*, 572 So.2d 1058 (La.App. 5 Cir. 1990)). Courts have broad discretion when determining whether to grant a motion for new trial, and that determination will not be disturbed absent abuse of that discretion. *Davis v. Wal-Mart Stores, Inc.*, 774 So. 2d 84, 93 (La. 2000). “Whether to grant a new trial requires a discretionary balancing of many factors.” *Gaddy v. Taylor Seidenbach, Inc.*, 446 F.Supp.3d 140, 150 (E.D. La. 2020), *aff’d sub nom. Adams v. Ethyl Corp.*, 838 Fed.Appx. 822 (5th Cir. 2020) (citing *Gibson v. Bossier City Gen. Hosp.*, 594 So. 2d 1332 (La. App. 2 Cir. 1991)). “Although the grant or denial of a motion for new trial rests within the trial court's wide discretion, the court cannot set aside a judgment if it is ‘supported by any fair interpretation of the evidence.’” *Chumley v. Magee*, 44,860, p. 11 (La.App. 2 Cir. 2/17/10); 33 So.3d 345, 352, writ denied, 2010-1125 (La. 9/17/10); 45 So.3d 1046 (citing *Campbell v. Tork Inc.*, 2003-1341 (La. 2/20/04), 870 So.2d 968). The “discretionary power to grant a new trial must be exercised with considerable caution.” *Rivet v. State, Dep’t of Transp. & Dev.*, 2001-0961, p. 5 (La. 11/28/01); 800 So.2d 777, 781.

PEREMPTORY GROUNDS FOR NEW TRIAL

In their memorandums, both St. John the Baptist Parish and Greenfield argue that their motions for new trial should be granted on the basis that the prior judgment was clearly contrary to the law and evidence, primarily on the basis that this Court did not apply the proper statutory interpretation principles.

The prior judgment was granted after a cross-motion for summary judgment brought by the Plaintiffs. “A motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue of material fact and the mover is entitled

⁷ La. C.C.P. Art. 1973

to judgment as a matter of law.” La.C.C.P. art. 966(A)(3). “The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law.” La.C.C.P. art. 966(D)(1). “A fact is ‘material’ when its existence or nonexistence may be essential to plaintiff’s cause of action under the applicable theory of recovery.” *Smith v. Our Lady of the Lake Hosp., Inc.*, 93-2512 (La. 7/5/94) (citing *Penalber v. Blount*, 550 So.2d 577, 583 (La. 1989)). The prior judgment turned on whether Plaintiffs produced sufficient material facts that proved the statutory procedures of Ordinance 90-27 enactment were not followed, and it was the finding of this Court that they had made such a showing. Now the present matter turns on whether the prior judgment was sufficiently supported by applicable provisions of law such that it could not be considered clearly contrary to the law and evidence or a miscarriage of justice.

1. Applicable Rules of Statutory Interpretation

Defendants allege in their motions for new trial that this Court did not apply proper principles of statutory interpretation to the provisions of the St. John the Baptist Home Rule Charter and Code of Ordinance, and therefore the Judgment granting Plaintiff’s motion for summary judgment is clearly contrary to the law and evidence. In its memorandum, Greenfield argues that rather than harmonizing the provisions of the Home Rule Charter and Code of Ordinance, this Court should have allowed the Home Rule Charter to supersede the Code of Ordinance instead of treating them with “equal dignity.”⁸ Greenfield cites to *Montgomery v. St. Tammany Parish Government*, for the principle that “home rule charters are the supreme law of home rule charter jurisdictions, subordinate only to the constitution and constitutionally allowed legislation.” *Montgomery v. St. Tammany Par. Gov’t by & through St. Tammany Par. Council*, 2017-1811 (La. 6/27/18); 319 So.3d 209. Further they cite Art. IV(B)(3)(d) of the Parish Home Rule Charter, which reads:

After all persons have been given the opportunity to be heard the council may pass the ordinance with or without amendments and the ordinance as finally adopted shall be published in full in the official parish journal within ten days after it is approved by the parish president as provided in section C hereof or recorded in the minutes of the council by the individual vote of each councilmember.

But the language of the Parish Home Rule Charter and Code of Ordinance do not conflict, rather the Code of Ordinance merely supplements the provisions of the Parish Home Rule Charter providing additional requirements for a valid ordinance. The Parish Home Rule Charter only

⁸ Greenfield Louisiana, LLC’s *Memorandum in Support of Greenfield’s Motion for New Trial* p. 4.

allows that an ordinance may be passed with or without amendment and says nothing about the effectiveness of the amendment. Rather, the Code of Ordinance exists to provide additional requirements that supplement the Parish Home Rule Charter, but the provisions of both do not directly contradict one another.

“[W]here there are two permissible views of the evidence, the fact-finder's choice cannot be manifestly erroneous or clearly wrong.” *Serpas v. Tulane Univ. Hosp. & Clinic*, 2013-1590 (La.App. 4 Cir. 5/14/14); 161 So.3d 726 (citing *Wallace v. Howell*, 09–1146, p. 2 (La.App. 4 Cir. 1/13/10), 30 So.3d 217, 218). For that reason, it is the finding of this Court, that the choice to apply both the Parish Home Rule Charter and Code of Ordinance is not contrary to the law or evidence.

2. Severing the Offending Amendment

Alternatively, Greenfield wishes the court to reconsider its judgment declaring the entirety of Ordinance 90-27 null and void, and to instead sever only the amendment to the Ordinance. In support of their argument in favor of severing the amendment, Greenfield cites a 1932 Louisiana Supreme Court case, *Bultman Mortuary Serv. v. City of New Orleans*. There the Louisiana Supreme Court articulated that where the portion to be removed is “distinctly separable from the remainder, and the remainder in itself contains the essentials of a complete enactment, the invalid portion may be rejected and the remainder will stand as valid and operative.” *Bultman Mortuary Serv. v. City of New Orleans*, 174 La. 360; 140 So. 503 (1932). St. John’s Code of Ordinances does in fact allow for severability, stating:

The sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional, invalid or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, that unconstitutionality, invalidity or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Code, since they would have been enacted without the incorporation in this Code of the unconstitutional, invalid or unenforceable phrase, clause, sentence, paragraph or section.

§ Sec. 1-8. However later sections of the Code of Ordinance pertaining to zoning provide that “no amendment shall become effective unless it shall have been proposed by or shall first have been submitted to the planning commission for review and recommendations.” § Sec. 113-76. Courts have consistently required strict compliance with the statutory procedures regulating enactment of zoning laws, failure of which is fatal to the validity of the zoning ordinance. *Schmitt v. City of New Orleans*, 461 So.2d 574 (La. App. 4 Cir. 12/18/1984). Greenfield argues that the amendment is distinctly separable from Ordinance 90-27, and that stripped of the amendment Ordinance 90-27 contains the essentials of a complete enactment. La. R.S. 24:177 provides that the text of a law is

the best evidence of legislative intent⁹, and further the “occasion and necessity for the law, the circumstances under which it was enacted, concepts of reasonableness, and contemporaneous legislative history may also be considered in determining legislative intent.” La. R.S. 24:177(B)(2)(a).

Here, the amendment to the ordinance was not simply an additional provision to Ordinance 90-27 but rather a modification of those zoning restrictions as a whole, and therefore stripping only the amendment would be to circumvent the original intent of the Ordinance itself. This is further supported by the order in which the amendment and Ordinance 90-27 were passed. In this instance, the amendment to Ordinance 90-27 was passed prior to the passage of the Ordinance itself, meaning that the amendment was clearly an element so crucial to enactment of Ordinance 90-27 that it had to be added in prior to the passage of Ordinance 90-27. Thus, the suggestion that severing the offending language would leave Ordinance 90-27 a complete and valid enactment is not persuasive.

DISCRETIONARY GROUNDS FOR NEW TRIAL

In addition to the peremptory grounds for new trial alleged by Defendants, the motion for new trial, per La. C.C.P. Art. 1973, allows the Court to grant a new trial on discretionary grounds provided there are good grounds upon which to do so. A litigant is not entitled to an additional day in court unless there is a good and compelling reason to grant one. *Perkins v. Allstate Ins. Co.* Additionally, trial courts are vested with a great deal of discretion in ruling on motions for new trial¹⁰ and new trials are disfavored where the contested judgment is supported by the record.¹¹

Louisiana jurisprudence routinely cautions against the grant of new trial, despite the great discretion afforded to courts, unless “substantial justice requires it.” *Taylor v. Sutton*, 6 La. Ann. 709, 710 (1851) see also *Succession of Robinson*, 186 La. 389; 172 So. 429 (1936), *Burthe v. Lee*, 152 So. 100 (La. Ct. App. 1934). With justice being the primary consideration in granting a new trial on discretionary grounds, it is the finding of this court that there is insufficient evidence to support Defendant’s motions for new trial. Principles of equity and justice require a greater showing than what Greenfield has alleged in its memorandum, and it would be fundamentally unfair to Plaintiffs to give Defendants another trial in this venue. “The grant of a new trial is not to be used to give the losing party a second bite at the apple without facts supporting a miscarriage

⁹ La. R.S. 24:177(B)(1)

¹⁰ *Gaddy v. Taylor Seidenbach, Inc.*, E.D. La. 2020, 446 F.Supp.3d 140.

¹¹ La. Code Civ. Proc. Ann. art. 1972(1) See also *McInnis v. Bonton*

of justice that would otherwise occur.” *Webster v. Hartford Accident & Indem. Co.*, 21-610, p. 3 (La.App. 5 Cir. 11/15/21) (citing *In re Gramercy Plant Explosion at Kaiser*, 04-1151, (La. App. 5 Cir. 3/28/06), 927 So.2d 492, 502).

CONCLUSION

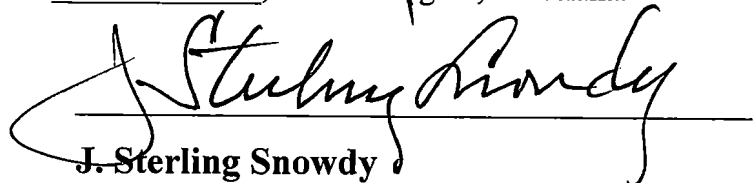
While Defendants allege errors that necessitate a new trial, it is the finding of this Court that said errors are best characterized as competing interpretations of the law, and all parties’ arguments are sufficiently rooted in the law such that a denial of new trial would not constitute a miscarriage of justice. For all the above reasons, it is the finding of this Court that justice would not be served by allowing Defendants to relitigate this matter, and for now the prior judgment must be maintained.

Based upon the law, the pleadings, the testimony, and posture of this case,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that St. John the Baptist Parish’s *Motion for New Trial* is **DENIED**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Greenfield Louisiana, LLC’s *Motion for New Trial* is **DENIED**.

Judgment signed on the 9 day of Jan 2024, 2023 in Edgard, Louisiana.



J. Sterling Snowdy

Judge, Fortieth Judicial District Court

PLEASE NOTIFY ALL PARTIES