

RENDERED: AUGUST 7, 2001
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court Of Appeals

NO. 2001-CA-001555-I

DARRYL T. OWENS AND CAROL LUMPKINS

MOVANTS

v. MOTION FOR RELIEF UNDER CR 65.07
FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. WINE
ACTION NO. 01-CI-005027

JEFFERSON COUNTY FISCAL COURT

RESPONDENT

AND
REBECCA JACKSON,
JEFFERSON COUNTY JUDGE EXECUTIVE

INTERVENING RESPONDENT

** ** * * * * * ** ** ** ** *

OPINION AND ORDER
DENYING CR 65.07 RELIEF

BEFORE: EMBERTON, JOHNSON, AND KNOPF, JUDGES.

EMBERTON, JUDGE: The movants are before the Court seeking relief under CR 65.07 from a circuit court denial of a temporary injunction which would have prevented the Jefferson Fiscal Court from approving legislative council districts for the merged government of Louisville and Jefferson County which comes into existence in January 2003. The districts have been drawn "by representatives of a department of geography from the largest public university that exists within the county." KRS 67C135(2). The county fiscal court is required to "approve the plan within thirty (30) days as submitted and without amendment." KRS

67C.135(3). The requirement that the fiscal court approve the proposed districts without amendment is at the center of this litigation.

One of the movants is a member of the fiscal court, and the other is a registered voter of Jefferson County. They argue that the statutory scheme of KRS 67C.135 constitutes an unconstitutional delegation of authority and improperly "commandeers elected officials' votes" by requiring the fiscal court to approve the proposed districts without "exercising any judgment or discretion." For that reason, the movants, as plaintiffs in circuit court, sought an injunction to prevent the fiscal court from acting on the proposed districts until the circuit court had fully considered their constitutional challenge. The circuit court denied the requested injunction, and the movants have sought relief in this Court.

Since the matter under review here is denial of a temporary injunction, the Court applies the standards of Maupin v. Stansbury, Ky. App., 575 S.W.2d 695 (1978), and Oscar Ewing, Inc. v. Melton, Ky., 309 S.W.2d 760 (1958), to review the question of the status to be observed while the constitutional questions are litigated in circuit court.

In assessing the injury that would occur to the movants if the injunction did not issue, we must first note that the fiscal court has no inherent authority in this matter. The fiscal court has such power as the legislature assigns. Bruner v. Jefferson County Fiscal Court, 239 Ky. 613, 40 S.W.2d 271, 272

(1931). It appears from the language used that the legislature may have chosen fiscal court's "approval" as a convenient point to finalize the formation of districts as defined by those chosen by the legislature to do so. There is no essential requirement that the composition of the districts of the new merged government be addressed to the fiscal court. Movant Owens has failed to show how some fundamental right will be harmed by the legislative denial of discretion to fiscal court.

The statutory intent to deny discretion to the fiscal court is clear. The requirement of KRS 67C.135(3) that "the fiscal court shall approve the plan within thirty (30) days as submitted and without amendment" appears in the early drafts of the statute. Review of the amendments proposed as the bill proceeded through the legislature indicates repeated rejection of changes to that concept. The ministerial function that has been assigned to the fiscal court is to accept the districts as drawn by the professional geographers under the guidelines provided by the legislature.

The movants allege that they have raised a substantial question on the merits of their claim of unconstitutional delegation by the legislature to the University of Louisville Geography Department. It may appear difficult to address this issue without resolving the claim itself. However, to succeed in their claim the movants must overcome significant precedent. Prior opinions of our appellate courts have approved delegation allowing local school boards to close or consolidate schools in

Coppage v. Ohio County Board of Education, Ky. App., 860 S.W.2d 779 (1992), allowing the governor to allocate surplus funds to state agencies for certain purposes in Hopkins v. Ford, Ky., 534 S.W.2d 792 (1976), allowing the state board of education to approve schools and programs for receipt of state funds to educate exceptional children in Butler v. United Cerebral Palsy of Northern Kentucky, Inc., Ky., 352 S.W.2d 203 (1961), and allowing a panel appointed by legislative leadership to select the locations of the new colleges in Craig v. O'Rear, 199 Ky. 553, 251 S.W. 828 (1923). In the case currently before the Court the legislature did provide standards and safeguards in KRS 67C.135(4)and(8). It may be that movants will eventually overcome these precedents, but, for purposes of the temporary injunction, we cannot say the movants have demonstrated such a substantial question as to justify the issuance of an injunction.

The public interest in this matter is significant. The legislature offered to the citizens of Louisville and Jefferson County the opportunity to merge their governments. The process for drawing new districts for electing the council for merged government set out in KRS 67C.135 was included within that plan as submitted to the voters. A majority of the voters of Jefferson County approved this plan. The process of drawing the districts under the scheme approved by the voters has reached a crucial point of acceptance by the fiscal court. It is in the public interest to finalize this stage so that candidates may carefully assess the possibility of filing for office before the statutory

deadline.

In view of the discussion above, the equities clearly favor denial of the injunction. The voters of Jefferson County have expressed their desire for merged government. The plan which the voters approved contained provisions for the transition to the new system. The Court should not interfere with that process except in the most severe and exceptional circumstances impacting the concrete rights of citizens. No such threat has been shown here.

Accordingly, the Court ORDERS that the motion for CR 65.07 relief be, and it is hereby, DENIED.

Because of the urgent nature of this matter, the Court ORDERS that this Opinion and Order be rendered immediately upon signature.

ALL CONCUR.

ENTERED: August 7, 2001 /s/ Thomas D. Emberton
JUDGE, COURT OF APPEALS

MOTION AND ORAL ARGUMENT FOR
THE MOVANTS:

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