

RENDERED: SEPTEMBER 4, 2015; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2014-CA-000187-MR  
AND  
NO. 2014-CA-000235-MR

KEVIN MIDDLETON

APPELLANT/CROSS-APPELLEE

APPEAL AND CROSS-APPEAL FROM GARRARD CIRCUIT COURT  
v. HONORABLE C. HUNTER DAUGHERTY, JUDGE  
ACTION NO. 12-CI-00132

GARRARD COUNTY, KENTUCKY;  
JOHN WILSON; JOE LEAVELL;  
DOAN ADKINSON; RONNIE  
LANE; FRED SIMPSON; AND  
BETTY HOLTZCLAW

APPELLEES/CROSS-APPELLANTS

### OPINION

AFFIRMING IN PART, REVERSING IN PART AND REMANDING AS TO  
APPEAL NO. 2014-CA-000187-MR AND AFFIRMING AS TO CROSS-  
APPEAL NO. 2014-CA-000235-MR

\*\* \*\* \* \* \* \* \*

BEFORE: COMBS, KRAMER, AND TAYLOR, JUDGES.

KRAMER, JUDGE: The direct appeal and cross-appeal at issue in this matter concern a declaratory judgment entered by the Garrard Circuit Court regarding (1) the effect of an elected official's agreement to accept a salary that is less than the salary otherwise fixed for his office; and (2) how, according to applicable law, an elected jailer's salary must be prospectively fixed between terms. For the reasons discussed below, we affirm in part, reverse in part, and remand for further proceedings not inconsistent with this opinion.

### **FACTUAL AND PROCEDURAL HISTORY**

The relevant facts of this case are undisputed. Garrard County does not maintain a full-service jail. The former jailer of Garrard County, Kenny Tuggle, was elected in 2006 for a four-year term ending December 31, 2010, at a salary fixed at \$30,547.97. He effectively resigned on December 31, 2008. On January 21, 2009, Middleton was appointed to serve the remaining two years of Tuggle's term after agreeing to accept a salary of \$20,000 per year; his duties largely consisted of transporting inmates to a jail in a neighboring county. On April 24, 2010, the Garrard Fiscal Court fixed the salary of the office of jailer for the next four-year term at \$20,300.02 per year. Thereafter, Middleton completed Tuggle's term, which expired on December 31, 2010; ran for the office of jailer for the following term; won the office; and, accordingly, Middleton continued to serve Garrard County as its jailer.

On April 21, 2012, Middleton then sued the above-captioned appellees and cross-appellants (hereinafter referred to collectively as "Garrard

County”<sup>1</sup>) in Garrard Circuit Court for the difference between the salary he had been paid for his service as jailer, and a salary he believed he should have received instead—namely, \$30,547.97 for each of his two years of service during Tuggle’s unexpired term and for each year he had already served in his own elected term. He also asked the circuit court to declare, as a matter of law, that he was entitled to continue receiving a salary of \$30,547.97 for the remainder of his elected term.

Following its review, the circuit court entered a judgment that was consistent with two legal determinations. First, Garrard County had a legal obligation to pay Middleton an annual salary of \$30,547.97 while Middleton was completing the remainder of Tuggle’s term. Second, Garrard County, by and through its Fiscal Court, was authorized to reset and reduce the salary for the office of jailer prior to the commencement of the jailer’s subsequent elective term; thus, Middleton had no entitlement to a salary of \$30,547.97 per year for the duration of his subsequent elected term. Additionally, the circuit court denied Middleton’s request for an award of attorney’s fees. These appeals followed.

### **STANDARD OF REVIEW**

Findings of fact resulting from a trial in a declaratory action shall not be set aside unless clearly erroneous. *Baze v. Rees*, 217 S.W.3d 207, 210 (Ky. 2006) (citing *Largent v. Largent*, 643 S.W.2d 261 (Ky. 1982)); *see also American*

---

<sup>1</sup> John Wilson, Joe Leavell, Doan Adkinson, Ronnie Lane, Fred Simpson, and Betty Holtzclaw are the various elected officials of the Garrard Fiscal Court. Middleton’s arguments are directed against them in their official capacities only.

*Interinsurance Exchange v. Norton*, 631 S.W.2d 851, 852 (Ky. App. 1982).

However, our review is *de novo* as to the trial court's conclusions of law. *Baze*, 217 S.W.3d at 210.

**ANALYSIS: Cross-appeal no. 2014-CA-000235-MR**

We begin with an analysis of Garrard County's cross-appeal. Garrard County asserts that the circuit court erred in determining that Middleton was entitled to an annual salary of \$30,547.97 for his service as jailer from January 21, 2009, to December 31, 2010. As to why, it argues that Middleton entered into a binding contract for a salary of \$20,000 per year instead and was either contractually bound to that salary or was equitably estopped from receiving any higher amount.

In Kentucky, however, once the salary applicable to the term of an elected official has been fixed, it cannot be reduced or otherwise changed by contract; indeed, any such contract is against public policy, void, and cannot be relied upon as a basis for estoppel. *See, e.g., City of Louisville v. Thomas*, 257 Ky. 540, 78 S.W. 2d 767 (1935); *City of Winchester v. Azbill*, 225 Ky. 389, 9 S.W.2d 51 (1928); *Town of Nortonville v. Woodward*, 191 Ky. 730, 231 S.W. 224 (1921). This rule applies even though Middleton was not elected, but was instead appointed to complete another person's elected term. *See Bosworth v. Ellison*, 148 Ky. 708, 147 S.W. 400, 402 (1912). Thus, Garrard County's cross-appeal argument is without merit and, in this respect, the circuit court is affirmed.

**ANALYSIS: Appeal no. 2014-CA-000187-MR**

The Kentucky Constitution only prohibits increasing or reducing an elected official's salary during a term of office, not between terms. *See, e.g.,* Kentucky Constitution §§ 161 and 235.<sup>2</sup> However, the issue presented in Middleton's direct appeal is not what the Kentucky Constitution allows; rather, it is what Kentucky Revised Statutes (KRS) 441.245 allows. Specifically, Middleton argues KRS 441.245(3), as written, clearly and unequivocally operated to prohibit Garrard County from ever reducing the salary of any jailer below what it had previously paid Kenny Tuggle.

As an aside, because KRS 441.245 specifically addresses the issue of a jailer's salary, it is the guiding statute in this matter. *See Wallace v. King*, 973 S.W.2d 485, 486 (Ky. App. 1998). And, at all times relevant to this litigation, KRS 441.245 has provided:

(1) The jailer who operates a full-service jail shall receive a monthly salary pursuant to any salary schedule in KRS Chapter 64 applicable to jailers operating a full service jail from the county jail operating budget.

(2) No jailer holding office in the Commonwealth on or after January 6, 1999, shall receive an annual salary of less than twenty thousand dollars (\$20,000).

---

<sup>2</sup> Ky. Const. § 161 states,

The compensation of any city, county, town or municipal officer shall not be changed after his election or appointment, or during his term of office; nor shall the term of any such officer be extended beyond the period for which he may have been elected or appointed.

Ky. Const. § 235 states,

The salaries of public officers shall not be changed during the terms for which they were elected; but it shall be the duty of the General Assembly to regulate, by a general law, in what cases and what deductions shall be made for neglect of official duties. This section shall apply to members of the General Assembly also.

(3) The salaries of jailers who are not subject to any salary schedule in KRS Chapter 64 may be set at a higher level if the salary does not exceed the constitutional salary limit applicable to jailers. These jailers' salaries shall at least equal the prior year's level and may be adjusted by the fiscal court for the change in the prior year's consumer price index according to the provisions of KRS 64.527.

It is uncontested that Middleton qualifies as a jailer who is not subject to any salary schedule in KRS Chapter 64. It is undisputed that his predecessor's salary was \$30,547.97 per year. Boiled down, the disagreement between Middleton and the appellees regards the meaning of the requirement set forth in KRS 441.245(3) that "[t]hese jailers' salaries shall at least equal the prior year's level."

The appellees argue they had no obligation to pay Middleton a salary equal to or greater than what they paid the jailer during Tuggle's term because, in their view, KRS 441.245 does not prohibit reducing the salary of a jailer between terms. This is because, as they read it, "the prior year" as used in KRS 441.245(3) means "the prior year so long as that prior year was within the current term of office and not within a preceding term of office." In support, the appellees point out that jailers who operate full-service jails are, based upon decreases in county population, subject to salary reductions between terms. *See* KRS 64.5275(3).

They note that KRS 64.527<sup>3</sup> (as referenced in KRS 441.245(3)) is a codification of

---

<sup>3</sup> In full, KRS 64.527 provides:

In order to equate the compensation of jailers who do not operate full service jails, constables in counties having an urban-county form of government, justices of the peace, county commissioners, and coroners with the purchasing power of the dollar, the Department for Local Government shall compute by the second Friday

what is generally known as the “rubber dollar” doctrine, an exception to the constitutional prohibition of changing an elected official’s compensation mid-term,<sup>4</sup> and they urge that this reference strongly indicates the General Assembly intended for KRS 441.245(3)’s reference to “the prior year” to affect mid-term salary adjustments only, rather than between-term salary changes. The appellees also assert that their interpretation of KRS 441.245(3) avoids absurdity.

However, when interpreting the meaning of a statute,

[t]he cardinal rule of statutory construction is that the intention of the legislature should be ascertained and given effect. To determine legislative intent, we look first to the language in the statute, giving the words their plain and ordinary meaning. *Only when the plain meaning of the statute’s language is ambiguous do we depart from a strict reliance on the words of the legislature.* When such an ambiguity is present, we look to traditional rules of statutory construction to assist in determining the intent of the legislature. In using these

---

in February of every year the annual increase or decrease in the consumer price index of the preceding year by using 1949 as the base year in accordance with Section 246 of the Constitution of Kentucky which provides that the above elected officials shall be paid at a rate no greater than seven thousand two hundred dollars (\$7,200) per annum. The Department for Local Government shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled in accordance with the increase or decrease in the consumer price index. Upon notification from the Department for Local Government, the appropriate governing body may set the annual compensation of the above elected officials at a rate no greater than that stipulated by the Department for Local Government.

<sup>4</sup> Generally speaking, the “rubber dollar doctrine” permits a mid-term increased annual adjustment of an official’s salary based upon the principle that the dollar, as relates to constitutional officer compensation, as outlined by maximum level in § 246 of the Kentucky Constitution, is subject to purchasing power adjustment in terms of the evolving Consumer Price Index. See *Matthews v. Allen*, 360 S.W.2d 135 (Ky. 1962); *Commonwealth v. Hesch*, 395 S.W.2d 362 (Ky. 1965); see also Kentucky Attorney General Opinion (Ky. OAG) 82-348 (“the actual application of the rubber dollar concept requires specific statutory implementation by the General Assembly. That is precisely what [the General Assembly has] done in enacting KRS 64.527[.]”).

canons on statutory construction, we presume that the General Assembly intended for the statute to be construed as a whole, for all of its parts to have meaning, and for it to harmonize with related statutes. We are also mindful that we are to avoid absurd results in construing statutes.

*Pearce v. University of Louisville, by and through its Board of Trustees*, 448

S.W.3d 746, 763 (Ky. 2014) (internal quotations, citations, and footnotes removed; emphasis added).

Here, the appellees' interpretation of KRS 441.245(3) alters its plain meaning by adding words to qualify "the prior year." This Court rejected a similar interpretation of a previous incarnation of KRS 441.245, which was advanced by the Clinton County Fiscal Court in *Wallace*, 973 S.W.2d 485. There, the now-repealed subsections (4) and (5) of KRS 441.245 were at issue, which provided:

(4) Except as provided in subsection (5) of this section, the jailer's compensation for 1983 and subsequent years shall equal *the prior year's* compensation and may be adjusted by the fiscal court for the change in the prior year's consumer price index.

(5) Effective January 6, 1986, the salary for jailers in any county where there is no jail and the jailer does not transport prisoners shall be twelve thousand dollars (\$12,000) per year.

(Emphasis added.)

As noted in *Wallace*, the Clinton Fiscal Court believed in that matter that it was authorized to reduce the Clinton County Jailer's salary between elective terms; accordingly, on May 27, 1993 (approximately six months prior to the election date for the jailer and seven months prior to when the appellant jailer took



office), the Fiscal Court reduced the jailer's salary from \$26,600 to \$15,000. A declaratory action was filed in Clinton Circuit Court regarding the Fiscal Court's reduction in the jailer's salary, and the circuit court found no impropriety.

Thereafter this Court vacated the circuit court's ruling, explaining:

A closer question is whether the alteration of the salary to \$15,000 occurring on May 27, 1993, was indeed a legal reduction. We fully agree with the observation made by the trial court early in its opinion and order: "Because of the confusing statutes and state constitutional provisions, the matter is not as simple as it seemingly should be."

On its face, KRS 441.245(4) mandatorily directs that 1983 was the "bellwether" year to determine a jailer's salary. There is neither equivocation nor ambiguity in the language dictating that whatever sum was the jailer's salary in 1983 should continue thereafter—with the only change permitted consisting of an upward escalation to allow for inflation in reference to the consumer price index. Regardless of political motives perhaps intimated by the timing in the salary reduction on May 27, 1993 (two days after the appellant's victory in the primary election), the undisputed fact remains that the fiscal court had no legitimate basis for cutting the salary. The only decrease is provided at subsection (5) of the statute:

Effective January 6, 1986, the salary for jailers in any county where there is no jail and the jailer does not transport prisoners shall be twelve thousand dollars (\$12,000) per year.

In this case, the jail had not been eliminated as of the date of the initial salary reduction; it remained in existence during the early portion of appellant's term of office. We hold that the fact that the jail was eliminated during the jailer's term of office did not entitle the fiscal court to lower his salary. We agree that the \$12,000 salary set by KRS 441.245(5) would govern the term of office of the next jailer. However, KRS 441.245(4), when

harmonized with Section 161 of the Kentucky Constitution, forbids the salary reduction that occurred in this case.

The compensation of any city, county, town or municipal officer shall not be changed after his election or appointment, or during his term of office; nor shall the term of any such officer be extended beyond the period for which he may have been elected or appointed.

Kentucky Constitution, § 161. Thus, even though his duties as jailer were modified after he assumed office, appellant's compensation could not be reduced during his tenure.

*Wallace*, 973 S.W.2d at 487.

Two points addressed in *Wallace* bear repeating. First, this Court found nothing ambiguous or equivocal about the now-repealed language of KRS 441.245(4): the words, “the jailer’s compensation for 1983 and subsequent years shall equal *the prior year’s* compensation and may be adjusted by the fiscal court for the change in the prior year’s consumer price index,” as stated in that provision (emphasis added), meant “that whatever sum was the jailer’s salary in 1983 should continue thereafter—with the only change permitted consisting of an upward escalation to allow for inflation in reference to the consumer price index.” *Id.* As applied, this meant the appellant jailer in *Wallace* was entitled, in 1994, to at least the same salary the previous jailer had received *during a prior term* in 1993. *Id.*

Second, it was noted that the only basis for decreasing a jailor’s salary between terms was provided in subsection (5) of KRS 441.245 (*i.e.*, a specific

reduction of a jailer's salary to \$12,000 "where there is no jail and the jailer does not transport prisoners. . . ."). *Id.* In the current version of KRS 441.245, that basis no longer exists.

With this in mind, we return to the directive in KRS 441.245(3) at issue in this case:

. . . These jailers' salaries shall at least equal the prior year's level and may be adjusted by the fiscal court for the change in the prior year's consumer price index according to the provisions of KRS 64.527.

Here, the plain meaning of this phrase is inescapable. To paraphrase the *Wallace* court, whatever sum was the jailer's salary the prior year should continue thereafter—with the only change permitted consisting of an upward escalation to allow for inflation in reference to the consumer price index.

Furthermore, even if "the prior year" could be considered a latently ambiguous phrase (and it is not), it is the same phrase this court interpreted in *Wallace* to mean *the prior year*—not, as urged by Garrard County, "the prior year so long as that prior year was within the current term of office and not within a preceding term of office." And, by including this same language in the current version of KRS 441.245(3), the General Assembly is presumed to have intended for the same meaning to apply. "A universally accepted rule of statutory construction is that the General Assembly is presumed to know the status of the law and the constructions placed on it by the courts." *Butler v. Groce*, 880 S.W.3d 547, 550 (Ky. 1994), J. Lambert dissenting (citing *Baker v. White*, 251 Ky. 691, 65

S.W.2d 1022 (1933); *Commonwealth, Dept. of Banking & Secur. v. Brown*, 605 S.W.2d 497 (Ky. 1980)).

Courts construe statutes; we do not rewrite them. Thus, in light of the absence of any other authority addressing the salary of a jailer tasked with transportation responsibilities but who does not operate a full-service jail, we are constrained by the patent language used by the General Assembly, regardless of whether we like the outcome.<sup>5</sup> Therefore, the circuit court is reversed in this respect.

Lastly, Middleton asserts that the circuit court should have exercised its inherent equitable powers by directing Garrard County to pay his attorney's fees in this matter, and he argues that the circuit court's refusal to do so constituted an abuse of discretion. However, as the Kentucky Supreme Court recently explained:

If courts truly had equitable or inherent powers as broad as those assumed by [Middleton], the American Rule regarding attorney's fees as costs would be obliterated. . . . [R]easonable minds can differ widely on what is "equitable." Without reasonable limits on the court's powers, the authority of the other branches of government could be indiscriminately invaded. Power is given to the legislature to grant attorney's fees by statute. The parties may contract in advance of litigation to pay attorney's fees should litigation occur. The court may protect the integrity of the court by an attorney's fee sanction. But trial courts may not award attorney's fees just because they think it is the right thing to do in a given case. That is not what the law of Kentucky allows,

---

<sup>5</sup> The General Assembly has recently taken action to amend KRS 441.245 for the specific purpose of removing the requirement, as it appears in subsection (3), that the jailer's compensation must be equal to the prior year's compensation. See Ky. Legislative Research Comm'n, Local Mandate Fiscal Impact Estimate, SB 184, available at <http://www.lrc.ky.gov/record/15rs/SB184/LM.doc>.

and their inherent powers do not extend beyond stated law. In other words, a trial court may not ignore the law and apply its will, no matter how sound it believes the reason to be. This obviously would create legal chaos.

*Bell v. Com., Cabinet for Health and Family Services, Dept. for Community Based Services*, 423 S.W.3d 742, 750 (Ky. 2014).

Here, Middleton's argument is simply that an award of attorney's fees would have been the right thing to do in this case. No statute or contract entitled Middleton to an award of attorney's fees. Middleton does not argue that such an award would have protected the integrity of the circuit court below. Consequently, there is no justifiable basis for such an award. The circuit court is, accordingly, affirmed in this respect.

### **CONCLUSION**

In sum, we AFFIRM that Middleton was entitled to a salary of \$30,547.97 for his service as Garrard County's jailer during the period of his appointment. We REVERSE to the extent that the circuit court held Middleton was not also entitled to that salary for the duration of his elected term according to the plain meaning of KRS 441.245(3), and REMAND for a recalculation of Middleton's award that is not inconsistent with this opinion. Lastly, we AFFIRM the circuit court's decision to deny Middleton an award of attorney's fees.

ALL CONCUR.

BRIEF FOR APPELLANT/CROSS-  
APPELLEE:

Gerry L. Calvert, II  
Lexington, Kentucky

BRIEF FOR APPELLEES/CROSS-  
APPELLANTS:

Jonathan L. Gay  
Erica K. Mack  
Litany L. Webster  
Lexington, Kentucky