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SUPREME COURT OF ARKANSAS

No. 12-603

SEARCY COUNTY COUNSEL FOR ETHICAL GOVERNMENT APPELLANT	**Opinion Delivered** February 28, 2013
V.	APPEAL FROM THE SEARCY COUNTY CIRCUIT COURT [NO. CV:2008-71]
JOHNNY HINCHEY, COUNTY JUDGE, SEARCY COUNTY APPELLEE	HONORABLE JOHN B. PLEGGE, SPECIAL JUDGE AFFIRMED.

PAUL E. DANIELSON, Justice

Appellant Searcy County Counsel for Ethical Government, an unincorporated association of Searcy County taxpayers (hereinafter "SCCEG"), appeals from the order of the Searcy County Circuit Court granting the motion for summary judgment of appellee Johnny Hinchey, County Judge, Searcy County, and finding that Judge Hinchey complied with the procedures set forth in Arkansas Code Annotated § 14-16-106(c) (Supp. 2007) when he sold a gravel crusher belonging to the county. SCCEG's sole point on appeal is that the circuit court erred in finding as a matter of law that the property at issue was subject to sale under the statute and that Judge Hinchey complied with the requirements thereof. We affirm the circuit court's order.

On September 15, 2008, SCCEG filed its complaint seeking a declaratory judgment that Judge Hinchey neglected his duties of office when he failed to sell and convey a county-

owned gravel crusher pursuant to the terms of Ark. Code Ann. § 14-16-105 (Supp. 2007).[1] SCCEG asserted that, because of Judge Hinchey's failure to comply with the statute, the sale of the crusher was null and void, and the county was entitled to immediate possession thereof.

Judge Hinchey answered, asserting that the crusher had been determined to have no value to the county and was sold in accordance with the procedures of Ark. Code Ann. § 14-16-106(c). He stated that the decision to sell the crusher for scrap was made after discussing the matter with the county assessor, who valued the crusher at $10,000 and appraised it as surplus and scrap. Judge Hinchey maintained that he authorized the sale of the crusher "as the manner most beneficial to the citizens for disposal of the discarded crusher" and that he did so in good faith. Attached to Judge Hinchey's answer were several exhibits, including statements from several Searcy County employees, as well as a statement by the county assessor.

On July 13, 2010, Judge Hinchey filed a motion for summary judgment, in which he asserted that the gravel crusher at issue had been disabled and out of service for "many years" prior to his taking office. He stated that he conferred with the county assessor, in accord with section 14-16-106(c), and they agreed that the crusher was "junk and should be sold for scrap." He further asserted that the county assessor had determined the scrap value of the crusher, if recycled, to be $10,000 and that he subsequently obtained a bid for the crusher of $10,000, which did not require Searcy County to incur any transportation costs. Based on

[1]The complaint also named as a defendant Opal Aday, a survivor of an estate by the entirety with Clifford Aday, deceased. The complaint alleged that the Adays had purchased the crusher from Searcy County.

these facts, Judge Hinchey contended, summary judgment should be granted and SCCEG's complaint should be dismissed. SCCEG responded to the motion, asserting that the crusher was not surplus property and that, prior to the filing of its action, the crusher was never identified as junk or scrap by either the county judge or the county assessor, which was required by section 14-16-106(c)(1). It maintained that the sole appraisal of the crusher by the county assessor failed to identify the machine as junk or salvage and therefore did not comport with the statute.

After having considered the pleadings, motions, response, and reply, the circuit court issued its order granting Judge Hinchey's summary-judgment motion. The court reasoned:

> At issue is a piece of equipment that was abandoned and no longer used by the County after the quarry closed in 2005. There is ample evidence in the record that the crusher was in poor condition, occupying space and was junk. Both the County Judge and the Assessor made this determination. Plaintiffs have put forth no evidence to refute this. Because the crusher is junk, it is subject to sale under A.C.A. § 14-16-106(c). It appears from the record that the Defendant, Hinchey, complied with the section of the sale of the crusher. Summary Judgment is therefore appropriate and Plaintiffs' Complaint is hereby and herewith Dismissed with Prejudice.

SCCEG filed a timely notice of appeal, and we accepted certification of the case from the court of appeals. We, however, dismissed the appeal without prejudice after finding the circuit court's order not to be a final, appealable order in that it failed to dispose of the claim against Aday. *See Searcy Cnty. Counsel for Ethical Gov't v. Hinchey*, 2011 Ark. 533. SCCEG subsequently moved to voluntarily nonsuit its complaint against Aday, and the circuit court granted the motion. SCCEG filed a timely notice of appeal from the circuit court's orders, and it now appeals.

For its sole point on appeal, SCCEG argues that the circuit court erred in finding that

section 14-16-106(c) was the relevant and applicable section to the sale of the crusher because, it contends, the crusher was not determined to be junk or scrap such that the statute would apply. It avers that because the crusher had value, namely a value of $10,000, it was required to be sold under the procedures set forth in section 14-16-105, rather than section 14-16-106, which pertains to property "otherwise of no value to the county." It further contends that even if the property had been determined to be junk or scrap such that section 14-16-106(c) would apply, the circuit court erred in granting summary judgment because Judge Hinchey did not first comply with the provisions of Ark. Code Ann. § 14-16-105. SCCEG urges that the provision for appraisal in section 14-16-105 must be used in conjunction with section 14-16-106 when dealing with surplus property, because otherwise, the property could be sold without providing the public a description of the property, the basis for the sale, and a statement of the property's fair-market value.[2]

Judge Hinchey counters that there are two statutes governing the sale of county property: (1) section 14-16-105, which applies to the sale of county property generally, and (2) section 14-16-106, which applies specifically to surplus property and property determined by the county judge and county assessor to be "junk, scrap, discarded, or otherwise of no value to the county." He maintains that the former, general statute must yield to the latter,

[2]SCCEG also argues that even if the sale was determined appropriate under section 14-16-106(c), the sale was void based on Judge Hinchey's failure to report the sale to the quorum court pursuant to section 14-16-106(c)(2), and the county court's failure to enter an order approving the sale, as required by section 14-16-106(f) (Supp. 2011); however, a review of the record reveals that this argument was not raised by SCCEG to the circuit court, nor did SCCEG obtain a ruling on it. It is therefore not preserved for our review. *See, e.g.*, *Advance Am. Serv. of Ark., Inc. v. McGinnis*, 375 Ark. 24, 289 S.W.3d 37 (2008).

specific statute, and that the latter is the applicable statute in the instant case. He contends that both he and the county assessor determined that the crusher at issue was junk or scrap and that the circuit court did not err in granting his motion for summary judgment.

The law is well settled that summary judgment is to be granted by a circuit court only when it is clear that there are no genuine issues of material fact to be litigated, and the party is entitled to judgment as a matter of law. *See Campbell v. Asbury Auto., Inc.*, 2011 Ark. 157, 381 S.W.3d 21. Once the moving party has established a prima facie entitlement to summary judgment, the opposing party must meet proof with proof and demonstrate the existence of a material issue of fact. *See id.* On appellate review, we determine if summary judgment was appropriate based on whether the evidentiary items presented by the moving party in support of the motion leave a material fact unanswered. *See id.* We view the evidence in the light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party. *See id.* Our review focuses not only on the pleadings, but also on the affidavits and documents filed by the parties. *See id.* At issue here is whether the circuit court erred in finding that the sale of the gravel crusher comported with the requirements of Ark. Code Ann. § 14-16-106(c) such that the grant of summary judgment was proper.

Section 14-16-106(c)(1) provides, in relevant part, that "[i]f it is determined by the county judge and the county assessor that any personal property owned by a county is junk, scrap, discarded, *or* otherwise of no value to the county, then the property may be disposed of in any manner deemed appropriate by the county judge." (Emphasis added.) Here,

SCCEG argues that the gravel crusher was not determined to be "junk, scrap, discarded, or otherwise of no value to the county" in accord with the statute. However, the record reflects a July 5, 2007 appraisal of the crusher by the county assessor, in which he deemed the property "bearing out" and "in-operable."[3] In addition, Judge Hinchey, in his notarized affidavit, stated,

> I was advised by several of the employees of the Searcy County Road Department that the gravel crusher was junk and should be sold for scrap, because parts were not available and the cost of repair would exceed the value of the gravel crusher after it had been repaired. I consulted with Mr. Niagle Ratchford, the Searcy County Assessor, who agreed with me that the gravel crusher was junk or scrap.

In light of the county assessor's description of the crusher and Judge Hinchey's affidavit, it is clear to this court that there was a determination by the county judge and the county assessor that the crusher was "junk, scrap, discarded, or otherwise of no value."

SCCEG also argues that even if the gravel crusher was properly determined to be junk under section 14-16-106(c), the sale of the crusher was void because Judge Hinchey did not first comply with the procedures set forth in Ark. Code Ann. § 14-16-105. We review issues of statutory construction de novo. *See Brock v. Townsell*, 2009 Ark. 224, 309 S.W.3d 179. It is for this court to decide what a statute means, and we are not bound by the circuit court's interpretation. *See id.* The basic rule of statutory construction is to give effect to the intent of the General Assembly. *See id.* In determining the meaning of a statute, the first rule is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in

[3]The appraisal and description of the property by the county assessor was filed July 10, 2007, and the crusher was sold on August 23, 2007.

common language. *See id*. Our court construes the statute so that no word is left void, superfluous, or insignificant, and meaning and effect are given to every word in the statute if possible. *See id*. When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to resort to the rules of statutory construction. *See id*. However, we will not give statutes a literal interpretation if it leads to absurd consequences that are contrary to legislative intent. *See id*. We will accept a circuit court's interpretation of the law unless it is shown that the court's interpretation was in error. *See id*. Our court seeks to reconcile statutory provisions to make them consistent, harmonious, and sensible. *See id*.

Section 14-16-105 indeed sets forth the appraisal, notice, and bidding procedures for the sale of county property generally, and we have long held that one of the clear purposes of Act 193 of 1945, now codified as section 14-16-105, "was *to make public all dispositions* a county might make of its property." *State, Use Miller County v. Eason*, 219 Ark. 36, 42, 240 S.W.2d 36, 40 (1951) (emphasis in original). That being said, by Act 41 of 1980, § 1, now codified as section 14-16-106(a),(b), the General Assembly established a separate provision and procedure for the sale of surplus property by a county, which contained its own notice and bidding procedures. Additionally, in 2005, the General Assembly amended section 14-16-106 to provide yet another procedure for county property determined to be "junk, scrap, discarded, or otherwise of no value to the county." Act 725 of 2005, § 1.

The question then is this: Do the provisions of section 14-16-105 for sales of county property generally also apply to sales or disposal of surplus property under section 14-16-106?

The simple answer is no. While cognizant of subsection (f)(1)(A) of section 14-16-105, which states that "[a]ny sale or conveyance of real or personal property belonging to any county not made pursuant to the terms of this section shall be null and void," this court has been resolute that a general statute must yield to a specific statute involving a particular subject matter. *See Bakalekos v. Furlow*, 2011 Ark. 505, 385 S.W.3d 810. Moreover, Act 41 of 1980 makes clear that the purpose behind section 14-16-106 was to enable counties to sell surplus property by public auction, which would likely result in the county receiving the highest sale price. *See* Act 41 of 1980, § 3. What this emergency clause tells us is that section 14-16-106 was enacted as a separate and distinct procedure from that already available to counties under section 14-16-105. Moreover, had the General Assembly intended for the provisions of section 14-16-105 to apply to sales or disposal of "junk, scrap, discarded [property], or [property] otherwise of no value to the county," it could have amended section 14-16-105 to include the sales or disposal of such property, rather than amending the separate section 14-16-106 to so provide. Accordingly, we cannot say that the General Assembly intended that the provisions of section 14-16-105 were also applicable to the sale or disposal of surplus county property under section 14-16-106.

For the foregoing reasons, we hold that the circuit court did not err in granting Judge Hinchey's motion for summary judgment, and we affirm the circuit court's order.

Affirmed.

Patterson Law Firm, by: *Jerry D. Patterson*, for appellant.

Davis Law Firm, by: *Steven B. Davis*, for appellee.