

RENDERED: JULY 25, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000570-MR

THOMAS ENVIRONMENTAL CONTRACTING

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 06-CI-01173

BOYD FISCAL COURT

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, LAMBERT, AND STUMBO, JUDGES.

STUMBO, JUDGE: This is an appeal of an order granting a declaratory judgment which deemed Thomas Environmental Contracting (hereinafter Appellant) legally ineligible to be awarded a contract for the construction of a pump station for the Boyd County sanitary sewer system expansion. At issue is a Boyd County Fiscal Court (hereinafter Appellee) ordinance which states “[u]nless prohibited or

otherwise inconsistent with law, no contract for construction shall be awarded to any bidder who is not a participant in an accredited apprenticeship training program as defined under KRS Chapter 343.” Ordinance No. 149-98. KRS 343.060 provides that an apprenticeship program is not in affect until approved by the Supervisor of apprenticeship training appointed by the Executive Director of the Apprenticeship and Training Council. See KRS 343.020-030.

Appellant first contends that the apprenticeship program does not have to be in place at the time of the bid, only before the awarding of the contract. Appellee responds that whether or not the program must be in place before the bid is irrelevant because Appellant’s program was not in place before the awarding of the contract. The trial court held that because Appellant’s apprenticeship program was not in place before the contract was awarded, it was not an eligible bidder. We agree.

On August 28, 2006, Appellee opened up bidding for a contract for the construction of a pump station for a sewer system expansion project. Appellant submitted the lowest bid and was so advised on September 1, 2006. Appellant admits that it was also advised on that day that it needed to have an accredited apprenticeship program in order to be awarded the contract.

On October 3, 2006, at its regular meeting, Appellee awarded the contract to Appellant. When notified of the award, Appellee submitted an application for approval of its apprenticeship training program to the

Apprenticeship and Training Council. The program was approved by the Supervisor two days later.

Appellee, having been advised that the necessary approval had not been timely obtained, advised Appellant it would not receive the contract on October 6, 2006. This declaratory action was filed thereafter.

Appellee contended below and repeats here that its failure to have the necessary approval is not fatal to receipt of the contract because it was misled by Appellees' engineer, Thomas Reed, who advised Appellee that he had "plenty of time to deal with the apprenticeship Program" and that the fiscal court did not want to award the contract until the next month. Appellee contends that it relied to its detriment upon this representation. Further Appellant argues that the trial court erroneously ruled without permitting the introduction of further evidence on this issue.

On January 29, 2007, the Boyd Circuit Court entered an opinion in which it held that under the ordinance, the apprenticeship program must be in place in order for a party to be an eligible bidder in the first place. Additionally it held that Appellant's program was not in place until October 5, 2006, which would be too late even if the court interpreted the ordinance in accordance with Appellant's theory.

Appellant then filed a motion to vacate, alter and reconsider on February 12, 2007. It was overruled and this appeal followed.

After reviewing the record and case law, we affirm the trial court's declaratory judgment. Notwithstanding the trial court's holding that a bidder must have the apprentice program in place before he can be an eligible bidder, we find the secondary holding to be dispositive of the issue.

Regardless of the trial court's interpretation of the ordinance, even if we agree with Appellant that the apprentice program only needed to be in place by the time the contract was awarded, it still cannot prevail. The contract was awarded on October 3, 2006, but the apprentice program was not approved and in place until October 5, 2006. The ordinance states that a bidder must be a participant in an "accredited training program" in order for the contract to be awarded. Even though it was only two days late, Appellant did not comply with the ordinance requirement in time. In regard to Appellant's contention that the court erred in ruling without the taking of further proof, we note that when the trial court extended the briefing schedule "to allow counsel for the parties to interview or otherwise depose state officials," Appellee neither objected nor requested further time to complete its proof.

Accordingly we affirm the trial court's decision and find Appellant was ineligible to be awarded the construction contract.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT
FOR APPELLANT:

James W. Lyon, Jr.
Greenup, Kentucky

BRIEF FOR APPELLEE:

Phillip Bruce Leslie
Greenup, Kentucky

ORAL ARGUMENT FOR
APPELLEE:

Shauna Rhodes
Greenup, Kentucky