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Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001507-MR
AND
NO. 2009-CA-001589-MR

TIMOTHY NOLAN AND
JULIA NOLAN

APPELLANTS/CROSS-APPELLEES

APPEAL AND CROSS-APPEAL FROM CAMPBELL CIRCUIT COURT
v. HONORABLE ROGER L. CRITTENDEN, SPECIAL JUDGE
ACTION NO. 08-CI-01308

CAMPBELL COUNTY FISCAL COURT;
CAMPBELL COUNTY PROPERTY
ADMINISTRATOR, DANIEL BRAUN;
CAMPBELL COUNTY SHERIFF, JOHN
DUNN; CAMPBELL COUNTY CLERK,
JACK SNODGRASS; CAMPBELL
COUNTY JUDGE-EXECUTIVE,
STEVE PENDERY; COMMISSIONER
MARK HAYDEN; COMMISSIONER
KENNETH RECHTIN; AND
COMMISSIONER DAVID OTTO

APPELLEES/CROSS-APPELLANTS

OPINION
REVERSING IN PART AND
AFFIRMING IN PART

** ** ** ** **

BEFORE: ACREE AND NICKELL, JUDGES; HARRIS,¹ SENIOR JUDGE.

ACREE, JUDGE: The Appellants, Timothy and Julia Nolan, seek reversal of the Campbell Circuit Court's order granting partial summary judgment to the Appellees, the Campbell County Fiscal Court and other Campbell County officials (hereinafter referred to collectively as the "Fiscal Court"). The Nolans allege that the circuit court erred when it declined to order the offices of the Campbell County Clerk, Property Valuation Administrator (PVA), and Sheriff to be located solely in Alexandria, Kentucky, at the Alexandria Courthouse. In addition to requesting that this court order those offices to be located in Alexandria, they also insist that the Campbell County Courthouse must be located in Alexandria. The Nolans also ask this court to find that the Fiscal Court may not spend funds collected via the court fee tax. Further, they aver that ordinances adopted by the Fiscal Court are void because notice regarding the ordinances was insufficient and the ordinances were improperly drafted. However, the Nolans agree with the circuit court's conclusion that Alexandria is the county seat of Campbell County. The Fiscal Court cross-appeals on this issue asserting that Newport is also a county seat. We affirm the circuit court's decision to dismiss the Nolans' claims and reverse the court's determination that Newport is not a county seat.

¹ Senior Judge William R. Harris concurred in this opinion prior to the expiration of his term of Senior Judge service on October 19, 2010. Release of this opinion was delayed by administrative handling.

To best address the parties' arguments, we must first consider the history of Campbell County.

In 1795 James Taylor, Sr., conveyed a tract of land in Newport 'known as the public square,' to the justices of the peace of Campbell county [sic] and their successors, upon condition that Newport should be the county seat and the land used for public buildings. The county seat was then located in Newport.

Comm'rs for Courthouse Dist. of Campbell County v. City of Newport, 29 Ky. L. Rptr. 649, 94 S.W. 629, 629 (1906). A courthouse was built in Newport and housed the county government until 1815, when a new courthouse was built in the same location.

However, in the December Session of 1839, the General Assembly passed an act creating Kenton County from land, part of which, was formerly located in Campbell County. (1840 Kentucky Acts [Ky. Acts] ch. 175, §§ 881-89). The 1840 Act also required appointed commissioners to locate the county seats for Campbell and Kenton County. *Id.* at § 4. The commissioners were not permitted to select any community as a county seat but were mandated to locate the seat as close to the center of the county "as the face of the country" would permit. *Id.* at § 1. As a result of the 1840 Act, Alexandria was named a county seat. *Comm'rs for Courthouse Dist. of Campbell County*, 94 S.W. at 629 (1906).

After identifying Alexandria as a county seat, the General Assembly passed numerous acts ensuring that certain government functions would occur in Newport:

The county seat at Alexandria being inconvenient to the people of Newport and adjacent towns, the Legislature, by the act of February 27, 1856 (Acts 1855-56, p. 41, c. 204), December 19, 1857 (Acts 1857-58, p. 3, c. 6), February 21, 1863 (Acts 1861-63, p. 491, c. 875), and February 26, 1863 (Acts 1861-63, p. 495, c. 880), provided that the circuit judge and county judge should hold their courts, and the clerks thereof, respectively, have their offices in the city of Newport at such place as that city might provide; that the city pay the expenses of holding courts there and provide the necessary offices.

Id. Under the acts, the city of Newport provided and maintained suitable buildings for these purposes. *Id.* However,

the Legislature, by acts of April 17, 1882 (Acts 1881-82, p. 569, c. 1107) and March 13, 1886 (Acts 1885-86, p. 667, c. 232), known as the “Courthouse Acts,” created a district of a part of the county known as the “Courthouse District,” for the purpose of building and maintaining a new courthouse on the public square of Newport for the use of the courts and officers of the county, to issue bonds for such purposes, to pay certain county governmental expenses incurred in the district, and to levy taxes for payment of same.

Id. As a result of these acts and additional “Courthouse Acts” passed thereafter, the county government conducts business both in Newport and in Alexandria. Over time, the state court system transitioned all of its operations to facilities in Newport.²

Several years ago, Campbell County devised a plan to move the Campbell County Clerk, County Sheriff, and Property Valuation Administrator out of the Campbell County Courthouse in Newport, and to consolidate them with other

² The location of Kentucky Court of Justice facilities is not at issue in this case and is governed by KRS Chapter 26.

county offices into a single building devoted to county administration.

Construction on a new county administration building began in 2008.

Soon after, House Bill 103 (2008) was prefiled in the Kentucky General Assembly. The legislative history of the bill, enacted as Kentucky Acts 2008, ch. 27 §1 (hereafter H.B.103) can be found most readily at <http://www.lrc.ky.gov/record/08rs/HB103.htm>. As prefiled, the bill would have repealed the Courthouse Acts. However, as its history indicates, the legislature amended the bill, removing language that would have repealed the Courthouse Acts, choosing instead to allow only the taxing authority contained in those Acts to sunset with passage of H.B.103. As enacted, and in addition to revoking any taxing authority afforded the courthouse commission, the legislation removed the requirement that the Courthouse District provide offices for city and county officials. *Id.*

Pursuant to H.B. 103, then, the commissioners are no longer required to provide free space for the county and city. H.B. 103 did not remove the requirement that certain functions of the county continue to take place in Newport, nor did it prohibit the courthouse district from providing space for the city or county.

With this history in mind, we turn to the issues presented in this case. The Nolans seek injunctive relief and mandamus ordering the County Clerk, Sheriff, and PVA to be located at the county seat in Alexandria, Kentucky, and vacated from the Fiscal Court Administration Building in Newport. Indeed, they assert that

these offices must be located in the historic Alexandria Courthouse. Further they ask this court to determine

A) Whether Campbell County Fiscal Court's ordinances were improperly drafted, summarized, reviewed and advertised; thereby rendering all ordinances from January 1999 to the present null, void and of no effect. The Campbell County Fiscal Court made no effort to comply with KRS 67.075, KRS 67.077, KRS 67.090 and Chapter 424 of the KRS requiring the drafting and advertising of all ordinances be in statutory compliance;

B) Whether the Fiscal Court conducts improper illegal meeting [sic] not properly advertised outside the county seat, and a determination of the consequences of said improper notice of meetings and thereby the validity of the ordinances;

C) Whether the Fiscal Court is improperly collecting taxes and fees; whether the County officials are liable for their actions; [and]

D) Whether Appellants are entitled to court costs and attorney fees.

(Appellants' Brief at I).

The circuit court determined that Alexandria and not Newport is the county seat, but granted summary judgment in favor of the Fiscal Court on each of the other issues. We review the circuit court's grants of summary judgment *de novo*. *Deaton v. Connecticut General Life Ins. Co.*, 17 S.W. 3d 896, 898 (Ky. App. 2000).

The Nolans' arguments rely on the assumption that Newport is not a county seat. Thus, the central issue that must be addressed in this case is where the county seat of Campbell County is located. At the outset, we note that although the term

“county seat” is used in several statutes, it is not defined. *See, e.g.*, KRS 132.410, KRS 67.035. Prior to the adoption of Section 59 of the Kentucky Constitution (Ky. Const.) in 1891, the General Assembly had the power to remove a county seat. *See Hall v. Marshall*, 4 Ky. L. Rptr. 502, 80 Ky. 552 (1882). After 1891, the power to remove a county seat was vested in the people. Ky. Const. § 64. Because there is no indication that a vote of the people moved the county seat from Alexandria to Newport after 1891, we must consider if an act of the General Assembly prior to 1891 affected the location, or locations, of the county seat.

While we agree with the circuit court that no action has resulted in the removal of the county seat from Alexandria to Newport, Newport appears to this Court to have become a county seat in addition to Alexandria. Because there is no statutory definition for “county seat” we must consider its ordinary meaning. In doing so, it becomes clear that the location of county seats prior to 1891 must be determined by considering the location where county officials performed their duties, as appears to have been the practice then, and even now.³

The term “county seat” is not rigidly defined. Webster’s indicates that a “county seat” is “the town that is the seat of county administration.” *Retrieved from <http://www.merriam-webster.com/dictionary/county%20seat>*. “[T]he words ‘county seat’ are often used to designate the courthouse, jail, and other public buildings belonging to the county, and are used in this sense in the Constitution when it provides for the removal of the county seat, and are also so used in some

³ Footnote 4, *infra*.

statutes.” *City of Middlesborough v. City of Pineville*, 30 Ky. L. Rptr. 331, 98 S.W. 298, 299 (Ky. 1906). The term “county seat” is also defined as “the town or city in which the seat of a county government is located, where the county court and other courts are held, and where the county officers perform their duties and functions.” 20 C.J.S. *Counties* § 75.

In Campbell County, Newport was regarded as the county seat until 1840 and the duties and functions of county government have been performed there since the late 1700s. While the political underpinnings of the establishment of Alexandria as a county seat are irrelevant here, it is sufficient to note that the 1840 decision was not based upon a referendum. However, the river town of Newport remained a hub of commerce and government as evinced by the General Assembly’s adoption of the Courthouse Acts.

While the Courthouse Acts did not expressly indicate that the General Assembly intended Newport to replace Alexandria as the county seat, we cannot ignore the obvious intention that county business be conducted both in Newport and in Alexandria. The Courthouse Acts expressly require such activities to occur in both towns. Specifically, the Acts require that the county judge and clerks thereof hold an office in Newport. *See Comm’rs for Courthouse Dist. of Campbell County*, 94 S.W. at 629. Considered in context of the ordinary meaning of “county seat” as set forth above, the Courthouse Acts and the government activities that had occurred in Newport for decades preceding the adoption of our current constitution provide a sufficient basis upon which to conclude that the

legislature intended Newport, as well as Alexandria, to serve as a county seat prior to 1891. Indeed this court is not alone in reaching the conclusion that Newport is today one of Campbell County's "county seats."⁴

Currently in Campbell County, county business is carried out in both Newport and Alexandria. Indeed, the county is required to conduct certain activities in both places. The Courthouse Acts make clear which activities are required to be conducted in both locations and the acts were not repealed. Since the legislature consciously chose to refrain from repealing those acts, we are compelled to conclude that those activities must continue to occur in Newport.

Because Newport became a county seat before 1891, and because after that date the county's residents have not voted to eliminate either Newport or Alexandria as a county seat, the Nolans' arguments regarding the location of the clerk, sheriff, and PVA's office fail. The Nolans' remaining arguments are likewise unpersuasive.

As noted by the circuit court, pursuant to KRS 23A.220 and 24A.185, the Fiscal Court is authorized to collect "additional fees and costs for the purpose of paying expenses for courthouses, bonds related to them, and administration expenses." *Nolan v. Campbell County Fiscal Court*, No. 08-CI-01308 (Campbell

⁴ Kentucky's Land Office indicates that Newport is a county seat. Kentucky Secretary of State, Land Office, <http://apps.sos.ky.gov/land/cities/citydetail.asp?id=290&city=Newport&idctr=290>. Also, THE KENTUCKY BICENTENNIAL COMMISSION, THE KENTUCKY ENCYCLOPEDIA 680 (John E. Kleber et al. eds., University Press of Kentucky, 1992) available at <http://www.kyenc.org/entry/n/NEWPO01.html> indicates that Newport and Alexandria are both county seats. Likewise, the National Association of Counties lists Newport as a county seat of Campbell County. NAOC, <http://www.naco.org/research/data/Pages/CountySeats.aspx>; see also THE CLARK GROUP, THE KENTUCKY DIRECTORY, GOLD BOOK 396 (2009-2010 ed.) (identifying Newport as the county seat of Campbell County, Kentucky).

Circuit Ct., May 12, 2009)(Order granting partial summary judgment). The Nolans do not present any evidence that these funds have been used for an improper purpose. Further, the Fiscal Court has the discretion to use the funds for administration expenses and courthouse expenses which are not necessarily limited to the courthouse in Alexandria. As the circuit court noted, “[t]his issue is better left to the required audits of county expenditures.” *Id.* Like the circuit court, “[a]bsent some specific demonstration that the statutes are being violated, this Court does not intend to involve itself in micro-managing the affairs of local governments.” *Id.*

While the Nolans assert that the circuit court failed to consider the issue regarding whether ordinances were properly drafted, the circuit court, in fact, did declare such allegations speculative. On appeal, the Nolans fail to present any evidence that the ordinances were not properly drafted or that the county did not comply with the notice requirements of KRS 67.090 (1).

In January of 2007, the “Fiscal Court adopted Resolution R-01-07 . . . establishing the regular meetings for the Fiscal Court for the years 2007, 2008, 2009, and 2010 to be held on the first Wednesdays of the month at Alexandria and the third Wednesdays of the month in Newport.” *Nolan v. Campbell County Fiscal Court*, No. 08-CI-01308 (Campbell Circuit Ct., May 12, 2009) (Order granting partial summary judgment). This resolution was made in compliance with Chapter 880, Section 1 of the 1864 Acts which require the county court to meet twelve times annually in the City of Newport. The Nolans’ brief avers merely that

the county “may not have advertised the Resolution.” (Appellants’ Brief at 23).

However, they present no evidence to support this assertion. Furthermore, because we find Newport, like Alexandria, is a county seat, the additional requirement of publication is not required.

For the reasons stated above, the Fiscal Court must continue to conduct county activities in Newport, a Campbell County seat of government, as required by the Courthouse Acts. Those acts, passed at a time when the Legislature had the authority to move the county seat, evince the intention to create an additional county seat in Campbell County. Should the citizens of Campbell County be dissatisfied with this result, they now have the authority to vote on the issue and decide the matter for themselves. *See* Ky. Const. § 64.

The decision of the circuit court is reversed in part and affirmed in part.

HARRIS, SENIOR JUDGE, CONCURS.

NICKELL, JUDGE, DISSENTS IN PART AND FILES SEPARATE
OPINION.

NICKELL, JUDGE, DISSENTING IN PART: Respectfully, I would affirm the trial court’s grant of summary judgment that Alexandria is the county seat of Campbell County, insofar as the county was created by the General Assembly of Kentucky in 1795; the county seat, though originally located at Newport, was established at Alexandria pursuant to an act of the Kentucky Legislature in 1840; and there is no evidence that this designation of Alexandria as the county seat of Campbell County has ever been formally changed. Certainly, as noted by the

majority, the citizens of Campbell County do have authority to vote on the issue and decide the matter for themselves, but they have never done so. Ky. Const. § 64.

I do concur with the remainder of the majority opinion as it relates to the remaining issues. Based upon the legislative history specifically relating to Campbell County, it appears the General Assembly has carved out sufficient special allowances and/or exceptions which, together with other statutory law, authorize the actions taken by the Campbell County Fiscal Court. Therefore, I would likewise affirm the trial court's grant of summary judgment in favor of Campbell County on these remaining issues.

BRIEF AND ORAL ARGUMENT
FOR APPELLANTS AND CROSS-
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BRIEFS AND ORAL ARGUMENT
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