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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001550-MR

POWELL COUNTY SOIL AND
WATER CONSERVATION

APPELLANT

v. APPEAL FROM POWELL CIRCUIT COURT
HONORABLE FRANK ALLEN FLETCHER, JUDGE
ACTION NO. 10-CI-00001

POWELL COUNTY FISCAL COURT;
DARREN FARMER; SHIRLEY
CRABTREE; RICKY CREED;
JIM DENNIS; BOBBY GINTER; AND
BUD PARKS

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: DIXON, STUMBO AND VANMETER, JUDGES.

DIXON, JUDGE: Appellant, the Powell County Soil and Water Conservation

District, appeals from an order of the Powell Circuit Court granting summary

judgment in favor of the Powell County Fiscal Court. Finding no error, we affirm.

The Powell County Soil and Conservation District (“District”) is a governmental subdivision of the Commonwealth of Kentucky established pursuant to KRS 262.200. In accordance with the provisions of KRS 262.200(4), the District has, over the years, requested annual operating funds from the Powell County Fiscal Court. In prior years, the Fiscal Court appropriated \$12,500 to the District, with the remainder of the District’s budget funded by the Commonwealth. However, due to state budgetary cutbacks, funding from the Commonwealth has essentially been eliminated.

In March 2008, the District submitted a proposed budget request to the Fiscal Court of \$15,000 for the fiscal year beginning July 1, 2008. In March 2009, the District submitted a proposed budget request to the Fiscal Court of \$70,400 for the fiscal year beginning July 1, 2009.¹ Following the submission of the 2009 proposed budget, several members of the District’s board attended the regular meeting of the Fiscal Court and were met with stern opposition. The Fiscal Court took the position that the proposed budget represented a drastic increase in requested funds at a time when both state and local programs were experiencing severe cutbacks. The Fiscal Court made it clear that it would not budget any more than \$12,500 to the District. Subsequently, on September 10, 2009, the Powell County Attorney sent a letter on behalf of the Fiscal Court reiterating the comments made during the meeting and informing the District:

¹ Although after the filing of this action, in March 2010, the District again submitted a budget request of \$70,500 for the fiscal year beginning July 1, 2010.

[Y]our request . . . was unacceptable . . . While the Court understands the need for funding, the money is simply not there and the Court cannot justify any additional taxes on the citizens of the County . . . The Court would like an explanation in the proposed appropriations of the 09-10 Budget. Total appropriations appear to have increased 69.81% from the prior year. No government entity can withstand such an increase in these dire economic times.²

On January 4, 2010, the District filed a declaratory judgment action in the Powell Circuit Court seeking a determination as to whether the Fiscal Court had complied with its statutory obligations under KRS 262.200(4). Thereafter, on March 29, 2010, the District filed a motion for summary judgment. At a subsequent hearing on the motion, the parties agreed to mediate the dispute and the trial court entered an order accordingly. However, mediation was unsuccessful and the District re-noticed its motion for summary judgment.

At a hearing on June 9, 2010, counsel for both parties informed the trial court that they had reached a proposed settlement. The agreement, read into the record, provided that the Fiscal Court would pay the District \$20,000 for the 2009-2010 fiscal year and would approve the budget request of \$70,400 for the 2010-2011 fiscal year. Notably, it does not appear from the record that any fiscal court members were in attendance during the hearing. Subsequently, the Fiscal Court in its next session refused to approve the proposed settlement agreement. The District thereafter filed a motion to compel enforcement of the agreement. In a

² We would note that the quoted excerpt is taken from the District's reply brief in this Court. Although the District states that the county attorney's letter is attached as Exhibit 8 to a joint affidavit filed below, no such exhibit is found in the record.

judgment rendered August 10, 2010, the trial court ruled that it was without authority to order the Fiscal Court to comply with the proposed agreement:

It would seem that the Judiciary, due to the separation of powers clause of the US Constitution and KY Constitution, cannot and should not invade the province of the discretion of the Powell Fiscal Court. To do so, would violate longstanding, firmly and deeply ingrained US and KY Constitutional principles.

The District now appeals to this Court as a matter of right.

The District first argues that it was entitled to summary judgment because the Fiscal Court failed to follow the procedure set forth in KRS 262.200(4).

Specifically, the statute provides:

(4) The board may request annual operating funds from the fiscal court. To support the request, the board shall present to the fiscal court a report of the previous year's operation, a long range plan for natural resource development, and an annual plan of work. Should a fiscal court fail to approve a requested budget, it shall present a specific list of objections and suggested corrections to the board in writing and within a reasonable time. If a budget request is not approved, the board may submit a revised budget request. Funds for an approved budget shall be supplied either from general funds or from the levy of a millage tax on all real property within the boundaries of the county. The tax shall be collected in the same manner as other county taxes, and shall be credited to the board. The funds so collected shall be expended by the board for the employment of soil conservation aids and for other purposes directly associated with the program, including promotional activities, prize moneys, office equipment and supplies, and incidentals deemed necessary.

The District argues that the language of KRS 262.200(4) clearly places the burden on the Fiscal Court to either approve the requested budget or “present a list

of objections and suggested corrections to the board in writing and within a reasonable time.” The District contends that the Fiscal Court failed to fulfill this mandatory duty because the county attorney’s letter provided neither specific objections nor suggested corrections. Accordingly, the District concludes that to “permit the fiscal court to ignore the statutory requirement and fund the District at its unfettered whim would render the statute a nullity.” We disagree.

Contrary to the trial court’s interpretation, we do not construe KRS 262.200 as a statutory mandate to provide funding to the District. Rather, subsection (4) sets forth a mandatory procedure to be followed by the fiscal court when presented with a funding request. Only in the event that a proposed budget is approved is the Fiscal Court required to provide funding. In fact, the District’s attorney conceded such during the summary judgment hearing.

The District argues that the Fiscal Court did not follow the proper procedure in that the county attorney’s letter did not set forth specific objections or suggestions. As previously noted, no copy of such letter is contained in the record or briefs herein for our review. Nevertheless, there can be no legitimate dispute that the Fiscal Court’s rejection of the District’s proposed budget was based upon a lack of county monies. Certainly, the request for \$70,400 in annual operating funds was a drastic increase from the Fiscal Court’s prior allocations of \$12,500. To be sure, counties across the Commonwealth are suffering economic cutbacks and budgetary woes. We cannot fathom what further objection or suggestion the county attorney could have provided to the District. Clearly, it knew why its

budget was rejected. We simply cannot conclude that the Fiscal Court violated KRS 262.400, or arbitrarily denied the District's funding request.

Next, the District argues that the trial court erred in refusing to order the Fiscal Court to comply with the proposed settlement agreement. Relying upon *Calloway v. Calloway*, 707 S.W.2d 789 (Ky. App. 1986), the District asserts that the county attorney, by agreeing to the proposed settlement and reading it into the record, bound the Fiscal Court to its provisions. Again, we disagree.

In *McDonald's Administratrix v. Franklin County*, 125 Ky. 205, 100 S.W. 861 (1907), the Court explained:

The fiscal affairs of the county are not, as seems to be supposed, confided to a certain number of magistrates, but are given solely to the fiscal court of the county (or to county commissioners, if the people of the county so elect). This tribunal acts as a body. It can only act at stated or called public meetings, at which a majority of the magistrates constituting it must be present, and a majority of those present concurring. It must keep a record of its acts. . . .

Such bodies, when acting for the municipality, must act as a unit--as a body. There is a wise reason for the provision. Public meetings at which the county attorney, the legal representative of the county, must be present, or have an opportunity to be present, give security against heedless measures being adopted. They invite discussion and examination, and are some guard against illadvised action. Publicity in such matters concerning the community is one of the best guaranties against improvident action by the public representatives. Then the public record which is required to be kept is an additional safeguard to the public, affording the best evidence of what is done on its behalf, and a check against irresponsibility and extravagance.

In *McKechnie v. Canada*, 198 Ky. 807, 250 S.W. 111 (1923), the court again reiterated that “[N]o valid appropriation can be made except by a majority of the members of the court acting together as a court, at a meeting held for that purpose.” *See also Fannin v. Davis*, 385 S.W.2d 321 (Ky. 1964).

We find no support for the District’s contention that the county attorney can bind the Fiscal Court to a settlement agreement in the absence of a Fiscal Court vote. The District’s citation to contract law concerning the binding nature of settlement agreements simply has no relevance to the facts herein. Nor do we find any merit in the claim that a county attorney is vested with unfettered authority to enter into legal settlements on behalf of a fiscal court pursuant to KRS 69.210.

The plain language of KRS 69.210(1) provides in relevant part:

The county attorney shall attend the fiscal court or consolidated local government and conduct all business touching the rights or interests of the county or consolidated local government, and **when so directed by the fiscal court** or consolidated local government, he or she shall institute, defend, and conduct all civil actions in which the county or consolidated local government is interested before any of the courts of the Commonwealth. (Emphasis added).

Thus, while the county attorney certainly had the authority to negotiate and reach a tentative agreement with the District, such agreement could not be valid and binding in the absence of an approving vote by the Fiscal Court.

Finally, we believe that the trial court properly held that to invade the province and discretion of the Fiscal Court would violate longstanding separation of powers principles. KRS 67.080 specifies how a fiscal court may appropriate

funds. Further, pursuant to KRS 67.083(h), a fiscal court's acts regarding funding for “[c]onservation, preservation and enhancement of natural resources including soils, water, air, vegetation, and wildlife” are discretionary. As far back as 1896, Kentucky courts have held that a fiscal court in the exercise of its discretion may refuse to make appropriations and that its action cannot be controlled by a writ of mandamus through the Kentucky judiciary. *Highbaugh v. Hardin County*, 99 Ky. 16, 34 S.W. 706 (1886). Because the Fiscal Court herein acted within its discretion in rejecting the District’s budget, the trial court was without authority to compel the Fiscal Court to provide the requested funding.

For the reasons set forth herein, we affirm the judgment of the Powell Circuit Court dismissing the Powell County Water and Conservation District’s declaratory judgment action against the Powell County Fiscal Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

James T. Gilbert
Richmond, Kentucky

BRIEF FOR APPELLEE:

Robert G. King
Stanton, Kentucky