

<b>RYAN GOOTEE GENERAL CONTRACTORS LLC</b>	*	<b>NO. 2018-CA-0276</b>
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<b>VERSUS</b>		<b>COURT OF APPEAL</b>
	*	
<b>PLAQUEMINES PARISH SCHOOL BOARD</b>	*	<b>FOURTH CIRCUIT</b>
	*	
		<b>STATE OF LOUISIANA</b>

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APPEAL FROM  
25TH JDC, PARISH OF PLAQUEMINES  
NO. 61-968, DIVISION "1"  
Honorable Michael D. Clement,

\* \* \* \* \*

**Judge Paula A. Brown**

\* \* \* \* \*

(Court composed of Judge Edwin A. Lombard, Judge Daniel L. Dysart, Judge Paula A. Brown)

Murphy J. Foster, III  
Jacob E. Roussel  
BREAZEALE SACHSE & WILSON, LLP  
23rd Floor, One American Place  
P. O. Box 3197  
Baton Rouge, LA 70821--3197

COUNSEL FOR PLAINTIFF/APPELLEE

Daniel Lund, III  
Stuart G. Richeson  
Carys A. Arvidson  
PHELPS DUNBAR, LLP  
365 Canal Street, Suite 2000  
New Orleans, LA 70130

COUNSEL FOR DEFENDANT/APPELLANT

**AFFIRMED**  
**11/07/2018**

This matter involves a dispute regarding the award of a public bid contract (“the Contract”). The Plaquemines Parish School Board and Denis Rousselle (collectively, the “School Board”) appeal the district court’s judgments which issued a writ of mandamus to award the Contract to appellee, Ryan Gootee General Contractors, Inc. (“Gootee”) and granted Gootee attorney’s fees and costs. Gootee’s answer to the appeal (“Answer”) seeks to increase the amount of attorney’s fees and costs awarded. For the reasons that follow, we affirm.

## **FACTUAL AND PROCEDURAL HISTORY**

This Court previously considered the underlying issues in this appeal in the matter of *Ryan Gootee General Contractors LLC v. Plaquemines Parish School Board*, unpub., 2015-0678 (La. App. 4 Cir. 11/18/15), 2015 WL 7356420 (“Gootee I”). Accordingly, we adopt pertinent facts and the procedural history delineated in *Gootee I* in our review of the case *sub judice* as follows:

In September 2014, the School Board advertised for a bid contract for a public works construction project known as “South Plaquemines High School–Recreational Field House and Restroom–Concession Buildings” (hereinafter, “the Contract”). After the bids

were opened, One Construction, LLC, was deemed the lowest bidder and Gootee's bid was the second lowest.

Gootee discovered that One Construction's bid proposal may not have included a certified copy of a resolution authorizing execution of the Contract by its authorized signatory, a violation of La. R.S. 38:2212(B)(5) of the Louisiana Public Bid Law. Gootee telephoned the School Board's architect about this alleged deficiency on October 24, 2014 and October 27, 2014; and on November 10, 2014, Gootee's counsel submitted a letter to the School Board's counsel to advise that One Construction's bid lacked a duly authorized signatory.

The School Board sent out a notice on November 4, 2014 advising that it would meet on November 10, 2014 to discuss the bid proposals. The Contract was awarded to One Construction on that date. Gootee was not present at the meeting.

Thereafter, on November 17, 2014, Gootee filed a "Petition For Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, Mandamus, And Declaratory Judgment" against the School Board and One Construction in the 24th Judicial District for Jefferson Parish ["24<sup>th</sup> JDC"]. . . . Gootee requested that an injunction be issued, that the Contract be nullified, that it be designated the lowest responsive bidder, and that a mandamus issue to compel the School Board to award Gootee the Contract. . . .

In response, the School Board filed a Peremptory Exception Of Prescription/No Right Of Action, Declinatory Exception Of Improper Venue, Peremptory Exception Of No Cause Of Action, And Dilatory Exception of Improper Cumulation Of Actions. . . . The [School Board] argued that as a political subdivision, the mandatory venue requirements of La. R.S. 13:5104(B) dictate that venue for a suit against the School Board was only proper in the 25th Judicial District for the Parish of Plaquemines.

The trial court granted the School Board's exception to venue. Gootee's claims against the School Board were transferred to Plaquemines Parish. The trial court allowed all surviving claims against One Construction to remain in Jefferson Parish.

After a hearing, the 24th JDC trial court granted Gootee's request for preliminary injunction against One Construction. Gootee and One Construction consented to a permanent injunction in order to expedite the appeal process. One Construction filed a suspensive appeal of the judgment granting the permanent injunction to the Fifth Circuit Court of Appeal.

Gootee's suit against the School Board was transferred to the 25th JDC for Plaquemines Parish in February 2015. At the same time, Gootee filed an Amended And Supplemental Petition for Mandamus And Damages[“Amended Petition”] that added Denis Rousselle, the School Board's Superintendent, as a party defendant.<sup>[1]</sup>

Thereafter, Gootee filed a Motion For Writ of Mandamus [against the School Board]. The motion asked for a writ of mandamus to be directed to the School Board to award the Contract to Gootee and for an award of attorney's fees. [Gootee] averred that inasmuch as One Construction, the first low bidder, had been permanently enjoined from work on the Contract, that Gootee should be awarded the Contract as the legitimate, lowest responsible bidder.

The School Board filed exceptions of no cause of action and no right of action to Gootee's supplemental and amended petition. . . .

In its opposition to Gootee's Motion For Writ of Mandamus, the School Board iterated that the permanent injunction Gootee obtained against One Construction in the 24th JDC had no legal effect upon it or the 25th JDC trial court because the School Board was not a party to that action. The School Board emphasized that no injunctive relief had been obtained against the School Board before the Plaquemines Parish trial court. As to the merits of the Contract, the School Board averred that Gootee could not meet its burden of proof to show that the One Construction bid proposal was a nullity or that the School Board was arbitrary in its award of the Contract to One Construction.

Upon hearing argument on the School Board's exceptions of no right of action and no cause of action [the “Exceptions”] and Gootee's motion for mandamus, the trial court denied the School Board's exceptions and granted Gootee's motion for mandamus.

The School Board then filed the present appeal. Gootee's answer to the appeal sought attorney's fees and an adjustment in its bid price commensurate with potential costs and fees incurred by the delay in its award of the Contract.

*Ryan Gootee*, 2015-0678 at \*1-3.

*Gootee I* affirmed in part the district court's judgment that denied the School Board's Exceptions; reversed in part that portion of the judgment that granted the writ of mandamus; denied Gootee's request for attorney's fees and an adjustment

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<sup>1</sup> Gootee filed a Second Amended and Supplemental Petition for Damages (“Amended Petition II”) on March 2, 2015, which added a request for an adjustment in its bid price commensurate with any increase in costs associated with the delay in its award of the Contract.

in its bid price; and remanded the matter for further proceedings consistent with the opinion. *Id.*, 2015-0678 at \*6.

On November 19, 2015, the day after the *Gootee I* judgment was rendered, the Fifth Circuit Court of Appeal affirmed the 24<sup>th</sup> JDC judgments, finding in part that the district court did not abuse its discretion in granting injunctive relief and determining that One Construction’s bid proposal violated the Public Bid Law.<sup>2</sup>

On April 21, 2016, the School Board filed a motion to dismiss the Amended Petition II as moot. The School Board asserted that it had voluntarily terminated the Contract with One Construction on April 5, 2016. The School Board argued that no basis in law existed for the second lowest bidder to be awarded a contract once a public owner has awarded, executed, and subsequently terminated a contract with the first low bidder. The district court denied the motion to dismiss. The School Board sought supervisory writ review. This Court denied the writ.<sup>3</sup>

On May 31, 2016, Gootee filed a motion for leave to file its Third Supplemental and Amended Petition (“Amended Petition III”), which was granted. In the Amended Petition III, the School Board alleged that the judgments granting the permanent injunction and denying One Construction’s exceptions had been made executory.<sup>4</sup> The Amended Petition III also prayed for judgment adjudicating Gootee as the lowest responsive bidder.

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<sup>2</sup> See *Ryan Gootee General Contractors, LLC v. Plaquemines Parish School Board & One Construction, Inc.*, 2015-325 (La. App. 5 Cir. 11/19/15), 180 So.3d 588, 602 (“*Gootee II*”).

<sup>3</sup> *Ryan Gootee General Contractors LLC v. Plaquemines Parish School Board*, 2016-0754 (La. App. 4 Cir. 12/05/16).

<sup>4</sup> Gootee attached as Exhibit E to its Amended Petition III the signed Order from the district court, dated May 19, 2016, which made the 24<sup>th</sup> JDC’s January 23, 2015 judgments executory.

Gootee filed a Fourth Amended Petition for Mandamus (“Amended Petition IV”) on March 16, 2017. The Amended Petition IV “clarified” that Gootee sought a summary mandamus action to compel the School Board to award Gootee the Contract as the lowest responsive bidder.<sup>5</sup> In response to the Amended Petition IV, the School Board’s opposition raised an exception of unauthorized use of summary proceeding.

The parties agreed to submit Gootee’s mandamus action and the School Board’s exception to summary proceedings to the district court on the briefs. On June 23, 2017, the district court denied the School Board’s exception to unauthorized use of summary proceeding; granted Gootee’s Amended Petition IV’s request for writ of mandamus; and ordered the School Board to award Gootee the Contract.

Gootee filed a motion for new trial for the limited purpose of having the trial court amend its judgment to award attorney’s fees pursuant to La. R.S. 38:2220.4(B)(1).<sup>6</sup> The district court granted the motion for new trial; and on January 8, 2017, awarded Gootee \$66,606.36 in attorney’s fees and \$5,562.45 in costs.

This appeal followed.

## **DISCUSSION**

The School Board contends the district court erred in three respects. First, Gootee contends the district court erred in denying its exception of unauthorized use of summary proceeding.

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<sup>5</sup> The Amended Petition IV also removed Gootee’s claim for an adjustment to the bid price.

<sup>6</sup> La. R.S. 38:2220.4(B)(1) provides in pertinent part: “[T]he court shall also award to the principal plaintiff as determined by the court, if successful in his action, reasonable attorney fees. The court shall also award to any prevailing defendant costs and reasonable attorney fees.”

The exception of unauthorized use of summary proceeding is a dilatory exception. *See La. C.C.P. art. 926(A)(3).* Our jurisprudence provides that it is proper to raise this exception to oppose a mandamus action. *Hatcher v. Rouse*, 2016-0666, p. 3-4 (La. App. 4 Cir. 2/1/17), 211 So.3d 431, 433 (citation omitted). “However, this exception is only designed to test whether an action should proceed in a summary manner rather than by ordinary proceeding.” *Id.*

In support of its argument that the use of summary proceedings was erroneous, the School Board relies on *Benson Const. Co. v. City of Shreveport*, 592 So.2d 1307, 1308 (La. 1992). In *Benson*’s underlying facts, the plaintiff had requested a summary proceeding to enjoin the continuation of a public bid contract that had been awarded to another bidder. The district court found that the plaintiff was limited to ordinary proceedings; on appeal, the appellate court granted the plaintiff’s writ application and determined the district erred in deciding that injunctive relief was not a remedy available to the plaintiff. The Supreme Court granted defendant’s writ and reversed the appellate court, holding that: “[A]fter a contract is awarded a party seeking to nullify must proceed by ordinary proceeding. La. R.S. 38:2220(B) [<sup>7</sup>].” *Id.* at 1308. *See also B.F. Carvin Const. Co., Inc. v. Jefferson Parish Council*, 1997-913, p. 5 (La. App. 5 Cir. 2/11/98), 707 So.2d 1326, 1328 (where the Fifth Circuit opined that, once the contract had been awarded, the sole remedy for the plaintiff, who had filed a petition for declaratory

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<sup>7</sup> La. R.S. 38:2220(B) states in pertinent part:

... any interested party may bring suit in the district court through summary proceeding to enjoin the award of a contract or to seek other appropriate injunctive relief to prevent the award of a contract which would be in violation of this Part, or through ordinary proceeding to seek appropriate remedy to nullify a contract entered into in violation of this Part.”

judgment, preliminary and permanent injunctions, and for writ of mandamus to be declared the lowest responsive bidder, was through ordinary proceeding).

The School Board also cites *Block Construction, LLC v. Recreation & Park Comm'n for Parish of East Baton Rouge*, 2017-0110 (La. App. 1 Cir. 1/19/18), 241 So.3d 1019, a case which reached a result similar to the outcomes in *Benson* and *Carvin*. In *Block*, the Court determined that mandamus relief was improper for a bidder who had requested injunctive relief, a declaratory judgment or, in the alternative, a writ of mandamus to compel the award of the contract. The Court noted that mandamus was only sought in the alternative and was not appropriate where the bidder had principally sought relief available through ordinary proceedings. Citing La. C.C.P. art. 3862, the Court opined that “[a] writ of mandamus may be issued in all cases where the law provides no relief by ordinary means or where the delay involved in obtaining ordinary relief may cause injustice.” *Id.* at p. 5, 241 So.3d at 1021. (emphasis added).

In the case *sub judice*, however, Gootee’s request for mandamus relief through summary proceeding is distinguishable from the mandamus relief denied to the *Benson*, *Carvin*, and *Block* plaintiffs. Unlike those plaintiffs, Gootee did not seek relief available through ordinary proceedings, such as injunctive relief or nullification of the Contract, in its Amended Petition IV. At the time of filing the Amended Petition IV, injunctive relief and nullification of the Contract had been granted in the 24<sup>th</sup> JDC judgments which permanently enjoined the award of the Contract to One Construction based on One Construction’s violation of the Public Bid Law. Moreover, at the time of the filing of Amended Petition IV, the 24<sup>th</sup> JDC judgments had been made executory. It is well-settled that “[a] judgment rendered in a Louisiana court may be made executory in any other Louisiana court of

competent jurisdiction, if its execution has not been and may not be suspended by appeal.”<sup>8</sup> See La. C.C.P. art. 2781. “[F]ull force and effect must be accorded judgments and decrees of the court which are regularly and legally entered. *Coleman v. Coleman*, 209 So.2d 801, 802 (La. App. 2 Cir. 1968).<sup>9</sup> Although we acknowledge that ordinary proceedings would have been required to resolve Gootee’s claim for damages, the Amended Petition IV requested damages only as an alternative remedy in the event Gootee was not awarded the Contract through mandamus relief.

La. C.C.P. art. 2592 permits a summary proceeding to be used at trial for disposition of mandamus actions.<sup>10</sup> See *Cent. Cnty. Sch. Bd. v. E. Baton Rouge Par. Sch. Bd*, 2008-0036, p. 18 (La. App. 1 Cir. 6/6/08), 991 So.2d 1102, 1114. Here, the only relief sought in Gootee’s Amended Petition IV was for mandamus: to be awarded the Contract based on its status as the lowest, responsive bidder. Thus, Gootee’s request for a summary proceeding was the appropriate procedural mechanism to demand mandamus relief; and accordingly, this Court finds no error in the district court’s denial of the School Board’s exception of unauthorized use of summary proceeding.

Secondly, the School Board argues that the trial court erred in granting a writ of mandamus directing the School Board to award the Contract to Gootee.

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<sup>8</sup> One Construction did not seek review of the *Gootee II* decision.

<sup>9</sup> Gootee also asserted that the need for injunctive relief was mooted by the School Board’s termination of the Contract with One Construction.

<sup>10</sup> La. C.C.P. art. 2592 states, in pertinent part:

Summary proceedings may be used for trial or disposition of the following matters only:

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(6) A habeas corpus, mandamus, or quo warranto proceeding.

Louisiana Code of Civil Procedure Article 3861 defines mandamus as ‘a writ directing a public officer or a corporation or any officer thereof to perform any of the duties set forth in Articles 3863 or 3864.’” *Hatcher*, 2016-0666, p. 5, 211 So.3d at 437. “A writ of mandamus may be directed to a public officer to compel the performance of a ministerial duty required by law, . . . .” *See La. C.C.P. art. 3863.* “If a public officer is vested with any element of discretion, mandamus will not lie.” *Hoag v. State*, 2004-857, p. 7 (La. 12/1/04), 889 So.2d 1019, 1092. Appellate review of a district court’s decision to grant or deny a request for a writ of mandamus is under an abuse of discretion standard. *See Lewis v. Morrell*, 2016-1055, p. 5 (La. App. 4 Cir. 4/5/17), 215 So.3d 737, 740 (citations omitted).

The School Board argues that Gootee still has not met certain prerequisites identified in *Gootee I* to entitle it to mandamus. Specifically, it points to the *Gootee I* Court’s reversal of the district court when it opined:

[A]s it presently stands, the judgments granting the permanent injunction and denying One Construction’s exceptions have not been made executory; there has been no specific judgment that nullifies the Contract between One Construction and the School Board; and Gootee has not been adjudicated the lowest responsible bidder. Thus, we find that the School Board presently retains discretion as to the award of the Contract because no final determination has been made that the award of the contract to One Construction violated the Public Bid Law. Accordingly, the trial court erred in granting the motion for mandamus.

*Ryan Gootee*, 2015-0678 at \*5. The School Board asserts that while the 24<sup>th</sup> JDC judgments have been made executory, the other two conditions have remained unfulfilled; that is, no specific judgment has been rendered to nullify the Contract and Gootee has not been adjudicated the lowest, responsible bidder. This argument lacks merit.

*Gootee I* did not expressly require a specific judgment nullifying the Contract or an adjudication of Gootee as the lowest, responsible bidder in order for Gootee to be entitled to mandamus relief. Instead, the effect of a lack of a final, executory judgment from the 24<sup>th</sup> JDC meant evidence still had to be weighed, the School Board retained discretion over the award of the Contract, and the validity of the One Construction bid proposal remained undetermined, all of which made mandamus relief premature at the time of the *Gootee I* decision. However, even if nullification of the Contract and Gootee's adjudication as the lowest, responsible bidder were requirements, as previously discussed, *supra*, we find these requirements were effectively met on November 19, 2015, when the 24<sup>th</sup> JDC judgment invalidated the One Construction contract and made it executory; and the district court granted the mandamus based on Gootee's status as the lowest responsible and responsive bidder.

This Court discussed the purpose of the Public Bid Law in *Dynamic Constructors, L.L.C., v. Plaquemines Parish Government*, 2015-0271, pp. 5-6 (La. App. 4 Cir. 8/26/15), 173 So.3d 1239, 1243, as follows:

Louisiana's Public Bid Law, found at La. R.S. 38:2212 *et seq.*, governs the manner by which all contracts for public works are to be awarded. It is a law which was enacted in the interest of the taxpaying citizens and has for its purpose their protection against contracts of public officials entered into because of favoritism and involving exorbitant and extortionate prices. *Haughton Elevator Div. v. State Div. of Admin.*, 367 So.2d 1161, 1164 (La. 1979); *Concrete Busters of Louisiana, Inc. v. Board of Com'rs of the Port of New Orleans*, [20]10-1172, p. 4 (La. App. 4 Cir. 2/2/11), 69 So.3d 484, 486. In enacting the Public Bid Law, the legislature has specifically prescribed the conditions under which the state will permit public work to be done on its behalf or on behalf of its political subdivisions. See *Hamp's Constr., L.L.C. v. The City of New Orleans*, p. 4, 924 So.2d at 107. In the words of our Supreme Court, it is "a prohibitory law founded on public policy," *Broadmoor, L.L.C. v. Ernest N. Morial New Orleans Exhibition Hall Auth.*, [20]04-0211, 04-0212, p. 6 (La. 3/18/04), 867 So.2d 651, 656, and is to be strictly

construed. *Id.*, pp. 8-9, 867 So.2d at 657; *Command Constr. Indus., L.L.C. v. City of New Orleans*, [20]13-0524, [20]13-0525, pp. 6–10 (La. App. 4 Cir. 10/23/13), 126 So.3d 716, 720-722.

Given the nature of the political mandate, a political entity such as the PPG has no authority to take any action that is inconsistent with the Public Bid Law. *Broadmoor, L.L.C.*, p. 6, 867 So.2d at 656. Specifically, “the requirements of the Public Bid Law, the advertisement for bids and the bid form *shall not be waived by any public entity.*” *Hamp’s Constr., L.L.C.*, p. 9, 924 So.2d at 110. [Emphasis supplied in the original]

Moreover, La. R.S. 38:2212(A)(1)(a) provides, in pertinent part, that public work performed by a public entity “shall be advertised and let by contract to the lowest responsible and responsive bidder who bid according to the bid documents as advertised . . .”

A contract made in violation of the Public Bid Law is an absolute nullity. *See State, Through Office of Governor v. L.W. Eaton*, 392 So.2d 477, 479 (La. App. 1<sup>st</sup> Cir. 1980). La. C.C. art. 2033 provides, in pertinent part, that “[a]n absolutely null contract, or a relatively null contract that has been declared null by the court, is deemed never to have existed.” Thus, this Court must reject the School Board’s argument that it retained authority to re-bid the Contract because it voluntarily terminated the Contract with One Construction for non-performance. Our review of the record shows the *Gootee II* decision had already invalidated the One Construction bid proposal well before the School Board’s “voluntary” termination of the Contract with One Construction on April 15, 2016. The Contract with One Construction was an absolute nullity; therefore, as an absolute nullity, it had no legal effects.

The uncontested facts show that Gootee had the second lowest bid after the One Construction bid.<sup>11</sup> Moreover, the School Board did not challenge Gootee's status as the second lowest responsible bidder at the mandamus hearing. Hence, after the 24<sup>th</sup> JDC judgments became final and executory in the 25<sup>th</sup> JDC, the School Board had a ministerial duty to award the Contract to the party deemed to be the actual lowest, responsible and responsive bidder—Gootee. It lacked discretion to do otherwise. Therefore, we find the district court did not abuse its discretion in issuing the writ of mandamus, compelling the award of the Contract to Gootee.

In its final assignment of error challenging the award of attorney's fees, the School Board maintains that Gootee's request for attorney's fees derives from La. R.S. 38:2220.1, *et seq.* In general, those statutes permit a private citizen to bring a civil action against public entities for violations of the Public Bid Law; and in particular, La. R.S. 38:2220.4(B)(1) mandates an award of reasonable attorney's fees to a plaintiff who successfully proves a violation of the Public Bid Law. The School Board argues that all the procedural requirements of those statutes must be met for an award of attorney's fees. Here, the School Board claims the award of attorney's fees to Gootee was inappropriate because Gootee failed to comply with the Attorney General notice provisions outlined in La. R.S. 38:2220.3 before it instituted suit.<sup>12</sup> Gootee disputes that it had to meet those notice requirements in

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<sup>11</sup> The School Board acknowledges in its brief that the One Construction bid was the lowest at \$2,597,000.00 and Gootee's bid was the second lowest at \$2,994,000.00.

<sup>12</sup> La. R.S. 38:2220.3 provides, in pertinent, part:

- A. Prior to initiation of the civil action, the complainant shall inform the attorney general of the alleged violation and all direct information he possesses regarding the alleged violation. . . .

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order to be awarded attorney's fees. Nevertheless, if notice were required, Gootee asserts it properly notified the Attorney General before it filed suit.

In support of their respective positions regarding compliance with the statutory Attorney General notice requirements, both parties cite *Gibson & Associates, Inc. v. State of La. Ex rel. Department of Transportation and Development*, 2013-2069 (La. App. 1 Cir. 9/24/14), 155 So.3d 59. Gootee relies on the majority opinion, which affirmed the district court award of attorney's fees to Plaintiff upon its finding that a violation of the Public Bid Law had occurred; whereas, the School Board relies on the dissenting opinion, which found that attorney's fees were not appropriate in the absence of Plaintiff's failure to meet the procedural requirements to notify the Attorney General prior to initiating suit.

In *Gibson*, Plaintiff obtained a judgment that the DOTD had violated the Public Bid Law by its failure to reject another bid as irregular. DOTD contended that the district court should not have awarded attorney's fees because La. R.S. 38:2220.4 authorizes attorney's fees only when a civil action is brought pursuant to La. R.S 38:2220.2<sup>13</sup> and 2220.3, which Plaintiff did not do in that matter. The majority in *Gibson* affirmed the district court's award of attorney's fees to Plaintiff, albeit Plaintiff's cause of action was not brought under La. R.S. 38:2220.2 and the procedural requirements of La. R.S. 38:2220.3 were not

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C. If the attorney general does not initiate a civil action within thirty days from the date of receipt of information concerning the alleged violation, the complainant may initiate the civil action. . . .

<sup>13</sup> La. R.S. 2220.2 provides, in pertinent part, the following:

A. Any person, association, corporation, or other business entity with direct knowledge of an alleged violation by a public entity of the provisions of R.S. 38:2212 et seq., may institute a civil action in district court against the public entity to seek a declaration that such violation has occurred. The procedure for the civil action shall comply with the provisions of this Section and R.S. 38:2220.3.

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satisfied. The *Gibson* majority opined that there is no language limiting a La. R.S. 38:2220.4 attorney fee award action only to claims brought under La. R.S. 38:2220.2 and 2220.3. *Gibson*, 2013-2069, p. 9, 155 So.3d at 45. The majority found “that a plain reading of La. R.S. 38:2220.4 reflects that compliance with the provisions of La. R.S. 38:2220.2 and 2220.3 is not an absolute prerequisite to an award of attorney’s fees under the statute.” *Gibson*, 2013-2069, p. 10, 155 So.3d at 45. Hence, the majority sustained the district court’s award of attorney’s fees because Plaintiff met the principal statutory requirement of La. R.S. 38:2220.4—Plaintiff prevailed on its claim that the DOTD violated the Public Bid Law. *Id.*

The *Gibson* dissent disagreed, asserting that the statutes which allow a citizen to bring a civil action should be construed *in pari materia* with one another. *Gibson*, 2013-2069, p. 1, 144 So.3d at p. 47. The dissent reasoned:

Like the public records law or open meetings law, the legislature could have provided for an award of attorney fees to the prevailing party without other procedural requirements, but did not do so. Rather, the legislature in LSA-RS. 38:2220.1 through 38:2220.4 chose to implement a special procedure requiring notice to the attorney general prior to suit by a private citizen.

*Gibson*, 2013-2069, p. 3, 144 So.3d at 49. Accordingly, the dissent concluded that Plaintiff’s lack of compliance with the procedural requirements of La. R.S. 38:2220.2 and 2220.3 and its failure to offer any evidence of compliance compelled the dismissal of Plaintiff’s claim for attorney’s fees and costs.

Upon review, this Court need not address whether we agree with the majority or the dissenting positions in *Gibson*. The record before us establishes that Gootee did supply notice to the Attorney General of its action against the School Board prior to filing suit. A letter dated November 17, 2014 from Gootee’s

counsel to the Attorney General, which was introduced into evidence, reads as follows:

Please allow this correspondence to serve as notice pursuant to La. R.S. 38:2220.3(A). This law firm represents Ryan Gootee General Contractors, LLC (“Gootee”) in connection with a bid submitted to the Plaquemines Parish School Board (the “School Board”) for the public project identified as South Plaquemines High School; Recreational Field House and Restroom-Concessions Building (the “Project”). One Construction, LLC (“One Construction”) was the apparent low bidder and was recently awarded the contract for the Project. However, One Construction’s bid should have been rejected. Likewise, the contract between the School Board and One Construction is a nullity as a matter of law.

On November 10, 2014, undersigned counsel notified counsel for the School Board of the deficiencies in One Construction’s bid. (A copy of Gootee’s protest letter and the referenced attachments are attached hereto). Specifically Gootee informed the owner that One Construction failed to submit evidence of corporate authority of the signatory with its bid pursuant to La. R.S. 38:2212 and as expressly required by the Bid Documents. Due to One Construction’s submission of a non-responsive bid, the contract between the School Board and One Construction must be declared a nullity, and the award be made to the second low bidder, Gootee.

The School Board maintains Gootee’s notice did not comply with the procedural requirements of La. R.S. 38:2220.3(C) because Gootee initiated its lawsuit prior to the lapse of thirty days from the date of its notice to the Attorney General.<sup>14</sup> However, the issue as to whether Gootee filed suit prior to the thirty days given to the attorney general to investigate a public bid complaint had expired is not dispositive as to whether Gootee provided the proper notice required by La. R.S. 38:2220.3(C). Instead, it goes to whether the lawsuit was prematurely filed.

An exception of prematurity is a dilatory exception. *See* La. C.C.P. art. 926. “All objections which may be raised through the dilatory exception are waived unless pleaded therein.” La. C.C.P. art. 926(B). Neither the district court nor an

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<sup>14</sup> Gootee filed suit in 24<sup>th</sup> JDC on November 27, 2014; the 24<sup>th</sup> JDC action against the School Board was transferred to the 25<sup>th</sup> JDC in Plaquemines Parish on February 9, 2015.

appellate court can raise the exception of prematurity on its own motion. *Farber v. Louisiana State Board of Medical Providers*, 2009-0301, p. 3 (La. App. 4 Cir. 9/9/10), 22 So.3d 962, 963. Here, the School Board did not raise any objection to the prematurity of Gootee's lawsuit in its district court pleadings or at any time before the district court awarded attorney's fees. Consequently, the School Board waived any right to challenge the validity of the attorney fee award on the grounds of prematurity. Gootee gave notice as required by La. R.S. 38:2022.3 and was the prevailing party in its action against the School Board. Thus, we find no error in the district court's decision to award attorney's fees to Gootee as mandated by La. R.S. 38:2220.4.

The School Board also complains that because a trial on the merits did not determine that the One Construction bid was illegal or find that Gootee was the lowest, responsive bidder, the district court erred in awarding attorney's fees. Having already found the district court properly granted mandamus because the One Construction bid was illegal and Gootee was the lowest, responsive bidder, these arguments lack merit.

We now address Gootee's Answer that its award of attorney's fees and costs should be increased.

#### **Gootee's Answer**

Gootee contends the district court's attorney fee award should be increased from \$66,606.36 in fees and \$5,562.45 in costs to \$106,764.93 in fees and \$7,526.98 in costs. Gootee represents that the increase reflects the total amount incurred by Gootee in the proceedings in the 24<sup>th</sup> JDC and the 25<sup>th</sup> JDC; whereas the amounts awarded by the district court encompassed only the fees and costs from the 25<sup>th</sup> JDC proceedings. Gootee emphasizes that all attorney's fees and

costs incurred resulted from its efforts in both judicial districts to invalidate the School Board's illegal award of the Contract to One Construction.

An attorney fee award should not be disturbed on appeal absent an abuse of discretion. *Dixie Serv., L.L.C. v. R & B Falcon Drilling USA, Inc.*, 2005-1212, p. 9 (La. App. 3/21/07), 995 So.2d 214, 220. Here, Gootee elected to initially file its action against the School Board in a jurisdiction that was not the proper venue. Accordingly, we cannot say that the 25<sup>th</sup> JDC district court abused its discretion in basing its attorney fee award on the fees and costs arising out of the proceedings occurring before that district court. Therefore, we decline to modify the judgment to increase the award of attorney's fees and costs.

## **CONCLUSION**

For the foregoing reasons, we affirm the judgments of the district court granting the writ of mandamus and the award of attorney's fees and costs.

**AFFIRMED**