**[Cite as *Cincinnati v. Harrison*, 2010-Ohio-3430.]**

# IN THE COURT OF APPEALS
# FIRST APPELLATE DISTRICT OF OHIO
# HAMILTON COUNTY, OHIO

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| CITY OF CINCINNATI, | : | APPEAL NO. C-090702<br>TRIAL NO. A-0900755 |
| Plaintiff-Appellant, | : | *D E C I S I O N.* |
| vs. | : | |
| CITY OF HARRISON, | : | |
| Defendant-Appellee, | : | |
| and | : | |
| BOARD OF COUNTY COMMISSIONERS OF HAMILTON COUNTY, OHIO, | : | |
| Defendant. | : | |

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: July 23, 2010

*Ennis, Roberts & Fischer Co., LPA,* and *William M. Deters, II,* for Plaintiff-Appellant.

*Schroeder, Maundrell, Barbiere & Powers, Lawrence E. Barbiere,* and *Michael R. Maundrell,* for Defendant-Appellee.

Please note: This case has been removed from the accelerated calendar.

**DINKELACKER, Judge.**

**{¶1}** In a single assignment of error, plaintiff-appellant the city of Cincinnati argues that the trial court abused its discretion when it failed to issue a temporary restraining order against defendant-appellee the city of Harrison to halt the development of Harrison's water-works expansion.[1] For the following reasons, we affirm the trial court's decision.

### *Cincinnati and Harrison Compete for Water Customers*

**{¶2}** The Greater Cincinnati Water Works (GCWW) is a department of Cincinnati that provides water to the city and a majority of Hamilton County. Pursuant to a contract with defendant Board of Commissioners of Hamilton County, Ohio, GCWW began to develop a project called "Water West." The project was designed to provide for the water needs of much of the western portion of Hamilton County. GCWW expended a great deal of capital during the implementation of the project, constructing water mains and lines throughout the area. Assumptions were made, based upon projected usage and other factors, that justified the expenditure and development.

**{¶3}** Harrison was offered an opportunity to receive water service from GCWW by purchasing water wholesale from GCWW, but Harrison declined. Instead, Harrison decided to provide water to its own citizens. Additionally, Harrison planned to provide water to two additional areas: an area that had been annexed by Harrison and another area of Harrison Township that had not. These two areas were within the area that GCWW had planned to serve as part of Water

[1] Defendant Board of County Commissioners of Hamilton County, Ohio, is not a party to this appeal.

West. In fact, GCWW had already begun construction of its own water mains in the two areas.

**{¶4}** When Cincinnati learned that Harrison had begun the process of spending public funds to install water mains and to otherwise prepare to provide competing service, Cincinnati filed suit. It also sought a temporary restraining order preventing further work by Harrison on the project until the litigation concluded. After conducting a hearing, the trial court denied the motion.

**{¶5}** In this appeal, Cincinnati now raises one assignment of error.

***Denial of the Temporary Restraining Order was Proper***

**{¶6}** In its decision, the trial court indicated that there was no clear and convincing evidence to demonstrate that Cincinnati would be irreparably harmed or that third parties would not be harmed if it ordered Harrison to stop its work. On this record, that decision was not an abuse of discretion.

**{¶7}** An abuse of discretion suggests a decision that is unreasonable, arbitrary, or unconscionable.[2] Few decisions rendered by a trial court are alleged to be arbitrary or unconscionable. Thus, the vast majority of cases in which an abuse of discretion is asserted involve claims that the decision is unreasonable. A decision is unreasonable "if there is no sound reasoning process that would support that decision. It is not enough that the reviewing court, were it deciding the issue de novo, would not have found that reasoning process to be persuasive, perhaps in view of countervailing reasoning processes that would support a contrary result."[3]

**{¶8}** For a trial court to issue a temporary restraining order, there must be clear and convincing evidence to support four findings: that the moving party has a

[2] *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.
[3] *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161, 553 N.E.2d 597.

substantial likelihood of success in the underlying suit; that the moving party will suffer irreparable harm if the order does not issue; that no third parties will be harmed if the order is issued; that the public interest is served by issuing the order.[4]

**{¶9}** The purpose of injunctive relief is to "prevent a future wrong that the law is unable to redress."[5] Therefore, when a party's injury can be redressed by an award of monetary damages, there is no irreparable harm.[6]

**{¶10}** The trial court determined that any harm that Cincinnati might suffer could be compensated through money damages. Evidence was presented by Cincinnati that it would lose $20 million by 2047 if Harrison was allowed to complete its project. At the conclusion of the hearing, the trial court noted that "[Harrison] has demonstrated, it's really, it's money. And you call it public resources or you call it the resources, but really, what it comes down to is money, is money, money, money. It's all about the money." This determination was supported by competent, credible evidence in the record, and reaching it was not an abuse of discretion.

### *No Different Standard When Public Funds at Issue*

**{¶11}** Cincinnati argues that there is a different standard when the party against whom injunctive relief is sought is an entity spending taxpayer money. It asserts that the Ohio Supreme Court's decisions in *Ottawa County*[7] and *Cementech*[8] stand for the proposition that, even if its harm would be redressed by money damages, the trial court should have still intervened to protect the taxpayers of Harrison. Cincinnati reasons that "[e]ven though Harrison proclaimed to the Court

[4] *Procter & Gamble Co. v. Stoneham* (2000), 140 Ohio App.3d 260, 267-268, 747 N.E.2d 268.
[5] *Garono v. State* (1988), 37 Ohio St.3d 171, 173, 524 N.E.2d 496.
[6] See *Aero Fulfillment Servs., Inc. v. Tartar*, 1st Dist. No. C-060071, 2007-Ohio-174, at ¶32.
[7] *Ottawa Cty. Bd. of Commrs. v. Marblehead*, 86 Ohio St.3d 43, 1999-Ohio-80, 711 N.E.2d 663.
[8] *Cementech, Inc. v. Fairlawn*, 109 Ohio St.3d 475, 2007-Ohio-2991, 849 N.E.2d 24.

of Common Pleas that it would pay millions of dollars if Cincinnati is damaged, the judiciary is required to be more vigilant about the public purse * * *," and that "GCWW is not required to prove any irreparable harm under the circumstances of this case at bar involving the significant irretrievable waste of public funds."

**{¶12}** Neither *Ottawa County* nor *Cementech* can be read to impose a duty on trial courts to be the watchdogs of the "public purse" through the use of a temporary restraining order. Nor do they require the application of criteria different than those in any other injunction case.

**{¶13}** *Ottawa* County involved the constitutionality of R.C. 6103.04 and made reference, only in passing, to the "preservation of public resources." But this was in the context of balancing a municipality's rights under Home Rule[9] with a county's authority under the statute at issue.[10] It was not in the context of determining the propriety of a restraining order.

**{¶14}** And although *Cementech* discussed the importance of protecting taxpayers from losses suffered in litigation, it did so in the context of deciding whether to award lost profits as damages in a competitive-bidding case. The court concluded that such an award "in effect punishes the very persons competitive bidding is intended to protect—the taxpayers."[11]

**{¶15}** *Cementech* did not involve a request for an injunction—which was part of the problem in that case. The disappointed bidder had not sought an injunction, and the court held that "a rejected bidder is limited to injunctive relief."[12] Importantly, the court went on to note that "the granting of an injunction should be

[9] Section 4, Article XVIII, Ohio Constitution.
[10] *Ottawa Cty.*, supra, at 47.
[11] *Cementech*, supra, at ¶12.
[12] Id. at ¶10.

done with caution, 'especially in cases affecting a public interest where the court is asked to interfere with or suspend the operation of important works or control the action of another department of government.' "[13]

**{¶16}** By asking this court to craft a new test for temporary restraining orders involving taxpayer money, Cincinnati is asking us to interfere with or suspend the operation of important works or to control the action of another department of government. We decline to adopt such a test.

### *Conclusion*

**{¶17}** Since the trial court did not abuse its discretion when it determined that Cincinnati had failed to show by clear and convincing evidence that it would suffer irreparable harm, we overrule its sole assignment of error and affirm the trial court's judgment.

Judgment affirmed.

**HILDEBRANDT, P.J.,** and **SUNDERMANN, J.,** concur**.**

*Please Note:*

The court has recorded its own entry this date.

[13] Id. at ¶10, quoting *Danis Clarkco Landfill Co. v. Clark Cty. Solid Waste Mgt. Dist.*, 73 Ohio St.3d 590, 602, 1995-Ohio-301, 653 N.E.2d 646.