[Cite as *Lake Twp. v. Walbridge*, 2021-Ohio-3761.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

Lake Township	Court of Appeals No. WD-21-008
Appellant	Trial Court No. CVF1901708
v.	
Village of Walbridge	**DECISION AND JUDGMENT**
Appellee	Decided: October 22, 2021

* * * * *

Philip L. Dombey, for appellant.

Brian J. Ballenger, for appellee.

* * * * *

MAYLE, J.

{¶ 1} Plaintiff-appellant, Lake Township, appeals the January 7, 2021 judgment of the Perrysburg Municipal Court, which dismissed the township's complaint against

defendant-appellee, the Village of Walbridge, with prejudice, following a bench trial before the magistrate. For the following reasons, we affirm.

I. Background and Facts

{¶ 2} Sometime before August 1977, a dispute arose between the township and the village regarding the village's potential annexation of certain property within what was known as the CSX Stanley Yard, as well as the maintenance and repair of a portion of Drouillard Road. The parties resolved their dispute through a written contract dated August 22, 1977—which is the focal point of this case.

{¶ 3} The 1977 agreement was executed by the trustees of the township and the mayor and clerk-treasurer of the village. In addition, there is a handwritten notation at the bottom of the contract stating that it was "[a]pproved as to [f]orm" by the village solicitor, with his signature. The village mayor and clerk-treasurer were authorized to sign the contract by Village of Walbridge Ordinance No. 24-77, which was passed by the village council on August 22, 1977.

{¶ 4} According to the contract, the village agreed "to maintain, repair, and improve Drouillard Road * * *[,]" to "at its own expense make the necessary repairs and maintenance to preserve the condition of the highway, * * *" and to "service said highway in regard to snow removal etc." In addition, the contract provides that the village "shall pay the entire cost of all pavement construction for improvements that are required, but shall reserve the right to determine the necessity of such improvements * *

*" unless such improvements are ordered by a government entity. Finally, the village agreed to "promptly" make any repairs to Drouillard Road that are deemed necessary by the county engineer and, if the village failed to make such repairs "within a reasonable time after receiving notice from the County Engineer, * * *" the contract authorizes the township to "proceed with the repair work and the Village agrees to reimburse the Township or County for any and all expenses incurred by the Township or County in the making of said repairs."

{¶ 5} In exchange for the village's agreement to maintain, repair, and improve Drouillard Road under these stated conditions, the township agreed that it would send a letter to the county commissioners before August 25, 1977, stating that it "does not oppose the annexation proceeding before the County Commissioners as petitioned by the Village * * *" and informing the commissioners that the parties had reached an agreement regarding the "maintenance and repair of Drouillard Road."

{¶ 6} On August 17, 1977, the township trustees sent a letter to the county commissioners stating that they "do not oppose the annexation proceedings that are before you at this time" and informing the commissioners that the township had reached an agreement with the village "regarding the maintenance, repairing, and improving [sic] Drouillard Road."

{¶ 7} The village then maintained, repaired, and improved Drouillard Road, pursuant to its obligations under the agreement, from 1977 until 2017—approximately 40

years. On January 20, 2017, J. James Bishop, the village administrator, sent a letter to the Lake Township trustees and Mark Hummer, the township administrator, regarding an "inquiry about the condition and maintenance of Drouillard Road, south of the Village * * *." Bishop stated:

> I recommend that the Township Trustees carefully revisit the referenced agreement dated August 22, 1977. You will find that in the nearly 40 years [sic], there have been significant demographic population, commercial use and jurisdictional (City of Toledo) shifts affecting Drouillard Road. The original signatories were not empowered to bind jurisdictions in perpetuity. The rule against perpetuities precluded open-ended terms of any agreement or contract beyond a limited scope and term. The Village of Walbridge has recognized this by maintaining and paving Luckey Road.
>
> I ask that the Trustees and the Village officials meet at your earliest convenience to clarify the matter and chart-out a plan for maintaining these roadways for 2017 and beyond.

{¶ 8} On March 3, 2017, the township's attorney responded to Bishop's letter, stating that the rule against perpetuities has no bearing on the 1977 contract and that the township "will expect Walbridge to honor its commitments" regarding the repair and maintenance of Drouillard Road unless the village could provide some legal authority to

support its position. In addition, the letter stated that there is "no reason to have the Trustees and Village officials meet to clarify the matter as it's crystal clear * * *."

{¶ 9} On April 30, 2018, Bishop responded to the township's attorney, stating that "[e]ffective June 1, 2018 the Village will no longer maintain Drouillard Road south of the Village. The roadway is located entirely within the jurisdiction of Lake Township." According to Bishop, the village's decision was "supported by legal boundaries, taxing and police jurisdictions and the significant demographic changes in Lake Township."

{¶ 10} The township's attorney responded to Bishop on October 19, 2018, stating that the township has "no obligation effective June 1, 2018, [sic] to maintain Drouillard Road in the area in question." In addition, the attorney suggested that the township obtain an opinion from "someone who is admitted to the practice of law" by November 15, 2018, as "snow plowing will become an issue and you will be putting the motoring public in danger and exposing the Village to liability."

{¶ 11} The parties did not have any additional correspondence on the matter until January 4, 2019, when the township informed the village that there was a "large pot hole on Drouillard Rd. in the north bound lane between the curve and Ayers Rd." The township took the position that the pothole was the village's responsibility pursuant to the 1977 contract, but the village refused to repair the pothole because it was within the jurisdiction of the township.

{¶ 12} Eventually, the township repaired the pothole itself. On January 7, 2019, the township sent the village an invoice for $116.13 for the repair of the pothole, and stated that "[t]his will serve as your notice that we intend to file a Declaratory Judgment Action including a request for attorneys fees and damages."

{¶ 13} On February 14, 2019, the township filed a declaratory judgment action against the village in Wood County Court of Common Pleas case No. 2019CV0092 seeking a declaration of the parties' rights and obligations under the 1977 contract. On May 15, 2019, the township moved for summary judgment. On August 20, 2019, the common pleas court denied the township's motion for summary judgment and dismissed the case, without prejudice, after finding that the matter was not appropriate for resolution by declaratory judgment. The common pleas court stated:

> Defendant is not disputing that the terms of the agreement require Defendant to maintain, repair, and improve Drouillard Road—or in other words—there is no dispute as to the parties' responsibilities under the agreement. Rather, Defendant is no longer intending to comply with the terms of the agreement for reasons not currently before the Court. In the event that the Court did issue a declaratory judgment to the effect that, under the August 22, 1977 agreement, Defendant is responsible for the maintenance, repair, and improvement of Drouillard Road, the Court believes that such a declaration would not terminate the controversy, as

Defendant is not failing to abide by the terms of the agreement due to a question of its responsibilities. The Court believes that a breach of contract or similar action would be more appropriate for a full and fair adjudication of Plaintiff's claim(s) and nothing in this Order precludes Plaintiff from filing such an action.

A. Perrysburg Municipal Court proceedings

{¶ 14} On December 5, 2019, the township filed a complaint against the village for breach of contract, unjust enrichment, and specific performance in Perrysburg Municipal Court case No. CVF 1901708. The township amended its complaint on December 27, 2019.

{¶ 15} In the amended complaint, the township alleged that the village has not performed on the 1977 contract since January 20, 2017. As a result, the township claimed damages in the amount of $575.22 for time, material, and equipment used for snow removal and ice control on Drouillard Road south of Ayers Road to the curve between January 12 and 31, 2019, and $1,279.99 for additional repair work that was performed on November 4, 2019—for a total amount of $1,855.21 in damages. The township sought a judgment for $1,855.21, plus interest, and a judgment "ordering the Defendant, during the pendency of this action and for the remaining term of the contract to comply with the contract and maintain Drouillard Road as set forth in the contract."

{¶ 16} On February 28, 2020, the village answered the amended complaint, denying the allegations and asserting two affirmative defenses—the village claimed that the court lacked subject-matter jurisdiction, and that "the alleged agreement is unenforceable by law."

{¶ 17} The township moved for summary judgment on August 11, 2020—which was denied on October 2, 2020. On December 3, 2020, the matter proceeded to trial before the magistrate. Two witnesses testified at trial: Ed Kolanko, the mayor of the village, and Mark Hummer, the police chief and administrator of the township.

{¶ 18} The township called Kolanko to testify on direct. Kolanko confirmed that the village mayor and clerk-treasurer were authorized by Village of Walbridge Ordinance No. 24-77 to sign the 1977 contract, and that the village had performed under the contract by repairing and maintaining Drouillard Road for approximately 40 years. Kolanko also authenticated various documents and pieces of correspondence regarding the parties' dispute over Drouillard Road. Kolanko was confronted with the village's brief in opposition to the township's motion for summary judgment—in which the village stated that it did not have the financial recourses to continue its work on Drouillard Road—and Kolanko confirmed that was "what the [brief] states." Kolanko was then questioned regarding the financial resources of the village, and Kolanko confirmed that the village has received some unspecified amount of tax revenue related to the 1977 annexation over the last 40 years.

{¶ 19} The township then called Hummer to testify. Hummer stated that through his previous positions with Perrysburg Township and the city of Perrysburg, he was familiar with annexation agreements between Perrysburg Township and two different municipalities—Perrysburg and Rossford. Hummer testified that the term of the agreement between Perrysburg Township and Perrysburg is 99 years, and that the agreement between Perrysburg Township and Rossford is "one in perpetuity." Hummer also verified the amount of damages that the township has incurred to maintain Drouillard Road since the village refused to perform under the 1977 contract.

{¶ 20} The village then called Kolanko back to the stand to testify on the village's behalf. Kolanko testified that there was a village administrator when the 1977 contract was signed, and that position was held by Charles Adkins at the time. Kolanko said that the village told the township that it would cease maintenance and repair work on Drouillard Road because the village "did not receive any feedback from the Township Trustees or Administrator to have a conversation requested back in 2017 regarding the 1977 agreement." Kolanko testified that the 40 years had been "excessive" and a "burden" on the village's taxpayers. Kolanko also stated that although the village has money in its unencumbered funds, he considers those funds to be like a "savings account" for unforeseen events.

{¶ 21} In closing, the township argued that the village got "the benefit of annexation without opposition" and the village must honor its obligation to maintain and

repair Drouillard Road, per the terms of the bargained-for contract. It claimed that the village got "43 years' worth of income tax, real estate tax and tangential benefit of having that Stanley Yard in the Village" and "they have decided unilaterally to breach the contract, to take the benefits and not deal with the obligations that came with it." The township argued that "[a]t worst" the 1977 contract should be enforced for 99 years—which it claimed was a reasonable amount of time, presumably given the 99-year duration of the Perrysburg-Perrysburg Township annexation agreement.

{¶ 22} In response, the village argued that the 1977 contract was void under R.C. 731.141—which, it claimed, states that where "a village has an administrator the administrator has to sign the contracts. It's real clear." The village asked the magistrate to review a case from this court, *Aquatic Renovations Sys., Inc. v. Walbridge*, 2018-Ohio-1430, 110 N.E.3d 877 (6th Dist.), which concluded that a contract between the village and a pool-lining company could not be enforced against the village because it was not executed by the village administrator. The village also argued that it would be unreasonable to force the village to perform under the 1977 contract in perpetuity, and that 40 years is a reasonable amount of time to expect the village to perform a project where "there's not a whole lot of benefit to the Village." The village argued that any tax benefit that the village received through annexation was "very small."

{¶ 23} On December 8, 2020, the township filed a post-trial brief that responded to the village's closing arguments relating to R.C. 731.141—which the township argued

was "not raised in any Pleadings." In this brief, the township conceded that "[c]ounsel is correct in pointing out that once a Village has an Administrator and is not a Charter Village, the provisions of [R.C.] 731.141, require the Administrator to enter into Contracts on behalf of the Village." But, the township argued that—contrary to Kolanko's testimony at trial—the village did not have a village administrator in 1977. In support, the township attached Walbridge Codified Ordinances Section 123.01, which states that "[t]he position of Village Administrator is established and the former position of Village Manager is abolished." Thus, the township argued, there was no village administrator in 1977—only a "Village Manager." Moreover, the township claimed that the 1977 contract was valid under R.C. 731.14, which states that "[a]ll contracts made by the legislative authority of a village shall be executed in the name of the village and signed on its behalf by the mayor and clerk"—which is what happened here.

{¶ 24} The village filed a reply to the township's post-trial brief on December 9, 2020, which attached various documents to support Kolanko's testimony at trial. Those documents show that the position of village administrator was established through Village of Walbridge Ordinance No. 44-76 on December 13, 1973. After the position was created, mayor Gary A. Revill appointed Charles Adkins as the village administrator, and this appointment was approved by council on June 13, 1977—i.e., a few months before the parties' contract was executed on August 22, 1977. On June 18, 2003, the village reorganized and abolished the village administrator position and created the

position of village manager through Village of Walbridge Ordinance No. 010-03. A few years later, on April 6, 2005, the village administrator position was reestablished (and the position of village manager was abolished) through Village of Walbridge Ordinance No. 11-05. Thus, consistent with Kolanko's testimony at trial, Charles Adkins was the village administrator in 1977.

{¶ 25} On January 7, 2021, the magistrate issued his decision. He made a factual determination, based on the testimony and post-trial submissions of the parties that "the Village of Walbridge had a 'Village Administrator' in August 1977 and that that official did not execute the Drouillard Road maintenance contract of August 1977." The magistrate concluded that under the version of R.C. 731.141 that was in effect in August 1977, the 1977 contract was void because it was not signed by the village administrator.

{¶ 26} The trial court adopted the magistrate's decision that same day, and dismissed the township's complaint with prejudice. The village did not file any objections to the magistrate's decision, as required by Civ.R. 53. Instead, the village filed a notice of appeal on February 8, 2021, and raised two assignments of error:

> 1. Whether the Trial Court Improperly [sic] applied ORC 731.141 to this matter for the following reason: Appellant asserts that Appellee did not properly assert the affirmative defense with required specificity or produce sufficient evidence pertaining to said defense as it pertains to ORC 731.141 and as a result Appellee waived this defense.

2. Whether the Trial Court improperly applied ORC 731.141 statute as controlling on the matter before the court; Appellant asserts that ORC Section 731.14 and ORC 735.271 et seq. are applicable to this 1977 Annexation Agreement when using the common usage of the terms.

II. Analysis

{¶ 27} In its first assignment of error, the township argues that the village did not plead its affirmative defense under R.C. 731.141 with the required specificity, nor did it produce "sufficient evidence" to support this defense at trial. In its second assignment of error, the township argues that R.C. 731.141 is inapplicable to the 1977 agreement, and the agreement is valid under the governing provisions of R.C. 731.14 and 735.271 et seq. We will address these assignments of error in turn.

A. The township waived all but plain-error review.

{¶ 28} Under its first assignment of error, the township asserts that the village did not sufficiently plead its affirmative defense under R.C. 731.141, and claims that the "pleading and/or other evidence produced at trial is wholly insufficient to establish the result of a void contract under [R.C.] 731.14 or [R.C.] 731.141." The township does not, however, present any factual or legal arguments as to *why* the "pleading and/or other evidence" was supposedly insufficient to demonstrate that the 1977 contract was void under R.C. 731.141.

{¶ 29} Instead, the township's substantive arguments within its first assignment of error are focused upon "resolv[ing] some of the standard of review confusion." That is, the township argues that, under *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, we must review the trial court's adoption of the magistrate's decision under the civil manifest-weight-of-the-evidence standard. *Wilson*, however, has no application to this case. In *Wilson*, the Supreme Court of Ohio analyzed the general framework for the application of a manifest-weight review in a civil case (as opposed to a criminal case), and concluded that "the civil-manifest-weight-of-the-evidence standard affords the lower court more deference then [sic] does the criminal standard." *Id.* at ¶ 26. *Wilson* did not concern the situation we have here—i.e., appellate review of the trial court's adoption of a magistrate's decision to which the appellant filed no objections.

{¶ 30} Under Civ.R. 53(D)(3)(b), a party may file written objections to a magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period. *See also* Civ. R. 53(D)(4)(e)(i) (stating that the trial court may enter judgment during the 14 days permitted for the filing of objections to a magistrate's decision or after the 14 days have expired). If an appellant does not file timely objections to the magistrate's decision as required by Civ.R. 53(D)(3)(b), that party cannot assert *any* error on appeal related to that decision "[e]xcept for a claim of plain error * * *." Civ.R. 53(D)(3)(b)(iv).

{¶ 31} Here, the township did not file objections to the magistrate's decision. Accordingly, under Civ. R. 53(D)(3)(b)(iv), the township has waived all but plain-error review of the trial court's adoption of the magistrate's decision. We therefore find the township's first assignment of error—under which it advocates for a civil manifest-weight-of-the-evidence standard of review—not well-taken.

B. The trial court did not commit plain error.

{¶ 32} Under its second assignment of error, the township argues that the 1977 contract is fully enforceable because it is governed by R.C. 731.14—not R.C. 731.141.

{¶ 33} The relevant version of R.C. 731.14, which was in effect as of August 22, 1977, provides that "[a]ll contracts made by the legislative authority of a village shall be executed in the name of the village and signed on its behalf by the mayor and clerk." Am.Sub.S.B. No. 338, 136 Ohio Laws 757. Here, the 1977 contract was signed by the village mayor and clerk-treasurer. According to the township, that was all that was required.

{¶ 34} The trial court, however, concluded that R.C. 731.141 (rather than R.C. 731.14) governs the validity of the 1977 contract. The applicable version of R.C. 731.141, which was also in effect as of August 22, 1977, provides that "[i]n those villages that have established the position of village administrator, * * * the village administrator shall make contracts, purchase supplies and materials, and provide labor for any work under his supervision involving not more than two thousand five hundred

dollars. * * * All contracts shall be executed in the name of the village and signed on its behalf by the village administrator and the clerk." Am.Sub.S.B. No. 338, 136 Ohio Laws at 757-758. In *Aquatic Renovations Sys.*, 6th Dist. Wood No. WD-17-038, 2018-Ohio-1430, 110 N.E.3d 877, at ¶ 36, we found that a contract between the village and a pool-lining company was void because it was not executed by the village administrator and the clerk as required by R.C. 731.141. The trial court relied upon *Aquatic Renovations* to conclude that the same result is required in this case because, although the 1977 contract was executed by the clerk, it was co-signed by the mayor instead of the village administrator as required by R.C. 731.141.

{¶ 35} On appeal, the township argues this was error because R.C. 731.141 is inapplicable and *Aquatic Renovations* is distinguishable. According to the township, R.C. 731.141 is inapplicable because, unlike the pool-liner contract that was at issue in *Aquatic Renovations*, the 1977 contract "was not a contract for any purchases of supplies or materials or labor relating to any work under the Administrator that would require competitive bidding."[1] That is, the township argues that R.C. 731.141 is limited to the

[1] The township relies upon the italicized portion of R.C. 731.141 to make this argument:

> In those villages that have established the position of village administrator, as provided by section 735.271 of the Revised Code, the village administrator shall make contracts, purchase supplies and materials, and provide labor for any work under his supervision involving not more than two thousand five hundred dollars. When an expenditure, other than the compensation of persons employed by the village, exceeds two thousand five hundred dollars, such expenditure shall first be authorized and directed by ordinance of the legislative authority of the village. When so authorized and directed, *the village administrator shall make a written contract with the lowest and best bidder after advertisement for not less than two nor more than four consecutive weeks in a*

making of contracts by competitive bidding and "does not govern Intergovernmental annexation agreements."

{¶ 36} The township makes an interesting argument, but the relevant issue for our determination is whether the trial court committed plain error by adopting the magistrate's decision. The application of plain error in civil cases

> is sharply limited to the *extremely rare* case involving *exceptional* circumstances where the error, left unobjected to at the trial court, rises to the level of challenging the legitimacy of the underlying judicial process itself. * * * The plain error doctrine should never be applied to reverse a civil judgment simply because a reviewing court disagrees with the result obtained in the trial court * * *. (Emphasis sic.)

Goldfuss v. Davidson, 79 Ohio St.3d 116, 122, 679 N.E.2d 1099 (1997). Notably, although the township now argues on appeal that R.C. 731.141 is inapplicable to the 1977

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newspaper of general circulation within the village. The bids shall be opened and shall be publicly read by the village administrator or a person designated by him at the time, date, and place as specified in the advertisement to bidders or specifications. The time, date, and place of bid openings may be extended to a later date by the village administrator, provided that written or oral notice of the change shall be given to all persons who have received or requested specifications no later than ninety-six hours prior to the original time and date time and date [sic] *fixed for the opening.* All contracts shall be executed in the name of the village and signed on its behalf by the village administrator and the clerk.

The legislative authority of a village may provide, by ordinance, for central purchasing for all offices, departments, divisions, boards, and commissions of the village, under the direction of the village administrator who shall make contracts, purchase supplies or materials, and provide labor for any work of the village in the manner provided by this section.

contract, its post-trial brief expressly conceded that "[c]ounsel is correct in pointing out that once a Village has an Administrator and is not a Charter Village, the provisions of [R.C.] 731.141, require the Administrator to enter into Contracts on behalf of the Village." Given that the township affirmatively represented to the trial court that the village was "correct" that R.C. 731.141 applies to any contract "once a Village has an Administrator,"—and given that the village had an administrator in August 1977 when the contract was executed—we cannot conclude that this is such an "extremely rare" or "exceptional" case that would "challeng[e] the legitimacy of the underlying judicial process itself" if left undisturbed. (Emphasis omitted.) *Goldfuss* at 122.

{¶ 37} We therefore find the township's second assignment of error not well-taken.

III. Conclusion

{¶ 38} In conclusion, we find that the township's two assignments of error are not well-taken. The judgment of the Perrysburg Municipal Court, finding that the 1977 contract is void because it was not executed by the village administrator as required by R.C. 731.141, is affirmed. The township is ordered to pay the costs of this appeal under App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

Christine E. Mayle, J.

Gene A. Zmuda, P.J.
CONCUR.

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JUDGE

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