

RENDERED: July 22, 2005; 10:00 a.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-001267-MR

MARK ERNST

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT  
HONORABLE ANTHONY W. FROHLICH, JUDGE  
ACTION NO. 03-CI-01786

COUNTY OF KENTON, EX REL KENTON  
COUNTY AIRPORT BOARD AND  
KENTON COUNTY AIRPORT BOARD

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \* \*

BEFORE: TACKETT AND TAYLOR, JUDGES; HUDDLESTON, SENIOR JUDGE.<sup>1</sup>

TAYLOR, JUDGE: Mark Ernst brings this appeal from a May 26,  
2004, Interlocutory Order and Judgment of the Boone Circuit  
Court concluding that the County of Kenton and the Kenton County  
Airport Board (the Board) are entitled to condemn Ernst's real

---

<sup>1</sup> Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

property for the purpose of constructing a North/South runway at the Greater Cincinnati/Northern Kentucky International Airport. We affirm.

All of the real property of the airport is located in Boone County, Kentucky. The Board, created by the Kenton Fiscal Court, controls the operation of the airport in its entirety. On December 24, 2003, Kenton County and the Board filed a petition for condemnation in Boone Circuit Court. Therein, they sought to condemn approximately 4.979 acres of land located in Boone County and owned by Ernst. The Board sought the real property for expansion of runways at the airport; specifically, the Board was constructing a new North/South runway. On December 23, 2003, the Kenton Fiscal Court had adopted a resolution authorizing the condemnation of Ernst's real property in Boone County.

Ernst answered and filed a motion to dismiss. In his motion, Ernst argued that under Kentucky Revised Statutes (KRS) 416.560(2), Boone County and/or Boone Fiscal Court, and not Kenton County and/or Kenton Fiscal Court, must initiate the condemnation proceedings on behalf of the Board. The circuit court denied the motion, and on May 26, 2004, the court entered its interlocutory order and judgment authorizing the condemnation of Ernst's property. Thereafter, Ernst also filed a motion for injunctive relief and/or stay of execution of

judgment. This motion was also denied by the circuit court. This appeal follows.<sup>2</sup>

Ernst's primary argument on appeal revolves around whether Boone County must initiate the condemnation action under KRS 416.560(2). That statute states, in relevant part, as follows:

If any department, instrumentality, or agency of a consolidated local government, city, county, or urban-county government, other than a waterworks corporation the capital stock of which is wholly owned by a city of the first class or a consolidated local government, operates in more than one (1) governmental unit, it shall request the governing body of the consolidated local government, city, county, or urban-county government wherein the largest part of the individual tract of the property sought to be condemned lies, to institute condemnation proceedings on its behalf.

In his brief, Ernst particularly argues:

It is beyond dispute that [the Board] is a component of the Kenton County government. Nor can it be disputed that to the extent [the Board] controls land within Boone County, it is operating in more than one governmental unit. Given that the entirety of Ernst's property is located in Boone County, in seeking to condemn Ernst's property [the Board] must comply with KRS 416.560(2), which requires that the Boone County Fiscal Court institute condemnation proceedings on its behalf. Because [the

---

<sup>2</sup> Although an interlocutory order is usually not subject to appellate review, an interlocutory order condemning property is an exception to this general rule and is subject to review by the appellate court. See Ratliff v. Fiscal Court of Caldwell County, Kentucky, 617 S.W.2d 36 (Ky. 1981); Hamilton v. Commonwealth Transportation Cabinet, Department of Highways, 799 S.W.2d 39 (Ky. 1990).

Board] failed to have its condemnation action brought by the Boone County Fiscal Court as required by KRS 416.560(2), this action has not been initiated by the proper governmental unit, and its petition for condemnation of Ernst's property must be dismissed.

In essence, Ernst maintains that the Board is operating "in more than one governmental unit" within the meaning of KRS 416.560(2), and as such, Boone County was required to institute the condemnation proceedings, rather than Kenton County, as the real property is located within Boone County. We must reject Ernst's interpretation of KRS 416.560(2). Rather, we interpret the phrase "operates in more than one governmental unit" as meaning that the Board must be created and maintained by more than one governmental unit in order for KRS 416.560(2) to be applicable. Accordingly, we cannot conclude that KRS 416.560(2) requires Boone County and/or Boone Fiscal Court to initiate condemnation of Ernst's real property.

We view Ernst's remaining contentions as moot.

For the foregoing reasons, the Interlocutory Order and Judgment of the Boone Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Philip Taliaferro  
Alice G. Keys  
TALIAFERRO, MEHLING, SHIROONI,  
CARRAN & KEYS  
Covington, Kentucky

BRIEF FOR APPELLEE:

Joseph L. Baker  
Debra S. Pleatman  
ZIEGLER & SCHNEIDER, P.S.C.  
Covington, Kentucky