

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001841-MR

JOE NORSWORTHY, SECRETARY OF LABOR,
COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM CLAY CIRCUIT COURT
HONORABLE R. CLETUS MARICLE, JUDGE
ACTION NO. 03-CI-00122

CLAY COUNTY FISCAL COURT AND
JAMES VINCENT ADAMS, THIRD-
PARTY DEFENDANT

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND KNOFF, JUDGES.

COMBS, CHIEF JUDGE: The Commonwealth's Secretary of Labor appeals from a summary judgment of the Clay Circuit Court, which dismissed its action to enforce the prevailing wage rate provisions of KRS¹ Chapter 337 against the Clay County Fiscal Court. Finding no error, we affirm.

¹ Kentucky Revised Statutes.

The Clay County Public Library ("the library") undertook improvements and renovations beginning in the fall of 1999. James Vincent Adams, a Middlesboro architect, was hired under separate contracts by the library and by the Manchester-Clay County Chamber of Commerce ("the Chamber") to design a computer learning center and a separate community room to be located on the library's second floor.

The bidding period for the construction of these two areas opened in March of 2000. Gilpin Construction Company, Inc. ("Gilpin Construction"), a London-based firm, submitted the low bid for each of the projects and was awarded separate contracts for the completion of the improvements.

A public hearing concerning the prevailing wage rate was held in Manchester in April 2001. Mike Gilpin of Gilpin Construction indicated to a hearing officer that the library renovation exceeded the threshold of two hundred fifty thousand dollars (\$250,000.00) established by the provisions of KRS 337.010(3). The Labor Cabinet ("the Cabinet") conducted an investigation, and in October 2002, it cited the Clay County Fiscal Court with a notice of violation.

The Cabinet alleged that the library improvements, while designated by the fiscal court as independent projects, were in reality part of a single initiative that qualified as a public works project governed by the wages and hours provisions

of KRS Chapter 337. Pursuant to the requirements of KRS 337.510, every public authority must notify the Department of Workplace Standards in writing of the specific public work to be constructed and obtain a schedule of the prevailing rate of wages for each necessary worker in the locality where the work is to be performed. The schedule of the prevailing rate of wages must be attached to and made part of the specifications for the work as well as be made a part of every contract for the construction of the project. These requirements apply only where the public works project is estimated to cost more than two hundred fifty thousand dollars (\$250,000.00).

While the aggregate costs of the two library projects exceeded three hundred thousand dollars (\$300,000.00), the prevailing wage rate was not incorporated into either of the projects' specifications or contracts. Having determined that the projects constituted one initiative and were thus governed by the provisions of KRS 337.510, the Cabinet directed the Clay County Fiscal Court to contact Gilpin Construction in order to determine how to provide additional compensation to each worker on the project. The fiscal court disputed the Cabinet's position and refused to comply with its directive.

Pursuant to the provisions of KRS 337.550, the Cabinet filed this action against the Clay County Fiscal Court on April 15, 2003. In July 2004, the fiscal court filed its motion for

summary judgment. It contended that the prevailing wage rate provisions were inapplicable to the library renovations since neither of the separate projects met the two hundred fifty thousand (\$250,000.00) threshold established by statute. In support of this position, James Vincent Adams submitted his affidavit explaining that the projects had been procured under separate contracts: one room was to be paid for by the fiscal court and the other room was to be paid for by the Chamber. Adams recalled that Gilpin Construction had submitted separate proposals for each of the projects and that separate contracts had been awarded. The Chamber had executed the contract with respect to the computer leaning center. The library had executed the contract with respect to the community room.

During the course of the renovations, Adams recounted that he had submitted statements and invoices to the Chamber with respect to the computer leaning center and to the library with respect to the community room. Adams attested that it was "mere coincidence that Gilpin Construction Company happened to be the successful Bidder on each separate project," emphasizing that "there was no collusion or attempt by or between the Affiant and the separate Owners on the two (2) separate projects to have only one Contractor or to treat the two (2) projects as a combined Project. . . ." Adams consistently characterized the renovations as two independent projects undertaken

simultaneously rather than as a joint project. The fiscal court argued that the provisions of KRS 337.51(1) simply did not apply and that it was entitled to judgment as a matter of law.

The Cabinet filed a written response opposing the fiscal court's motion for summary judgment, but it did not appear at the hearing. On August 10, 2004, summary judgment was entered in favor of the fiscal court, and the Cabinet's enforcement action was dismissed.

On appeal, the Cabinet argues that the trial court erred by concluding that the fiscal court was entitled to judgment as a matter of law. The Cabinet contends that the library improvements constituted a single public works project with costs estimated to exceed the statutory threshold, thus triggering the application of the prevailing wage rate provisions. We disagree.

The provisions of KRS 337.510 carefully define a public authority's obligations under the prevailing wage requirements. The obligations apply to the "construction, reconstruction, improvement, enlargement, alteration, or repair of any public works project by contract fairly estimated to cost more than two hundred fifty thousand dollars (\$250,000)." KRS 337.010(3)(a). The statute also provides as follows:

No public works project, if procured under a single contract and subject to the requirements of this section, may be divided

into multiple contracts of lesser value to avoid compliance with the provisions of this section. . . .

Id.

The construction of the library's computer learning center was managed and funded by the Manchester-Clay County Chamber of Commerce, a private entity. Construction of the library's community room was managed and funded by the Clay County Public Library, a public entity under the authority of the Clay County Fiscal Court. The Chamber hired James Adams to provide architectural services, and it hired Gilpin Construction to act as primary contractor. Under a separate bid, Gilpin Construction also won the contract for construction of the library's community room.

Gilpin Construction submitted separate pay applications for the work that it performed on each project. Work on the learning center was billed to the Chamber, and work on the library's community room was billed to the fiscal court. According to Adams's affidavit, separate certificates of substantial completion were issued with respect to each project. Adams unequivocally treated the improvements as separate and distinct projects. No evidence presented to the court tended to indicate that the parties had worked together collusively in order to avoid compliance with the prevailing wage requirements governing a public authority.

The trial court did not err by concluding that the prevailing wage requirements of KRS 337.510 did not apply to the improvements undertaken at the Clay County Public Library. Absent any issue of material fact, the fiscal court was entitled to judgment as a matter of law. The grant of summary judgment was appropriate. CR 56.03. We affirm the order of summary judgment of the Clay Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

James R. Grider, Jr.
Environmental & Public
Protection Cabinet
Frankfort, Kentucky

BRIEF FOR APPELLEE CLAY COUNTY
FISCAL COURT:

Roy G. Collins
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BRIEF FOR APPELLEE JAMES
VINCENT ADAMS:

Guy R. Colson
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