

RENDERED: FEBRUARY 8, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000938-MR

SPENCER COUNTY FIRE
PROTECTION DISTRICT

APPELLANT

v. APPEAL FROM SPENCER CIRCUIT COURT
HONORABLE CHARLES R. HICKMAN, JUDGE
ACTION NO. 05-CI-00193

JUDY PUCKETT; JOE PAUL SMITH;
PATSY SMITH; LAWRENCE STAMPER;
CHARLES RAISOR; GREGORY BARKHAM;
ANGELA BARKHAM; AND DANITA CARTER

APPELLEES

OPINION REVERSING AND REMANDING

** ** * ** * ** *

BEFORE: LAMBERT, NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Spencer County Fire Protection District (SCFPD) brings this appeal from a March 27, 2006, Opinion and Order of the Spencer Circuit Court determining that an ad valorem tax increase levied by the Board of Trustees of SCFPD pursuant to Kentucky Revised Statutes (KRS) 75.040 is subject to the recall provisions of KRS 132.017 and KRS 132.023. For the foregoing reasons, we reverse and remand.

In 1993, SCFPD was created pursuant to KRS Chapter 75. SCFPD has authority to levy a tax on property in the district for the “purpose of defraying the expenses of establishment, maintenance, and operation of the fire department” KRS 75.040(1)(a). In August 2005 SCFPD voted to adopt and assess a tax rate of seven cents (.07) per one hundred dollars (\$100.00) of assessed property value. Seven residents within SCFPD, Joe Paul Smith, Patsy Smith, Lawrence Stamper, Charles Raisor, Gregory Barkham, Angela Barkham, and Danita Carter (collectively referred to as “residents of SCFPD”), petitioned the Spencer County Clerk challenging the tax rate and requesting that the matter be placed before the voters in a recall vote pursuant to KRS 132.023.

On October 18, 2005, SCFPD filed a petition in the Spencer Circuit Court against Judy Puckett, Spencer County Clerk, and the residents of SCFPD seeking to enjoin the clerk from finding the resident's petition sufficient, from certifying that the petition was in compliance with KRS 132.017, and from placing the tax rate issue before the voters. SCFPD also sought a determination that KRS 132.017 is not applicable to the petition filed by the residents. The clerk subsequently responded to SCFPD's petition and also made a demand for declaratory judgment. Ky. R. Civ. P. (CR) 57; KRS Chapter 418. Therein, the clerk sought a determination of the applicability of KRS 132.017 and 132.023 to the tax rate assessed by SCFPD pursuant to KRS 75.040.

SCFPD subsequently filed a motion for summary judgment. Therein, SCFPD argued that pursuant to KRS 75.040(1)(a), the district was exempt from the provisions of KRS 132.023. In a December 22, 2005, Opinion and Order, the circuit court determined “that once the initial [tax] rate was established pursuant to KRS 75.040,

the provisions of KRS 132.023 govern any subsequent levy of tax increase, which also makes it subject to recall petition as set out in KRS 132.017.”¹ The court further stated that “[t]he record is devoid of whether the petition complies. Therefore Defendant, Judy Puckett, Spencer County Clerk, must comply with the provisions of KRS 132.017 and **is hereby ordered to make her determination on the notice for recall (petition for recall) consistent with the provisions of KRS 132.017.**”²

The clerk subsequently filed a motion requesting the court to “rule on the remaining issues of law.” By Opinion and Order entered March 27, 2006, the circuit court determined that the petition and affidavits filed with the county clerk were sufficient and satisfied KRS 132.017. Thus, the court ordered the property tax increase to be placed before the voters in a recall election pursuant to KRS 132.017. This appeal follows.

SCFPD contends that the circuit court erred by determining that the seven percent tax levied against residents of SCFPD pursuant to KRS 75.040 is subject to the four percent limitation prescribed by KRS 132.023 and, thus, subject to recall vote as provided for in KRS 132.017. We agree.

KRS 75.040(1) states as follows:

(a) Upon the creation of a fire protection district or a volunteer fire department district as provided in KRS 75.010 to 75.031, the trustees of a district are authorized to establish

¹ The opinion and order entered December 22, 2005, was interlocutory.

² Kentucky Revised Statutes (KRS) 132.023 essentially provides that where a tax rate levied by a district exceeds four percent (4%), the tax shall be subject to a recall vote as provided for in KRS 132.017. KRS 132.017 sets forth the requirements and procedures that must be followed if such a petition and election are utilized.

and operate a fire department and emergency ambulance service as provided in subsection (6) of this section and to levy a tax upon the property in the district, including that property within cities in a fire protection district or a volunteer fire department district, as provided by KRS 75.010(2) provided that the property is subject to county tax, and not exceeding ten cents (\$0.10) per one hundred dollars (\$100) of valuation as assessed for county taxes, for the purpose of defraying the expenses of the establishment, maintenance, and operation of the fire department or to make contracts for fire protection for the districts as provided in KRS 75.050. The rate set in this subsection shall apply, notwithstanding the provisions of KRS 132.023.

(b) A fire protection district or a volunteer fire department district that establishes and operates an emergency ambulance service and is the primary service provider in the district may levy a tax upon the property in the district not to exceed twenty cents (\$0.20) per one hundred dollars (\$100) of valuation as assessed for county taxes, for the purpose of defraying the expenses of the establishment, maintenance, and operation of the fire department and emergency ambulance service or to make contracts for fire protection for the districts as provided in KRS 75.050. The rate set in this subsection shall apply, notwithstanding the provisions of KRS 132.023.

KRS 132.023 provides, in relevant part:

(3) (a) That portion of a tax rate levied by an action of a tax district, other than the state, counties, school districts, cities, consolidated local governments, and urban-county governments which will produce revenue from real property, exclusive of revenue from new property, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010 shall be subject to a recall vote or reconsideration by the taxing district, as provided for in KRS 132.017, and shall be advertised as provided for in paragraph (b) of this subsection.

It is well-established that interpretation and construction of a statute is a matter of law for the court. *City of Worthington Hills v. Worthington Fire Protection*

District, 140 S.W.3d 584 (Ky.App. 2004). However, where the terms of a statute are clear and unambiguous, the statute must be given effect as written without resort to rules of construction or interpretation. *Mondie v. Com.*, 158 S.W.3d 203 (Ky. 2005); *Vandertoll v. Com.*, 110 S.W.3d 789 (Ky. 2003). In both instances, our review proceeds *de novo*. *Revenue Cabinet v. Hubbard*, 37 S.W.3d 717 (Ky. 2000).

The language of KRS 75.040 is clear and unambiguous. It plainly provides that “[t]he rate set in this subsection shall apply, notwithstanding the provisions of KRS 132.023.” Simply put, the unambiguous language of KRS 75.040 provides that a tax levied pursuant to KRS 75.040 is not subject to the recall provisions of KRS 132.023. Where a statute is unambiguous, we are not obligated to review legislative intent nor do we have any authority to effectively amend the statute by interpreting it contrary to its plain meaning. *City of Louisville v. Fidelity and Columbia Trust Co.*, 245 Ky. 704, 54 S.W.2d 40 (1932). As such, we believe the circuit court erred by determining that SCFPD's tax levy was subject to recall in this case.

In light of our ruling above, we view SCFPD's remaining contention regarding the defective recall petition to be moot.

For the foregoing reasons, the Opinion and Order of the Spencer Circuit Court is reversed and this cause is remanded for proceedings not inconsistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE.

James G. Hodge

Louisville, Kentucky