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**SUPREME COURT ORDERED OPINION NOT PUBLISHED:
SEPTEMBER 10, 2008
(FILE NO. 2007-SC-0847-D)**

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-001451-MR

KLINT KELLEY

APPELLANT

v. APPEAL FROM MARSHALL CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 05-CI-00073

MIKE MILLER, JUDGE EXECUTIVE;
AND JERRY ENGLISH, GORDON
HARGROVE, JEROME HICKS,
COMMISSIONERS OF THE MARSHALL
COUNTY FISCAL COURT

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: DIXON AND VANMETER, JUDGES; GRAVES,¹ SENIOR JUDGE.

¹ Senior Judge John W. Graves, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

VANMETER, JUDGE: Klint Kelley appeals from a summary judgment for appellees entered by the Marshall Circuit Court in an action stemming from his employment termination. We affirm.

Kelley began working on October 13, 2003, as the county planner for Marshall County. On January 14, 2005, he was dismissed from his employment by appellee Marshall County Judge/Executive Mike Miller. Kelley then filed a petition seeking mandamas and a declaration of rights against Miller and the remaining appellees, who were the county's fiscal court commissioners. Eventually, both Kelley and appellees moved for summary judgment. The trial court granted summary judgment for appellees, succinctly summarizing the underlying facts as follows:

1. On or about July 31, 2003, Marshall County Planner Robert Strow retired. Following Strow's retirement, Marshall County Judge Executive Mike Miller . . . and [Kelley], discussed [Kelley's] employment to replace Strow as County Planner. Sometime thereafter, [Kelley] visited Judge Miller, and later met with Judge Miller and Marshall County Commissioner Jerome Hicks and Commissioner Gordon Hargrove in Judge Miller's office. The meeting with Miller, Hicks and Hargrove occurred sometime after October 7, 2003 and before October 13, 2003.
2. [Kelley] claims that he was hired on October 7, 2003 during an executive session of the Marshall County Fiscal Court, but also states in his Complaint that he was hired on or about October 21, 2003. [Kelley] actually reported to work on October 13, 2003.
3. The minutes from the October 7, 2003 Fiscal Court meeting indicate an executive session was held to deal with personnel matters, but there is no testimony that suggests that [Kelley's] employment was discussed at that meeting. The only testimony given in this regard was by Commissioner Hargrove, who stated that the October 7, 2003 executive session had nothing to do with Kelley's hiring.

4. The facts are uncontradicted that no formal action was taken by the Marshall County Fiscal Court to hire [Kelley]. The facts of record in this case strictly indicate that [Kelley] was not hired in executive session.
5. [Kelley] alternatively asserts that by accepting money recovered by [him] for services rendered with the knowledge and consent of the Fiscal Court that the Fiscal Court ratified [Kelley's] employment. There is no question but that [Kelley] did receive an annual salary as County Planner and that [Kelley] reported to the Fiscal Court at their regular meetings on work he was doing as County Planner.
6. Finally, it is undisputed that in 2004, Judge Miller and Kelley signed a job description which unambiguously states that [Kelley] worked at the exclusive direction of Judge Miller, and all parties agree.
7. Finally, the facts that lead to this litigation were based upon Judge Miller's terminating Kelley's employment without a vote of the Fiscal Court. This is undisputed, particularly given in light of the fact that a motion was made in front of the Fiscal Court to terminate [Kelley], which did not pass, and all parties agreed that Judge Miller terminated [Kelley's] employment.

The court concluded that if Kelley's employment was at the pleasure of the county judge/executive pursuant to KRS 67.711, that official also was vested with the authority to terminate Kelley's employment. The court alternatively found, in essence, that if Kelley's appointment depended on the fiscal court's approval, his employment was void *ab initio* since fiscal court approval was never obtained for his hiring. Thus, it was unnecessary to obtain fiscal court approval for his firing from such unapproved employment. This appeal followed.

Kelley contends that the trial court erred by entering summary judgment for appellees because genuine issues of material fact exist as to whether he was either hired

by the fiscal court, or hired by the county judge/executive with ratification by the fiscal court. CR 56.03. Further, he asserts that genuine issues of material fact exist as to whether his dismissal was improper since it occurred without fiscal court approval. We disagree.

The functions of county fiscal courts and county commissioners are governed by KRS Chapter 67. More particularly, KRS 67.710 specifies that a county judge/executive's responsibilities "include, but are not limited to," the duty to

[e]xercise with the approval of the fiscal court the authority to appoint, supervise, suspend, and remove county personnel (unless otherwise provided by state law)[.]

KRS 67.710(7). Employment in certain positions is exempt from such fiscal court approval as, "[n]otwithstanding the provisions of KRS 67.710(7)," the county judge/executive is authorized to also

appoint a deputy county judge/executive, and a reasonable number of other assistants, secretaries, and clerical workers within the office of the county judge/executive as determined by the fiscal court, who shall serve at his pleasure. The fiscal court, pursuant to KRS 64.530(4), shall fix reasonable compensation for the deputy county judge/executive and such other employees.

KRS 67.711(1).

Although Kelley argues that he was hired and therefore could be fired only by the fiscal court, the record belies this assertion since it is undisputed that Kelley began working on October 13, 2003, but he was not mentioned in the minutes of either the October 6 or the October 21 fiscal court meeting. It is well established that with certain limited exceptions not applicable here, a fiscal court must conduct business in public sessions. *See* KRS 61.800 to 61.884. Moreover, a fiscal court may speak only through

its records. *Campbell County v. Braun*, 295 Ky. 96, 174 S.W.2d 1 (1943). Given the fiscal court's failure to discuss the hiring of Kelley on the record of its meetings, the trial court did not err by finding that no genuine issue of material fact exists in this regard.

Further, we find no merit to Kelley's assertion that a genuine issue of material fact exists as to whether his hiring by Miller was ratified by the fiscal court. The job description for Kelley's position as county planner included the following duties:

1. To serve as an employee of the Marshall County Fiscal Court by assisting the Marshall County Judge/Executive in writing and administrating various grants on behalf of the Marshall County Fiscal Court and its various agencies. The County Planner will work under the direction of the County Judge/Executive.

. . . .

3. The County Planner is responsible for assisting the Marshall County Judge/Executive in updating the County Inventory Ledger annually.

. . . .

5. The County Planner shall research and propose new projects for Marshall County that will be for the benefit and general welfare of the citizens of Marshall County. Any new project shall first be proposed to the Marshall County Judge/Executive and acted on at his or her direction.
6. The County Planner shall participate in any other programs or special activities that the Marshall County Fiscal Court or any agency thereof in [sic] pursuing at the direction of the Marshall County Judge/Executive.
7. Activities outside the normal duties of the office of the County Planner will not be subject to reimbursement unless pre-approved by the Marshall County Judge/Executive.

This description clearly and repeatedly provides that the county planner must follow the directions of the county judge/executive, rather than those of the fiscal court. Further, the job description confirms that the county planner is appointed by, serves at the pleasure of, and is a member of the office of the county judge/executive. As the fiscal court is given no role in the county planner's hiring, firing, or supervision, we find no merit in Kelley's claim that his hiring was ratified by the fiscal court. The trial court did not err by entering summary judgment for appellees.

Kelley's final contention, that genuine issues of material fact exist as to whether the absence of fiscal court approval rendered his dismissal improper, also lacks merit. If his employment was at the county judge/executive's pleasure, the very nature of that employment rendered fiscal court approval of his hiring or firing irrelevant. Further, if his employment in fact required fiscal court approval or ratification, the absence of any such official approval or ratification, as reflected in fiscal court meeting minutes, rendered his employment improper *ab initio*, and no need existed for the fiscal court to approve his subsequent termination from that improper employment. *See Lewis v. Bd. of Educ. of Johnson County*, 348 S.W.2d 921 (Ky. 1961); *City of Pikeville v. Lee*, 329 S.W.2d 580 (Ky. 1959).

The court's judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Robert B. Frazer
Marion, Kentucky

BRIEF FOR APPELLEES:

Kerry B. Harvey
Benton, Kentucky