

RENDERED: AUGUST 2, 2013; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000623-MR

CAROLE HERMAN, DANIEL BORK,
JACK W. BULLOCK, TIMOTHY R. ECHELARD,
ANN EHIGNER GALVIN, MARGERY HARDY,
LINDA HOSTETTER, KRIS STEUBS,
VERNON SHRIVER, TIM WOLF, PAULA
GISLER WOLF, AND WILLIAM VAN EPPS

APPELLANTS

v. APPEAL FROM JESSAMINE CIRCUIT COURT
HONORABLE C. HUNTER DAUGHERTY, JUDGE
ACTION NO. 10-CI-01173

JESSAMINE COUNTY FISCAL COURT
AND JESSAMINE COUNTY FIRE DISTRICT

APPELLEES

OPINION AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, MAZE, AND NICKELL, JUDGES.

COMBS, JUDGE: The appellants, owners of certain real property in northwest Jessamine County, appeal an order of the Jessamine Circuit Court granting summary judgment in favor of the Jessamine County Fiscal Court. We affirm the

judgment.

The Kentucky Revised Statutes (KRS) at Chapter 75 authorize the formation of fire protection districts as special taxing districts. The chapter permits the fire protection district to levy annually an *ad valorem* tax upon the property in the district in order to fund fire protection efforts within its boundaries. The Jessamine County Fire District was established under this provision and is governed by a board of trustees.

With the enactment of KRS 75.015 in 1994, the Kentucky General Assembly also authorized the formation of fire protection subdistricts within the boundaries of an existing fire protection district. The statute provides, in relevant part, as follows:

(1) A fire protection subdistrict may be formed according to the provisions of this section. A fire protection subdistrict shall:

(a) Be located within the territorial limits of a fire protection district or volunteer fire department district;

(b) Have a continuous boundary; and

(c) Be managed by the board of trustees of the district, which shall:

1. Impose an ad valorem tax on property in the subdistrict in addition to the ad valorem tax the board imposes on property in the district as a whole; and

2. Expend the revenue from that additional tax on improved fire

protection facilities and services for the subdistrict.

(2) Persons desiring to form a fire protection subdistrict shall present a petition to the fiscal court clerk and to each member of the fiscal court. The petition shall be accompanied by a map and a metes and bounds description or other description which specifically identifies the boundaries of the proposed subdistrict. The petition shall be signed by more than sixty percent (60%) of the persons who both:

(a) Live within the proposed subdistrict; and

(b) Own property that is located within the proposed subdistrict and is subject to taxation by the district under KRS 75.040.

.....

(4) Upon receipt of the petition, the fiscal court shall hold a hearing and provide notification in the manner required for creation of a taxing district under KRS 65.182(2) to (5). Following the hearing, the fiscal court shall set forth its written findings of fact and shall approve or disapprove the formation of the subdistrict. The creation of the subdistrict shall be of legal effect only upon the adoption of an ordinance in accordance with the provisions of KRS 67.075 to 67.077. A certified copy of the ordinance creating the subdistrict shall be filed with the county clerk.

(5) Upon the creation of a fire protection subdistrict, the trustees shall levy a tax, not to exceed the amount stated in the petition, on the property in the subdistrict, for the purpose of improving fire protection facilities and services in the subdistrict.

.....

(8) The board of trustees shall not reduce the tax rate imposed on property in the district as a whole as a result of receiving extra revenue from the additional tax on property in the subdistrict. The trustees shall expend the extra revenue solely on improving fire protection facilities and services in the

subdistrict and shall not expend the extra revenue on facilities or services that are shared by the entire district.

(9) Fire subdistrict taxes shall be placed on the tax bill in a place separate from the bill of the fire district tax so that ratepayers can ascertain the amount of each tax and its rate.

. . . .

(11) Fire districts shall maintain a separate accounting of all subdistrict funds

On November 6, 1995, seventy-two percent (72%) of the land-owning residents of a portion of northwest Jessamine County petitioned the fiscal court for the formation of a fire protection subdistrict. The petition was filed in accordance with the provisions of KRS 75.015 and was accompanied by a map and description specifically identifying the boundaries of the proposed subdistrict. The petitioners acknowledged that the Jessamine County Fire District's board of trustees would have authority to impose a special *ad valorem* tax on the property assessed for local taxation in order to provide enhanced fire protection for the proposed subdistrict.

Upon receipt of the petition, the fiscal court held a hearing with proper notice under the provisions of KRS 65.182 (pertaining to the procedures for creating a taxing district). Testimony was taken. Following the hearing, the fiscal court prepared written findings of fact and approved the formation of the proposed fire protection subdistrict. An ordinance creating the subdistrict was adopted, and a certified copy of that ordinance was duly filed with the county clerk.

Upon its formation, the subdistrict was managed by the Jessamine County Fire District's Board of Trustees. The board of trustees asserts that revenue collected from the subdistrict has been used to build a fire station; to purchase an aerial fire truck and other equipment necessary to fight fires at the large homes common to the subdistrict; and to pay a staff of part-time fire-fighters.

On October 15, 2010, twelve county taxpayers residing in the fire protection subdistrict (the appellants) filed a declaratory judgment action against the Jessamine County Fiscal Court and the Jessamine County Fire District. The taxpayers contended that the formation of the fire protection subdistrict violated Section 171 of the Constitution of Kentucky, which requires uniformity of taxation. They also challenged the imposition of a special *ad valorem* tax on their property pursuant to KRS 75.015 as violating Section 180 of the Constitution of Kentucky, which requires every ordinance levying a tax to specify distinctly the purpose for which the tax is levied; it also prohibits the use of taxes levied for one purpose to be devoted to another.¹ In the alternative, they contended that the *ad valorem* taxes collected from the property owners of the fire protection subdistrict had been misappropriated and that they were used to fund facilities or services that were shared by the entire district in violation of the statute's provisions.² These property owners sought a refund of the special *ad valorem* taxes paid or, alternatively, an audit of the tax revenue expenditure.

¹Citing a large volume of constitutional challenges, the Attorney General declined to participate in the defense of the statute.

² This contention was supported by correspondence from the state auditor of public accounts.

During discovery, the Jessamine County Fire District admitted that it had unintentionally deposited revenue derived from the subdistrict into its own accounts and that it had expended sub-district funds for services benefitting the entire district. It reported that its board of trustees had adopted detailed written policies in order to prevent any improper use of sub-district revenue in the future. It also reported that the board had approved: (1) the transfer of \$100,000.00 from the fire district's general fund to the subdistrict as reimbursement for use of the subdistrict's revenue toward the acquisition of a training tower; (2) the transfer of \$244,420.18 for expenses erroneously charged to the subdistrict for the period of 1996 through 2006; (3) the transfer of \$24,500.00 to the subdistrict as reimbursement for rental income received; and (4) the transfer of \$300.00 for reimbursement for legal fees. It announced that it was willing to work in good faith to restore any mismanaged funds to the subdistrict.

On February 9, 2012, the Jessamine County Fiscal Court filed a motion for summary judgment. In its memorandum in support of the motion, the fiscal court argued that KRS 75.015 was constitutional on its face. It also observed that it had no statutory authority either to collect or to administer the disputed revenue and that it could not be held accountable either for the levy or mismanagement of the expenditures.

On February 17, 2012, the Jessamine County Fire District filed a cross-motion for partial summary judgment. The fire district supported the fiscal court's motion for summary judgment based upon the constitutional issues. It also

observed that discovery concerning the disputed expenditures was ongoing and that the appropriate remedy was not to invalidate the statute and/or ordinance providing for the formation of the subdistrict.

On March 5, 2012, the Jessamine Circuit Court concluded that KRS 75.015 is constitutional and granted the motion of the Jessamine County Fiscal Court for summary judgment. While the remaining claims against the Jessamine County Fire District were yet to be adjudicated, the judgment recited that the judgment in favor of the fiscal court was final and that there was no just reason to delay its entry. Kentucky Rule(s) of Civil Procedure 54.02. The claims against the fiscal court were dismissed, and this timely appeal followed.

The property owners contend that the trial court erred by dismissing their action against the fiscal court. They argue that the provisions of KRS 75.015, allowing for the formation of a fire protection subdistrict and additional tax levy upon property owners, are unconstitutional and that the fiscal court is ultimately responsible for the taxes levied in the fire protection subdistrict.

We review a trial court's decision to grant summary judgment *de novo*. *Blevins v. Moran*, 12 S.W.3d 698 (Ky. App. 2000). The judgment should be granted only where the pleadings, the discovery, the admissions, the stipulations, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Kentucky Rule(s) of Civil Procedure 56.03.

Before the Jessamine Circuit Court, the taxpayers contended that the formation of the fire protection subdistrict and the imposition of a special *ad valorem* tax on their property pursuant to KRS 75.015 violate § 171 and § 180 of the Constitution of Kentucky. Again, as noted earlier, Section 171 requires uniformity of taxation “within the territorial limits of the authority levying the tax[.]” and Section 180 prohibits taxes levied and collected for one purpose from being diverted to another purpose “by any county, city, town or municipal board or local legislative body, levying a tax[.]”

Our due regard for the authority of our co-equal branch of government compels us to presume the constitutionality of every legislative enactment. *Baker v. Fletcher*, 204 S.W.3d 589 (Ky. 2006). Additionally, it is the practice of our courts to refrain from addressing constitutional issues where other, non-constitutional grounds can be relied upon to decide a matter. *Id.*, citing *Dawson v. Birenbaum*, 968 S.W.2d 663 (Ky. 1998). The issue of constitutionality is addressed only if it is absolutely necessary to a proper determination of the merits of the case under consideration. *Preston v. Clements*, 313 Ky. 479, 232 S.W.2d 85 (1950).

Aside from the constitutional issue, there exists a sufficient basis for the trial court’s decision to grant summary judgment in favor of the fiscal court. Consequently, we affirm without reaching the constitutional issue presented.

KRS Chapter 65 sets forth general provisions applicable to counties, cities, and other governmental units. It provides specifically for the formation of “taxing

districts” – any special districts authorized by statute to levy *ad valorem* taxes within the meaning of Section 157 of the Constitution of Kentucky. A fire protection subdistrict created pursuant to the provisions of KRS 75.015 is a special and separate taxing district under the provisions of KRS 65.180.

The fiscal court was clearly empowered by the provisions of KRS 75.015 to approve the property owners’ request for the formation of a fire protection subdistrict and to create the subdistrict through the adoption of an ordinance in accordance with the provisions of KRS 65.182(2) to (5). The county clerk is required to add the levy to the tax bills of the affected property owners, and the sheriff is required to account for the funds collected. However, the underlying authority to levy the *ad valorem* tax on property in the disputed fire protection subdistrict was not delegated to the fiscal court. The fiscal court is not the “authority levying the tax” under Section 171 of the Constitution of Kentucky; nor is it the “municipal board or local legislative[] body levying a tax” under Section 180 of the Constitution of Kentucky. Contrary to the assertion of the property owners, the fiscal court *did not levy* the disputed taxes. That power was exclusively the duty and prerogative of the trustees of the fire protection subdistrict. KRS 75.015(5). Consequently, we conclude that no action based upon the levy of the disputed tax or the administration of the generated revenue could be asserted against the Jessamine County Fiscal Court. Therefore, it is not necessary to address the constitutional issues presented by the property owners with respect to the judgment entered in favor of the fiscal court.

We affirm the summary judgment of the Jessamine Circuit Court entered in favor of the Jessamine County Fiscal Court.

ALL CONCUR.

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