2016 WL 687144

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

NOT DESIGNATED FOR PUBLICATION

Court of Appeal of Louisiana,
First Circuit.

The LOUISIANA OIL AND
GAS ASSOCIATION, INC.
v.
The Honorable James D. "Buddy"
CALDWELL, in his Capacity as the
Attorney General for the State of Louisiana
v.
Board of Commissioners for the Southeast
Louisiana Flood Protection Authority–East.

No. 2015 CA 0889.
|
Feb. 18, 2016.

On Appeal from the 19th Judicial District Court, In and for the Parish of East Baton Rouge, State of Louisiana, Trial Court No. 626,798, Div. D, The Honorable Janice Clark, Judge Presiding.

Attorneys and Law Firms

Robert A. Mahtook, Jr., Amy J. Goode, Lafayette, Louisiana, for Appellant, The Louisiana Gas and Oil Association, Inc.

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Gladstone N. Jones, III, Eberhard D. Garrison, Kevin E. Ruddell, Emma Elizabeth Antin Daschbach, James R. Swanson, Brent B. Barriere, Loretta G. Mince, Benjamin D. Reichard, New Orleans, Louisiana, J. Michael Veron J. Rock Palermo, III, Alonzo P. Wilson, Turner D. Brumby, Ashley E. Philen, Lake Charles, Louisiana, for Intervenor/Appellee, Southeast Louisiana Flood Protection Authority–East.

Before WHIPPLE, C.J., WELCH, and DRAKE, JJ.

Opinion

DRAKE, J.

***1** The plaintiff, The Louisiana Oil and Gas Association, Inc. (LOGA) appeals a judgment of the trial court dismissing its petition for declaratory judgment and injunctive relief, following a bench trial, and granting the relief requested by the intervenor, Southeast Louisiana Flood Protection Authority–East (SLFPA–E). For the following reasons, we affirm the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY

LOGA is a non-profit trade association whose membership includes individuals and independent oil and gas exploration, development, production and transportation companies conducting oil and gas activities in Louisiana and on public lands owned by the State of Louisiana. This litigation arises from SLFPAE's hiring and compensating private attorneys on a contingency fee basis to represent it in a lawsuit filed on July 24, 2013, against nearly one-hundred oil and gas companies for damages to coastal wetlands allegedly caused by oil and gas operations. That suit was originally filed in Civil District Court for the Parish of Orleans, was removed to the United States District Court for the Eastern District of Louisiana, and was dismissed on February 13, 2015, for failure to state a cause of action. *See Bd. of Comm'rs of Se. Louisiana Flood Prot. Auth.-East v. Tennessee Gas Pipeline Co., LLC,* 88 F.Supp.3d 615 (E.D.La.2015), *appeal docketed,* No. 15–30162 (5th Cir. Feb. 27, 2015). Prior to SLFPA–E filing suit in Civil District Court for the Parish of Orleans, it passed a resolution to hire private legal counsel on a contingency fee basis to represent it, and had the resolution approved by the Honorable James D. "Buddy" Caldwell, in his capacity as Attorney General of the State of Louisiana (Attorney General). The resolution, entitled, "Resolution No. 06–06–13–04—Engagement of Jones, Swanson, Huddell & Garrison, LLC," provided:

> WHEREAS, the levee districts within jurisdiction of ... (SLFPA–E) have experienced damages due to land loss and erosion caused by third parties; and
>
> WHEREAS, retaining counsel to represent SLFPA–E in this matter will require a law firm with special expertise and experience.

> BE IT HEREBY RESOLVED, that the SLFPA–E authorizes its President or Vice president to engage Jones, Swanson, Huddell & Garrison, LLC, on behalf of itself and the levee districts within its jurisdictions, regarding claims for damages due to land loss and erosion, for the benefit of and on behalf of the residents within its jurisdiction.
>
> BE IT FURTHER RESOLVED, that Jones, Swanson, Huddell & Garrison, LLC, shall be paid on a contingency basis ranging from 32.5 percent to 22.5 percent of any gross recovery depending on the amount of the recovery.

The Attorney General approved the resolution on July 16, 2013.

The present suit began with LOGA filing a Petition for Declaratory Judgment and Injunctive Relief against the Attorney General in order to have the approval of the resolution declared invalid under Louisiana law. LOGA contended that: (1) the Attorney General is the exclusive counsel for the SLFPA–E and therefore, the hiring of special counsel is the responsibility of the attorney general; (2) alternatively, if SLFPA–E could hire private attorneys by resolution, the resolution did not comply with La. R.S. 42:263, which requires the full reason for the action and the compensation to be paid to be stated; and (3) some of the funds potentially received from the litigation must be deposited into the state treasury and therefore, the contingency fee contract deducts funds that are due to the State and is a violation of the legislative delegated power to appropriate state funds.

***2** The Attorney General filed a reconventional demand, requesting dismissal of LOGA's petition and seeking a declaratory judgment that the Attorney General is counsel for flood protection authorities only when called upon. Further, the Attorney General sought legal clarification as to whether, pursuant to La. R.S. 30:29, it could enter into legal service contracts with private attorneys under certain conditions and that those contracts were not contingency fee contracts in violation of state law. LOGA responded by filing an Exception of No Cause of Action and/or Prematurity, which the trial court denied in open court on February 24, 2014. SLFPA–E intervened on February 5, 2014, seeking dismissal of LOGA's claims, a declaration of authority to retain private counsel, and a declaration that the approval of the resolution was valid.

This matter proceeded to trial on February 24–25, 2014, and March 10, 2014. LOGA's principal demand and the Attorney General's reconventional demand, as it related to the principal demand, were tried on February 24–25, 2014. The portion of the reconventional demand related to La. R.S. 30:29 was severed and tried on March 10, 2014. The trial court ruled on the principal demand and reconventional demand in open court on March 10, 2014, and adopted the post-trial memoranda of the Attorney General and SLFPA–E as its written reasons. The trial court signed a judgment granting relief in favor of SLFPA–E on March 10, 2014, dismissing LOGA's petition for declaratory judgment and injunctive relief with prejudice, and finding that: (1) SLFPA–E was permitted to retain special counsel pursuant to La. R.S. 38:330.6 and 42:263; (2) that the Attorney General's approval of the resolution was valid; and (3) the Attorney General serves as SLFPA–E's counsel only when called upon to do so. It is from this judgment that LOGA appeals. [1] , [2]

ASSIGNMENTS OF ERROR

LOGA assigns four errors as follows:

(1) The trial court erred in dismissing LOGA's Petition for Declaratory Judgment and Injunctive Relief.

(2) The trial court erred in concluding SLFPA–E is a political subdivision rather than a state agency; therefore, funds received in SLFPA–E's lawsuit are state funds.

(3) The trial court erred in finding and declaring the Attorney General represents SLFPA–E only when called upon to do so under La. R.S. 38:330.6.

(4) The trial court erred in finding SLFPA–E's resolution complied with La. R.S. 42:263.

DISCUSSION

State Agency v. Political Subdivision

A declaratory judgment is one which simply establishes the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done, and its distinctive characteristic is that the declaration stands by itself with no executory process following as a matter of course, so that it is distinguished from a direct action in that it does not seek execution or performance from the defendant or the

opposing litigants. Appellate courts review a district court's decision to grant or deny a declaratory judgment using the abuse of discretion standard. *Olde Nawlins Cookery, L.L.C. v. Edwards,* 2009–1189 (La.App. 1 Cir. 5/3/10), 38 So.3d 1012, 1015. LOGA claims that the trial court erred in determining that SLFPA–E is a political subdivision rather than a state agency. The status of SLFPA–E is a question of law; statutory interpretation which is a question of law is reviewed under the *de novo* standard. *Olde Nawlins Cookery,* 38 So.3d at 1016.

***3** LOGA argues that Article VII, § 9 of the Louisiana Constitution provides: "All money received by the state or by any state board, agency, or commission shall be deposited immediately upon receipt in the state treasury." Article VII, § 10 provides that "money shall be drawn from the state treasury only pursuant to an appropriation made in accordance with the law." The appropriation of state money is vested in the Legislature pursuant to Article III, § 16. Relying on *Meredith v. leyoub,* 96–110 (La.9/9/97), 700 So.2d 478, LOGA claims that funds received by a state agency cannot be used to pay private attorneys without express Legislative authority.

Accordingly, the first issue before this court is whether SLFPA–E is a political subdivision or a state agency, and whether the trial court erred in finding that SLFPA–E was a political subdivision. It is undisputed that La. R.S. 38:330.1(A)(1) created SLFPA–E and another flood protection authority and provides that those flood protection authorities "are established as levee districts pursuant to Article VI, Sections 38 and 38.1 of the Constitution of Louisiana ." A "levee district" is defined as "a political subdivision of this state organized for the purpose and charged with the duty of constructing and maintaining levees, and all other things incidental thereto within its territorial limits." La. R.S. 38:281(6). The Attorney General asserts that an *in pari material* reading of these two statutes reveals that SLFPA–E was established as a levee district, and thus, is a political subdivision. SLFPA–E argues that La. R.S. 38:330.1 states that it was established as a "flood protection authority" pursuant to Article VI, Sections 38 and 38.1 of the Louisiana Constitution, and that Article VI refers to "Local Governments." Furthermore, SLFPA–E argues that it is not a state-funded agency but derives its funding from property taxes collected within its jurisdiction for the purpose of constructing and maintaining levees, levee drainage, flood protection, hurricane flood protection and other revenue from certain levee districts. *See* La. R.S. 38:330.3; *see also* La. Const. Art. VI, § 39.

LOGA argues that despite the language of La. R.S. 38:330.1(A)(1) and La. R.S. 38:281(6), the Legislature intended to create flood protection authorities as state agencies, not political subdivisions. LOGA claims that Article VI, § 38.1 grants the Legislature power to "establish regional flood protection authorities ... and provide for their territorial jurisdiction, governing authority, powers, duties, and function," and that pursuant to that grant of power, the legislature enacted La. R.S. 38:330.1 *et seq.* LOGA argues that the Legislature's intent to create flood protection authorities as state agencies, not political subdivisions, is manifested in three ways: (1) La. R.S. 38:330.6 designates the Attorney General as counsel for SLFPA–E, meaning the Legislature intended to treat flood protection authorities different than levee boards in terms of counsel; (2) La. R.S. 38:330.2(G) subjects SLFPA–E to the Administrative Procedure Act (APA), La. R.S. 49:950 *et seq.,* which applies to agencies and not political subdivisions; and (3) La. R.S. 38:330.1(2) provides that SLFPA–E shall be subject to Title 49, Chapter 2, Part II, thereby elevating its role in the comprehensive state system for coastal management, which indicates SLFPA–E is a state agency rather than a political subdivision.

***4** Our interpretation of these statutes are guided by well established rules of statutory construction. *See Katie Realty, Ltd. v. Louisiana Citizens Property Insurance Corporation,* 2012–0588 (La.10/16/12), 100 So.3d 324, 328. Legislation is the solemn expression of the legislative will; thus, the interpretation of legislation is primarily the search for legislative intent. *In re Succession of Boyter,* 99–0761 (La.1/7/00), 756 So.2d 1122, 1128. The starting point for interpretation of any statute is the language of the statute itself, as the text of the law is the best evidence of legislative intent. *See* La. R.S. 24:177(B)(1); *Rando v. Anco Insulations, Inc.,* 2008–1163 (La.5/22/09), 16 So.3d 1065, 1075. When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature. La. C.C. art. 9; La. R.S. 1:4; *In re Clegg,* 2010–0323 (La.7/6/10), 41 So.3d 1141, 1154 *(per curiam).* The words of a law must be given their generally prevailing meaning. La. C.C. art. 11.

Relying on the above principles of law, we find no ambiguity in either La. R.S. 38:330.1(A)(1), which establishes SLFPA–E as a "levee district," or La. R.S. 38:281(6), which defines

a "levee district" as a political subdivision. The words of both statutes are clear and unambiguous. *See* La. C.C. art. 9. Therefore, we see no need to determine the intent of the legislature by resorting to interpreting (1) La. R.S. 38:330.6, and its designation of counsel for SLFPA–E; (2) La. R.S. 38:330(2)(G), and the effect of APA designation; or (3) La. R.S. 38:330.1(2), which subjects SLFPA–E to Title 49.

Attorney General's Duty Pursuant to La. R.S. 38:330.6

LOGA claims that the trial court erred in finding that the Attorney General represents SLFPA–E only when called upon to do so. LOGA claims that the Attorney General is the sole counsel to SLFPA–E, pursuant to La. R.S. 38:330.6. SLFPA–E sought a declaration that the Attorney General was counsel to SLFPA–E only when called upon to do so. When the issue involves statutory interpretation, which is a question of law, our review is *de novo. Tanana v. Tanana,* 2012–1013 (La.App. 1 Cir. 5/31/13), 140 So.3d 738, 742.

Louisiana Revised Statutes 38:330.6 states:

> The state attorney general and his assistants shall be and are hereby designated as counsel for each flood protection authority in the execution of the purposes of this Chapter and are hereby charged with the responsibility of representing each authority in any and all matters when called upon to do so.

LOGA claims that this statute mandates that the attorney general act as counsel for any flood protection authority, including SLFPA–E. SLFPA–E and the Attorney General argue that the Attorney General is required to be counsel for SLFPA–E **only** when called upon to do so. LOGA counters that the Attorney General is attempting to insert the word **only** into the statute. We disagree. The Legislature clearly is modifying the entire paragraph with "when called upon to do so." Otherwise, the Legislature could have ended La. R.S. 38:330.6 after "in any and all matters." In construing a statute, an appellate court is bound to consider all parts together, giving effect to all parts, if possible, not construing as surplusage any sentence, clause or word, if a construction can be legitimately found which will give meaning to and preserve all words of the statute. *Ritchie v. Louisiana Department of Public Safety and Corrections,* 595 So.2d 1158, 1160 (La.App. 1 Cir.1991), *writ denied,* 600 So.2d 642 (La.1992). We decline to read out of the statute "when called upon to do so," as LOGA suggests. Therefore, we find that the trial court did not commit manifest error in concluding that pursuant to La. R.S. 38:330.6, the Attorney General represents flood protection authorities only when called upon to do so. Furthermore, La. R.S. 38:330.6 does not support LOGA's argument that by designating the Attorney General as counsel for SLFPA–E, the legislature intended to treat flood protections authorities as state agencies.

Resolution Compliance with La. R.S. 42:263

***5** LOGA claims that even if SLFPA–E is legally entitled to hire private counsel, the Attorney General's approval of the resolution at issue in this matter was improper, because the resolution failed to comply with La. R.S. 42:263(A), which provides, in pertinent part:

> No ... levee board ... or other local or state board shall retain or employ any special attorney or counsel to represent it in any special matter or pay any compensation for any legal services whatever **unless a real necessity exists, made to appear by a resolution thereof stating fully the reasons for the action and the compensation to be paid.** The resolution then shall be subject to the approval of the attorney general ...
>
> (Emphasis added).

LOGA asserts that the resolution did not fully state the reasons for the action, or the compensation to be paid, and that no real necessity existed.

The Attorney General found that the resolution complied with La. R.S. 42:263(A) and approved it. Richard McGimsey, the director of the civil division of the Attorney General's Office, testified at trial that he was involved in the review of the resolution. Mr. McGimsey stated that there had been dozens of times that a flood protection authority sought the approval of the Attorney General to hire special counsel. With regard to the resolution, he had to determine if it was properly submitted by a political subdivision, whether the firm to be appointed was licensed to practice law, the fee, and the purpose for the political subdivision hiring special counsel. Mr. McGimsey believed that the submission of the resolution indicated a real necessity to hire special counsel. He further indicated that the resolution stated that SLFPA–E wanted to hire the firm "regarding claims for damages due

to land loss and erosion and for the benefit of and [sic] on behalf of the residents within its jurisdiction." Mr. McGimsey also testified that the statement in the resolution that "the contingency ranged from 32.5 percent to 22.5 percent of any gross recovery depending on the amount of the recovery" was sufficient notice of the compensation paid for both he and the first assistant, with whom he was required to review the fee, to approve the resolution. Mr. McGimsey determined that the resolution complied with La. R.S. 42:263.

LOGA relies upon *Board of Com'rs of Burns Levee Dist. v. Perez,* 202 La. 655, 12 So.2d 670 (1943), and asserts that SLFPA–E failed to establish a "real necessity" for hiring private counsel. The *Perez* court found that there was no showing of a "real necessity" to hire special counsel when the descriptions in the resolution were vague and the levee boards "were ably represented by the Attorney General." 12 So.2d at 675. However, we find the present matter more similar to *Cortina v. Gulf States Utilities–Cajun Elec. Power Co-op., Inc.,* 594 So.2d 1326, 1330 (La.App. 1 Cir.1991), *writ denied,* 600 So.2d 666 (La.1992) and *writ denied,* 600 So.2d 667 (La.1992), where this court determined that the evidence established the existence of the "need [for] outside help" and a "real necessity" for private counsel to represent the school board involved in a tax dispute, where the volume and technical aspects of the tax litigation [were] evident from the record. The resolution at issue in this matter specifically states that the "levee districts within jurisdiction of ... (SLFPA–E) have experienced damages due to land loss and erosion caused by third parties" and that the representation of SLFPA–E "will require a law firm with special expertise and experience." Unlike *Perez,* where there was no evidence of a "real necessity" for hiring private counsel, we agree with the trial court's finding in this matter, a "real necessity" was shown to exist as evidenced by the wording of the resolution and the obvious complexities of the case.

***6** Additionally, the resolution did state the compensation to be paid. LOGA points to no law or jurisprudence that states that a range of a contingency fee is insufficient to fully state compensation. The issues of whether a "real necessity" existed or if the contingency fee was sufficiently stated in the resolution are questions of fact which cannot be reversed in the absence of manifest error. In applying the manifest error-clearly wrong standard, the appellate court must determine not whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. Thus, if the fact-fmder's conclusions are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse, even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. *Young v. City of Gonzales,* 2014–1299 (La.App. 1 Cir. 3/12/15), 166 So.3d 1070, 1073. Therefore, the trial court was not manifestly erroneous in finding that the resolution complied with La. R.S. 42:263.

CONCLUSION

For the foregoing reasons, the March 10, 2014 judgment of the trial court declaring: (1) that SLFPA–E is permitted to retain special counsel pursuant to La. R.S. 38:330.6 and 42:263; (2) that the Attorney General's approval of Resolution 06–06–13–04 is valid under Louisiana law; (3) that the Attorney General serves as counsel to flood protection authorities and is charged with representing those authorities pursuant to La. R.S. 38:330.6 *only* when called upon to do so; and (4) dismissing LOGA's petition for declaratory judgment and injunctive relief is affirmed. All costs of this proceeding are assessed against LOGA.

AFFIRMED.

All Citations

Not Reported in So.3d, 2016 WL 687144, 2015-0889 (La.App. 1 Cir. 2/18/16)

Footnotes

1 A judgment in favor of the Attorney General on his reconventional demand was signed on March 24, 2014, dismissing LOGA's petition with prejudice and granting relief in favor of the Attorney General. The March 24, 2014 judgment is the subject of a separate appeal entitled, *"Louisiana Oil and Gas Association, Inc. v.*

Honorable James D. "Buddy" Caldwell, in his capacity as the Attorney General of the State of Louisiana, Docket No. 2015–0398."

2 The judgment before this court was rendered on March 10, 2014. After the judgment was signed by the trial court, the Louisiana Legislature passed 2014 La. Acts 544, § 1, effective June 6, 2014, which enacted La. R.S. 49:214.36(O), and purportedly seeks to prohibit the filing of suits such as the present suit and to apply retroactively to actions pending on the Act's effective date. The trial court ruled that Act 544 was unconstitutional and signed a judgment on December 3, 2014. At the time of the hearing in this matter, both parties agreed that a notice of appeal regarding the December 3, 2014 judgment had been filed with the Louisiana Supreme Court, seeking to appeal the ruling of the trial court on the constitutionality of Act 544. Any action taken by the Louisiana Supreme Court may have ramifications on the opinion issued by this court.