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Franklin, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

GARY W. MOODY,)

Appellant,)

vs.)

CITY OF FRANKLIN,)

Appellee.)

No. 41A05-1011-PL-693

APPEAL FROM THE JOHNSON SUPERIOR COURT

The Honorable Kevin M. Barton, Judge

Cause No. 41D01-1010-PL-74

August 19, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Gary W. Moody, pro se, appeals the trial court's order denying his motion for an injunction following a hearing. Moody presents several issues for review. However, after reviewing the appellate briefs, we issued an order directing Moody to show cause why the appeal should not be dismissed as moot. We conclude that Moody's response to that order does not show why the appeal should not be dismissed as moot. As such, we dismiss Moody's appeal.

FACTS AND PROCEDURAL HISTORY

On October 22, 2010, Moody, pro se, filed a verified petition for temporary injunction.¹ The court set the matter for hearing on October 27. On October 25, Moody filed an amended petition for an ex parte restraining order and injunction as well as a supporting affidavit, seeking an order prohibiting the City of Franklin ("City") from continuing with a street paving project ("2010 Paving Project") pursuant to a contract with Milestone Contractors, LP ("Milestone"). He also filed an "Affidavit to Transfer Case and for Consideration of Ex Parte Order."² Appellant's App. at 4. The trial court denied the "Ex Parte Issuance of Amended Petition for Ex Parte Restraining Order and Injunction." Id. Finally, also on October 25, following a hearing attended by Moody and the City, the court issued an "Order on Petition for Temporary Restraining Order and Setting Bond." Id. Moody did not post the required bond.

¹ Moody has not included a copy of the verified petition for temporary injunction in the record on appeal.

² Moody also did not include a copy of the Affidavit to Transfer Case and for Consideration of Ex Parte Order in his appellant's appendix.

On October 27, the court held a hearing on Moody's request for an injunction. At issue was whether the contract the City executed with Milestone for a component of the 2010 Paving Project was valid because the person acting as city engineer when the contract was executed was not a licensed engineer. At the hearing, the trial court made certain statements indicating that its ruling would be favorable to Moody. However, later that day, the court issued its written order denying the request for an injunction. In that order, the court made findings and conclusions thereon and denied the request for an injunction. Moody filed a motion to correct error, which the trial court denied. Moody now appeals.

DISCUSSION AND DECISION

Moody contends that the trial court erred when it denied his request for an injunction barring the City from proceeding with the part of the 2010 Paving Program to be performed under a contract with Milestone. Todd A. Wilkerson, the City Engineer who had executed the contract, was not a licensed engineer. Moody pointed to Indiana Code Section 25-31-1-19, which provides that local governments and agencies "may not engage in the construction or maintenance of any public work involving the practice of engineering for which plans, specifications, and estimates haven to been prepared, certified, and sealed by, and the construction and maintenance executed under the direct supervision of an engineer." Moody alleged that the 2010 Paving Project involved the practice of engineering and, therefore, Wilkerson, who was not a licensed engineer, was not authorized to enter into a contract with Milestone for a component of the 2010 Paving Project.

Moody now appeals as of right under Appellate Rule 14(A) from the order denying the injunction.³ In so doing, Moody requests that we order the trial court to revise its findings to conform to the oral statements favorable to Moody's position that the trial court had made at the hearing on his request for an injunction. Moody also asks that we reverse the order denying the injunction. But in its appellee's brief, the City alleges that Moody's appeal is moot given the current status of the 2010 paving project.⁴ We issued an order to show cause why Moody's appeal should not be dismissed as moot. In that order, we asked Moody to provide the status of the paving project at issue to show that the issues raised in his appeal are not moot.

The standard describing mootness is well-settled. "The long-standing rule in Indiana courts has been that a case is deemed moot when no effective relief can be rendered to the parties before the court." Mosley v. State, 908 N.E.2d 509, 603 (Ind. 2009). "When the concrete controversy at issue in a case has been ended or settled, or in some manner disposed of, so as to render it unnecessary to decide the question involved, the case will usually be dismissed." Id.

On July 13, Moody filed his response to the order to show cause ("Response").⁵ Moody alleges that the "contractor was still working on the unfinished parts of the 2010 contract in Spring 2011." Response at 4. He also attached to his response a Milestone

³ Because Moody appeals from the order denying his request for an injunction, we are limited to reviewing only the relief denied in that order.

⁴ In its brief, the City stated that the "acts which [Moody] seeks to enjoin have already occurred[.]" Appellee's Brief at 8.

⁵ Moody's response was filed in his "Motion in Response to Court's Order to Show Cause; Motion to Consolidate Cases; Motion to Shorten Deadlines." Orders on the motion to consolidate cases and motion to shorten deadlines will be issued separately from this decision.

“loadout” receipt dated May 9, 2011; an Accounts Payable Voucher from the City to Milestone dated July 1, 2011; and a Contractor’s Progress Estimate from Milestone dated April 1, 2011.

Our order was issued June 28, 2011. In his Response, Moody does not demonstrate that the part of the 2010 Paving Project at issue is still ongoing. And none of the attachments to Moody’s Response show the status of work as of June 28, 2011. The “loadout” receipt and the progress estimate predate the order to show cause by at least two months, and the Accounts Payable Voucher shows only that a payment was approved in July, not that work was still ongoing. Because Moody has not shown that the part of the Paving Project contracted to Milestone is still ongoing, and because this appeal is only from the order denying the injunction to prohibit work under that contract, Moody has not met his burden to show cause why this appeal should not be dismissed.

Moody also asserts in his response that he is not a lawyer, cannot afford to pay a lawyer in this case, and has been unable to secure pro bono assistance in this case. But pro se litigants are held to the standards of licensed attorneys. See Goosens v. Goosens, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005). Thus, Moody is held to the same standards and burdens of proof in this case as a licensed attorney. Moody has not met his burden to show that the issues raised in his appeal are not moot. As such, we must dismiss his appeal.

Dismissed.

ROBB, C.J., and CRONE, J., concur.