

RENDERED: AUGUST 13, 2010; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2009-CA-001543-MR

CHRISTIAN COUNTY WATER DISTRICT

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT  
HONORABLE EDWIN M. WHITE, SPECIAL JUDGE  
ACTION NO. 06-CI-01241

HOPKINSVILLE SEWAGE AND WATER  
WORKS COMMISSION d/b/a/ HOPKINSVILLE  
WATER AND ENVIRONMENT AUTHORITY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: TAYLOR, CHIEF JUDGE; COMBS AND NICKELL, JUDGES.

COMBS, JUDGE: Christian County Water District (CCWD) appeals the order of the Christian Circuit Court that awarded partial summary judgment to Hopkinsville Water and Environment Authority (HWEA). After our review, we affirm.

HWEA is a municipal utility or water provider operated by the City of Hopkinsville and not regulated by the Public Service Commission (PSC). CCWD is a water district statutorily created by the Christian County Fiscal Court, Kentucky Revised Statutes (KRS), Chapter 74. Unlike the HWEA, it is regulated by the PSC. CCWD and HWEA have been providing water service to Hopkinsville and Christian County for many years. In 1973, they entered into a water purchasing agreement providing that HWEA would sell water to CCWD. Over the next three decades, the two entities engaged in a number of transfer agreements without major disagreement.

In 2005, HWEA sought to impose higher rates on the water that it was selling to CCWD. CCWD opposed the rate increase and invoked the PSC to initiate proceedings. A settlement (Agreement 2-2005) was reached in which HWEA agreed not to raise its rates; CCWD agreed to transfer service territory in qualified areas upon HWEA's request. The agreement was executed in 2006.

During the tenure of their agreement, HWEA twice requested transfers of service territory; CCWD failed to execute either transfer. Therefore, in 2006, HWEA filed the underlying complaint, requesting "a declaration of rights and responsibilities of both HWEA and the CCWD with regard to [Agreement 2-2005]." In May 2008, the Christian Circuit Court awarded partial summary judgment to HWEA. It found: that Agreement 2-2005 is valid and enforceable; that the Circuit Court has jurisdiction to enforce the agreement; and that CCWD

should “take reasonable and good faith efforts, and all other steps necessary” to comply with the terms of the agreement. CCWD responded by filing this appeal.

Summary judgment is a device utilized by the courts to expedite litigation. *Ross v. Powell*, 206 S.W.3d 327, 330 (Ky. 2006). It is a “delicate matter” because it “takes the case away from the trier of fact before the evidence is actually heard.” *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 482 (Ky. 1991). The movant must prove that no genuine issue of material fact exists and that the movant “should not succeed unless his right to judgment is shown with such clarity that there is no room left for controversy.” *Id.*

The trial court must view the evidence in favor of the non-moving party. *City of Florence v. Chipman*, 38 S.W.3d 387, 390 (Ky. 2001). The non-moving party must present “at least some affirmative evidence showing the existence of a genuine issue of material fact.” *Id.* On appeal, our standard of review is “whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Further, because summary judgments deal solely with issues of law and do not involve fact finding, our review is *de novo*. *Pinkston v. Audubon Area Community Services, Inc.*, 210 S.W.2d 188, 189 (Ky. App. 2006).

CCWD’s first argument is that Christian Circuit Court does not have jurisdiction with respect to Agreement 2-2005 and that jurisdiction lies with the PSC. We disagree.

The PSC has jurisdiction over “the regulation of rates and service of utilities.” KRS 278.040(2). Municipal water providers (e.g., HWEA) are exempt from the PSC’s jurisdiction unless the services they render are “pursuant to a contract **with a utility which is regulated by the PSC.**” *City of Greenup v. Public Service Commission*, 182 S.W.3d 535, 538 (Ky. App. 2005). (Emphasis added.) Furthermore, establishment of water district territories is governed by KRS 74.110. It provides that territory changes are subject to approval by the county judge executive and appealable to the circuit court. It does not incorporate by reference any involvement by the PSC.

In this case, HWEA is a municipal utility or water provider that does not come within PSC’s jurisdiction. However, because of rendering services to CCWD, an entity that is within PSC’s jurisdiction, HWEA became subject to the PSC’s jurisdiction in some matters. When HWEA proposed raising the rates that it charged CCWD for water, the dispute as to *rates* properly went before the PSC. Agreement 2-2005 was part of the result of that proceeding. The dispute now before us arises from Agreement 2-2005, which is a contract that addresses *territory* -- not rates or services.<sup>1</sup> It is an issue wholly distinct from the original dispute.

The PSC’s authority should not “limit or restrict . . . contract rights” of cities or political subdivisions. KRS 278.040(2). A water district is a political subdivision within the statute’s meaning. *Louisville Ext. Water Dist. v. Diehl*

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<sup>1</sup> “Services” are defined as “the purity, pressure, and quantity of water,” which are not at issue in this case. KRS 278.010(13).

*Pump & Supply Co.*, 246 S.W.2d 585, 586 (Ky. 1952). Therefore, the PSC would have had no jurisdiction in this contractual matter. The trial court correctly determined that it alone had jurisdiction.

CCWD argues that the PSC has jurisdiction because the territory shift will affect its quality of service. We do not agree. The current order solely addresses the validity of Agreement 2-2005 -- not the collateral effects of its terms. The contract provides that transfer of territory is subject to an approval process in compliance with KRS 74.110. That proceeding will be the proper venue in which to present evidence relating as to how the service will be affected by the potential change in territory. Additionally, we reiterate that KRS 74.110(3) directs and mandates that appeals from this process are to be taken exclusively to the circuit court. No provision is made for concurrent jurisdiction between the court and the PSC.

CCWD's next arguments are: (1) that the summary judgment was erroneous because the record did not contain all of the proof concerning how the transfer would affect its service; and (2) that CCWD's territory is protected from encroachment by federal law. These arguments are irrelevant to the threshold issue of jurisdiction currently before us, and we shall refrain from addressing them.

We conclude that in its order of partial summary judgment, the circuit court correctly found: that the contract was valid and enforceable; that the circuit court had jurisdiction; and that the parties should act in good faith in order to comply with the contract. As we noted above, the contract itself provides that an

approval process in accordance with KRS 74.110 must be completed before a transfer actually takes place. The CCWD prematurely attempts to present evidence at this juncture that will become pertinent in that future proceeding. The trial court did not err in its entry of partial summary judgment. Accordingly, we affirm.

ALL CONCUR.

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