

MISSOURI COURT OF APPEALS

Michel v. Taylor

143 Mo. App. 683 (1910) · Decided May 2, 1910

SUMMARY

The court considers a challenge to a special tax bill issued by the City of Joplin for sidewalk construction. It holds that the required one-week advertisement for bids had not elapsed before the contract was awarded, rendering the tax bill void. The judgment for the defendant is affirmed, and the court declines to dismiss the case for lack of writ-of-error notice.

CASE DETAILS

COURT	Missouri Court of Appeals
WRITING FOR THE COURT	Gray, J.
JURISDICTION	Missouri
DECIDED	May 2, 1910
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff sued in the Jasper County Circuit Court to recover on a special tax bill issued by the City of Joplin for sidewalk construction. After the defendant prevailed, the plaintiff's appeal was dismissed and the case proceeded in the Missouri Court of Appeals on a writ of error transferred from the Kansas City Court of Appeals.
STANDARD OF REVIEW	The appellate court reviewed whether the circuit court correctly held the special tax bill void based on noncompliance with the statutory and ordinance notice requirement for bids.
PRECEDENTIAL VALUE	Published Missouri Court of Appeals opinion; precedential value not otherwise specified in the opinion.
PARTIES	Michel v. Taylor

TOPICS

- appellate procedure
- municipal law
- construction law
- statutory interpretation

PRACTICE AREAS

- appellate procedure
- municipal law
- construction law
- statutory interpretation

QUESTIONS PRESENTED

1. Whether the failure to show service of statutory notice of the writ of error required dismissal of the proceeding.
2. Whether filing a brief on the merits waived the defendant's objection to the writ of error.
3. Whether publication of notice for bids on seven consecutive mornings, with the contract awarded on the seventh day, satisfied the requirement of not less than one week's advertisement.
4. Whether the statutory and ordinance requirements for notice of letting a public-improvement contract were mandatory or merely directory.

HOLDINGS

1. The filing of a merits brief together with a motion objecting to the writ of error does not waive the right to insist on the objection.
2. Publication of the notice on January 1 and each succeeding day through January 7 did not satisfy the requirement of not less than one week's advertisement because seven full days had not elapsed before the contract was awarded.
3. Statutory and ordinance requirements for notice of letting contracts for public improvements are mandatory rather than directory; failure to comply rendered the special tax bill void.

KEY QUOTATIONS

“In other words, from the time the notice was first published until the contract was let, seven full days had not elapsed.” (at 687)

“It is insisted by plaintiff that ordinances requiring notice of letting the contract for public improvements are directory and not mandatory. We are not of this opinion.” (at 688)

FACTUAL BACKGROUND

The City of Joplin published an advertisement for bids to construct a sidewalk on January 1, 1908, and on each of the next six mornings, including January 7. The bids were opened and the contract was awarded on the evening of January 7, approximately 8 p.m., before seven full days had elapsed from the first publication. The defendant challenged the validity of the resulting special tax bill, and the circuit court held the bill void.

PROCEDURAL HISTORY

The Jasper County Circuit Court held the special tax bill void and entered judgment for the defendant. Plaintiff initially appealed, later dismissed the appeal, and obtained a writ of error. The Missouri Court of Appeals declined to dismiss the writ for lack of notice and affirmed the circuit court's judgment on the merits.

DISPOSITION

affirmed

CASES CITED

- Burdette v. Dale, 95 Mo. App. 515, 69 S. W. 480
- Russel v. Croy, 164 Mo. 69, 63 S. W. 849
- Midland v. Linton, 82 N. W. 886
- Leach v. Burr, 188 U. S. 510, 47 L. Ed. 567
- Roth v. Hax, 68 Mo. App. 283
- Clapton v. Taylor, 49 Mo. App. 117
- Keane v. Cushing, 15 Mo. App. 96
- Galbraith v. Newton, 30 Mo. App. 380

OPINION

GRAY, J.

GRAY, J. This action was instituted in the circuit court of Jasper county, on the 8th day of September, 1908, by plaintiff, to recover on a special tax-bill issued by the city of Joplin, a city of the third class, for the construction of a sidewalk.

On trial in the circuit court, the defendant was successful and plaintiff appealed. From the printed abstract of the record and brief filed by appellant, the cause is here on the appeal taken by plaintiff from the judgment of the Jasper County *686Circuit Court. There is nothing in the abstract, statement or brief to indicate that the cause is in this court except by virtue of that appeal.

From the brief of the respondent, we are informed that the cause is in this court on a writ of error; that the appeal was dismissed by the appellant. The appeal was first granted to the Kansas City, Court of Appeals, and the writ of error was obtained from that court.

The case is in this court on a transfer from the Kansas City Court of Appeals. There is nothing in the record filed by the appellant, or in this court, showing that any notice, required by section 852, Revised Statutes 1899, has ever been given to the defendant. Rule 7 of this court, provides: "All notices of writs of error, with the acceptance, waiver or return of service endorsed thereon, shall be filed with the clerk of this court, and by him attached to the transcript in the cause, and shall be the only evidence that such notice has been given." The defendant has filed in this court a motion to have the cause dismissed, because of the failure to give this notice.

This motion is printed and is accompanied with a brief on the merits. The filing of a brief on the merits with a motion objecting to the writ, is not a waiver of the right to insist upon the objections to the writ. Burdette v. Dale, 95 Mo. App. 515, 69 S. W. 480.

The record in the case is very brief, and in view of the result reached from an examination of the points in controversy, we will not sustain the motion to dismiss. The taxbill sued on is-in regular form and the introduction of it made a prima-facie case for the plaintiff.

To impeach the validity of a taxbill, the defendant offered in evidence the proceedings of the council relating to the advertisement for bids for the work. There was introduced an ordinance of the city relating to the construction of sidewalks, which provides that *687when the council shall deem it necessary to construct sidewalks, an estimate shall be prepared by the engineer; and upon presentation of such estimate, the council shall direct the said engineer to advertise for bids in the manner provided by statute for advertising for bids for work to be done upon the roadway of any street.

This statutory provision is found in the Session Acts of 1901, at page 65, and requires “not less than one week’s advertisement for bids thereon.” The advertisement in controversy was published on January 1, 1908, and each and every day thereafter, including January 7, 1908, but the last insertion was on the day the bids were opened and the contract awarded.

The first day of January, 1908, was Wednesday, and the advertisement for the bids was published, in the paper of that morning, and six succeeding mornings, and the contract was awarded on the following Tuesday evening, about 8 p. m. In other words, from the time the notice was first published until the contract was let, seven full days had not elapsed.

In *Russel v. Croy*, 164 Mo. l. c. 92, 63 S. W. 849, the court says: “The word ‘week’ in its most accurate sense, means seven consecutive days, beginning with Sunday, but it is also appropriately used to mean seven consecutive days, beginning with any day.” In that case the court holds that a week does not expire until seven full days have elapsed. This is the general interpretation given to the word.

[*Midland v. Linton*, 82 N. W. 886; *Leach v. Burr*, 188 U. S. 510; 47 L. Ed. 567.] In *Roth v. Hax*, 68 Mo. App. 283, it is held that in advertisements for bids for public improvements, the publication on the date of the contract, should not be counted, and the court says: “The evident meaning of the ordinance was that the five days’ advertising should have passed before the day when the contract should be let.” *688It is insisted by plaintiff that ordinances requiring notice of letting the contract for public improvements are directory and not mandatory.

We are not of this opinion. [*Clapton v. Taylor*, 49 Mo. App. 117; *Keane v. Cushing*, 15 Mo. App. 96; *Galbraith v. Newton*, 30 Mo. App. 380.] The trial court held the taxbill void, because the notice of the letting was not published for one week, as required by the ordinance, and in so holding, we believe no error was committed, and the judgment will be affirmed.

All concur.