2012 IL App (2d) 110645-U
No. 2-11-0645
Order filed June 26, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MAUREEN HENKEL, on behalf of herself and all Citizens and Taxpayers of the City of West Chicago, Plaintiff-Appellant, v. THE CITY OF WEST CHICAGO and MIKE KWASMAN, JAMES BEIFUSS,. . LORI CHASSEE, JIM SMITH, H. RONALD MONROE, RUBEN PINEDA, ALAN MURPHY, RUSSELL RADKIEICZ, SANDY DIMAS, JOSEPH GIANFORTE, JOHN C. SMITH, JR., REBECCA STOUT, NANETTE CONNELLY, and NICHOLAS DZIERZANOWSKI, in their official capacity as members of the City of West Chicago City Council, Defendants-Appellees.	)	Appeal from the Circuit Court of Du Page County. No. 11-CH-635 Honorable Terrence M. Sheen, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Burke concurred in judgment.

ORDER

Held: The City of West Chicago complied with the competitive bidding exemption requirements of section 8-9-1 of the Illinois Municipal Code when it entered into the

contract at issue. Where the language of the statute is unambiguous, the trial court correctly found that the City of West Chicago waived bidding requirements when it adopted the resolution that authorized the contract. We affirmed.

¶ 1 In this municipal contracting dispute, plaintiff, Maureen Henkel, on behalf of herself and all citizens and taxpayers of the City of West Chicago, appeals the trial court's decision to grant defendants', the City of West Chicago (the City) and the City of West Chicago City Council (the City Council), motion to dismiss plaintiff's amended complaint pursuant to section 2-619(a)(9) of the Illinois Code of Civil Procedure (the Code). 735 ILCS 5/2-619(a)(9) (West 2010). Plaintiff asserts that the City must comply with section 8-9-1 of the Illinois Municipal Code (the Municipal Code) (65 ILCS 5/8-9-1 (West 2010)). Plaintiff contends that (1) the trial court erred when it found that the type of duties described by the contract are not considered "any work or other public improvement" pursuant to section 8-9-1 of the Municipal Code; and (2)the trial court erred when it determined that the City properly waived bidding requirements when it adopted the resolution that authorized the contract. We affirm.

¶ 2 On October 4, 2010, the City Council voted on a resolution authorizing the mayor to execute an agreement with Municipal Services, LLC. The vote to approve the agreement was 11 ayes and 0 nays, with 3 aldermen absent during the vote. On that same day, defendants entered into a contract with Municipal Services, LLC. The contract authorized municipal street sweeping; municipal fleet repair; small engine equipment repair; maintenance operations, duties, and functions; with the management duties and functions related to such operations to be performed by Municipal Services, LLC. The recital adopting the contract reflected that the agreement was entered into pursuant to section 8-10-4 of the Municipal Code. This statute is entitled "Purchasing and Public Works

Contracts in Cities of More than 500,000". 65 ILCS 5/8-10-4 (West 2010). The total cost of all tasks and assignments authorized by the contract was not to exceed $2.3 million over a 5-year period.

¶ 3 On February 4, 2011, plaintiff filed a complaint, which she amended on March 11, 2011. Plaintiff's amended complaint sought a preliminary injunction and a permanent injunction. The amended complaint alleged that section 8-9-1 of the Municipal Code was the applicable statute, rather than section 8-10-4 of the Municipal Code. Plaintiff alleged that section 8-9-1 of the Municipal Code required advertising for bids and letting to the lowest responsible bidder unless exempted from these provisions by a vote of two-thirds. Plaintiff alleged that defendants did not advertise for bids nor did defendants authorize by two-thirds vote to exempt themselves from advertising for bids. Plaintiff also alleged that duties covered by the contract constituted "any work or other public improvement," as contemplated by section 8-9-1 of the Municipal Code.

¶ 4 On March 28, 2011, defendants filed a motion to dismiss plaintiff's amended complaint pursuant to section 2-619(a)(9) of the Code. See 735 ILCS 5/2-619(a)(9) (West 2010). Defendants admitted that the citation to section 8-10-4 of the Municipal Code was error because the City has fewer than 500,000 residents. Defendants further stated that the City was a home rule municipality pursuant to Article VII, Section 6 of the Constitution of the State of Illinois of 1970, and as such did not have to follow section 8-9-1 of the Municipal Code. Defendants also argued that the contract did not cover "any work or other public improvements" as contemplated by section 8-9-1 of the Municipal Code and, in the alternative, the City successfully exempted itself from advertising for bids by authorizing the contract by a two-thirds vote pursuant to section 8-9-1 of the Municipal Code.

¶ 5 On June 8, 2011, the trial court held a hearing on defendants' motion to dismiss. The trial court granted defendants' motion. The trial court stated, "I don't find that this in any way constitutes what [section 8-9-1 of the Municipal Code] really contemplates. That's work of public improvements. This is not. These are temporary measures." The trial court's written order stated:

> "This Court *** does hereby grant the City of West Chicago's Motion to Dismiss Plaintiff's Amended Complaint for the reasons set forth in the court's ruling on the record. Specifically, that the contract at issue does not constitute a public improvement, as required under [section 8-9-1 of the Municipal Code], requiring a public bid and, further, that the clear language of the statute does not require any further act than an affirmative vote of 2/3rds of the sitting aldermen and no two-step process is required. The Court further finds that the action of the City was in accordance with the statute and proper."

Plaintiff timely appealed.

¶ 6 This appeal arises from the trial court's order granting defendant's section 2-619(a)(9) motion to dismiss. Section 2-619(a)(9) permits involuntary dismissal where "the claim asserted is barred by other affirmative matters avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2010). An order granting this type of motion to dismiss is reviewed *de novo. Lacey v. Village of Palatine,* 232 Ill. 2d 349, 359 (2009).

¶ 7 This is a case of statutory interpretation. Thus, we must determine whether section 8-9-1 of the Municipal Code applies to the agreement and, if so, whether the City properly exempted itself from the public bidding requirement of the section. The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Washington District 50 Schools v. Illinois Workers Compensation Commission,* 394 Ill. App. 3d 1087, 1090 (2009). The legislature's intent

will first be determined by analyzing the statutory language, which is given its plain and ordinary meaning. *Id.* If the intent of the legislature can be ascertained from the plain language of the statute, then the court will apply the statute as enacted without resorting to other canons of statutory interpretation. *Id.* If the statute is subject to two or more reasonable interpretations, the court may use other canons of statutory interpretation to ascertain the meaning of the language in dispute. *Id.* We can affirm for any reason on the record. *In re Marriage of Gary,* 384 Ill. App. 3d 979, 987 (2008).

¶ 8 The relevant portion of section 8-9-1 of the Municipal Code provides:

> "In municipalities of less than 500,000 *** any work or other public improvement which is not paid for in whole or in part by special assessment or special taxation, when the expense thereof will exceed $20,000, shall be constructed either (1) by a contract let to the lowest responsible bidder after advertising for bids, in the manner prescribed by ordinance, except that any such contract may be entered into by the proper officers without advertising for bids, if authorized by a vote of two-thirds of all the aldermen or trustees then holding office; or (2) in the following manner *** ." 65 ILCS 5/8-9-1 (West 2010).

¶ 9 Plaintiff first contends that the trial court erred when it found that the type of work described by the contract is not considered "any work or other public improvement" pursuant to section 8-9-1 of the Municipal Code. 65 ILCS 5/8-9-1 (West 2010). Specifically, plaintiff argues that the trial court erred because it found that the contracted duties did not constitute "a public improvement," and therefore were not covered under section 8-9-1 of the Municipal Code. Plaintiff argues that section 8-9-1 of the Municipal Code more broadly covers "any work." Thus, according to plaintiff, the trial court's finding was too narrow and requires reversal.

¶ 10 Defendants respond that both the plain meaning of the statute and case law support that the phrase "any work or other public improvement" encompasses only permanent improvement to real property owned by a municipality. Specifically, defendants argue that "statutory construction requires that modifying words or phrases be construed to modify words or phrases immediately preceding them rather more remote words or phrases," meaning that the terms "any work" should be modified by the word "other" and read to mean that "any work" constitutes a type of "public improvement." See *Smith v. International Solid Waste Disposal Ass'n,* 239 Ill. App. 3d 123, 138 (1992). Defendants cite *Western Lion Limited v. City of Mattoon,*123 Ill. App. 3d 381, 384 (1984) for the proposition that "public improvement" refers to any permanent improvements to real property owned by a municipality. Defendants also cite *City of Chicago v. Hanreddy,* 211 Ill. 24 (1904), to support the assertion that "any work" refers only to "public works."

¶ 11 Here, while reasonable persons could disagree and the parties have done little to resolve this ambiguity in their briefs and arguments before this court concerning the meaning of "any work or other public improvement" as it applies to this contract, the remainder of the language of section 8-9-1, the basis of plaintiff's second contention, is very clear and unambiguous. That language is dispositive of this case in the City's favor.

¶ 12 Plaintiff argues that the trial court erred in determining that the City properly waived bidding requirements pursuant to section 8-9-1 of the Municipal Code when it adopted the resolution authorizing the contract. Plaintiff first argues that the vote taken by the City Council relative to the agreement was a vote to approve a contract already awarded without competitive bidding. Plaintiff cites *The City of Chicago v. Hanreddy*, 211 Ill. 24, 30 (1904), for the proposition that a vote must be held "whereby bidding procedures are to be exempted, not a vote approving a contract already

awarded without competitively bidding as is the case here." *Hanreddy,* 211 Ill. at 30. Plaintiff further argues that section 8-9-1 of the Municipal Code requires a multi-step voting process before bidding requirements can be waived on a particular contract. According to plaintiff, before voting to award a particular contract, the City Council must vote to allow the municipality to enter into contracts whereby bidding procedures are exempted. Plaintiff cites to foreign jurisdictions for the proposition that precedent approval is required before non-bid contracts can be considered.

¶ 13 Defendants respond that there is no evidence on the record establishing that the contract was awarded prior to the City Council's vote. Moreover, defendants take issue with plaintiff's interpretation of *Hanreddy*, and argue that it does not stand for the proposition urged by plaintiff. Defendants assert that the *Hanreddy* court did not opine that a precedent vote is required and that plaintiff takes the quoted words of the *Hanreddy* court out of context. Last, defendants argue that section 8-9-1 of the Municipal Code does not require a separate vote to waive competitive bidding prior to approving the contract. Instead, defendants assert that the sole statutory requirement is that the contract be approved by two-thirds of the aldermen or trustees then in office.

¶ 14 We determine that defendants met the requirements of section 8-9-1 of the Municipal Code when they approved the agreement by two-thirds vote. A review of the record confirms defendants' assertion; the record does not reflect that the contract was awarded prior to the City Council's vote. Moreover, although plaintiff argues that section 8-9-1 of the Municipal Code requires that the City Council must first vote to allow the municipality to enter into contracts that are exempt from bidding procedures before it can vote to enter into a particular contract, this interpretation would expand upon the plain and ordinary meaning of the language in section 8-9-1 of the Municipal Code. See *Gonzalez v. Profile Sanding Equipment, Inc.*, 333 Ill. App. 3d 680, 693 (2002) (statutes must be

enforced as written, and a court may not depart from the statute's plain language by reading into it exceptions, limitations, or conditions not expressed by the legislature). Plaintiff's reliance on *Hanreddy* and foreign jurisdictions are not necessary. The language of section 8-9-1 of the Municipal Code is clear. Thus, canons of statutory construction are unnecessary. *Weinikoff v. RNC Telecom Services of Illinois, Inc.*, 341 Ill. App. 3d 89, 95 (2003). Here, we need not move beyond the statutory language to interpret the legislature's meaning. Defendants properly exempted the contract from the public bidding requirement when it approved the contract by a two-thirds vote.

¶ 15 We note that section 8-10-5 of the Municipal Code offers a more comprehensive procedure of how to proceed when dispensing with competitive bidding procedures. See 65 ILCS 5/8-10-5 (West 2010). Although section 8-10-5 is applicable only when awarding emergency contracts, it is instructive in that the statute recognizes a process that is notably missing from section 8-9-1 of the Municipal Code. See 65 ILCS 5/8-9-1 (West 2010). When the legislature omits language that is present in other statutes, the legislature intends to convey a different meaning. *Weinikoff*, 341 Ill. App. 3d at 94.

¶ 16 Moreover, plaintiff's comments during oral argument assert the need for public notice. We note that the general public had notice of the City Council's action through the agenda it was required to post pursuant to the Open Meetings Act. 5 ILCS 120/1 (West 2010). The Open Meetings Act provides:

> "citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2010).

Here, the record is silent as to whether citizens were given advance notice through a posted agenda. However, at oral argument, the parties agreed that citizens were provided with the advance notice necessitated by the Open Meetings Act. Hence, public notice was met.

¶ 17 In the current matter, the City complied with competitive bidding exemption requirements of section 8-9-1 of the Municipal Code. Because we determine that defendants properly exempted themselves from competitive bidding pursuant to section 8-9-1 of the Municipal Code when they approved the agreement by two-thirds vote, we affirm the trial court's judgment. See *In re Marriage of Gary*, 384 Ill. App. 3d at 987 (the appellate court can affirm for any reason in the record).

¶ 18 Last, we remind defendants that much of this disagreement and subsequent litigation could have been avoided had the City been more diligent in its attempt to determine the appropriate statute under which to operate. Although the City originally argued that it was a home rule municipality, and thus, exempt from the requirements of section 8-9-1, the City later abandoned the argument. As late as oral argument, counsel for defendants still referred to "the general authority" granted by the Municipal Code without any specific statutory reference. Careful research of the involved statutes may have greatly simplified this matter. We note that the use of valuable taxpayer dollars, the underlying issue that spurred this appeal, may be further jeopardized when carelessness in researching and applying an appropriate statute causes preventable litigation.

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County.

¶ 20 Affirmed.