

FILED

JAN 21 2015

STATE OF MINNESOTA

KAREN MESSNER
COURT ADMINISTRATOR
SIBLEY COUNTY, MINN

DISTRICT COURT

COUNTY OF SIBLEY

FIRST JUDICIAL DISTRICT

Case Type: Election Contest

In the Matter of the Contest of the Special
Election held on November 4, 2014, for the
purpose of the passage of a ballot question
for Independent School District No. 2310,
Sibley County, Minnesota, Sibley East Public
Schools,

Court File No.: 72-CV-14-199

Nathan Kranz,

Contestant,

v.

Sibley East Public Schools,
Independent School District No. 2310,

and

Mark Ritchie, Secretary of State for the
State of Minnesota

Contestees.

**ORDER
ON MOTIONS FOR
CONTEMPT, DAMAGES &
SANCTIONS & JUDGMENT**

This matter came on before the Honorable Kevin W. Eide, Judge of District Court, on November 16, 2015 at the Sibley County Courthouse, Gaylord, Minnesota, pursuant to Contestees Sibley East Public Schools and Independent School District No. 2310's motion for contempt and damages, and Contestant Nathan Kranz's motion for Rule 11 sanctions. Erick G. Kaardal, Esq. appeared with and on behalf of Contestant Nathan Kranz. Michelle D. Kenney, Esq. appeared on behalf of Contestees Sibley East Public Schools and Independent School District No. 2310.

After a review of the arguments presented and the entire file herein, this Court makes the following:

ORDER

1. Contestees Sibley East Public Schools and Independent School District No. 2310's motion for contempt is DENIED.
2. Contestees Sibley East Public Schools and Independent School District No. 2310's motion for damages is DENIED.
3. Contestant Nathan Kranz's motion for Rule 11 sanctions is DENIED.
4. Court Administration shall distribute the \$6,000.00 in funds held on behalf of Contestant Nathan Kranz as follows:

\$806.50 to Contestees Sibley East Public Schools; and

\$5,193.50 to Contestant Nathan Kranz.
5. Any other motions not specifically granted are respectfully DENIED.
6. The attached Memorandum is incorporated herein.

JUDGMENT

*The above Conclusion of Law/or Order for Judgment
Constitute the Judgment of the Court*

LET JUDGMENT BE ENTERED ACCORDINGLY.

**KAREN V. MESSNER
COURT ADMINISTRATOR
SIBLEY COUNTY**

By: *Jan Cape*
Deputy

BY THE COURT:

Dated: *January 21, 2016*

Dated: January *21*, 2016

Kevin W. Eide
Kevin W. Eide
Judge of the District Court

MEMORANDUM

This matter stems from a special election held on November 4, 2014, wherein Contestees Sibley East Public Schools and Independent School District No. 2310 (hereafter "Contestees") sought authority to issue \$43,045,000 in general obligation bonds for the acquisition and improvement of school facilities. The referendum was approved by the voters. After the election, Contestant Nathan Kranz (hereafter "Contestant") filed an election contest based on procedural irregularities occurring prior to the election. A trial was held before this Court on December 2, 2014; and on December 17, 2014, this Court issued its order dismissing the election contest and affirming the election results. Contestant then appealed this Court's decision to the Minnesota Court of Appeals.

In light of the appeal, Contestees filed a motion to require Contestant to file a \$6,000,000 surety bond to protect the public from increased costs which were thought possible if the general obligation bond sale was delayed beyond January 2015. In an Order filed January 13, 2015, this Court granted the motion in part, requiring Contestant to file a surety bond of \$295,000 in addition to the \$5,000 surety bond already on deposit with the Court. On January 22, 2015, this Court issued an amended Order requiring the surety bond to be deposited by no later than February 2, 2015 at 4:30 p.m.

On January 27, 2015, Contestant filed a Motion for Stay of Enforcement of the Amended Order on Motion for Surety Bond. On January 29, 2015, this Court denied that motion. On January 30, 2015, Contestant moved the Court of Appeals for a stay of the order requiring the filing of a surety bond.

Though Contestant never did file the additional \$295,000 surety bond, the parties appeared and argued before the Court of Appeals on February 3, 2015. On February 5, 2015,

the Court of Appeals issued its preliminary decision, affirming this Court's original decision and denying Contestant's motion to stay the surety bond requirement. The Court of Appeals full decision was issued on March 9, 2015. On April 8, 2015, Contestant filed his Petition for Review to the Supreme Court. The Supreme Court denied the Petition for Review on May 19, 2015, and on June 1, 2015 the Court of Appeals issued its Judgment including an award of Contestees costs and disbursements totaling \$384.50.

While the appeal process was ongoing, Contestees filed an initial Motion for Costs and Attorneys' Fees, seeking an award of \$33,243.25. On March 16, 2015, Contestees filed an Amended Motion for Costs and Attorneys' Fees, also seeking an award of \$33,243.25. Of the \$33,243.25, \$422.00 was listed as attributable to costs and disbursements. The remainder consisted of attorneys' fees. In an Order filed April 1, 2015, this Court awarded Contestees \$422.00 in costs and disbursements, but declined to award attorneys' fees, finding such an award is not provided for in Minn. Stat. §209.07.

The general obligation bonds were finally sold on June 10, 2015. Contestees allege that due to the delay in the sale caused by Contestant's challenges to the referendum and subsequent appeals, the School District will incur \$2,903,424.58 in additional interest costs over the life of the bonds. They have now moved the Court for an Order finding Contestant in contempt for failing to file the surety bond as ordered by this Court, and for an award of damages to cover the increased bond costs. That motion was filed with the Court on September 25, 2015. In response, Contestant served a motion for Rule 11 sanctions and attorney's fees on Contestees by fax at 7:08 p.m. on October 12, 2015. Contestant subsequently filed that motion with the Court on November 2, 2015.

I. Contestees' Motion for contempt based upon Contestant's failure to file a surety bond.

Contestees argue Contestant should be held in contempt of Court for failing to file the \$295,000 surety bond, and that failing to do so would defeat the right Contestees have in the protection of a surety bond in an election contest. A party may be found in constructive contempt for disobedience of any lawful judgment, order, or process of the court. Minn. Stat. §588.01, Subd. 3(3) (2015). In exercising civil contempt powers ..., the only objective is to secure compliance with an order presumed to be reasonable. *Hopp v. Hopp*, 156 N.W.2d 212, 216 (1968).

Minn. Stat. §209.07 provides that if a surety bond ordered in a school district election contest is not filed within the time allowed by the court, the contest shall be dismissed with prejudice. Minn. Stat. §209.07, Subd. 4 (2015). The statute notably does not provide for the contestant to be held in contempt of court for failing to file a bond, or for any other relief beyond dismissal.

This Court's Amended Order filed January 22, 2015, ordered Contestant to deposit with the Court a surety bond in the amount of \$295,000 by no later than February 2, 2015 at 4:30 p.m. In accordance with Minn. Stat. §209.07, the order could (and perhaps should) have included a provision that if the additional surety bond was not deposited by February 2, 2015 at 4:30 p.m., the matter would be dismissed with prejudice. However, this Court had already dismissed the matter with prejudice in its Findings of Fact, Conclusions of Law, and Order and Judgment filed December 16, 2014.

In spite of Contestant's failure to deposit the bond as ordered, the parties argued their cases before the Minnesota Court of Appeals on February 3, 2015. The appellate Order filed

March 10, 2015, notes that while the appeal was pending, Contestant moved to stay enforcement of this Court's order for a surety bond, and Contestees moved to dismiss the matter because Contestant had failed to post the bond as ordered. The Court of Appeals stated, "Because we have decided the appeal on the merits, the propriety of requiring additional security during the pendency of the appeal is now moot."

To find Contestant in contempt, the Court would be required to make a finding that Contestant had the financial ability to post the additional \$295,000 surety bond and willfully chose not to file the bond when required to do so by the Court. A party has the option to file a surety bond and, if they do not, they must suffer the consequences. This Court does not believe it can find Contestant in contempt for choosing not to file a surety bond. Further, the Court would be required to find that Contestant had the financial ability to pay the surety bond and willfully chose not to. Contestant states he would not have had the ability to post the bond. The Court does not have any record before it upon which to find that he could have posted the bond.

Based upon the record in this case, the limitation for relief set forth in Minn. Stat. §209.07, and the Court of Appeals determination that the matter had been deemed moot, the Court cannot find Contestant in contempt for failing to deposit the bond as previously ordered.

II. Contestees' Motion for damages to cover increased municipal bond costs.

Contestees also argue they are entitled to an award of damages resulting from the delay in the sale of the municipal bonds. The bonds were initially scheduled to be sold on January 14, 2015. Because of Contestant's appeal, however, the bond sale did not occur

until June 10, 2015. Contestees argue interest rates on municipal bonds increased between January and June of 2015, and as a result the School District and its taxpayers will incur additional interest costs of approximately \$2,900,000 over the life of the bonds. In response, Contestant argues that the only statutory remedy available to the district under Minn. Stat. §209.07, Subd. 4 is dismissal of the election contest.

Minn. Stat. §209.07, Subd. 4 provides for a surety bond sufficient to provide for costs of the contest to the school district, including any additional costs that may be incurred by the school district if the bond issue is delayed. The surety bond provided for in Minn. Stat. §209.07 is essentially an injunction bond. The underlying purpose of an injunction bond is to require the party seeking a temporary restraining order to pay for the harm caused by its erroneous granting without subjecting him to open or indeterminate liability. See *Hubbard Broadcasting, Inc. v. Loescher*, 291 N.W.2d 216, 220 (Minn. 1980).

Contestees cite to *O'Leary v. Carefree Living America (Minnetonka), Inc.* for the premise that the amount of a bond limits the liability of the surety, but not the liability of the principal. *O'Leary v. Carefree Living America (Minnetonka), Inc.*, 655 N.W.2d 639, 643 (Minn. Ct. App. 2003). *O'Leary* involved a \$90,000 supersedeas bond to stay enforcement of a judgment for the sale of real property pending appeal. *Id.* The Court of Appeals upheld the district court's award of \$448,517.07 in damages under a theory of unjust enrichment, after appellants retained possession longer than anticipated, transferred rents to third parties, and failed to make mortgage payments. *Id.*

The idea that damages are not limited by the amount of a supersedeas bond or to cases involving only unjust enrichment was addressed in detail in *County of Blue Earth v. Wingen*, 684 N.W.2d 919 (Minn. Ct. App. 2004) ("*Wingen*"). Citing Minn. R. Civ. App. P. 108.01,

Subd. 2, the *Wingen* Court held an appellant is liable for "the damages sustained by the respondent in consequence of the appeal" without reference to the theory by which damages are sustained. *Wingen* at 922-923. Consequential damages are those reasonably foreseeable by the parties at the time the stay is entered, subject to the prevailing party's duty to mitigate damages. *Wingen* at 924. The harmed party has the burden to demonstrate such damages with a reasonable degree of certainty and exactness, and also has an obligation to take reasonable measures to mitigate damages. *Id.*

While *O'Leary* and *Wingen* establish parameters by which the Court may award damages in excess of a posted bond, whether to award such damages still remains at the discretion of the Court. See *O'Leary* at 643. In this Court's Order on Motion for Attorneys' Fees and Costs & Order for Judgment filed April 1, 2015, the Court stated, "The issue of whether an individual contesting an election should be held liable for attorneys' fees raises public policy concerns which may have been considered by the legislature in its decision to omit recovery for attorneys' fees in connection with the drafting of Minn. Stat. §209.07. If contestants faced potential liability for all attorneys' fees associated with a contest, would they be less likely to assert what may be a valid election contest for fear of the financial consequences of a loss?" Similar public policy concerns are raised in connection with a contestant's liability for damages.

Addressing surety bonds required in actions affecting a public body, the legislature specifically provided that "[s]uch bond shall be conditioned for payment to the public body of any loss or damage which may be caused to the public body or taxpayers by such delay, to the extent of the penal sum of such bond, if such party, or parties, shall not prevail therein." Minn. Stat. §562.02 (2015) (*emphasis added*). In connection with challenges to school board

elections, however, the legislature has provided only for "a surety bond of at least \$5,000 or a greater amount determined necessary by the court to provide security for costs of the contest to the school district, including any additional costs that may be incurred by the school district if the bond issue is delayed." Minn. Stat. §209.07, Subd. 4 (2015) (*emphasis added*). Though the legislature could have provided for an award of "damages" in connection with bond requirements in election contests, it specifically provided only for "costs." Considered in this light, perhaps this Court was too hasty in ordering the increased bond in January 2015. As with the Order on Motion for Attorneys' Fees, this Court will not read the statute to include a claim for damages where such a provision was not made. Contestees motion for damages to cover the increased municipal bond costs resulting from the delay in their sale is therefore respectfully DENIED.

III. Contestant's Motion for Rule 11 sanctions and attorney fees.

Contestant has moved the Court for Rule 11 sanctions against Contestees, arguing Contestees' motions for contempt and damages were without merit in law or fact and were filed merely to harass Contestant Kranz with "unreasonable and vexatious litigation." In response, Contestees argue Contestant's motion must be denied for failure to provide the mandatory "safe harbor" period required by the rule, and because their motions were not filed in violation of court rules.

Rule 11 of the Minnesota Rules of Civil Procedure provides that all pleadings, motions and other documents shall be signed, and that by signing, the attorney or self-represented litigant is certifying that (among other assertions) the pleading, motion or other document is not being presented for an improper purpose such as to harass or to cause

unnecessary delay or needless increase in the cost of litigation; and that the claims are warranted by existing law or a non-frivolous argument for the extension, modification or reversal of existing law. Minn. R. Civ. P. 11.02. Rule 11.03 provides specific guidelines for the initiation of a motion for sanctions as follows:

"A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate Rule 11.02. It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged document, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney fees incurred in presenting or opposing the motion." Minn. R. Civ. P. 11.03(a)(1).

The 21 day period set forth in Minn. R. Civ. P. 11.03 is a mandatory provision, and court authority to assess sanctions under the rule is circumscribed by this "safe harbor" provision. *See Johnson v. Johnson*, 726 N.W.2d 516, 519 (Minn. Ct. App. 2007).

Contestant's motion was served on counsel for Contestees by facsimile at 7:08 p.m. on October 12, 2015. Because service was made after 5:00 p.m., one additional day is added to the prescribed period. *See* Minn. R. Civ. P. 6.05. As a result, the earliest Contestant could have filed his motion with the Court and been in compliance with the "safe harbor" provision would have been November 4, 2015. Instead of waiting until November 4, 2015, Contestant filed his motion on November 2, 2015. Because Contestant failed to provide Contestees with the full 21 day "safe harbor" period required under the Minnesota Rules of Civil Procedure, his motion for sanctions and attorney fees must be DENIED.

Conclusion

Contestees moved the Court for an order finding Contestant in contempt for failing to deposit an additional bond of \$295,000, and for alleged damages stemming from the delay in the sale of the municipal bonds. The Court reiterates its concern that if contestants faced potential liability for all possible damages associated with a contest, they may be less likely to assert what may be a valid election contest for fear of the financial consequences of a loss. Based upon the record in this case, the limitation for relief set forth in Minn. Stat. §209.07, and the Court of Appeals determination that the matter had been deemed moot, the Court cannot find Contestant in contempt for failing to deposit the bond as previously ordered. Furthermore, the Court will not read Minn. Stat. §209.07 to include a claim for damages where such a specific provision was not made. Contestees' motion for damages to cover the increased municipal bond costs resulting from the delay in their sale is therefore respectfully DENIED. Finally, because Contestant failed to provide Contestees with the full 21 day "safe harbor" period required under the Minnesota Rules of Civil Procedure, his motion for sanctions and attorney fees is also DENIED.

K.W.E.