

COMMONWEALTH OF KENTUCKY
NELSON CIRCUIT COURT
CIVIL ACTION NO. 22-CI-00555
DIVISION 1

DONALD THRASHER

PLAINTIFF

VS.

TEMPORARY RESTRAINING ORDER

DAMON JACKEY, ET. AL.

DEFENDANTS

* * * * *

On December 6, 2022, the plaintiff, Donald Thrasher (hereinafter "Thrasher"), acting *pro se*, filed a Verified Complaint for Declaratory and Injunctive Relief against the defendants, Damon Jackey, Chairman of the Nelson County School Board, Wes Bradley, Superintendent of the Nelson County Schools, and the Nelson County School Board. He also filed an *Ex Parte* Motion for a Temporary Restraining Order to Maintain Status Quo.

Unfortunately, this Court was unable to take any immediate action on the *ex parte* motion because Thrasher also filed an affidavit to disqualify the undersigned judge. That affidavit was forwarded to the Chief Justice of the Supreme Court of Kentucky. The state's highest court then directed this judge to treat Thrasher's affidavit "as a motion to recuse and either grant or deny the request." This Court denied Thrasher's motion to recuse on December 9, 2022, and the matter was resubmitted to the Chief Justice. On today's date at 10:41 a.m., the Clerk of the Supreme Court of Kentucky informed the undersigned judge that the Chief Justice had denied said motion. As a result, this Court will now address and adjudicate the *ex parte* motion.

Thrasher, a Nelson County taxpayer, is seeking to restrain the Nelson County School Board (hereinafter "the board") from approving eighteen construction contracts related to the board's District Facilities Plan (hereinafter "the DFP"). See *Overstreet vs. Mayberry*, 603 S.W.3d 244, 263 (Ky. 2020) ("taxpayers in Kentucky, on behalf of themselves, have been

government bodies or their agents to challenge the propriety of city, county, or state tax or expenditure of public funds"). In doing so, Thrasher has alleged that the board has violated 702 KAR 4:180. In particular, Thrasher asserts the following: (1) that the amendment of the DFP for an increase in bond ability was not an "unforeseen occurrence," and (2) that the Local Planning Committee has changed a portion of the plan from renovation to new building without complying with the Planning Manual's demographics requirements. To further complicate matters, Nelson County voters have overwhelmingly elected two new board members who are supposedly opposed to these construction plans.

This Court always has strong reservations about restraining elected officials from conducting their business. See *Board of Education of McCreary County vs. Nevels*, 551 S.W.2d 13, 20 (Ky. App. 1977) (citing *Commonwealth ex. rel. Breckinridge vs. Winstead*, 430 S.W.2d 647 (Ky. 1968)) ("in the absence of extraordinary circumstances" an officer should not be enjoined from performing his duties"). In fact, the undersigned judge has only restrained one governmental body over the past nineteen years.

However, this Court finds "extraordinary circumstances" for the issuance of a restraining order herein. As grounds, it appears that the board is rushing to approve eighteen construction contracts before the two new opposing members can take office. Once the membership changes at the start of the new year, the next board will be placed in the unfair position of having to either acquiesce to a plan that they and their voters disagreed with or to breach the eighteen construction contracts. That decision carries enormous ramifications, including litigation, damages, and substantial attorney's fees.

When a trial court issues a Temporary Restraining Order, it must find that the plaintiff's "rights are being or will be violated by the adverse party and the applicant will suffer immediate

...y, loss or damage before the adverse party or his attorney can be heard in opposition." See CR 65.03(1). This Court finds as follows: (1) that the action presents a substantial legal question as to the board's compliance with certain regulations, (2) that the rights of taxpayers, like Thrasher, will be violated by an immediate vote to approve said contracts, and (3) that taxpayers, like Thrasher, will suffer immediate and irreparable harm if the board ignores the election results and approves these construction contracts.

This Court would have preferred to have conducted a hearing before entering this Temporary Restraining Order. However, the undersigned was unable to take any action until the Supreme Court of Kentucky denied the motion to recuse earlier today. In addition, the Court's schedule prevents it from conducting an evidentiary hearing on today's date. As a result, this Court will conduct a hearing on Monday, December 19, 2022, as to whether a Temporary Injunction should be issued herein. See *Maupin vs. Stansbury*, 575 S.W.2d 695 (Ky. App. 1978).

NOW, THEREFORE, THE COURT BEING SUFFICIENTLY ADVISED, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. That the motion of the plaintiff, Donald Thrasher, for a Temporary Restraining Order is hereby granted.
2. That the defendants, Damon Jackey, Wes Bradley, and the Nelson County School Board, shall be restrained and enjoined from acting to approve any construction contracts related to the District Facilities Plan and/or its amendments pending further Orders of the Court.
3. That within seventy-two (72) hours of entry hereof, the defendants shall be allowed to file a responsive memorandum.
4. That the parties and/or counsel shall appear before this Court on Monday, December 19, 2022, at 2:00 p.m. for a hearing as to whether a Temporary Injunction should be issued.

... Circuit Court Clerk shall forward a copy of this Temporary Restraining Order to the plaintiff, Donald Thrasher, at donethrasher@yahoo.com, and to the defendant's counsel of record, Hon. Michael A. Owsley at Mowsley@elpolaw.com, and to Hon. Eric Farris at eric.farris@dinsmore.com as the board's counsel.

6. That the plaintiff, Donald Thrasher, shall post a bond of \$500.00.

7. That upon the bond being posted, the Nelson County Sheriff's Department shall serve a copy of this Order upon the defendants, Damon Jackey, Wes Bradley, and the Nelson County School Board in accordance with CR 4.04, with the plaintiff being responsible for said cost.

8. That this Temporary Restraining Order is interlocutory in nature.

DATED 12/14/2022.


TIME 1:23 p.m.




JUDGE, NELSON CIRCUIT COURT

DISTRIBUTION LIST:

- Donald Thrasher
- Michael A. Owsley
- Eric Farris
- Defendants
- Nelson County Sheriff's Department
- Clerk – please comply with the above
- Clerk – schedule a hearing for 12/19/2022 at 2:00 p.m.

Clerk  Date 12-14-22 at 1:29pm

ENTERED
DIANE THOMPSON, CLERK
DEC 14 2022
NELSON CO. CIRCUIT DISTRICT COURT

at 1:29pm