

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

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| CLEVELAND CONSTRUCTION, INC., | : | APPEAL NO. C-090419 |
| | : | TRIAL NO. A-0402638 |
| Plaintiff-Appellant, | : | |
| | : | <i>JUDGMENT ENTRY.</i> |
| vs. | : | |
| CITY OF CINCINNATI, | : | |
| | : | |
| Defendant-Appellee, | : | |
| | : | |
| and | : | |
| | : | |
| TIMOTHY RIORDEN, ET AL., | : | |
| | : | |
| Defendants. | : | |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

This case arose from defendant-appellee city of Cincinnati's rejection of a bid by plaintiff-appellant Cleveland Construction, Inc., for drywall work on the expansion and renovation of the Cincinnati Convention Center. Cleveland Construction sued the city for lost profits and sought an injunction when it was not awarded a contract. The trial court denied injunctive relief and granted a directed verdict for the city as to lost profits, but held that the contractor was deprived of its property interest in the contract without due process. This court affirmed as to the property-interest determination but reversed the directed-verdict determination.²

The city appealed. The Ohio Supreme Court accepted the case and held that, since Cleveland Construction had never been awarded the contract and then deprived of it, it

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² *Cleveland Constr., Inc. v. Cincinnati*, 169 Ohio App.3d 627, 2006-Ohio-6452, 864 N.E.2d 116.

could have had a property interest only if the city had no discretion to reject its bid, or if the city had so little discretion that not awarding the contract would have been an abuse of discretion. The court concluded that, given the city's extensive discretion in considering bids, Cleveland Construction had no property right in the contract at issue. The court concluded its opinion by stating that the “judgment of the court of appeals is therefore reversed, and judgment is entered for the city.”

Cleveland Construction filed a motion for either clarification or reconsideration of that decision. It noted that the decision appeared to enter judgment in favor of the city as to all of its claims. Cleveland Construction argued that the supreme court “[ha]d not accept[ed] jurisdiction over the portion of the First District’s Judgment relating to Plaintiff’s claims for Equal Protection violations, which the First District remanded for a new trial on issues of liability and damages under 42 U.S.C. § 1983.” The motion to clarify or reconsider was denied.

After the case returned to the trial court, Cleveland Construction filed a request to set the equal-protection claim for trial. The trial court denied that request and entered judgment for the city.

In one assignment of error, Cleveland Construction now claims that the trial court “erred by refusing to follow this court’s mandate to retry the Equal Protection damage claim and by entering judgment in favor of the city on that claim.” We disagree. “[A]bsent extraordinary circumstances, such as an intervening decision by the Supreme Court, an inferior court has no discretion to disregard the mandate of a

superior court in a prior appeal in the same case.”³ A trial court exceeds its jurisdiction by proceeding contrary to the mandate of the superior court.⁴

The Ohio Supreme Court’s mandate, as spelled out in its judgment, could not be clearer: “the judgment of the court of appeals is reversed, and judgment is entered for the city, consistent with the opinion rendered herein. It is further ordered that * * * a mandate be sent to the Court of Common Pleas for Hamilton County to carry this judgment into execution * * *.” The supreme court did not limit or qualify its reversal of our decision. It did not enter judgment for the city on only some claims—it entered judgment for the city. The court was given the opportunity to clarify or revise its mandate, and it did not. The trial court’s entry of judgment was ministerial and mandatory, and it was the only action the court had the jurisdiction to undertake. Our jurisdiction is no broader.

We overrule Cleveland Construction’s sole assignment of error and affirm the trial court’s judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DINKELACKER and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on April 30, 2010

per order of the Court _____.

Presiding Judge

³ *Hopkins v. Dyer*, 104 Ohio St.3d 461, 2004-Ohio-6769, 820 N.E.2d 329, at ¶1, quoting *Nolan v. Nolan* (1984), 11 Ohio St.3d 1, 462 N.E.2d 410, syllabus.

⁴ *O'Donnell Constr. Co. v. Mannen*, 8th Dist. No. 88717, 2006-Ohio-6601, at ¶9, citing *State ex rel. Crandall, Pheils & Wisniewski v. DeCessna*, 73 Ohio St.3d 180, 1995-Ohio-98, 652 N.E.2d 742, and *State ex rel. TRW, Inc. v. Jaffe* (1992), 78 Ohio App.3d 411, 604 N.E.2d 1376.