L.A. Barrier & Son, Inc. v. South Carolina Department of Transportation

2008 | Cited 0 times | Court of Appeals of South Carolina | July 21, 2008

THE STATE OF SOUTH CAROLINA In The Court of Appeals

L.A. Barrier & Son, Inc., Respondent,

v.

South Carolina Department of Transportation, Appellant.

Appeal from Richland County Paige J. Gossett, Administrative Law Judge

Unpublished Opinion No. 2008-UP-418 Heard June 3, 2008 Filed July 21, 2008

REVERSED

Deborah Brooks Durden, of Columbia, for Appellant.

John Julius Pringle, Jr., of Columbia, for Respondent.

PER CURIAM: The South Carolina Department of Transportation (SCDOT) appeals from the Administrative Law Courts (ALC) order requiring SCDOT to grant L.A. Barrier & Son, Inc.s (L.A. Barrier) application for certification as a Disadvantaged Business Enterprise (DBE). We reverse.

BACKGROUND

The present case concerns L.A. Barriers application to SCDOT for certification as a DBE. Federal regulation requires states that receive federal highway funding to implement DBE programs. 49 C.F.R. § 26.3 (2007). DBE programs were created to ensure nondiscrimination in the award of Department of Transportation contracts and to provide a level playing field for eligible businesses. 49 C.F.R. § 26.1 (2007). As a recipient of federal highway funding, South Carolina created its DBE program through section 12-28-2930 of the South Carolina Code (2000), requiring SCDOT to expend a minimum amount of state source highway funds through contracts with DBEs.

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South Carolinas DBE program is regulated under 25A S.C. Code Ann. Regs. 63-700 to 63-718 (Supp. 2007). Under 25A S.C. Code Ann. Reg. 63-702, to be eligible for participation in both the federal and state DBE programs in South Carolina, a firm must first be certified by SCDOT as a bona fide [DBE] pursuant to the standards and procedures set forth in Regulations 63-703 and 63-704 and 49 C.F.R. Part 26. The South Carolina regulations incorporate the federal standards for determining DBE status found in 49 C.F.R. § 26.

Under the applicable regulations, a DBE is defined as a for-profit small business, which is owned and controlled by one or more individuals who are both socially and economically disadvantaged. 49 C.F.R. § 26.5 (2007); 25A S.C. Code Ann. Reg. 63-701 (Supp. 2007). To meet the ownership requirement, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals. 49 C.F.R. § 26.69(b) (2007). Under the regulations, women are presumed to be socially and economically disadvantaged individuals but must still show they have a net worth not exceeding $750,000 to qualify as a disadvantaged individual. 49 C.F.R. § 26.67(a)(1) - (2)(i) (2007). In this appeal, SCDOT argues L.A. Barrier is not entitled to certification as a DBE because it does not meet the ownership requirements of 49 C.F.R. § 26.69 (2007).

FACTS

L.A. Barrier is a closely held corporation in the business of hauling and transporting road construction materials. L.A. Barrier is one of three corporations owned by members of the Barrier and Tyson families in Lexington, South Carolina. The other two corporations are B & T Sand Co., Inc. (B & T Sand) and B & T Investments, Inc. (B & T Investments).

Prior to July 1, 2006, Betty Tyson (Betty) owned 25,000 shares of L.A. Barriers stock, while Bill Barrier (Bill) and Bob Barrier (Bob) each owned 12,000 shares, and Electa Barrier (Electa) owned 1,000 shares. On or about July 1, 2006, Betty transferred all 25,000 of her shares without consideration to Lisa Tyson (Lisa), who is married to Bettys son, Joel Tyson (Joel). Also on or about July 1, 2006, Electa transferred 500 shares to Lisa for $4,210. Lisa paid for the shares using funds from a joint checking account she shared with Joel. At the time of the transfers, Bettys net worth exceeded $750,000, so she no longer qualified as a disadvantaged individual. After the two transfers, Lisa, the new president of L.A. Barrier, owned fifty-one percent of L.A. Barriers stock.

On July 31, 2006, L.A. Barrier applied to SCDOT for certification as a DBE. Subsequently, in a letter dated December 8, 2006, SCDOT denied the application. The letter outlined SCDOTs reasons for denying certification, including: (1) Betty was involved in an affiliate firm through her ownership of stock in B & T Sand; (2) Betty was engaged in a business relationship with L.A. Barrier as its landlord because she owned a one-half interest in the building and property where L.A. Barrier operates; and (3) Joel had not renounced his interest in the ownership interest of the 500 shares Lisa purchased using funds from their joint checking account. After receiving SCDOTs letter, L.A. Barrier requested a contested case hearing before the ALC.

Between the time of SCDOTs denial of certification and the contested case hearing, Betty and Joel took several steps to correct the errors causing SCDOTs denial of L.A. Barriers application. On April 9, 2007, Betty transferred her one-half interest in the building and real estate where L.A. Barrier operates to Tommy Tyson (Tommy), her husband, without consideration. On the same day, she transferred all of her stock in B & T Sand to Joel, her son, without consideration. Lastly, Joel signed a document renouncing his interest in the 500 shares of stock purchased with funds from the joint checking account he shared with Lisa.

The contested case hearing was held on May 1 and 2, 2007. Ultimately, the ALC determined L.A. Barrier qualified for DBE certification and ordered SCDOT to grant L.A. Barriers application. This appeal follows.

STANDARD OF REVIEW

Section 1-23-610 of the South Carolina Code (Supp. 2007) sets forth the standard of review when the Court of Appeals is sitting in review of a decision by the ALC on appeal from an administrative agency. The review of the administrative law judges order must be confined to the record. S.C. Code Ann. § 1-23-610(C). Under section 1-23-610(C), the Court of Appeals

may affirm the decision or remand the case for further proceedings; or [the Court] may reverse or modify the decision if the substantive rights of the petitioner [have] been prejudiced because [] the finding, conclusion, or decision is:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

LAW/ANALYSIS

SCDOT argues L.A. Barrier does not qualify as a DBE because Joel did not effectively renounce his interest in the 500 shares of stock Lisa acquired with funds from their joint checking account, and as

a result, Lisa does not have sole ownership of fifty-one percent of the firm. Specifically, SCDOT argues: (1) while Joel renounced his interest in the stock, he did not also renounce his interest in the jointly held assets used to purchase the stock, and (2) the document whereby Joel renounced his interest in the stock was not included in L.A. Barriers application for certification. We agree.

Under 49 C.F.R. § 26.69(i) (2007), when marital assets are used to acquire a disadvantaged individuals ownership interest in a business or firm, the finder of fact must apply the following rules:

(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, [the entity determining DBE status] must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. . . .

(2) A copy of the document legally transferring and renouncing the other spouses rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firms application for DBE certification.

Looking at the language of the section as a whole, it is clear the purpose of the regulation is to ensure the ownership interest is solely attributable to the disadvantaged individual for the purpose of determining whether the firm meets the fifty-one percent threshold of 49 C.F.R. § 26.69(b). While 49 C.F.R. § 26.69(i) sets forth the general rule that some portion of the ownership interest is attributable to the disadvantaged individuals spouse if marital assets are used to purchase the ownership interest, the section also provides an exception when the spouse has renounced his or her portion of the ownership interest.

However, subsections (1) and (2) of 49 C.F.R. § 26.69(i) address the method of renunciation differently. While subsection (1) mandates that the ALC must treat an ownership interest as being acquired with the individuals own funds when the spouse has renounced any rights in the ownership interest, subsection (2) refers to renunciation of the assets used to acquire the ownership interest.

SCDOT first argues Joel must have renounced his interest in the assets used to acquire the stock in addition to the stock itself to comply with the terms of 49 C.F.R. 26.69(i). We agree.

When the terms of a statute are clear, the court must apply those terms according to their literal meaning. Paschal v. State Election Commn, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995). This Court cannot construe a statute without regard to its ordinary and plain meaning and may not resort to a forced interpretation in an effort to expand or limit the scope of a statute. Berkebile v. Outen, 311 S.C. 50, 55, 426 S.E.2d 760, 763 (1993). Furthermore, the construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be

overruled absent compelling reasons. Dunton v. S.C. Bd. of Examrs in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987).

L.A. Barrier argues a renunciation of the 500 shares of stock is sufficient to comply with the statute; however, a plain reading of the statute demonstrates otherwise. Because Lisa purchased the 500 shares of stock with funds from Joel and Lisas joint checking account, the statute mandates that SCDOT apply 49 C.F.R. § 26.69(i). The plain language of 49 C.F.R. § 26.69(i) requires the non-disadvantaged spouse to renounce both the rights in the ownership interest and the rights in the jointly owned assets used to acquire the ownership interest. See 49 C.F.R. § 26.69(i)(1) - (2).

Although Joel may have satisfied 49 C.F.R. § 26.69(i)(1) by renouncing his interest in the stock by the date of the hearing, he failed to satisfy 49 C.F.R. § 26.69(i)(2) by never renouncing his ownership interest in the joint checking account. While we recognize the 500 shares of stock represent a very small portion of the overall ownership interest, the fact remains without a full and proper renunciation, these shares must be attributed in part to Joel, such that Lisas ownership interest falls short of the fifty-one percent ownership requirement set forth in 49 C.F.R. § 26.69(b). Because L.A. Barrier did not meet the eligibility requirements of 49 C.F.R. § 26, SCDOT properly denied its application for certification as a DBE. See 25A S.C. Code Ann. Reg. 63-703(A) (stating SCDOT will certify a firm as a bona fide DBE under the State or Federal DBE Program if [SCDOT] determines that the firm meets the eligibility requirements of 49 C.F.R. Part 26).

In light of our holding on this issue, it is not necessary to address SCDOTs remaining arguments. Futch v. McAllister Towing of Georgetown, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing that an appellate court need not address additional issues if the resolution of another issue is dispositive).

CONCLUSION

For the foregoing reasons, the ALCs order is

REVERSED.

WILLIAMS, THOMAS, and PIEPER, JJ., concur.