THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Edward D. Sloan, Jr., individually, and as a Citizen, Resident, Taxpayer and Registered Elector of Greenville County, and on behalf of all others similarly situated,

Appellant,

v.

Greenville County, a Political Subdivision of the State of South Carolina, Dozier Brooks, Scott Case, C. Wade Cleveland, Bob Cook, Joseph Dill, Lottie Gibson, Allen "Bunk" Johnson, Mark C. Kingsbury, Xanthene Norris, Stephen Selby, and Dana Sullivan and Paul B. Wickensimer, in their official capacity as Greenville County Council Members,

Respondents.

Appeal From Greenville County
John C. Few, Circuit Court Judge

REVERSED AND REMANDED

Unpublished Opinion No. 2002-UP-598
Submitted September 9, 2002 – Filed October 1, 2002

James G. Carpenter and Jennifer J. Miller, both of Greenville, for appellant.

Thomas H. Coker, Jr. and Boyd B. Nicholson, Jr., both of Greenville, for respondents.

PER CURIAM: Edward Sloan filed an action challenging Greenville County's contract procurement procedures for a 1998 road construction project and a 1999 family court renovation project. The trial court dismissed Sloan's actions as moot. Sloan argues the trial court erred in granting the County's motion to dismiss. We reverse and remand.[1]

FACTS AND PROCEDURAL HISTORY

In 1998, Greenville County identified roads needing to be either repaired or constructed within the county, a project that would cost $8.5 million. In 1999, Greenville County decided to renovate the family court courthouse, an expansion expected to cost $1.3 million.

Unless the County invokes an exception, the Greenville County Procurement Ordinance requires competitive, sealed bidding for construction projects costing more than $15,000.[2] In 1997, the County amended its Procurement Ordinance to also allow the use of construction management services, "design-build" services, or turnkey-management services instead of the competitive, sealed bidding method.[3]

These alternative procurement methods are to be used at the discretion of the County Administrator or his designee. "[T]he method which is the most advantageous to the County and will result in the most timely, economical, and

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[1] Because oral argument would not aid the Court in its decision, we decide this case without oral argument pursuant to Rule 215, SCACR.

[2] See Greenville County Procurement Ordinance No. 2736, § 3-202(1).

[3] See Greenville County Procurement Ordinance No. 3018.

successful completion of the construction project" should be selected.[4] "The determination for the method of source selection utilized shall be stated in writing and included as part of the contract file."[5]

The County Administrator selected the design-build method for both the road project and the family court project. The County did not solicit competitive, sealed bidding for either project. The County sent out Requests for Proposals (RFPs) for the road project on July 21, 1998, and for the family court project on July 18, 1999. The road construction was completed in November 1999. The family court project was completed by July 2000.

Sloan, a taxpayer and resident of Greenville County, obtained the records pertaining to the contracts of both projects through the Freedom of Information Act. After reviewing the records, Sloan discovered the County re-used the written determination from a 1997 road project for the 1998 road project. Sloan characterized the written determination for the family court project as conclusory and not fact-specific.

Sloan filed lawsuits for both projects seeking declaratory relief. He argued the contracts were invalid due to an inadequate written determination, thus making the procurements ultra vires acts and, therefore, void. Sloan filed this road construction project lawsuit on February 24, 1999 and filed the family court project lawsuit on November 2, 1999.

Sloan moved for summary judgment and the County filed motions to dismiss in both cases. The trial court denied the motions. On August 15, 2000, the cases were consolidated. After consolidation, the trial court dismissed both cases as moot because both construction projects were complete. Sloan appeals.

LAW/ANALYSIS

Sloan submits the trial court erred when it dismissed his cases. He maintains both cases fall under a recognized exception to the mootness doctrine. We agree.

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[4] Id. at § 5-501(a).

[5] Id.

A matter "becomes moot when judgment, if rendered, will have no practical effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing court to grant effectual relief."[6] In civil cases, three exceptions exist to the mootness doctrine: (1) a court may retain jurisdiction if the issue is capable of repetition yet evades review, (2) a court may decide questions of manifest urgency to establish a rule for future conduct in matters of important public interest, and (3) an appellate court may take jurisdiction if a decision could affect future events or have collateral consequences for the parties.[7]

Without deciding the applicability of the other exceptions, we hold this case falls squarely within the public interest exception to the mootness doctrine. Our supreme court established the public interest exception in Ashmore v. Greater Greenville Sewer District.[8] In Ashmore, citizens of Greenville brought an action challenging the validity of legislation establishing the Greenville Memorial Auditorium Board and sought to enjoin the Board's issuance of bonds to fund the project.[9] The court held the legislation establishing the Board was unconstitutional, thus rendering moot any need to enjoin the Board's ability to issue bonds.[10] The court, however, chose to reach the issue of whether the legislature could create a special district and authorize it to issue bonds for construction and operation, stating "questions of public interest . . . should be

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[6] Curtis v. State, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) (alterations in original) (citation omitted), cert. denied, 122 S. Ct. 1295 (2002).

[7] Id. at 568, 549 S.E.2d at 596.

[8] 211 S.C. 77, 44 S.E.2d 88 (1947).

[9] Id. at 83-85, 44 S.E.2d at 91.

[10] Id. at 96, 44 S.E.2d at 96-97.

decided for future guidance, however abstract or moot they may have become in the immediate contest."[11]

In Sloan v. School District of Greenville County,[12] this Court discussed whether the use of a competitive, sealed bidding process was a question of important public interest in the context of standing. Deciding the taxpayer had standing to bring the suit, we said, "The expenditure of public funds pursuant to a competitive bidding statute is of immense public importance."[13]

The competitive, sealed bidding process is a question of public importance, both in the context of standing and in the context of the sufficiency of the written determination. The government is attempting to maintain the public's trust and confidence by requiring contracts to be awarded through the process of competitive, sealed bidding.[14]

The County attempts to distinguish Ashmore and its progeny from the current appeal by arguing the cases cited by Sloan deal with the validity or interpretation of a statute or ordinance. We note the current appeal involves the interpretation of an ordinance.

The County further argues a ruling in this case would not provide guidance in future cases due to the fact-specific nature of each project. An interpretation of the ordinance would determine two things: (1) whether a determination from a previous project may be used, and (2) whether fact-specific findings are necessary. We believe a ruling on the merits will provide future guidance to the County, thus placing this case under the public importance exception to the mootness doctrine. According, we reverse the trial court's dismissal of Sloan's actions and remand for further proceedings.

REVERSED AND REMANDED.

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[11] Id.

[12] 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000).

[13] Id. at 524, 537 S.E.2d at 303.

[14] Id.

GOOLSBY, HOWARD, and SHULER, JJ., concur.