

The FIRST UTILITY DISTRICT OF KNOX COUNTY, TENNESSEE,
Appellee,

v.

The CITY OF KNOXVILLE and the West Knox Utility District of
Knox County, Tennessee, Appellants.

Court of Appeals of Tennessee, Eastern Section.

May 23, 1986.

1986 WL 5900

Knox Chancery

C.A. No. 663

Hon. Frederick D. McDonald, Chancellor

Claude K. Robertson and Barry W. Eubanks with Robertson, Williams, Ingram & Overbey, Knoxville, for appellants.

Courtney N. Pearre, Special Attorney for City of Knoxville.

Robert H. Leonard, Knoxville; Thomas M. Hale and David E. Rodgers with Kramer, Rayson, McVeigh, Leake & Rodgers, Knoxville, for appellee.

OPINION

PARROTT, Presiding Judge.

**1 This is a lawsuit wherein the plaintiff, the First Utility District of Knox County, Tennessee (hereinafter "FUD"), brought a complaint against the defendants, the City of Knoxville, Tennessee (hereinafter "City") and the West Knox Utility District of Knox County, Tennessee (hereinafter "WKUD"), seeking a judgment declaring and interpreting the respective rights, duties and obligations between and among FUD, WKUD, and the City pursuant to a Waste Water Facility Agreement (hereinafter "Agreement") entered into by said parties. The Chancellor entered an opinion in which he first determined that WKUD should be restricted to two-thirds of the capacity of the common interceptor line constructed by FUD pursuant to the Agreement but only during periods when the total waste water flow from the Ten Mile Creek Drainage Basin exceeds the capacity of the line. The Chancellor also determined that FUD is permitted by the Agreement to redirect the waste water it collects in the Ten Mile Creek Drainage Basin from the Fourth Creek Treatment Plant to FUD's Turkey Creek Treatment Plant for treatment and disposal. However, FUD would be subject to certain other terms of the Agreement, including the obligation to pay the City for

the costs incurred by the City in being prepared to treat and dispose of FUD's waste water, and FUD would continue to be obligated to maintain the interceptor line. Further, the Chancellor concluded that if FUD elected to remove its waste water from the Fourth Creek Treatment Plant, FUD could not use the interceptor line or other common facilities constructed pursuant to the agreement. Defendants, WKUD and the City, have appealed to this Court.

The pertinent facts are as follows:

WKUD lies north of Interstate 75 and Interstate 40 which run east and west through Knox County, while FUD lies south of that interstate highway. The City lies on the eastern side of these utility districts. The Ten Mile Creek Drainage Basin is located in West Knox County, between the Fourth Creek Drainage Basin to the east, which is within the area of the City, and the Turkey Creek Drainage Basin to the west, which is within the area of FUD. The Ten Mile Creek Drainage Basin covers portions of both FUD and WKUD, generally their eastern most portions, and a small area of the westerly portion of the City.

In the late 1960's and early 1970's, a population expansion in the western portion of the City and the western portion of Knox County created a need for waste water collection and treatment facilities within the Ten Mile Creek Drainage Basin. At that time neither FUD nor WKUD had a sewage treatment facility readily available to the Ten Mile Creek Drainage Basin, however, the City had excess capacity at its Fourth Creek Treatment Plant. In 1970 the City, WKUD and FUD began negotiations to determine how the Ten Mile Creek Drainage Basin could best be served.

In 1971, the parties entered into the Agreement whereby WKUD and FUD would build the collection lines within their respective district boundaries and deliver sewage to a pump station built by the City for pumping the sewage to the City's Fourth Creek Treatment Plant for treatment. In addition to the collection lines within its boundaries, FUD also agreed to build an interceptor line for the joint use of FUD and WKUD. WKUD agreed to pay FUD two-thirds of the cost of the interceptor line after application of any Federal grant funds.

**2 The agreed upon sewage disposal system normally handled all of the sewage generated within the area. However, at times of heavy rainfall, problems would occur. The City tied an overflow connection into WKUD's lines so that at periods of heavy rainfall, the excess capacity over what could be handled by the City would flow into WKUD's lines. The combination of the seepage of rainfall and storm water, referred to as infiltration and influx, into the sanitary sewers and overflow from the City was presented by WKUD for introduction into the upper end of the common interceptor line maintained by FUD for transportation of WKUD's sewage and for collection and transportation of FUD's sewage to the pumping station. During very wet weather, the demands coming from WKUD coupled with peak load demand by FUD had the effect of overloading the capacity of the

system. This resulted in stoppage and backing up in the collection lines of FUD, and the blowing of manhole covers, allowing the release of sewage out upon the ground.

Continued population growth throughout the western portion of Knox County has further increased the demand for sewage disposal. To meet this increased demand, FUD proposed that it substantially expand its Turkey Creek Treatment Plant and that all of the Ten Mile Creek sewage be rerouted from the Fourth Creek Treatment Plant of the City to FUD's expanded Turkey Creek Treatment Plant. Due to additional development within the Fourth Creek Drainage Basin, the City must enlarge its Fourth Creek Treatment Plant and proposed to increase the capacity of its Fourth Creek Treatment Plant to accommodate its required expansion plus treatment of the sewage coming from the Ten Mile Creek Drainage Basin.

Defendants present two issues for our determination. The first issue raised by defendants pertains to whether the Chancellor correctly interpreted the Agreement so as to allow FUD to redirect the waste water it collects in the Ten Mile Creek Drainage Basin from the Fourth Creek Treatment Plant to the Turkey Creek Treatment Plant. The Chancellor determined that the agreement does not obligate either FUD or WKUD to deliver any specific amount of waste water to the City to be treated, but does require that FUD and WKUD reimburse the City for the costs incurred in pumping and treating the sewage. Adhering to the rule that public contracts are to be strictly construed and that nothing is to be included by implication, we must agree with the Chancellor's decision. *Volunteer Electric Coop. v. TVA*, 139 F.Supp. 22 (E.D.Tenn.1954), *aff'd*, 231 F.2d 446 (6th Cir.1956).

Paragraph three of the Agreement requires the City to construct the facilities necessary to dispose of all waste delivered by FUD and WKUD, and further obligates the City to pump and treat or otherwise dispose of all waste delivered by FUD and WKUD. Paragraph ten sets forth the rates for services and provides that a minimum bill of \$56,100.00 will be paid to the City regardless of how many gallons of sewage are delivered to the City for treatment. Paragraph thirteen allocates the cash payment required by FUD and WKUD individually if the minimum number of gallons necessary to yield the minimum cash amount of \$56,100.00 is not met. Strictly construed, the Agreement does not require FUD to furnish any minimum amount of sewage but does provide that if FUD does not furnish a minimum amount of sewage then it has an obligation to pay, in cash dollars, its pro rata portion of certain minimum payments as set forth in the Agreement.

**3. Defendants next question whether the Chancellor was correct in restricting WKUD to the use of two-thirds of the capacity of the common interceptor line during periods of heavy rain. In the court below, FUD insisted the term "joint use" meant fifty-fifty use of the common interceptor line. Defendants insist "joint use" means WKUD and FUD may use the interceptor line in common, with no restrictions on the extent of the use of the line for either party.

In Paragraph one of the Agreement, FUD agreed to build an interceptor line for the "joint use" of FUD and WKUD. WKUD agreed to pay two-thirds of the cost of the interceptor line after the application of any Federal grants. The Chancellor determined that the requirement of WKUD to pay two-thirds of the cost of the interceptor line modified and explained the term "joint use" in Paragraph one. Since WKUD was required to pay two-thirds of the cost of the interceptor line, the Chancellor reasoned that WKUD should be restricted to two-thirds of the use of that line during periods of maximum utilization by both FUD and WKUD. The Chancellor stated further that either WKUD or FUD can use any portion of the interceptor line when it would not overload the capacity of the line. The Chancellor's findings of fact are reviewed de novo upon the record, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn.R.App.P. 13(d). We find the evidence in this case does not preponderate against the holding of the Chancellor.

For the reasons given, we affirm the judgment as entered with costs taxed to defendants-appellants.

HOUSTON M. GODDARD and HERSCHEL P. FRANKS, JJ., concur.