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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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KENNETH RESCHLY d/b/a **RESCHLY CONSTRUCTION,**	)	
Plaintiff-Appellant,	)	Filed November 30, 1987
vs.	)	
ROBERT HUFF, ALAN TREES, and **STEPHEN WILSON,**	)	7-358 87-109
Defendants-Appellees.	)	

Appeal from the Iowa District Court for Henry County (No. CL1080-0886), John C. Miller, Judge.

Plaintiff appeals from a trial court ruling granting defendants' motion to dismiss plaintiff's petition seeking damages for an alleged intentional interference of a prospective contractual relationship with defendants. **AFFIRMED.**

Thomas J. Vilsack of Bell & Vilsack, Mount Pleasant, for plaintiff-appellant.

Robert A. Engberg and William Scott Power of Aspelmeier, Fisch, Power, Warner & Engberg, Burlington, for defendants-appellees.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

DONIELSON, P.J.

Plaintiff appeals from a trial court ruling granting defendants' motion to dismiss plaintiff's petition seeking damages for an alleged intentional interference of a prospective contractual relationship with defendants. Plaintiff claims the trial court erred in (1) concluding he lacked standing to pursue his claim and (2) finding the discretionary function exemption in Iowa Code section 613A.4(3) mandated a dismissal. We affirm.

Plaintiff, a contractor, submitted a bid to Winfield-Mt. Union School Board, composed of the defendants, to perform construction work concerning a proposed addition to the high school. Plaintiff had seen a "Notice to Bidders" in a newspaper of general circulation. Plaintiff's bid was the lowest bid, but defendants chose to accept the bid from the other contractor, Winfield Builder's Supply. Plaintiff contends that had his claim not been dismissed, the proof would have established that prior to the notice being published, defendants had prematurely awarded the contract to Winfield Builder's Supply without compliance with the mandatory bidding process; hence, to avoid embarrassment, defendants ultimately awarded the contract to Winfield Builder's Supply and rejected plaintiff's low bid. Plaintiff asserts it is this action which is illegal and interfered with his potential contract rights with defendants and that by law defendants should have accepted plaintiff's low bid.

Defendants' motion to dismiss was sustained by the trial court on the grounds that plaintiff lacked standing to pursue this cause of action and that awarding of bids is a discretionary function exemption pursuant to Iowa Code section 613A.4(3). Plaintiff appeals from the trial court's ruling.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. Findings of fact are binding if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

Plaintiff raises two issues: (1) whether the trial court erred in sustaining defendants' motion to dismiss on the grounds that plaintiff lacked standing, and (2) whether the trial court erred in sustaining defendants' motion to dismiss on the grounds that the discretionary function exemption set forth in Iowa Code section 613A.4(3) was applicable to the facts of this case. Under the view we take in this case, we address only plaintiff's first argument.

The general rule in Iowa is that an unsuccessful bidder lacks standing to bring suit absent any allegation of fraud or conspiracy. See Elview Const. Co. v. North Scott Community School District, 373 N.W.2d 138 (Iowa 1985). Plaintiff does not allege fraud or conspiracy. Rather, plaintiff distinguishes the Elview case by noting (1) he has brought this action against the Board members individually and not against the Board itself and (2) that his suit is not based on his being an unsuccessful bidder but that the defendants knowingly exceeded their authority, thus interfering with plaintiff's contract rights.

Defendants contend, and we agree, that the general rule applies and that regardless who the defendant is, this plaintiff lacks standing to pursue this cause of action. We do not find dispositive the fact plaintiff sued Board members, rather than the Board itself. Neither are we convinced that the above-stated principle in Elview is not applicable in tort as well as contract.

The purpose of a competitive bidding statute (see Iowa Code § 23.18) is to protect the public; such statutes are enacted for the benefit of the taxpayers, not the bidders. Elview Const. Co., 373 N.W.2d at 141. Thus, taxpayers of a school district have standing to test the legality of a contract made by the school district; unsuccessful bidders do not. Id. at 141-42. 64 Am. Jur. 2d, Public Works and Contracts § 87 at 949 (1972) states the following:

> [A]s a general rule a bidder, though his bid may be the lowest submitted, and he may be a reliable and responsible contractor, cannot by judicial action compel the public authorities to award the contract

> to him or otherwise found an action in his own right upon the denial of the contract to him.

Regardless how plaintiff phrases his claim, his basis for this action is that of an unsuccessful bidder at a public auction. We affirm the trial court's granting of defendants' motion to dismiss based on plaintiff's lack of standing to pursue this claim. Because of our ruling, we do not address plaintiff's other contention of error.

AFFIRMED.