[Cite as *Hennosy v. Columbus Mun. Civ. Serv. Comm.*, 2010-Ohio-5971.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Stephen Hennosy,	:	
Appellant-Appellant,	:	
v.	:	No. 10AP-417 (C.P.C. No. 09CVF06-8967)
The Municipal Civil Service Commission for the City of Columbus, Ohio,	:	(ACCELERATED CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on December 7, 2010

Thompson Hine LLP, and *William C. Moul,* for appellant.

Richard C. Pfeiffer, Jr., City Attorney, *Lara N. Baker,* City Prosecutor, and *Emily D. Bennett,* for appellee.

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, J.

{¶1} Appellant-appellant, Stephen Hennosy, appeals from a judgment of the Franklin County Court of Common Pleas dismissing his appeal from a decision of appellee-appellee, Municipal Civil Service Commission for the City of Columbus, Ohio ("commission"), to remove appellant's name from a promotional eligibility list. Because (1) the commission's proceeding was not quasi-judicial in nature and (2) the commission did not unlawfully delegate its authority to a hearing officer, we affirm.

I. Facts and Procedural History

{¶2} Appellant had been a Columbus Firefighter for over 19 years when on April 7, 2009 he participated in a competitive examination for the position of Fire Lieutenant with the city of Columbus. Of the 123 applicants who took the examination, appellant qualified seventeenth on the eligibility list for the position.

{¶3} On May 1, 2009 a hearing officer of the commission held an investigative hearing to determine whether appellant breached test security. Following an investigation, the hearing officer determined the evidence demonstrated appellant had prior knowledge that arson would be on the examination. In particular, appellant brought up the subject of arson before one of the role players administering the oral examination mentioned the topic, the hearing officer concluded appellant impermissibly acquired information about the examination prior to taking it. Accordingly, the hearing officer recommended the commission remove appellant's name from the eligibility list. On May 18, 2009, the commission approved the hearing officer's recommendation and removed appellant's name from the list. Appellant timely appealed the commission's decision to the Franklin County Court of Common Pleas.

{¶4} In response, the commission on July 1, 2009 filed a motion to dismiss for lack of subject matter jurisdiction pursuant to Civ.R. 12(B)(1), stating the investigation the hearing officer conducted was not quasi-judicial in nature. After appellant filed a memorandum opposing the commission's motion, the trial court on April 7, 2010 granted the commission's motion to dismiss. The court noted that "although a lengthy hearing was in fact held * * * and the investigation hearing officer's [sic] clearly exercised discretion * * * the proceedings cannot be quasi-judicial in nature because there was no statute or other

law that *required* the Commission to give notice and a hearing." (Emphasis sic, Decision at 7.)

II. Assignments of Error

{¶5} Appellant appeals, assigning the following errors:

> 1. The lower court erred in holding that it lacked subject matter jurisdiction pursuant to Ohio Revised Code Section 2506.01 in an administrative appeal where the Civil Service Commission's decision results from a quasi-judicial proceeding.
>
> 2. The lower court erred in holding that it lacked subject matter jurisdiction pursuant to Ohio Revised Code Section 2506.01 where the Civil Service Commission delegated discretionary authority to one of its Hearing Officer without meaningful review, guidelines, and control.
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> 3. The lower court erred in holding that it lacked subject matter jurisdiction because, where neither local civil service rules nor state law prohibits an appeal from the decision of a civil service commission removing a civil servant from a promotional eligibility list on which he/she has been placed, such decision may be appealed to the Court of Common Pleas pursuant to Ohio Revised Code Section 2506.01.
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> 4. The lower court erred by failing to find that the Commission, in interpreting its own rules to deny a civil servant (Appellant) substantial rights and interest without notice or hearing, engages in a quasi-judicial action subject to review under Ohio Revised Code Section 2506.01.
>
> 5. By reason of the unauthorized delegation of authority granted by the Civil Service Commission to its Hearing Officer, the Civil Service Commission had a duty to provide notice of hearing and to conduct a hearing on the subject of Appellant's potential removal from the promotional eligible list on which he had been placed.
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> 6. The lower court erred in failing to find implicit in Section 154 of the Columbus City Charter and/or in Rules XIII(I) and XII(G)(b) of the Commission a requirement that the Commission provide notice and hearing on the subject of

> Appellant's potential removal from the promotional eligible list on which he had been placed, thus rendering the action of the Commission quasi-judicial.
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> 7. The lower court erred in failing to determine that the absence of guidelines established by the Commission and/or provided to its delegees, as to the standard for determining the conditions under which a civil servant may be removed from a position on a promotional eligible list created by the Commission, renders the action of the Commission a quasi-judicial function, and requires notice of hearing and hearing, prior to any action by the Commission removing Appellant from the promotional eligible list on which he had been placed.
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> 8. The lower court erred in failing to find that the Commission engaged in a quasi-judicial function by failing to provide notice and hearing to Appellant with respect to Commission action which violated Appellant's procedural and substantive constitutional rights to due process, thus rendering the Commission's action quasi-judicial.

{¶6} Appellant grouped his assignments of error into two issues. Appellant contends the trial court erred in holding it lacked subject matter jurisdiction because (1) the commission's proceedings were quasi-judicial in nature and (2) the commission unlawfully delegated its authority to a hearing officer.

III. The Columbus Charter

{¶7} Section 146 of the Columbus City Charter provides for the creation of a civil service commission. The commission, created pursuant to that authority, has the power to "prescribe, amend and enforce rules for the classified service" and, as particularly pertinent to appellant's appeal, to provide rules for the "rejection of candidates or eligibles who fail to comply with reasonable requirements * * * or who have attempted deception or fraud in connection with any examination." Charter Section 149(e). Firefighters and Fire Lieutenants are part of the classified service. Charter Section 148(2).

{¶8} Section 154 of the Charter, which provides for investigations and hearings related to the classified service, states that "[i]n any investigation or hearing conducted by the commission it shall have the power to subpoena and require the attendance of witnesses and the production of books and papers pertinent to the investigation and to administer oaths to such witnesses." The Rules and Regulations of the commission also address investigations and hearings, stating the commission "may make investigations, either sitting en banc or through * * * a Hearing Officer, concerning all matters touching the enforcement and effect of the Charter, as it applies to Civil Service and these Rules." Rule XIV(H). According to the rule, the commission or hearing officer in the course of an investigation "may subpoena witnesses and/or require the production of documents and records relevant to the investigation." Id. "The Commission's investigation may be public or private and may terminate with such decision or report within the power of the Commission to render or make." Id. As pertinent here, the Rules provide an eligible may be removed from an eligibility list if the "individual has practiced or attempted to practice deception or fraud on the application or examination." Rule VI(E)(i).

IV. Quasi-Judicial Issue

{¶9} Appellant initially claims the commission's decision to adopt the hearing officer's recommendation to remove appellant's name from the promotional eligibility list is an order reviewable in the court of common pleas pursuant to R.C. 2506.01. Appellant asserts the common pleas court wrongly concluded it lacked subject matter jurisdiction.

{¶10} A "court has subject matter jurisdiction over a case if the court has the statutory or constitutional power to adjudicate that case." *Garrett v. Columbus*, 10th Dist. No. 10AP-77, 2010-Ohio-3895, ¶13, citing *Pratts v. Hurley,* 102 Ohio St.3d 81, 2004-

Ohio-1980, ¶11. A dismissal for lack of subject matter jurisdiction under Civ.R. 12(B)(1) "raises a question of law, and thus, this court reviews a trial court's ruling on such a motion under the de novo standard." Id., citing *Crosby-Edwards v. Ohio Bd. of Embalmers & Funeral Directors*, 175 Ohio App.3d 213, 2008-Ohio-762, ¶21.

{¶11} R.C. 2506.01(A) provides for administrative appeals and states that "every final order, adjudication, or decision of any officer * * * commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located." A "final order, adjudication or decision" under R.C. 2506.01(A) means "an order, adjudication, or decision that determines rights, duties, privileges, benefits, or legal relationships of a person." R.C. 2506.01(C). Although the commission's decision to remove appellant's name from the promotional eligibility list was final and determined appellant's rights to a position on the list, appellant's contentions are not resolved under R.C. 2506.01 alone.

{¶12} Section 4(B), Article IV of the Ohio Constitution provides that the courts of common pleas have the power to review proceedings of administrative officers and agencies, but only if the proceedings are quasi-judicial in nature; administrative actions that are not quasi-judicial in nature are not appealable to the courts of common pleas under R.C. 2506.01. *Fortner v. Thomas* (1970), 22 Ohio St.2d 13, paragraph one of the syllabus; *M.J. Kelley Co. v. Cleveland* (1972), 32 Ohio St.2d 150, paragraph one of the syllabus. The court of common pleas thus had subject matter jurisdiction over appellant's appeal case pursuant to R.C. 2506.01 and Section 4(B), Article IV of the Ohio Constitution if the hearing officer's investigation was quasi-judicial in nature.

{¶13} The "most common test for determining whether an administrative proceeding is quasi-judicial, is whether the proceeding in question involved the exercise of discretion and required notice and a hearing." *Andrews v. Civ. Serv. Comm. of Columbus* (Apr. 18, 1996), 10th Dist. No. 95APE10-1324, citing *Rossford Exempted Village School Dist. v. State Bd. of Edn.* (1989), 45 Ohio St.3d 356, 359. Importantly, "[w]hether a proceeding is quasi-judicial turns upon the requirements imposed by law, and not upon what actually occurred." Id., citing *In re Appeal of Howard* (1991), 73 Ohio App.3d 717, 719. In determining whether an agency proceeding is quasi-judicial, the court must focus on whether the statute or rule governing the proceeding required notice and a hearing, not whether notice and a hearing were provided. Id.

{¶14} In *Andrews* two applicants appealed to the Franklin County Court of Common Pleas after their names were removed from a firefighter eligibility list. Id. At the time, the commission's Rule XIV(F) provided that if an applicant's name were removed from such an eligibility list, the matter would be referred to a commission's background officer, the applicant would be notified of the date and time of the review meeting, and the background officer would meet with the applicant and a representative from the commission to review the information that resulted in the decision to remove the applicant's name from the list. Id. This court concluded that Rule XIV(F) explicitly required "a disqualified applicant be given notice of the date and time of this review meeting," making it "implicit in CCSCR XIV(F) that a disqualified applicant will have some opportunity to state his or her case for reinstatement at the meeting with the background officer." Id. Accordingly, we determined that the "meetings with commission background officers pursuant to CCSCR XIV(F) were quasi-judicial proceedings." Id.

{¶15} In contrast, the commission rule pursuant to which the hearing officer conducted the investigation at issue does not contain any similar requirement for notice or a hearing. Although Rule XIV(H) provides that the hearing officer "may subpoena witnesses and/or require the production of documents and records relevant to the investigation"; nothing in the rule, or in Section 154 of the Columbus City Charter, requires that the subject of the investigation be given notice of the investigation or an opportunity to be heard at the investigation. Appellant nonetheless argues that the hearing officer's ability to subpoena witnesses and require the production of documents under Rule XIV(H) implicitly requires notice and a hearing. To the contrary, this court, in applying the same charter provision and rule at issue here, concluded "neither the Charter nor the Rules include a requirement that the commission give notice or hold a hearing as part of an investigation," so that any decision resulting from a proceeding under these provisions does "not result from a quasi-judicial proceeding." *Garrett* at ¶18. Because the provisions governing the commission's investigation of appellant do not require notice or a hearing, the investigation was not a quasi-judicial proceeding.

{¶16} Appellant alternatively asserts notice and hearing were implicitly required pursuant to Charter Section 149-1 and Rule XIII(E). Appellant's reliance on the provisions is misplaced. Charter Section 149-1 provides that "any employee of the City of Columbus in the classified service, who is suspended, reduced in rank or compensation or discharged * * * may appeal from such decision or order therefore, to the civil service commission." The commission, in turn, "shall forthwith notify the official issuing the order of suspension, reduction or discharge" and "shall hear such appeal within ten days." Rule XIII(E) similarly provides for appeals to the commission if an employee is suspended,

reduced in rank, position, compensation or discharged. Here, although the commission removed appellant's name from an eligibility list, appellant was not suspended, reduced in his rank, position, or compensation, or discharged. Section 149-1 and Rule XIII(E) do not apply here.

{¶17} Appellant next contends *Nuspl v. City of Akron* (1991), 61 Ohio St.3d 511 holds that "[w]here neither the local civil service rules nor state law prohibits an appeal from the decision of a civil service commission declaring a person ineligible to take a civil service examination, such decision may be appealed to the court of common pleas pursuant to R.C. 2506.01." Id. at syllabus. Although no statute or local rule prohibits appellant from appealing the removal of his name from the eligibility list, *Nuspl* is not controlling, as it involved a quasi-judicial proceeding. There a disqualified test applicant appealed to the Akron Civil Service Commission pursuant to Section 5(2) Rule 2 of the Akron Civil Service Rules. According to those rules, the commission would "afford such appellant an opportunity to be heard in his own behalf." Id. at 514. The Supreme Court of Ohio stated that implicit in Section 5(2) Rule 2 of the Akron Civil Service Commission Rules were "the requirements of notice to the appellant, and the opportunity for the appellant to state his or her case in a hearing," making "the procedure set forth in the Akron Civil Service Rules of the 'quasi-judicial' nature." Id. at 516. *Nuspl* differs from appellant's circumstances, because the commission's rules at issue here do not state explicitly or implicitly that the subject of the investigation should receive notice or an opportunity to be heard.

{¶18} Appellant also relies on *Marshall v. Civ. Serv. Comm. of Columbus, Ohio* (1968), 14 Ohio St.2d 226 which holds that "[w]here a municipal Civil Service

Commission formally rejects the application of a municipal civil service employee to take a promotional examination * * * the employee has a plain and adequate remedy in the ordinary course of the law by appeal under Section 2506.01, Revised Code, to the Court of Common Pleas." Id. at syllabus. The rule at issue there, on which the court concluded the applicant should have appealed to the Court of Common Pleas, required notice and an opportunity to be heard. Id. at 229 (noting the Rule stated that "[i]n all cases of rejection an applicant shall be notified immediately of the rejection and the reasons therefore" and "shall have an opportunity to show cause to the commission why his application should not have been rejected"). Appellant can point to no similar provisions in the Columbus City Charter or rules governing his circumstances.

{¶19} Accordingly, the investigation which resulted in the removal of appellant's name from the promotional eligibility list was not quasi-judicial in nature because Rule XIV(H) and Charter Section 154, pursuant to which the investigation was conducted, do not require appellant be given notice or an opportunity to be heard. Appellant's first, third, fourth, and sixth assignments of error are overruled.

V. Unlawful Delegation of Authority

{¶20} Appellant also contends the court of common pleas had jurisdiction over the his appeal based on our decisions in *Thomas v. Civ. Serv. Comm. of Columbus* (Dec. 23, 1993), 10th Dist. No. 93AP-717 (Memorandum Decision) and *Seesholtz v. Civ. Serv. Comm.* (Aug. 16, 1994), 10th Dist. No. 94APE01-25. In both cases, the commission removed an applicant's name from an eligibility list for police officers and a background officer denied the applicant's request to restore the name to the eligibility list. Rule XIV(E), at that time, governed the procedure that allowed a background officer to review an

appeal from a rejected applicant, stating the applicant would be "notified of the date and time of the review meeting." According to the rule, after the applicant "had an opportunity to present information to the Background Officer, the officer shall make a determination as to whether the applicant's name will be restored to the list." *Thomas,* supra. The applicant then received a letter stating the background officer's decision, a decision that was final. Id.

{¶21} Noting the Columbus City Charter charged the commission with "the duty to prescribe, amend, and enforce rules," *Thomas* concluded the commission delegated "authority to a background officer who, under Rule XIV, [was] given no specific guidelines." "More importantly," we noted, "nothing in the rule provide[d] that the actions taken [were] subject to review and control by the commission." Id. Accordingly, we concluded Rule XIV(E) was "an unlawful delegation of the commission's duties and responsibilities under the charter." Id. Because "the commission had a duty to review that decision and * * * did not, the decision was subject to appeal under R.C. 2506." *Seesholtz*, supra.

{¶22} Notably, Rule XIV(E), at issue in *Seesholtz* and *Thomas*, now states not only that the "Commission will review the materials submitted by the Background Officer * * * and decide whether the applicant's name will be reinstated to the list," but that "decisions by the Commission * * * are final." No longer does an impermissible delegation of the commission's authority exist, as the commission, not the background officer, now issues the final decision.

{¶23} Appellant nonetheless asserts that because the hearing officer conducting the investigation had no guidelines to follow, and because the commission did not review

the hearing officer's recommendation, removing appellant's name from the promotional eligibility list must be subject to review under R.C. Chapter 2506. Neither Rule XIV(H) or Charter Section 154 gives the hearing officer any authority to render a final decision. The final sentence of Rule XIV(H) states that the "Commission's investigation may be public or private and may terminate with such decision or report within the power of the *Commission* to render." (Emphasis added.) Although Rule XIV(H) permits the commission, executive secretary, or a hearing officer to conduct an investigation, the investigation may only terminate with a decision or report of the commission. Because the commission retained the final decision concerning investigation results, no unlawful delegation of authority exists. Consistent with the rules, the commission, not the hearing officer, removed appellant's name from the promotional eligibility list when it adopted the hearing officer's recommendation.

{¶24} Accordingly, we overrule appellant's second, fifth, seventh, and eighth assignments of error.

{¶25} Having overruled appellant's eight assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas dismissing this case for lack of subject matter jurisdiction.

Judgment affirmed.

TYACK, P.J., and FRENCH, J., concur.

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