

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Wylie K. Fletcher,	:	
Appellant-Appellant,	:	
v.	:	No. 12AP-46 (C.P.C. No. 11CVF-08-9534)
Ohio Department of Transportation,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on August 28, 2012

Moses Law Offices, L.L.C., and Michael A. Moses, for appellant.

Michael DeWine, Attorney General, Drew C. Piersall, and Joseph N. Rosenthal, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶ 1} Appellant, Wylie K. Fletcher, appeals from a judgment of the Franklin County Court of Common Pleas affirming an order of the State Personnel Board of Review ("SPBR") wherein SBPR dismissed appellant's appeal for lack of jurisdiction. For the following reasons, we affirm.

I. Background

{¶ 2} Appellant began working for the Ohio Department of Transportation ("ODOT") in March 2008 under the position title "Deputy Director 5," a position which appellant acknowledged was an unclassified civil service position. Before his employment

with ODOT, appellant had worked in the Ohio Department of Rehabilitation and Correction ("ODRC").

{¶ 3} On November 5, 2010, appellant consented to a demotion from his position as Deputy Director 5 to the position of "Administrative Officer 2," which is a position in the classified service, effective November 7, 2010. In January 2011, a deputy director of human resources for ODOT reviewed appellant's employment status and determined that, because appellant's new position was his first classified service position with ODOT, he was required to serve a 180-day probationary period. In a letter dated January 28, 2011, ODOT informed appellant that he had been a probationary employee as of November 7, 2010, the date he was placed into the classified service position. In a separate letter dated that same day, ODOT informed appellant that his employment was terminated by probationary removal due to unsatisfactory service.

{¶ 4} Appellant appealed his removal to the SPBR pursuant to R.C. 119.12 and 124.34. ODOT moved to dismiss the appeal on the ground that appellant was a probationary employee and that, under former R.C. 124.27(C), he had no right to appeal. After appellant filed a memorandum contra, the Administrative Law Judge ("ALJ") issued a report recommending that the appeal be dismissed for lack of jurisdiction. Over appellant's objections, the SPBR adopted the ALJ's recommendation in July 2011.

{¶ 5} Appellant filed an appeal to the Franklin County Court of Common Pleas. After the parties filed their respective briefs, the trial court issued a decision and entry affirming the SPBR's order of dismissal.

II. Assignments of Error

{¶ 6} In a timely appeal, appellant presents the following two assignments of error for our consideration:

[1.] The decision of the lower court was erroneous insofar as it affirmed the order of the state personal board of review dismissing an employee's appeal from the appellee's removal without a hearing because it was not supported by reliable, probative and substantial evidence and was not in accordance with law.

[2.] The decision of the lower court was erroneous insofar as it affirmed the order of the state personal board of review in adopting the finding that Mr. Fletcher was in a probationary

period at the time of his removal since his classified status arose via a transfer from another agency, because it was not supported by reliable, probative and substantial evidence and was not in accordance with law.

{¶ 7} In both assignments of error, appellant argues that the trial court erred by affirming SPBR's order. Appellant claims that SPBR erred by not holding a hearing before dismissing his appeal and by finding him to be a probationary employee that, under R.C. 124.27, could not appeal his removal. Because these assignments of error are interrelated, we will address them together.

{¶ 8} In an administrative appeal under R.C. 119.12, a court of common pleas reviews an agency's order to determine whether it is supported by reliable, probative, and substantial evidence and is in accordance with law. *Berning v. Ohio Dept. of Transp.*, 10th Dist. No. 11AP-837, 2012-Ohio-2991, ¶ 7; *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 110-11 (1980). The standard of review is more limited on appeal to this court where, unlike the trial court, we do not determine the weight of the evidence. *Rossford Exempted Village School Dist. Bd. of Edn. v. State Bd. of Edn.*, 63 Ohio St.3d 705, 707 (1992). In reviewing the trial court's determination that an order is supported by reliable, probative, and substantial evidence, our role is confined to determining whether the court of common pleas abused its discretion. *Berning* at ¶ 7. However, in determining whether an order was in accordance with law, this court's review is plenary. *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.*, 63 Ohio St.3d 339, 343 (1992).

{¶ 9} In this case, the trial court affirmed the SPBR's decision to dismiss appellant's appeal for lack of subject-matter jurisdiction. The SPBR "derives its jurisdiction from R.C. Chapter 124 and possesses only that authority conferred thereunder." *Khalaq v. Ohio Environmental Protection Agency*, 10th Dist. No. 09AP-963, 2011-Ohio-1087, ¶ 15, citing *Ketron v. Ohio Dept. of Transp.*, 61 Ohio App.3d 657, 659 (10th Dist.1991).

{¶ 10} As pertinent here, the SPBR's jurisdiction over the removal of a probationary employee is outlined in R.C. 124.27, which, at the time of appellant's removal, provided the following in relevant part:

All original and promotional appointments, including appointments made pursuant to section 124.30 of the Revised Code, but not intermittent appointments, shall be for a probationary period, not less than sixty days nor more than one year * * *. No appointment or promotion is final until the appointee has satisfactorily served the probationary period. If the service of the probationary employee is unsatisfactory, the employee may be removed or reduced at any time during the probationary period. If the appointing authority decides to remove a probationary employee in the service of the state, the appointing authority shall communicate the removal to the director. A probationary employee duly removed or reduced in position for unsatisfactory service does not have the right to appeal the removal or reduction under section 124.34 of the Revised Code.

Former R.C. 124.27(C).¹

{¶ 11} This statute empowers an appointing authority to remove a probationary employee for unsatisfactory service *at any time* during the probationary period and evidences the legislature's intent "to divest the SPBR of jurisdiction over *all* probationary removals, regardless of when they occurred." (Emphasis sic.) *State ex rel. Rose v. Ohio Dept. of Rehab. & Corr.*, 91 Ohio St.3d 453, 457 (2001). " 'Since the probationary period is for the benefit of the appointing authority to aid in the determination of merit and fitness for civil service employment[,] * * * the General Assembly historically has provided for a degree of leeway in the dismissal of probationary employees.' " *Id.*, quoting *Walton v. Montgomery Cty. Welfare Dept.*, 69 Ohio St.2d 58, 59 (1982). Moreover, it is well settled that probationary civil service employees have no property interest in continued employment sufficient to warrant due process protection. *Rose* at 457, citing *Walton* at 64; *Jacomin v. Cleveland*, 70 Ohio App.3d 163, 168 (8th Dist.1990); *Taylor v. Middletown*, 58 Ohio App.3d 88, 91-92 (12th Dist.1989).

{¶ 12} Appellant does not dispute that, under former R.C. 124.27(C), a probationary employee has no right to appeal a removal for unsatisfactory service. Instead, he argues that he was not a probationary employee under the statute. According

¹ Former R.C. 124.27(C) is now R.C. 124.27(B). See 2011 H.B.No. 153 (eff. June 30, 2011); 2012 Am.Sub.H.B. No. 487 (eff. June 11, 2012). Except as mentioned in footnote 2 of this opinion, the language in current R.C. 124.27(B) is nearly identical to that in former R.C. 124.27(C).

to appellant, former R.C. 124.27(C) only confers probationary status on "original and promotional appointments," and his voluntary demotion to the classified service position of Administrative Officer 2 did not fall into either category. Appellee counters that, while appellant's demotion was not a promotional appointment, it nevertheless constituted an original appointment under former R.C. 124.27(C). Therefore, our analysis hinges on the definition of "original appointment" in the context of former R.C. 124.27(C).

{¶ 13} "Words and phrases shall be read in context and construed according to the rules of grammar and common usage." R.C. 1.42; *see also State ex rel. Barley v. Ohio Dept. of Job & Family Servs.*, ___ Ohio St.3d ___, 2012-Ohio-3329, ¶ 20. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly. R.C. 1.42; *Id.* at ¶ 21.

{¶ 14} "Original appointment" is not defined in R.C. Chapter 124. "Original" means "first in order." *Black's Law Dictionary* 759 (6th Ed.1991). The Supreme Court of Ohio has defined "appointment" in the context of R.C. 124.11(D) by relying on the ordinary meaning of the word and the definition provided in Ohio Adm.Code Chapter 124-1. *Barley* at ¶ 20-21. " 'In common usage, "appoint" means "to assign, designate, or set apart by authority." ' " *Barley* at ¶ 20, quoting *State ex rel. Glasstetter v. Rehab. Servs. Comm.*, 122 Ohio St.3d 432, 2009-Ohio-3507, ¶ 19, quoting *Webster's Third New Internatl. Dictionary* 105, 1769, and 1915 (2002). Further, Ohio Adm.Code 124-1-02(E) defines "appointment" as "placement of an employee in a position."

{¶ 15} From these definitions, an original appointment occurs the first time an appointing authority places an employee into a position of classified service. While former R.C. 124.27(C) does not use the words "classified service" in describing the position to be filled,² the only "positions" referred to throughout the remaining provisions of former R.C. 124.27 are those "in the classified service." *See* former R.C. 124.27(A) and (B) (outlining the procedure for appointments in the classified service). Further support for this reading is contained in Ohio Adm.Code 123:1-19-01, which states that "[e]ach employee in the *classified civil service* shall serve an initial probationary period following

² We note that the current version of the statute, redesignated as R.C. 124.27(B), has been amended to expressly refer to "All original and promotional appointments *in the classified civil service.*" (Emphasis added.) *See* 2012 Am.Sub.H.B. No. 487 (eff. June 11, 2012).

any original appointment, whether with or without competitive examination." (Emphasis added.)

{¶ 16} Here, appellant's original appointment occurred in November 2010, when ODOT first placed him into a classified civil service position of Administrative Officer 2. Whether or not he was voluntarily or involuntarily demoted into the position, his placement in that position still amounted to an "appointment" under the common and administrative definitions of the word. Moreover, while appellant argues that he had previously been in a classified position with ODRC, the appointment was nevertheless "original" with respect to ODOT—a different appointing authority that had never placed him into a classified position before. As appellee correctly notes, appellant's completion of a probationary period at one point in his career did not exempt him from all future probationary periods required by different agencies. Therefore, appellant's voluntary demotion was an original appointment to a classified service position, and he was therefore a probationary employee as of November 2010.

{¶ 17} Pursuant to former R.C. 124.27(C), appellant did not have the right to appeal ODOT's decision to remove him for unsatisfactory service during his 180-day probationary period. Because SPBR lacked jurisdiction to hold a hearing under these circumstances, *see Rose* at 457, SPBR was correct in dismissing the appeal without a hearing. Accordingly, we hold that the trial court did not err in affirming SPBR's order because the order was supported by reliable, probative, and substantial evidence and was in accordance with law.

{¶ 18} Therefore, appellant's first and second assignments of error are overruled.

III. Conclusion

{¶ 19} Having overruled appellant's first and second assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

KLATT and CONNOR, JJ., concur.
