[Cite as *Stainfield v. Jefferson Emergency Rescue Dist.*, 2010-Ohio-2282.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

JULIA A. STAINFIELD,	:	**O P I N I O N**
Appellant,	:	**CASE NO. 2009-A-0044**
- vs -	:	
JEFFERSON EMERGENCY RESCUE DISTRICT,	:	
Appellee.	:	

Administrative Appeal from the Ashtabula County Court of Common Pleas, Case No. 2008 CV 285.

Judgment: Affirmed.

Nicholas A. Iarocci, The Iarocci Law Firm, Ltd., 213 Washington Street, Conneaut, OH 44030 (For Appellant).

Bernadette T. Larson, The Professional Building, 355 West Prospect Road, #103, Ashtabula, OH 44004 (For Appellee).

DIANE V. GRENDELL, J.

{¶1} Appellant, Julia A. Stainfield, appeals the Judgment Entry of the Ashtabula County Court of Common Pleas, in which the trial court affirmed the decision of the Appellee, Jefferson Emergency Rescue District, removing Stainfield from the position of Executive Director. For the following reasons, we affirm the decision of the trial court.

{¶2} Stainfield was employed by the appellee, Jefferson Emergency Rescue District (JERD), as a part-time employee in 1991. In 1991, she was appointed as Executive Director of the District, a full time salaried position.

{¶3} On December 12, 2007, at a regular meeting of the Board of Trustees of the JERD, Stainfield was suspended as Executive Director. Stainfield received a letter from the Board on December 14, 2007, informing her of the following allegations which led to her suspension: "1. Derogatory and vulgar remarks toward Jefferson Rescue Employees and Board directors. 2. Partiality toward work shift schedules. 3. Mis-information concerning an employee's qualifications. 4. Deviation from approved and signed contracts. 5. Inappropriate behavior by a Director." She was further notified that "[t]his is an ongoing investigation and [she] will be contacted by the private individual designated to investigate the conduct and prepare the necessary charges as per O.R.C. 505.72."

{¶4} Michael Hiener, a local attorney, was appointed as the private individual designated to investigate Stainfield's alleged misconduct, pursuant to R.C. 505.72. On January 8, 2008, the JERD contacted Patrolman David Wassie, of the Jefferson Police Department, to conduct a criminal investigation of Stainfield's workplace conduct.

{¶5} On February 13, 2008, a hearing was held before the JERD, which included a period of executive session of the Board, and a decision was issued, removing Stainfield from her position. Stainfield subsequently filed an appeal with the trial court. Stainfield alleged 10 assignments of error, which she also raises on appeal in this court.

{¶6} The trial court affirmed the decision of the JERD, finding that "the cause for removal of [Stainfield] in her position as Executive Director by the Rescue District is sufficient, the procedure followed by the Rescue District was regular, the charges were related to and affect the administration of the office, and there was credible evidence to support such charges." Furthermore, the decision of the JERD was "proper, lawful, reasonable and supported by the evidence."

{¶7} Stainfield timely appeals and raises the following assignments of error:

{¶8} "[1.] The trial court committed prejudicial error by denying appellant's assignment of error No. 1 that appellant's suspension exceeded 30 days in violation of R.C. 733.37.

{¶9} "[2.] The trial court committed prejudicial error by denying appellant's assignment of error No. 2 and appellant's Motion to Strike[,] seeking private citizen Michael Hiener's testimony be stricken since he did not testify under oath at the hearing.

{¶10} "[3.] The trial court committed prejudicial error by denying appellant's assignment of error No. 3 that appellee failed to conduct a vote before holding executive session in violation of R.C. 112.22(G)(1).

{¶11} "[4.] The trial court committed prejudicial error by denying appellant's assignment of error Nos. 4, 5, 6, and 7 and Appellant's Motion to Strike deciding to consider the testimony, report, and exhibits of Officer David Wassie on appeal.

{¶12} "[5.] The trial court committed prejudicial error by denying appellant's assignment of error No. 8 and determining that members of appellee did not have a conflict of interest in serving on the board to decide whether to remove appellant as executive director.

{¶13} "[6.] The trial court committed prejudicial error by denying appellant's assignment of error No. 10 and finding that Michael Hiener's investigation and report was adequate."

{¶14} The JERD is a joint ambulance district pursuant to R.C. 505.71. Removal of an employee is governed by R.C. 505.72(A), which states that "[t]o initiate removal proceedings, and for such purpose, the board shall designate a private citizen to investigate the conduct and prepare the necessary charges ***." "Since an appeal under R.C. 505.72(A) involves the review of an administrative board's decision by a common pleas court, the procedure for bringing such an appeal would be governed by R.C. Chapter 2506." *Green v. S. Cent. Ambulance Dist*., 11th Dist. No. 93-A-1848, 1994 Ohio App. LEXIS 3746, at *7.

{¶15} When reviewing an administrative appeal brought pursuant to R.C. 2506.01, "[t]he common pleas court considers the 'whole record,' *** and determines whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence." *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 147, 2000-Ohio-493.

{¶16} "The standard of review to be applied by the court of appeals in an R.C. 2506.04 appeal is '*more limited* in scope.' *** 'This statute grants a more limited power to the court of appeals to review the judgment of the common pleas court only on 'questions of law,' which does not include the same extensive power to weigh 'the preponderance of substantial, reliable and probative evidence,' as is granted to the

common pleas court.' *** 'It is incumbent on the trial court to examine the evidence. Such is not the charge of the appellate court." Id. (citations omitted) (emphasis sic).

{¶17} Stainfield first asserts that the trial court erred by determining that she waived the 30-day limitation requirement on the length of her suspension.

{¶18} R.C. 733.37 states that "an accused person may be suspended by a majority vote of all members elected to the legislative authority of the municipal corporation, but such suspension shall not be for a longer period than fifteen days, unless the hearing of such charges is extended upon the application of the accused, in which event the suspension shall not exceed thirty days."

{¶19} Stainfield was suspended at the JERD board meeting on December 12, 2007. The meeting minutes provide that Stainfield asked for an extension "until the first of the year, as she will be on vacation." A hearing was set for January 2, 2008, and Stainfield again requested a rescheduling due to a conflict. A hearing was then set for January 11, 2008; however, Stainfield requested another postponement, in order for her counsel to obtain responses from his request for documents. The hearing was ultimately scheduled for February 13, 2008. There was never any objection to Stainfield's continued suspension.

{¶20} The trial court found that "based on the postponements requested by Appellant and Appellant's counsel, Appellant's due process rights have not been violated." We agree.

{¶21} The record does not reveal that Stainfield was denied a fair hearing. Stainfield had notice of the charges against her and a meaningful opportunity to be heard. After such, she was discharged. Her due process rights were not violated by

the continued suspension. See *Morgan v. Bd. of Directors*, 9th Dist. No. 12689, 1987 Ohio App. LEXIS 6230, at *4 (although a hearing on the charges against a fire chief was not perfect, it was fair and provided the chief with the opportunity to present his defense. Thus, trial court properly affirmed the decision of the township board to dismiss the chief).

{¶22} Furthermore, Stainfield failed to object to her continued suspension. This court has explained that "generally, the failure to object or otherwise bring an error to the trial court's attention constitutes a waiver of that error on appeal. This rule also applies in appeals to the common pleas court from an administrative hearing." *Carrolls Corp. v. Planning Comm*., 11th Dist. No. 2005-L-112, 2006-Ohio-3209, at ¶31, citing *Alberini v. Warren Twp. Bd. of Trustees,* 11th Dist. No. 4083, 1989 Ohio App. LEXIS 4291, at *5-*6. Stainfield's failure to object to her prolonged suspension at the administrative hearing forfeits her right to challenge the suspension on appeal.

{¶23} Stainfield's first assignment of error is without merit.

{¶24} Stainfield next asserts that since Michael Hiener did not testify under oath, his testimony should have been stricken. She cites to both Evidence Rule 603 and R.C. 2317.

{¶25} Rule 603 of the Ohio Rules of Evidence states: "Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the witness' duty to do so." Further, R.C. 2317.30 states: "Before testifying, a witness shall be sworn to testify the truth, the whole truth, and nothing but the truth." Moreover, R.C. 733.39 provides that "[i]n all cases in which

the attendance of witnesses may be compelled for an investigation under section 733.38 of the Revised Code, any member of the legislative authority of the municipal corporation may administer the requisite oaths, and such legislative authority has the same power to compel the giving of testimony by attending witnesses as is conferred upon courts."

{¶26} Stainfield never objected to the unsworn testimony, in fact, when Hiener asked Stainfield's counsel "Do you want to put me under oath?" Stainfield's counsel replied, "No, I don't since it is not my duty to do that."

{¶27} "While it is error for unsworn testimony to be admitted as evidence, such error is waived by failing to bring it to the court's attention. This is because the failure to administer an oath *can easily be corrected* at the time; an attorney may not fail to object and then cite the lack of an oath as error. If that were possible, the remainder of the trial would be a 'free play.'" *State v. Norman* (1999), 137 Ohio App.3d 184, 198 (emphasis added).

{¶28} Furthermore, "'[u]nder the invited-error doctrine, a party will not be permitted to take advantage of an error which he himself invited or induced the court to make.'" *O'Beirne v. Geauga Cty Bd. of Elections (*1997), 80 Ohio St.3d 176, 181, quoting *State ex rel. Bitter v. Missig*, 72 Ohio St.3d 249, 254, 1995-Ohio-147. The invited error doctrine is applied when counsel is "actively responsible" for the error. *State v. Campbell*, 90 Ohio St.3d 320, 324, 2000-Ohio-183. Moreover, "a litigant cannot be permitted, either intentionally, or unintentionally to induce or mislead a court into the commission of an error and then procure a reversal of the judgment for an error for

which he was actively responsible." *Lester v. Leuck* (1943), 142 Ohio St. 91, 93 (citation omitted).

{¶29} Accordingly, Stainfield's second assignment of error is without merit.

{¶30} In her third assignment of error, Stainfield contends that the JERD failed to conduct a vote before holding an executive session in violation of R.C. 121.22(G)(1), which states that "the members of a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of *** the *** dismissal *** of a public employee or official, or the investigation of charges or complaints against a public employee[.]" Further, the statute requires that "[i]f a public body holds an executive session pursuant to division (G)(1) of this section, the motion and vote to hold that executive session shall state which one or more of the approved purposes listed in division (G)(1) of this section are the purposes for which the executive session is to be held."

{¶31} The trial court found that "as evidenced by the affidavits of Darcie Wehrung, Judy Maloney and Charlene Kusar, all members of the Board of Trustees of the Rescue District, the Board voted to go into executive session to specifically hear evidence on potential criminal charges against [Stainfield], and such vote took place after the court reporter turned off her stenography equipment, prior to her leaving the room. Therefore, proper procedure for going into executive session was followed."

{¶32} We disagree with the trial court's assessment that the proper procedure was followed. There was no indication the motion was made with the specificity required of R.C. 121.22(G), which requires that an executive session can be held only

after a "majority of the quorum of the public body determine, by a roll call vote, to hold an executive session" prior to going into executive session. Nor was there any indication that there was a vote to hold the executive session that specifically stated an approved purpose for which the executive session was being held. See R.C. 121.22(G)(1).

{¶33} This court has held that "the purpose of R.C. 121.22 is to open government business to public scrutiny. It was not intended as a separate method for politicians to change the results of the political process when it reaches a result with which they do not agree. This is especially true when the politicians acquiesced in the procedure which was followed." *Jones v. Brookfield Twp. Trustees*, 11th Dist. No. 92-T-4692, 1995 Ohio App. LEXIS 2805, at *15.

{¶34} In *Moraine v. Bd. of City Commrs*. *of Montgomery Cty.(*1981), 67 Ohio St.2d 139, 145, the Supreme Court of Ohio observed that "the intent of the Sunshine Law, that deliberations concerning public issues be made public, could not be further served by invalidating a decision insofar as such deliberations were laid before the public eye." "A decision by a public body will not be invalidated on the ground that Ohio's Sunshine Law was violated where there is no evidence that a resolution, which was adopted in an open meeting, resulted from deliberations in a meeting not open to the public." *Theile v. Harris*, 1st Dist. No. C-860103, 1986 Ohio App. LEXIS 7096, at *19; *State ex rel. Jones v. Sandusky City Schools*, 6th Dist. No. E-OS-041, 2006-Ohio-188, at ¶18 ("[a]ppellant's complaint fails to allege that the Board's decision not to renew his employment contract resulted from 'nonpublic deliberations' made in the Board's

executive session. Therefore, appellant did not state a violation of Ohio's Sunshine Law upon which relief could be granted, and appellant's *** argument is without merit").

{¶35} The mere fact an issue of public concern is raised in closed session does not necessarily mean the action was deliberated. *Greene Cty. Guidance Ctr., Inc. v. Greene-Clinton Community Mental Health Bd.* (1984), 19 Ohio App.3d 1, 5. "Evidence that a public body deliberated on a public issue in executive session does not automatically result in invalidation of a resolution. 'Besides the act of deliberation, there must be proof of causation.' *** Thus, there must be evidence in the record that the public body arrived at its decision on the matter *as a result of* the nonpublic deliberations." *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd*., 161 Ohio App.3d 372, 2005-Ohio-2868, at ¶22 (citation omitted).

{¶36} The JERD argues that there is no evidence in the record that Stainfield's removal resulted as a matter of the testimony heard in the executive session; the means by which the JERD board reached its decision were laid before the public during the open hearing. However, it is irrelevant if the aforementioned requisite evidence was in the record because Stainfield has not properly challenged the violation in the manner prescribed by statute.

{¶37} R.C. 121.22(I), which prescribes the method and jurisdiction for presenting a challenge to R.C. 121.22, states that "[a]ny person may bring an action *** within two years after the date of the alleged violation or threatened violation. Upon proof of a violation or threatened violation of this section in an action brought by any person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions.

{¶38} (2)(a) If the court of common pleas issues an injunction pursuant to division (I)(1) of this section, the court shall order the public body that it enjoins to pay a civil forfeiture of five hundred dollars to the party that sought the injunction and shall award to that party all court costs and, subject to reduction as described in division (I)(2) of this section, reasonable attorney's fees. The court, in its discretion, may reduce an award of attorney's fees to the party that sought the injunction or not award attorney's fees to that party if the court [makes certain prescribed determinations]."

{¶39} Stainfield did not challenge the violation in the manner prescribed above. Instead, she filed an administrative appeal pursuant to R.C. 505.72. Thereafter, there were attempts by both parties to supplement the record with regard to the administrative appeal. Stainfield failed to request an injunction, imposition of penalties, and/or award of attorney fees due to the alleged violation of R.C. 121.22.

{¶40} In *Fahl v. Athens*, 4th Dist. No. 06CA23, 2007-Ohio-4925, the Fourth District was presented with a challenge to R.C. 121.22 in the context of an administrative appeal and the court refused to address the argument. Id. at ¶27 ("because Appellants failed to bring an original action in the common pleas court alleging a violation of the sunshine law and requesting appropriate relief, we decline to address Appellants' arguments regarding alleged violations of the Sunshine Law.").

The *Fahl* court stated that "[a]t no point have Appellants actually brought an original action in the court of common pleas alleging a violation of the sunshine law. While Appellants may be entitled to bring such a separate action, we conclude that they cannot do so in the narrow context of an administrative appeal. Thus, we cannot properly consider Appellants' arguments regarding these issues and certainly cannot

presume such a violation, in the absence of a finding of such a violation, in order to exempt Appellants from the standing requirements to bring their current appeal." Id. at ¶29.

{¶41} Accordingly, Stainfield's third assignment of error is without merit

{¶42} In her next assignment of error, Stainfield argues that Officer Wassie's report and exhibits were introduced during the executive session and were not made a part of the record of the proceeding. Therefore, she contends that the trial court erred by considering such testimony and denying her Motion to Strike.

{¶43} The trial court found that "the testimony at the public portion of the hearing of *** Officer Wassie, provided extensive information testified to regarding the investigative findings for this Court to consider in making its decision."

{¶44} "Generally, a public body may hold executive sessions to consider the discipline or dismissal of a public employee." *Morgan,* 1987 Ohio App. LEXIS 6230, at *8. Furthermore, "the General Assembly did not intend the [hearing pursuant to R.C. 733.35] to be governed by the strict Rules of Evidence, but that the hearing must merely afford the accused the opportunity to hear the charges against h[er] and defend against those accusations." *Roseman v. Reminderville*, 14 Ohio App.3d 124, 127; *Morgan,* 1987 Ohio App. LEXIS 6230, at *5 ("[p]otentially objectionable evidence was admitted both for and against" the employee, however, since "[t]he record reveal[ed] that [the employee's] ability to defend against the charges was not impaired," the inclusion of the evidence was not reversible error).

{¶45} The reports and exhibits of Officer Wassie were incorporated into Attorney Hiener's report and Stainfield's counsel was able to question him on record regarding

the charges. Moreover, Stainfield's counsel was also able to question Officer Wassie, on record after the executive session ended, regarding his report and investigation. Accordingly, Stainfield's ability to defend against the charges was not impaired by the inclusion of the evidence.

{¶46} Stainfield's fourth assignment of error is without merit.

{¶47} In her fifth assignment of error, Stainfield contends that the trial court erred by determining that the board members of the JERD did not have a conflict of interest in the removal of Stainfield from her position.

{¶48} As mentioned above, the Ohio Revised Code expressly provides for the Board of Trustees of a joint ambulance district to initiate removal proceedings and hear charges against the accused. R.C. 505.72 and R.C. 733.36.

{¶49} This court has held that, when considering the action of an administrative body, "there is a presumption of honesty and integrity unless there is a showing to the contrary, 'and the party alleging a disqualifying interest bears the burden of demonstrating that interest to a reviewing court.'" *Sanger v. Geneva-on-the-Lake,* 11th Dist. No. 92-A-1743, 1993 Ohio App. LEXIS 3362, at *7, quoting *Ohio State Bd. Of Pharmacy v. Poppe* (1988), 48 Ohio App.3d 222, 229. Moreover, "where a majority of the charges are supported by substantial, reliable and probative evidence, any alleged biased regarding t[he] charges d[oes] not change the sufficiency and credibility of the evidence supporting the board's decision." Id. at *9 (citation omitted).

{¶50} Testimony from Hiener, the private individual designated to investigate, revealed that he did not disclose anything of substance about his investigation to the JERD Board. The allegations leading to Stainfield's suspension did not involve

misconduct personally affecting Hiener. Hiener testified that he did not have any connections with the JERD. Furthermore, he testified that the board members did not provide him with any evidence that he considered in formulating the charges against Stainfield.

{¶51} The court in *Poppe*, 48 Ohio App.3d at 229, noted that "the Revised Code contains no provision for the disqualification of administrative board members." Further, the court found that, "[i]n light of the lack of any statutory authority *** to disqualify an administrative board member, we believe [appellant's] contention is reduced to one of a denial of due process based on the manner in which [the person or people with the alleged bias] conducted or participated in the board's decision-making process." Id.

{¶52} "Although due process entitles an individual in an administrative proceeding to a fair hearing before an impartial tribunal, a substantial showing of personal bias is required to disqualify a hearing officer or to obtain a ruling that the hearing is unfair." *N. Coast Payphones, Inc. v. Cleveland*, 8th Dist. No. 88090, 2007-Ohio-6814, at ¶23 (citations omitted). "In practice this means a personal bias so extreme as to display clear inability to render a fair judgment." *Meadowbrook Care Ctr. v. Ohio Dept. of Job & Family Servs*., 10th Dist. No. 06AP-871, 2007-Ohio-6534, at ¶25.

{¶53} The JERD Board based its decision on the investigative report and testimony of Investigator Hiener; there was no indication that the JERD Board based its decision on anything other than the information at the hearing. The record in the case demonstrates no indications of bias or prejudice regarding Hiener. Furthermore, the record is devoid of any substantial showing of personal bias on behalf of the JERD Board which would affect Stainfield's due process rights. Stainfield has failed to

establish a showing of bias that would amount to a deprivation of her due process in this particular case.

{¶54} Stainfield's fifth assignment of error is without merit.

{¶55} In her final assignment of error, Stainfield argues that "the investigation of private citizen Michael Hiener was totally inadequate and relied almost exclusively on the investigation of Officer Wassie who Mr. Hiener did not retain and whose investigation was not part of Mr. Hiener's investigation." Furthermore, she contends Hiener's investigation was "woefully inadequate, not credible and insufficient to justify [Stainfield's] removal."

{¶56} The trial court found the charges testified to by Heiner and Wassie "are violations of the Rescue District's Rules and Regulations, and provide a proper and lawful basis for [Stainfield] to be removed from her position as Executive Director." Moreover, the decision of the JERD "is sufficient, and further, is proper, lawful, reasonable, and supported by the evidence." We agree.

{¶57} Hiener's report, as well as his testimony, indicated that he found "29 non inclusive items that are considered impermissible conduct" during his investigation of Stainfield. Specifically, during his testimony, he stated that Stainfield "used abusive language while on call," "language was often profane," and Stainfield had "acknowledged that she has used some inappropriate language toward [an employee]." Further, employees Hiener interviewed stated that Stainfield "would take a lot of days off, leave early, come in late, hair appointments on a regular basis" and, in the minds of the employees, Stainfield "was drawing a full-time salary and really wasn't working full-time hours." Hiener did state that he did not have documentation on the house

Stainfield worked, just the statements of the employees. He also learned, from employee interviews, that Stainfield would rarely wear her uniform and when they "were out in public or on runs *** people didn't recognize her as somebody working the squad because she was not dressed like the rest of them."

{¶58} Hiener also found that Stainfield had made malicious statements regarding employees and on one occasion called an employee's religion "a bunch of shit and him hypocritical for not drinking but getting his girlfriend pregnant." Hiener also found that Stainfield's son Drew, an EMT licensed in Montana, worked for the JERD during the summer of 2007. Although he was not licensed and/or certified in Ohio, Stainfield allowed Drew to go on runs and provide patient care. Furthermore, it was reported that during Drew's employment, Stainfield showed favoritism to her son; he was scheduled for more shifts than other employees with seniority. Hiener also had suspicions "about her handling of money coming into the squad." He discovered late fees and interest charges on credit card accounts for JERD for which Stainfield was responsible and an uncashed petty cash check from 2005.

{¶59} Hiener stated that he deferred all alleged criminal violations he discovered during his investigation to Officer Wassie. Officer Wassie discovered several violations and suspicious behavior, including unopened bills and notices, including mail from IRS and OPERS. He found morphine and Zoloft, stored improperly in a credenza. He also found that Stainfield reimbursed herself for $153.41, through a JERD account, for a wedding gift for an employee. Additionally, he found that she paid herself a higher bonus than what she was entitled. He also found multiple websites visited on

Stainfield's work computer which were in "blatant violation of the districts use of the computer [policy], as well as, the prohibition against doing personal business at work."

{¶60} "[A] court of appeals, in reviewing a common pleas decision as to a disciplinary decision *** need only concern itself with whether the trial court's decision is supported by 'reliable, probative and substantial evidence and is in accordance with law.'" *Sanger*, 1993 Ohio App. LEXIS 3362, at *4 (citation omitted).

{¶61} Based on the record and the findings herein, we cannot conclude that the ruling of the JERD is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence.

{¶62} Stainfield's sixth assignment of error is without merit.

{¶63} For the foregoing reasons, the Judgment Entry of the Ashtabula County Court of Common Pleas, affirming the decision of the JERD to remove Stainfield from the position of Executive Director, is affirmed. Costs to be taxed against appellant.

MARY JANE TRAPP, P.J.,

TIMOTHY P. CANNON, J.,

concur.