

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

SAMUEL PASKEY,	:	O P I N I O N
Appellant,	:	
- vs -	:	CASE NO. 2015-T-0040
OHIO DEPARTMENT OF INSURANCE,	:	
Appellee.	:	

Civil Appeal from the Trumbull County Court of Common Pleas.
Case No. 2014 CV 1672.

Judgment: Affirmed.

Edward A. Czopur, DeGenova & Yarwood, Ltd., 42 North Phelps Street, Youngstown, OH 44503 (For Appellant).

Mike DeWine, Ohio Attorney General, and *W. Scott Myers*, Assistant Attorney General, State Office Tower, 30 East Broad Street, 25th Floor, Columbus, OH 43215 (For Appellee).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Samuel Paskey, appeals the Trumbull County Court of Common Pleas judgment affirming an order of appellee, Ohio Department of Insurance (“ODI”), denying his application to be licensed as an insurance agent in the state of Ohio. For the following reasons, we affirm the trial court’s judgment.

{¶2} Paskey received his professional high school teaching license in 2009. In 2013, while employed at Cardinal High School, three female students filed criminal

complaints against Paskey alleging inappropriate sexual contact. On March 14, 2013, Paskey entered into a separation agreement with the Cardinal Local School District Board of Education and tendered his formal resignation.

{¶3} Paskey was charged with three counts of sexual imposition, third-degree misdemeanors in violation of R.C. 2907.06, on March 18, 2013, in the Chardon Municipal Court. On August 14, 2013, Paskey pled guilty to three amended counts of criminal mischief, third-degree misdemeanors in violation of R.C. 2909.07. He was sentenced to 60 days incarceration on each count, which were suspended, and 5 years probation.

{¶4} On August 23, 2013, Paskey submitted a “Permanent Voluntary Surrender of License” to the Ohio Department of Education. The document stated: “I stipulate and agree that I am taking this action described herein in lieu of formal disciplinary proceedings pursuant to O.R.C. Section 3319.31. This surrender is based upon my conviction in the Chardon Municipal Court for three misdemeanor counts of criminal mischief.” In October 2013, the Department of Education adopted a “Resolution” to accept Paskey’s voluntary surrender and entered an order permanently revoking Paskey’s teaching license pursuant to R.C. 3319.31(B)(1) and R.C. 3319.311(F).

{¶5} In February 2014, Paskey submitted an application to the ODI for a license to sell insurance in Ohio. He admitted to his criminal history in the application and included a letter of explanation. Paskey asserted he pled to the lesser charges of criminal mischief in order to spare his two teenage daughters a public trial.

{¶6} The ODI denied Paskey’s application in a “Notice of Opportunity for Hearing.” The notice stated the Superintendent of Insurance intended to “refuse to

issue him any license and/or take any other action or actions authorized pursuant to Revised Code section 3905.14(D) including civil penalties and/or administrative costs.”

The grounds for this decision were as follows:

COUNT ONE: On or about October 10, 2013, the Ohio State Board of Education permanently revoked Paskey’s five-year professional high school teaching license. Pursuant to section 3905.14(B)(17), the Superintendent may refuse to issue a license to a person for having any professional license revoked.

COUNT TWO: The allegations contained in Count One are hereby incorporated as if fully rewritten herein. On or about August 14, 2013, in the Chardon Municipal Court, Paskey was convicted of Criminal Mischief, a misdemeanor of the 3rd degree. Paskey fails to comply with the requirements of section 3905.06(A)(1)(h) that he be of good reputation and character. Pursuant to 3905.14(B)(2) of the Revised Code, the Superintendent may refuse to issue a license to a person who fails to comply with any insurance law.

{¶7} Paskey requested a hearing, which was held before a Hearing Officer of the ODI on May 15, 2014. Paskey testified at length and submitted several exhibits into the record, including a document titled “Permanent Voluntary Surrender of License”; a letter notifying Paskey of the Department of Education’s acceptance of the voluntary surrender of his teaching license; a satisfactory “Due Diligence” background check performed on Paskey by Farmers Insurance; a copy of Paskey’s resume; Paskey’s teaching evaluations at Cardinal for the years 2002 through 2006; and 26 letters of recommendation from colleagues, community members, friends, and family. ODI also submitted exhibits into the record, including the Department of Education’s “Resolution to Accept the Voluntary Surrender and to Enter an Order to Revoke Permanently” Paskey’s teaching license; the Separation Agreement between Paskey and Cardinal Local School District Board of Education; the Chardon Municipal Court’s entry of sentence; victim statements compiled by the Middlefield Police Department; and

Paskey's insurance licensing application and personal statement regarding his criminal convictions.

{¶8} In his "Report and Recommendation," the Hearing Officer stated that Paskey had "committed violations of the laws and regulations of this state, and that he is not suitable to be licensed as an insurance agent." The Hearing Officer included excerpts from the hearing transcript in his "Findings of Fact" that were relevant to all of the following: Paskey's resignation from Cardinal High School in March 2013; the separation agreement he entered into with the school district; Paskey's conviction of three misdemeanor counts of criminal mischief in August 2013, stemming from the sexual imposition allegations brought against him by female students, for which he was still on a period of probation; and that in October 2013, although Paskey insisted otherwise, the Department of Education permanently revoked his five-year professional high school teaching license. In concluding the findings of fact, the Hearing Officer found the evidence reflected that Paskey "has been convicted of a misdemeanor of the third degree in 2013 and that he is still on a period of probation. The Respondent submitted many letters of recommendation that he be licensed. This Hearing Officer did review Ohio Revised Code section 3905.14(E) in order to consider [Paskey's] lawyer's request [to impose a lesser sanction]."

{¶9} The Hearing Officer made the following Conclusions of Law and recommended that the application be denied:

[1.] On or about October 10, 2013, the Ohio State Board of Education permanently revoked Paskey's five-year professional high school teaching license.

[2.] Ohio Revised Code section 3905.14(B)(17) provides the Superintendent may refuse to issue a license to a person for having any professional license revoked.

[3.] On or about August 14, 2013, in the Chardon Municipal Court, Paskey was convicted of Criminal Mischief, a misdemeanor of the 3rd degree.

[4.] Paskey fails to comply with the requirements of section 3905.06(A)(1)(h) that he be of good reputation and character.

[5.] Ohio Revised Code section 3905.14(B)(2) provides that the Superintendent may refuse to issue a license to a person who fails to comply with any insurance law.

{¶10} Paskey filed written objections, pro se, to the Hearing Officer's "Report and Recommendation." Within these objections, Paskey provided detailed responses and explanations to the allegations brought against him by the female students. Paskey also continued to insist that his teaching license had not been revoked but was voluntarily surrendered. He attached documents to these objections, including a letter written by his attorney to the ODI, which stated, inter alia, that "Mr. Paskey explained to me that the Ohio Department of Insurance, License Division may be having some difficulty comprehending the difference between a permanent voluntary surrender of a license and a revocation of a license."

{¶11} The Superintendent accepted the Hearing Officer's recommendation and ordered that Paskey "be denied a license as an insurance agent in the State of Ohio." Paskey appealed this order to the Trumbull County Court of Common Pleas, pursuant to R.C. 119.12. The common pleas court affirmed the Superintendent's order, stating, "the Court cannot find that the decision of the Ohio Department of Insurance was unlawful, unreasonable, and/or against the manifest weight of the evidence."

{¶12} Paskey timely appealed from this entry and raises the following assignments of error before this court:

[1.] The trial court abused its discretion in upholding the decision of the Ohio Department of Insurance denying Appellant's application for licensure as the Department was without sufficient evidence to find Appellant unfit pursuant to R.C. 3905.06(A)(1)(h).

[2.] The common pleas court abused its discretion in finding that Appellant's teaching license had been "revoked" rather than "voluntarily surrendered" and, as a result, further abused its discretion in upholding the Ohio Department of Insurance's denial of Appellant's request for licensure.

{¶13} R.C. 2506.04 sets forth the standard of review regarding appeals from administrative decisions. In construing this statutory provision, the Ohio Supreme Court has distinguished between the court of common pleas and the court of appeals standards of review. *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 147 (2000). The common pleas court is to consider the entire record and determine "whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence." *Id.* (citations omitted). The court of appeals' standard of review is "more limited in scope" and extends only to "questions of law." *Id.*, quoting *Kisil v. Sandusky*, 12 Ohio St.3d 30, 34 (1984). "Within the ambit of 'questions of law' for appellate court review" is whether the court of common pleas abused its discretion. *Kisil, supra*, at 34, fn. 4.

{¶14} In his first assignment of error, Paskey asserts the court of common pleas abused its discretion in upholding ODI's denial of his application because there was insufficient evidence for ODI to find Paskey did not fit the criteria set forth in R.C. 3905.06(A)(1)(h).

{¶15} R.C. 3905.14(B)(2) states the superintendent of insurance may “refuse to issue or renew any license of an insurance agent [for] * * * [v]iolating or failing to comply with any insurance law, rule, subpoena, consent agreement, or order of the superintendent or of the insurance authority of another state[.]” This provision grants the superintendent discretion to refuse to issue a license for failing to comply with, *inter alia*, R.C. 3905.06(A)(1)(h). R.C. 3905.06(A)(1)(h) states, in pertinent part:

The superintendent of insurance shall issue a resident insurance agent license to an individual applicant whose home state is Ohio upon submission of a completed application * * * if the superintendent finds * * * [t]he applicant is of good reputation and character, is honest and trustworthy, and is otherwise suitable to be licensed.

{¶16} The statute does not define what constitutes “good reputation and character,” and there is no case law explicitly on point. This is, however, clearly a factual determination to be made by the superintendent of insurance. It is a decision entrusted to the superintendent’s exercise of judgment based on the contents of the applicant’s completed application and, if relevant, the evidence adduced at a subsequent hearing. Pursuant to the common pleas court’s standard of review, such a factual determination should not be disturbed unless it is “unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence.” *Henley, supra*, at 147.

{¶17} The ODI provided Paskey with notice of the basis for denying approval of his application and an opportunity to be heard prior to denial. A subsequent hearing was held at which Paskey was permitted to testify, call witnesses, and submit exhibits. The Hearing Officer reported that the evidence reflected Paskey had “been convicted of a misdemeanor of the third degree in 2013 and that he is still on a period of probation.”

He then recommended that, because Paskey had “committed violations of the laws and regulations of this state, * * * he is not suitable to be licensed as an insurance agent.” Paskey submitted written objections, including detailed explanations of his criminal convictions, and attached additional exhibits. After consideration, the Superintendent adopted the Hearing Officer’s recommendation. Based on Paskey’s convictions of criminal mischief, the Superintendent held that he failed to comply “with the requirements of section 3905.06(A)(1)(h) that he be of good reputation and character.”

{¶18} The court of common pleas held there was substantial, reliable, and probative evidence to support the Superintendent’s exercise of judgment in determining that Paskey was not of good reputation and character. Based on our independent review of the record, we hold the court of common pleas did not abuse its discretion in upholding the ODI’s denial of Paskey’s application.

{¶19} Paskey’s first assignment of error is without merit.

{¶20} In his second assignment of error, Paskey asserts the court of common pleas abused its discretion in finding that Paskey’s teaching license was revoked rather than voluntarily surrendered. We note, however, that whether Paskey’s teaching license was “revoked,” such that it could preclude Paskey from obtaining an insurance license under R.C. 3905.14(B)(17), is a matter of law we review de novo.

{¶21} R.C. 3905.14(B)(17) states the superintendent of insurance may “refuse to issue or renew any license of an insurance agent [for] * * * [h]aving any professional license or financial industry regulatory authority registration suspended or revoked or having been barred from participation in any industry.”

{¶22} R.C. 3319.311(F) states, in relevant part, that “[n]o surrender of a license shall be effective until the board takes action to accept the surrender.” Additionally, Section 3301-73-22(B)(6) of the Ohio Administrative Code provides that “[t]he state board may accept the permanent voluntary surrender * * * of a license under [R.C. 3319.311(F)],” and the document must include a statement “[t]hat the respondent authorizes the state board to adopt a resolution permanently revoking a license or permanently denying an application.”

{¶23} The above provisions reveal that (1) a licensed educator may voluntarily surrender his license but that it is not effective until the state board accepts it, and (2) a voluntary surrender must include language authorizing the state board to permanently revoke the license. Therefore, a voluntary surrender does not preclude a permanent revocation and, in fact, must authorize it.

{¶24} In August 2013, Paskey submitted a “Permanent Voluntary Surrender of License” to the Ohio Department of Education, which was signed, witnessed, and notarized. It included the following language: “I, Samuel J. Paskey, do hereby voluntarily, knowingly, and intelligently surrender to the Ohio State Board of Education (hereinafter State Board) the following license(s): Five-year professional high school teaching license issued in 2009. * * * I hereby authorize the State Board to adopt a Resolution permanently revoking my license.” The Department of Education subsequently issued a “Resolution” that, simultaneously, accepted Paskey’s voluntary surrender and permanently revoked his teaching license.

{¶25} In his voluntary surrender, Paskey authorized the Department of Education to revoke his license, and the Department did in fact revoke it. This alone

gave the Superintendent authority under R.C. 3905.14(B)(17) to refuse to issue Paskey an insurance license. We hold, therefore, that the court of common pleas did not err in ruling that Paskey's teaching license was revoked, as contemplated under R.C. 3905.14(B)(17), regardless of the fact that he submitted a voluntary surrender.

{¶26} Paskey's second assignment of error is without merit.

{¶27} The judgment of the Trumbull County Court of Common Pleas is hereby affirmed.

DIANE V. GRENDALL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.