

IN THE SUPREME COURT OF OHIO

ERICA BARGA	:	CASE NO: 2023-0637
	:	
Appellant/Cross-Appellee	:	On Appeal from the Ohio Court of
	:	Appeals for the Second Appellate District
vs.	:	
	:	Court of Appeals Case No: 2022-CA-14
VILLAGE COUNCIL OF THE	:	
VILLAGE OF SAINT PARIS	:	
	:	
Appellee/Cross-Appellant	:	

**FOURTH MERIT BRIEF OF APPELLEE/CROSS-APPELLANT
VILLAGE COUNCIL OF THE VILLAGE OF ST. PARIS**

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ARGUMENT

I. Appellee/Cross-Appellant's Brief and Proposition of Law and Arguments in Support of the Cross-Appeal

Proposition of Law No. I:

In an administrative appeal on law and fact brought under R.C. 737.171, the standard of review is a hybrid review where the trial court decides if a preponderance of reliable, probative and substantial evidence exists in the record to support the village council's decision terminating its village chief, giving due deference to the village council's resolution of evidentiary conflicts and not substituting its judgment for that of the village council, with the burden of persuasion on the terminated chief.

The court of appeals, applying a de novo standard of review and assigning the burden of persuasion to the Village, under 737.171 and R.C. 2506 and R.C. 2505, treats this administrative appeal like a civil service proceeding instead of a discipline proceeding conducted by a statutory village under R.C. 737.171, and orders reversal of the judgment of the common pleas court and remands the matter for a de novo review of the Village Council's termination decision. (Appx. 18-22, COA Doc. 38; Appx. 110, 112-114, 111) On remand the court of appeals assigns the burden of persuasion to the Village, and the common pleas court, in its discretion, is to decide whether to hear new evidence. (Appx. 18-22, COA Doc. 38) The trial court is further instructed it may substitute its judgment on questions of fact in the place of Village Council. (*Id.*) These holdings are in error for the reasons set forth in the Village's Second Brief and below.

A. Application of R.C. Chapter 2505 to Barga’s administrative appeal is barred under the invited-error doctrine.

Quite simply, throughout the entire common pleas court proceeding Barga argues that R.C. Chapter 2506 governed her appeal. Barga misleads this Court by omission regarding the nature of appeal she filed, separately the nature of the appeal she prosecuted before the Champaign County Court of Common Pleas and the Second District Court of Appeals. Barga describes her notice of administrative appeal to this Court as follows:

In her notice of appeal from the decision of the Village Council, filed with the common pleas Court, Erica Barga expressly and clearly noted she as appealing under the appeal provisions of R.C. 737.171. The notice stated: “This appeal is taken pursuant to the applicable provisions of the Ohio Revised Code, including § 737.171.”

Barga does not, however, signal that her quote is incomplete. Barga’s Notice of Administrative Appeal states:

This appeal is taken pursuant to the applicable provisions of the Ohio Revised Code, including § 737.171, as well as Chapters 2505 and 2506 on the following grounds:

She then lists ten grounds, most springing from Chapter R.C. 2506. (Appx. 118-122) Further, and inconsistent with her current position, Barga argues for and proceeds under the provisions of Ohio Revised Code Chapter 2506 throughout the trial court appellate proceedings. She issues a Praecipe to the Clerk of the Village of Council of the Village of Saint Paris pursuant to R.C. 2506.02. (Appx. 126-127, 128) Barga then cites R.C. 2506.02 when she improperly files portions of the record of proceedings, contrary to the mandates of R.C. 2506.02, in the trial court.¹ The Village

¹ R.C. 2506.02 provides in relevant part:

Within forty days after filing a notice of appeal in relation to a final order, adjudication, or decision covered by division (A) of section 2506.01 of the Revised Code, the officer or body from which the appeal is taken, upon the filing of a praecipe by the appellant, shall prepare and file in the court to which the appeal is taken, a complete transcript of all the original papers, testimony, and evidence offered, heard, and taken into consideration in issuing the final order, adjudication, or decision.

(Appx. 128)

objects to her non-compliance with R.C. 2506.02 and files the complete record of proceedings. (Appx. 129-131) Barga then twice moves the trial court, sitting in appellate capacity, to supplement the record citing R.C. 2506.03(A). (Appx. 132-138, 139-167) The trial court adjudicates all Barga's appellate grounds brought under R.C. 737.171 and Chapter R.C. 2506. (Appx. 30-81)

During the entire trial court proceeding, Barga steadfastly argued for the R.C. Chapter 2506 standard for her appeal. She cited R.C. Chapter 2506 as controlling law in her Motion to Supplement the Record² and her Supplemental Motion of Appellant to Supplement the Record,³ and most notably in her Appellate Brief before the Common Pleas Court.⁴ Barga's Third Brief to this Court incorrectly argues the appellate proceedings below are confined to R.C. 737.171.⁵ (Barga Third Brief, filed Dec. 19, 2023, p. 12) She appears to re-invent the procedural history of this matter to avoid the consequences of having invited legal error.

The invited-error doctrine, a settled principle, mandates that “[a] party will not be permitted to take advantage of an error which he himself invited or induced the trial court to make.” *Lester v. Leuck* (1943), 142 Ohio St. 91 [26 O.O. 280], paragraph one of the syllabus; *Hal Artz Lincoln-Mercury v. Ford Motor Co.*, 28 Ohio St.3d 20, 28, 502 N.E.2d 590 (1986), fn. 16. Barga prosecuted her appeal under R.C. 737.171 and R.C. Chapters 2505 and 2506. (Appx. 18, COA Doc. 38) Thus, under the invited-error doctrine, even if Barga is correct – which she is not – she cannot take advantage of the error she invited by consistently arguing that R.C. Chapter 2506 governs her administrative appeal.

² At page one Barga writes, “As the Court is aware, R.C. 2506.03(A) allows an appellant in an administrative appeal to supplement the record on appeal in certain circumstances.”

³ At page 6 Barga writes, “R.C. 2506.03 governs the scope of evidence reviewing in the hearing of an administrative appeal under Chapter 2506.”

⁴ At page 9 Barga's Standard of Review Section is captioned “Standard of Review applicable to an appeal under R.C. Sections 2506.01 etc.” and continues to cite and quote R.C. §2506.04 as the standard of review.

⁵ An argument that appears for the first time in her Appellate Brief to the Second District Court of Appeals.

While Barga re-invents the procedural history of this administrative appeal, she does not contest the Village's statement of facts, or challenge it in any regard.

B. The resolution of this matter will be of great importance to statutory villages.

While Barga cannot take advantage of her invited error, the current matter remains one of great importance to Ohio statutory villages that must be decided by this Court. Absent this Court's direction, the standard of review to be applied by Ohio trial courts sitting in appellate review capacity will remain in a state of utter confusion. The instant case will answer, for the future of Ohio statutory villages, whether the standard of review for police officer discipline is:

- (a) hybrid review, where the trial court decides if a preponderance of reliable, probative, and substantial evidence exists in the record to support the village council's decision while giving due deference to the village council's resolution of evidentiary conflicts and not substituting its judgment for that of the village council, with the burden of persuasion on the appellant terminated chief; or
- (b) a novo review where the trial court may substitute its judgment for that of the village council and hearing new testimony at its discretion, with the burden of persuasion on the appellee village.

Despite her briefing in the trial court, Barga now argues decisional law deciding civil service appeals should control the outcome here. However, Barga does not dispute that village chiefs do not face the civil service rigors including testing, list ranking, and interview process as well as robust due process protections, nor that most statutory villages do not have the fiscal resources of cities. This is a critical point because, in doing so, she concedes the context of a statutory village and civil service city differ. This difference is the crux of the Village's argument that statutory village chiefs of police who have been disciplined under R.C. 737.171 should

proceed only under the standard set in R.C. 2506.04. (Village’s Second Brief, p. 25-26, 28, 31-33, 36, filed Nov. 27, 2023; Appx. 111)

Here the court of appeals orders remand to the trial court for a de novo review under R.C. 2505.01(A)(3). Neither the court of appeals decision nor Barga analyze whether the procedure on appeal definitions contained in R.C. 2505.01(B) are satisfied. (Appx. 111) They are not. The question of whether a statutory village council’s “administrative-related appeal” must be answered by this Court to settle the standard of review precedent governing administrative appeals filed by terminated statutory village chiefs of police.

By its very nature, R.C. 2505.01 only applies to the final order of an administrative officer, agency, board, department, tribunal, commission, or other instrumentality. The village itself is statutorily defined as a political subdivision pursuant to R.C. 2744.01(F) (Appx. 168-171) and its council is a “legislative authority” pursuant to R.C. 705.15 (Appx. 172). R.C. 2506.01 applies to the “final order, adjudication, or decision of any officer, tribunal, *authority*, board, commission, department or other division *of any political subdivision of the state....*” (Appx. 112) (emphasis added).

Instead, Barga argues “the Village attempts to erase the distinction between an appeal under R.C. 737.171 and an appeal under R.C. 2506.04.” (Barga Third Brief, p. 13) She cites *Chupka v. Saunders*, 28 Ohio St.3d 325, 504 N.E.2d 9 (1986) as her authority, a *per curium* opinion. (Barga Third Brief, p. 14) However, Barga does not cite the *per curium* opinion. Instead, she quotes Justice Brown’s concurring opinion:

This Court has long recognized that R.C. 2506.04 provides a separate right of appeal, with its own separate standard of review. *Chupka v. Saunders*, 28 Ohio St.3d 325, 332, 504 N.E.2d 9 (1986). (“Thus, a police or fire department member may appeal a commission decision pursuant to either R.C. 124.34 or R.C. Chapter 2506.”). By failing to distinguish cases where a R.C. 2506.04 appeal was under review from cases where an appeal under R.C. 737.171 was under review, the

Village attempts to create an impression of inconsistent standards or confusion amongst the appellate courts where none really exists.

(Barga Third Brief, p. 14) Barga does not acknowledge or address that the *Chupka per curium* decision is limited to the interplay between R.C. 124.34, which shall control the “[a]dministrative and judicial review of the suspension, demotion or removal of a police officer” and R.C. Chapter 2505, which governs the scope of a trial *de novo*, “to the extent they are applicable. See *Newsome v. Columbus Civ. Serv. Comm.* (1984), 20 Ohio App. 3d 327, 329; *In re Locke* (1972), 33 Ohio App. 2d 177 [62 O.O.2d 276].” *Chupka v. Saunders*, 28 Ohio St.3d 325, 327, 504 N.E.2d 9 (1986). The *per curium* opinion does not hold that two separate paths to appeal in the civil service context exist. Moreover, the *per curium* opinion does not hold that a path to the protections afforded by the civil service exam process applies to non-civil service employees. It holds only that the administrative and judicial review for a disciplined civil service police officer “must be conducted pursuant to R.C. 124.34.” *Chupka*, at 327. This holding is not in dispute here. Even *Chupka* specifically holds Chapter 2505 provisions are not even imposed in every civil service case, only “to the extent they are applicable.” *Chupka* at 327.

R.C. 2506.01(B), which states “[t]he appeal provided in this section is in addition to any other remedy of appeal provided by law” does not impact the above analysis. Other remedies, such as mandamus, injunctive relief, declaratory judgment, or due process federal civil rights actions may be available to terminated statutory village police chiefs. To well-settle the law governing the standard of review to be applied here, this Court should declare that R.C. 2506.01(B) does not create a right for two different types of administrative appeals, with each assigned a unique standard of review and burden of persuasion.

Chupka further holds:

The scope of a trial de novo is governed by the provisions of R.C. Chapter 2505 to the extent they are applicable. See *Newsome v. Columbus Civ. Serv. Comm.* (1984), 20 Ohio App. 3d 327, 329; *In re Locke* (1972), 33 Ohio App. 2d 177 [62 O.O.2d 276]. R.C. 2505.21⁶, which is among the applicable provisions, provides in part as follows:

"An appeal taken on questions of law and fact entitles the party to a hearing and determination of the facts de novo which shall be upon the same or amended pleadings. The court shall review the final order, judgment or decree upon such part of the record made in the trial court as any party may present to the court and such additional evidence as upon application in the interest of justice the court may authorize to be taken, such evidence to be presented in the manner and form prescribed by the court."

Thus, in a trial de novo the court of common pleas is empowered to "* * * substitute its own judgment on the facts for that of the commission, based upon the court's independent examination and determination of conflicting issues of fact. * * *" *Newsome*, supra, at 329. The "trial," in a trial de novo, is the "independent judicial examination and determination of conflicting issues of fact and law, notwithstanding the evidence before the appellate court consists of the record of the proceedings in the lower tribunal." *Lincoln Properties v. Goldslager* (1969), 18 Ohio St. 2d 154 [47 O.O.2d 316], paragraph one of the syllabus. The trial is not necessarily "* * * a second event where the witnesses personally reappear and reaffirm or respoke their previous testimony. * * *" *Id.* at 161. In fact, evidence in addition to the transcript and record of the commission's proceedings may only be admitted with the express permission of the reviewing court. *Newsome*, supra; *Resek v. Seven Hills* (1983), 9 Ohio App. 3d 244.

Chupka at 327-328.

The concurring opinion does not hold that two separate and simultaneous appellate procedures exist for Barga, or even for civil service police and fire employees. Justice Brown's concurring opinion holding is analyzed in *Westlake Civ. Serv. Comm. v. Pietrick*:

This "appeal on questions of law and fact" is a relative rarity among civil service employees whose misdeeds allow for discipline under R.C. 124.34(A). An appeal on questions of law and fact is "a rehearing and retrial of a cause upon the law and facts." R.C. 2505.01(A)(3). R.C. 124.34 "provides two separate procedures, one for civil servants who are not policemen or firemen and another for civil servants who are police or fire officers." *Chupka v. Saunders*, 28 Ohio St.3d 325, 331, 28 Ohio B. 393, 504 N.E.2d 9 (1986) (Brown, J. concurring). R.C. 124.34(C) allows only members of city or township police and fire departments an appeal on questions of

⁶ R.C. 2505.21 is repealed, 141 v H 412, § 2 [GC § 12223-21; 116 v 104; Bureau of Code Revision, 10-1-53; 126 v 56]. Eff 3-17-87).

law and fact; such an appeal constitutes a trial de novo. *Chupka* at 327, citing *Cupps v. Toledo*, 172 Ohio St. 536, 179 N.E.2d 70 (1961), paragraph two of the syllabus.

Westlake Civ. Serv. Comm. v. Pietrick, 142 Ohio St.3d 495, 2015-Ohio-961, 33 N.E.3d 18, ¶ 24. Barga's strategy before this Court is legally flawed. She cannot ignore that she argued before the trial court the applicability of the standard set forth in Chapter R.C. 2506, and now argue that she can choose to proceed under either R.C. 737.171 or Chapter R.C. 2506. If it were to be accepted, how would the doctrines of issue preclusion and res judicata be reconciled where a trial court order provides a statutory village chief relief under one standard but denies it under the other?

Even if, however, this Court orders a trial de novo to be conducted on issues of law and fact, which would require this Court to hold that an administrative decision of a village council is, in fact, contained in the definitional section of R.C. 2505.01(B), and it is not, this Court should instruct the courts below what that means in the context of the voluminous and extensive record created, preserved, and filed with the trial court here. Both *Chupka* and *Heatwall v. Boston Heights*, 68 Ohio App. 3d 96, 98, 587 N.E.2d 440, 441 (9th Dist. 1990), authority cited by Barga (Barga Third Brief, p. 13), if applied, would deny the taking of any additional evidence by the trial court because the record before it is not only complete, but also voluminous and extensive. *Chupka* holds:

Since the appeal to the court of common pleas is upon the record from the commission, the availability of that record to the court of common pleas is crucial to proper disposition of the case before it. In this case, the transcript of the commission's dispositional hearing was erroneously omitted from the record sent to the court of common pleas. The trial judge stated that his decision was made on the "*entire* record" (emphasis added) certified and filed by the commission. It is obvious that the trial court believed that it had the entire record before it and rendered its decision based on that assumption.

While R.C. 2505.21⁷ provides that an independent review can be "* * * upon such part of the record made in the trial court as any party may present to the court," the

⁷ R.C. 2505.21 is repealed, 141 v H 412, § 2 [GC § 12223-21; 116 v 104; Bureau of Code Revision, 10-1-53; 126 v 56]. Eff 3-17-87).

partial record before the trial court here was not sufficient under these circumstances. Neither party realized that the commission had failed to transcribe the dispositional hearing until the case was before the court of appeals. Chupka had requested that the commission send the entire record to the trial court and Saunders relied on that request. If Chupka had affirmatively requested that only a portion of the record be transcribed, Saunders could then have requested an additional portion of the record.

Since the commission failed to comply with the praecipe and did not provide the court of common pleas with the entire record as requested by appellant, the court of appeals should have remanded the cause to the trial court to reconsider its decision and decide the cause on the entire record. The commission's error caused the record to be incomplete. Therefore, the commission should not be able to avoid a review of its decision by the appropriate forum as a result of that failure.

Chupka, at 328. *Heatwall*, a village police officer appeal, not a village police chief appeal, rejects the summary judgment standard and instead imposes a trial de novo standard; but it does not force a new trial, rather it allows the trial court in its sound discretion to determine whether additional evidence will be allowed:

Where a record of the proceedings before the council has been preserved, appellant has a privilege, not a right, to seek to present additional evidence through the testimony of witnesses, subject to the sound discretion of the trial court. *Id.*

Heatwall.

Id. at 98. Barga concedes she has no right to present additional evidence, but only a privilege subject to the sound discretion of the trial court. (Barga Third Brief, p. 13). The trial court already ruled that the record here is complete.

This Court's decision should also instruct lower courts on whether the trial court is free to substitute its judgment for that of the statutory village council and with whom the burden of persuasion will rest when a village police chief files an administrative appeal under R.C. 737.171 and chooses to be governed by the procedures and standards of Chapter R.C. 2506. If statutory villages are going to be held accountable to the rigorous standards applied to civil service police and fire employees, first responders only hired after statutorily required vetting and testing, this

Court's opinion and analysis should explain how the current statutory language imposes the rigorous standards to non-civil service political subdivisions to allow the Ohio General Assembly to contemplate a reasonable amendment.

The chilling effect of an automatic "additional bite at the apple" is that statutory villages may be best served, if they are going to be held to civil service standards on their limited fiscal resources, to avoid investing time and resources into full and thorough administrative hearings and simply allow the record to be developed before the trial court, divesting statutory villages of self-governance. Here, the Village goes to great time and expense, hiring independent counsel to prosecute the matter, conducts a three-day hearing, deliberates the matter, files its findings of fact and conclusions of law, transcribes the complete hearing proceedings, files the complete record, and then engages in the onslaught of motion practice Barga files as well as appellate briefing. The Village is not objecting to providing due process – clearly – it provided more than adequate due process to Barga. The Village objects to providing thorough and expensive due process protections, spending time and resources thoroughly supporting its decision, and then having to be held to civil service standards, including a trial de novo, and allowing a trial court to substitute its judgment for that of Village Council.

While Barga argues the standard of review and standard of persuasion to be decided here has been settled for six decades (Barga Third Brief, p. 39-47), decisional law accurately analyzed by the Village in its merit (second) brief proves otherwise. (Village Second Brief, p. 27-39) Barga's attempt to suggest the decisional law accurately analyzed by the Village is misleading or distinguishable falls flat. (Barga Third Brief, p. 15-1)

The Findings of Fact and Conclusions of Law, and the extensive record taken as a whole, demonstrate the Village Council weighed the testimony, evidence, and argument, made credibility

determinations, and supported its decision with substantial, reliable, and probative evidence, as affirmed by the trial court under the mandatory statutory and decisional law governing a trial court's standard of review. The standard pronounced by the court of appeals should be rejected, the standard utilized by the trial court adopted, and remand instructions to the Second District Court of Appeals should be ordered.

CONCLUSION

Contrary to Barga's arguments, the decision below and authority it relies upon does not swallow up the Open Meetings Act. Allowing legislative authorities to deliberate in private when conducting quasi-judicial proceedings properly applies Ohio statutory and decisional law. Courts do not publicly deliberate for the same policy reasons legislative authorities are not required to deliberate publicly. No decisional or statutory law mandates public deliberation when deciding removal proceedings for a village police chief. An affirmance will promote orderly administration of justice.

The decision below is wrong in its reasoning and harmful in its application to Ohio's statutory villages by requiring de novo appeal proceedings and placing the evidentiary burden on the legislative authority. The analysis of the appellate court falls short as it fails to explain why R.C. 2505.01(B) applies here rather than the R.C. 2506.04 standard argued by Barga before the trial court. The decision undermines the structure and purpose of R.C. 737.171 and R.C. 2506.04. It creates confusion for Ohio statutory villages and Ohio courts sitting in appellate review capacity. Complying with both the Ohio Revised Code appeal procedures and properly implementing the due process rights afforded to statutory village police chiefs cannot remain a moving target. Barga should not be permitted to benefit from this confusion through her refusal to acknowledge the

nature of the appeal she prosecuted in the courts below. Barga's arguments do nothing but further confuse the issues.

Statutory villages will be harmed if additional protections provided only to civil service employees are judicially injected into the removal process for village chiefs, public employees who are not statutorily required to test for employment eligibility. Simply put, there is a statutory distinction between cities and statutory villages for good reason. The decision below must be reversed regarding the standard of review to be utilized. A reversal will promote the swift administration of justice statutory villages require to remain fiscally sound and to provide their communities with adequately qualified police chiefs, officials who are statutory law enforcement policy makers.

Respectfully submitted,

Lynnette Dinkler, Counsel of Record

s/ Lynnette Dinkler

Lynnette Dinkler (0065455)

COUNSEL FOR APPELLEE/CROSS-
APPELLANT, VILLAGE COUNCIL OF
THE VILLAGE OF ST. PARIS

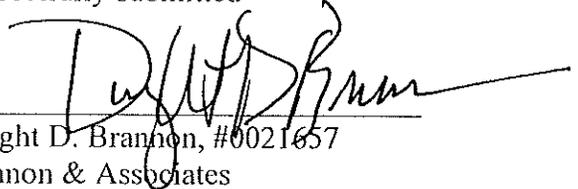
CERTIFICATE OF SERVICE

I certify that a copy of this Fourth Merit Brief was sent by electronic mail to counsel for Appellant/Cross-Appellee Erica Barga, Dwight D. Brannon (dbrannon@branlaw.com) and Kevin Bowman (kbowman@branlaw.com), on January 8, 2024.

s/ Lynnette Dinkler
Lynnette Dinkler (0065455)

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Respectfully submitted

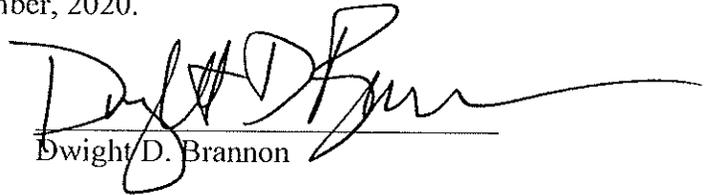


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the forgoing notice of appeal was served by hand delivery upon the **Village Council of the Village of Saint Paris**, 135 West Main Street, St. Paris, Ohio 43072, this 2nd day of December, 2020.



Dwight D. Brannon

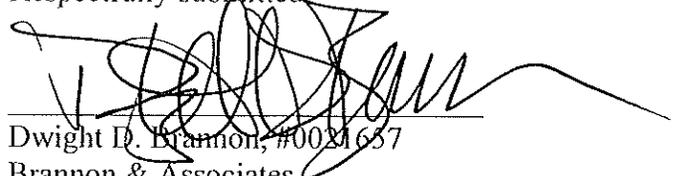
Mayor and voted on by the Village Council prior to her suspension from her employment; charges were filed against Appellant in retaliation for protected activities; the hearing on the charges that were filed, which was held before the Saint Paris Village Council, was insufficient in substance, specifics, and procedure, to protect Appellant's due process rights; and the decision terminating Appellant's employment otherwise violated Appellant's constitutional and personal rights, doing so deliberately to impair applicant's right to a fair hearing. This appeal is taken pursuant to the applicable provisions of the Ohio Revised Code, including § 737.171, as well as Chapters 2505 and 2506 on the following grounds:

1. The decision of the Mayor to place Appellant on suspension prior to the decision of the Village Council to terminate Appellant's employment as Village Chief of Police does not comply with the procedural requirements of R.C. § 737.171, et al. and is a nullity.
2. The decision of the Mayor to place Appellant on suspension prior to the decision of the Village Council to terminate Appellant's employment as Village Chief of Police violated Appellant's right to counsel pursuant to R.C. § 9.84 and the City attorneys conspired to violate Appellant's statutory, constitutional, and common law rights.
3. The decision of the Village Council to terminate Appellant's employment is arbitrary, capricious, unreasonable and unsupported by substantial, reliable, probative and competent evidence.
4. The decision of the Village Council to terminate Appellant's employment was not supported by a preponderance of the evidence.
5. The decision of the Village Council to terminate Appellant's employment is an unconstitutional denial of Appellant's right to procedural and substantive due process

of law, pursuant to R.C. § 2506.03(A)(2), entitling Appellant to a new hearing before this Court.

6. The decision of the Village Council to terminate Appellant's employment was in retaliation for Appellant engaging in protected activity, specifically for filing one or more complaints with the Ohio Civil Rights Commission.
7. The decision of the Village Council to terminate Appellant's employment was motivated by discriminatory animus, specifically discrimination against Appellant on the basis of her sex.
8. The decision of the Village Council to terminate Appellant's employment was in violation of the open meetings statute, R.C. § 121.22, as the Village Council was advised by a legal advisor during its deliberations; the very legal advisors who had drafted the charging documents in conspiracy, in secrecy, and otherwise, with the Mayor and some members of Council.
9. The decision to terminate Appellant's employment is improper for other errors of fact and law which are apparent on the face of the record and as developed by the facts.
10. The suspension and termination was an abuse and usurpation of power by Council and their attorneys, and was ultra vires in fact and law.

Respectfully submitted



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Attorneys for Appellant/Relator

PETITION FOR A WRIT OF MANDAMUS

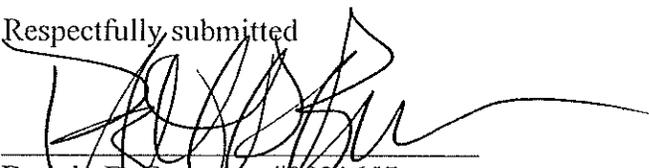
Now Comes Relator, Erica Barga, and states the following for her Petition for a Writ of Mandamus:

1. This Court of Common Pleas has jurisdiction to hear this petition for a Writ of Mandamus pursuant to Ohio Revised Code Section 2731.02.
2. A relator is entitled to a writ of mandamus where the relator can establish a clear legal right to the requested relief, a clear legal duty on the part of the respondent to provide the relief, and the lack of an adequate remedy in the ordinary course of law. See *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 56, 2012-Ohio-69, 960 N.E. 2d 452, ¶ 6.
3. Relator Erica Barga was Chief of Police of the Saint Paris, Ohio Village Police Department, appointed pursuant to R.C. § 737.15.
4. Relator has a clear legal right to be reinstated to her position as Village Chief of Police, as her removal from that position was not done according to the procedural requirements of R.C. § 737.171, and was thus illegal.

5. Relator has a clear legal right to be reinstated to her position as Village Chief of Police, as her removal from that position was done in retaliation for engaging in a protected activity, namely making one or more complaints to the Ohio Civil Rights Commission, and was thus illegal.
6. Relator has a clear legal right to be reinstated to her position as Village Chief of Police, as her removal from that position was motivated by discriminatory animus, specifically discrimination against Relator based on her sex, and was thus illegal.
7. Relator has a clear legal right to be reinstated to her position as Village Chief of Police, as her removal from that position was done in violation of her constitutional and personal rights, and was thus illegal.
8. For these reasons, the removal of Relator from her position as Village of Saint Paris Chief of Police was illegal and without effect.
9. Relator has a clear legal right to be reinstated to her position as a Village of Saint Paris Chief of Police.
10. Respondent has a clear legal duty to reinstate Relator to her position as Village of Saint Paris Chief of Police.
11. Relator has no adequate remedy in the ordinary course of law.
12. For these reasons Relator Erica Barga petitions the Court to issue a Writ of Mandamus commanding the Village Council of The Village of Saint Paris, Champaign County, Ohio to reinstate her to her position as Village of Saint Paris Chief of Police, with back pay, benefits, and all the emoluments of that office.

PRAYER FOR RELIEF

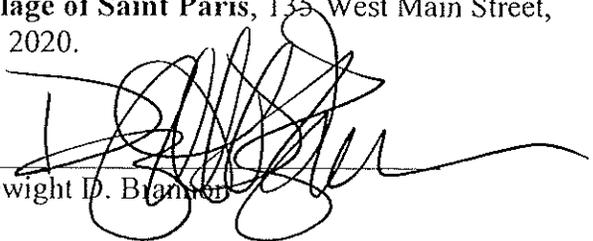
Wherefore, Relator Erica Barga prays the Court to issue a Writ of Mandamus commanding the Village Council of the Village of Saint Paris, Champaign County, Ohio to reinstate her to her position as Village of Saint Paris Chief of Police, with back pay, benefits, and all the emoluments of that office. In addition, Relator demands an award of her attorney's fees, costs, and other expenses incurred in the prosecution of this proceeding, as well as any and all other relief to which she may be entitled in equity or at law.

Respectfully submitted

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CERTIFICATE OF SERVICE

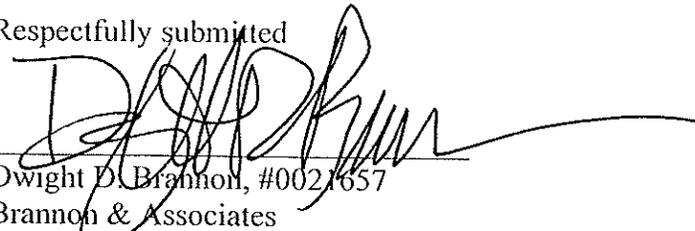
The undersigned hereby certifies that a copy of the forgoing notice of appeal was served by hand delivery upon the Village Council of the Village of Saint Paris, 135 West Main Street, St. Paris, Ohio 43072, this 2nd day of December, 2020.


Dwight D. Brannon

Appellant Erica Barga from which this appeal is taken, including all journal entries and minutes.

Said filing is required to be made within forty (40) days from the date of filing of this Praecipe.

Respectfully submitted

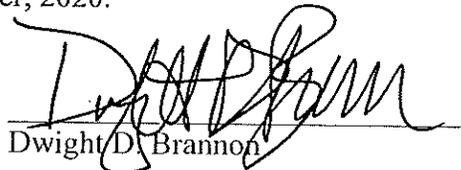


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Attorneys for Appellant/Relator

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the forgoing notice of appeal was served by hand delivery upon the **Village Council of the Village of Saint Paris**, 135 West Main Street, St. Paris, Ohio 43072, this 3 day of December, 2020.



Dwight D. Brannon

§ 2506.02 Filing of transcript.

Within forty days after filing a notice of appeal in relation to a final order, adjudication, or decision covered by division (A) of section 2506.01 of the Revised Code, the officer or body from which the appeal is taken, upon the filing of a praecipe by the appellant, shall prepare and file in the court to which the appeal is taken, a complete transcript of all the original papers, testimony, and evidence offered, heard, and taken into consideration in issuing the final order, adjudication, or decision. The costs of the transcript shall be taxed as a part of the costs of the appeal.

History

127 v 963 (Eff 9-16-57); 141 v H 412. Eff 3-17-87; 151 v H 23, § 1, eff. 8-17-06.

R.C. 2506.02 (Page, Lexis Advance through File 13 of the 135th General Assembly (2023-2024))

IN THE COMMON PLEAS COURT
CHAMPAIGN COUNTY, OHIO
CIVIL DIVISION

FENNY S. UNDERWOOD
COMMON PLEAS COURT
CHAMPAIGN COUNTY, OHIO

2020 DEC 30 PM 3:47

FILED

STATE, ex rel. ERICA BARGA,	:	Case No: 20 CA 00142
Appellant/Relator,	:	Judge: NICK A. SELVAGGIO
-vs-	:	
VILLAGE COUNCIL OF THE VILLAGE OF SAINT PARIS,	:	<u>NOTICE OF APPEARANCE AND APPELLEE/RESPONDENT'S INITIAL RESPONSE TO APPELLANT'S MOTION TO SUPPLEMENT THE RECORD</u>
Appellee/Respondent.	:	

The undersigned attorneys, Daniel Bey, Shannon Wahl, and Randall Comer, of the law firm of Martin, Browne, Hull & Harper, PLL, hereby enter their notice of appearance as counsel for Appellee/Respondent, the Village Council of the Village of Saint Paris, Ohio (“Appellee/Respondent”), in the above captioned matter. Please amend all records to reflect said representation and direct all further notices to the undersigned counsel at the business address listed below.

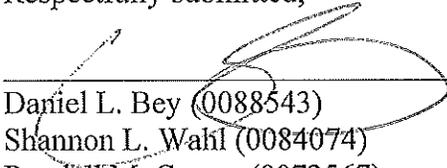
In addition, Appellee/Respondent received a copy of Appellant/Realtor’s Motion to Supplement the Record, as was filed with this Court on or about December 28, 2020. Appellee/Respondent, by and through its counsel, states that said motion is premature and improper at this stage of the proceedings per R.C. 2506.02, Appellant/Relator’s Praecipe for the record, and Local Rule 4.15(E). Specifically, R.C. 2506.02 provides in relevant part as follows:

Within forty days after filing a notice of appeal in relation to a final order, adjudication, or decision covered by division (A) of section 2506.01 of the Revised Code, the officer or body from which the appeal is taken, upon the filing of a praecipe by the appellant, shall prepare and file in the court to which the appeal is taken, a complete transcript of all the original papers, testimony, and evidence offered, heard, and taken into consideration in issuing the final order, adjudication, or decision.

Appellant/Relator's Notice of Appeal and Praecipe for the record was filed on December 3, 2020 and was served upon Appellee/Respondent on December 8, 2020. Per R.C. 2506.02, Appellant/Relator's Praecipe, and this Court's docket of the case, the record of proceedings must be prepared and filed within forty (40) days of the filing of the appeal and thus is due on or before, January 12, 2021. To the extent that any portion of the record has already been filed with this Court, such filing was made by or at the direction of Appellant/Relator without Appellee/Respondent's knowledge, consent, or involvement. Appellee/Respondent is currently preparing the official record and will file same on or before the due date of January 12, 2021.

Because Appellee/Respondent is still within its window of time to submit the record of proceedings to this Court, we respectfully request the Court to delay ruling on Appellant/Relator's motion until after the record of proceedings is filed in accordance with R.C. 2506.02. Further, Appellee/Respondent reserves the right to file a Memorandum Contra to Appellant/Relator's Motion to Supplement the Record with regard to any documents, records or information outside the record of proceedings or otherwise prohibited from disclosure due to privilege or other restrictions under Ohio law.

Respectfully submitted,



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Shannon L. Wahl (0084074)
Randall M. Comer (0072567)
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*Attorneys for Appellee/Respondent
Village Council of the Village of Saint Paris*

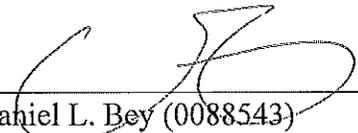
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Appearance and Appellee/Respondent's Initial Response to Appellant's Motion to Supplement the Record has been served upon the following this 30th day of December 2020:

Dwight D. Brannon
Kevin A. Bowman
Brannon & Associates
130 W. Second Street, Suite 900
Dayton, OH 45402

Matthew C. Schultz
Jason P. Matthews, LLC
130 W. Second Street, Suite 924
Dayton, OH 45402

Attorney for Appellant/Relator
Erica Barga



Daniel L. Bey (0088543)
Martin, Browne, Hull & Harper, PLL

IN THE COMMON PLEAS COURT OF CHAMPAIGN COUNTY, OHIO
CIVIL DIVISION

ERICA BARGA

Appellant/Relator

vs.

VILLAGE COUNCIL OF THE
VILLAGE OF SAINT PARIS

Appellees/Respondents.

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CASE NO. 2020 CV 00142

JUDGE NICK SELVAGGIO

TELETYPE UNIT
COMMON PLEAS COURT
CHAMPAIGN COUNTY, OHIO

2020 DEC 28 PM 1:33

FILED

MOTION TO SUPPLEMENT THE RECORD

Now comes Appellant/Relator Erica Barga, by and through the undersigned counsel, and moves the Court, pursuant to Champaign County Local Rule 4.15(E) and R.C. § 2506.03(A), to supplement the record in the appeal at bar. As described in the attached Affidavit, several items of information and testimony were excluded from the hearing which took place before the Saint Paris Village Council. For this reason, Appellant/Relator moves the Court to supplement the record in the appeal at bar.

MEMORANDUM

As the Court is aware, R.C. 2506.03(A) allows an appellant in an administrative appeal to supplement the record on appeal in certain circumstances. Specifically, the statute allows supplementation of the record where:

(2) The appellant was not permitted to appear and be heard in person, or by the appellant's attorney, in opposition to the final order, adjudication, or decision, and to do any of the following:

- (a) Present the appellant's position, arguments, and contentions;
 - (b) Offer and examine witnesses and present evidence in support;
 - (c) Cross-examine witnesses purporting to refute the appellant's position, arguments, and contentions;
 - (d) Offer evidence to refute evidence and testimony offered in opposition to the appellant's position, arguments, and contentions;
 - (e) Proffer any such evidence into the record, if the admission of it is denied by the officer or body appealed from.
- (3) The testimony adduced was not given under oath.
- (4) The appellant was unable to present evidence by reason of a lack of the power of subpoena by the officer or body appealed from, or the refusal, after request, of that officer or body to afford the appellant opportunity to use the power of subpoena when possessed by the officer or body.
- (5) The officer or body failed to file with the transcript conclusions of fact supporting the final order, adjudication, or decision.

R.C. § 2506.03(A)(2)-(5).

Champaign County Local Rule 4.15(E) recognizes this, and creates a procedure for supplementing the record on appeal:

(E) In all appeals where the submission of additional evidence is required or permitted by law, a motion to supplement the record shall be filed within fourteen (14) days after the filing of the record of proceedings, supported by affidavit requesting the submission of additional evidence and specifying the nature and type of additional evidence to be submitted and the reasons therefor.

As detailed in the attached affidavit, the following evidence was excluded from the hearing:

- At one point in the proceedings Mayor Brenda Cook refused to continue to answer questions;

- The Village Council refused to allow Appellant to call Village Administrator Spencer Mitchell to testify against Mayor Cook because she was “his boss” (Transcript p. 659);
- Appellant’s Exhibits 19, 21 and 23 were excluded from the record, but were proffered (Transcript, p. 658);
- Appellant requested in her Praecipe that the Village Clerk assemble “any videos, social media postings, Facebook postings, comments, including deleted postings and comments, offered, heard, and taken into consideration by the Village Council” and present those items as part of the record on appeal, which was not done.
- Appellant seeks to solicit testimony from Village Fiscal Officer Marc McGuire regarding the Mayor’s communications with Village Council members during the hearing.
- Appellant seeks to include video recordings from the St. Paris Police Officer’s body cameras, which recorded the officers’ interactions with Mayor Cook, which demonstrate the Mayor’s efforts to interfere in the officers’ performance of their duties.
- Appellant seeks to include the Facebook videos of the hearing on November 16, 19, and 23, 2020, as well as the Village Council meeting on December 7, 2020, at which Village Council members made admissions about the inappropriate nature of Mayor Cook’s actions.
- Appellant seeks to solicit testimony from counsel retained by the Village, Daniel Bey and Shannon Wahl, so as to establish their representation of the Mayor’s interests, as opposed to the Village’s interests, as well as their changing interpretations of the applicable law, and claims of attorney-client and work product privilege with regard to these interpretations, as well as Mr. Bey’s participation in what the Village Council claims were executive sessions.

These items of testimony and evidence are necessary for Appellant to fully present her appeal to this Court. For these reasons, pursuant to Champaign County Local Rule 4.15(E) and R.C. § 2506.03(A), Appellant/Relator Erica Barga moves the Court to supplement the record in the appeal at bar as detailed above. In addition, pursuant to Champaign County Local Rule 4.15(F), Appellant requests a hearing on this motion.

Respectfully submitted



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matt@daytonemploymentlawyers.com
Attorneys for Appellant/Relator

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the forgoing was served by regular mail upon the **Village Council of the Village of Saint Paris**, 135 West Main Street, St. Paris, Ohio 43072, this 22nd day of December, 2020. A courtesy copy has also been provided to counsel for the Village at the address below:

Daniel Bey, Esq.
Shannon Wahl, Esq.
Martin, Brown, Hull & Harper
500 N Fountain Ave.
Springfield, Ohio 45504

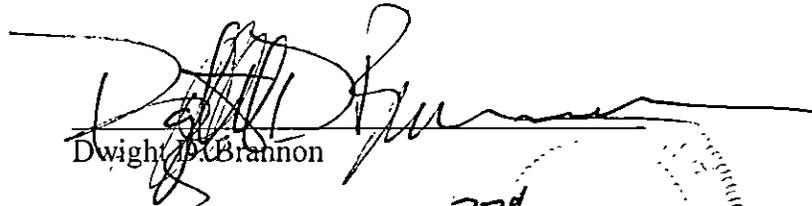


Kevin A. Bowman

5. In the Praeceptum for the record I filed with the Saint Paris Village Clerk, I asked the Clerk to assemble “any videos, social media postings, Facebook postings, comments, including deleted postings and comments, offered, heard, and taken into consideration by the Village Council” and present those items as part of the record on appeal, which was not done.
6. In my opinion as an attorney, it is necessary to complete my cross-examination of Mayor Cook in order to accurately and fully present Chief Barga’s appeal.
7. In my opinion as an attorney, it is necessary to elicit testimony from Village Administrator Spencer Mitchell in order to accurately and fully present Chief Barga’s appeal.
8. In my opinion as an attorney, it is necessary to solicit testimony from the Village Fiscal Officer Marc McGuire that Mayor Cook met with Village Council member Susan Prince outside of the hearing to discuss the subject matter of the hearing, in order to accurately and fully present Chief Barga’s appeal.
9. In my opinion as an attorney, it is necessary to include the excluded exhibits, as well as the items requested in the Praeceptum, in order to accurately and fully present Chief Barga’s appeal.
10. In my opinion as an attorney, it is necessary to include video recordings from the St. Paris Police Officer’s body cameras, which recorded the officers’ interactions with Mayor Cook, in order to accurately and fully present Chief Barga’s appeal.
11. In my opinion as an attorney, it is necessary to include the Facebook videos of the hearing on November 16, 19, and 23, 2020, as well as the Village Council meeting on December 7, 2020, in order to accurately and fully present Chief Barga’s appeal.

12. In my opinion as an attorney, it is necessary to include the testimony Village Solicitor Daniel Bey and his co-counsel Shawn Wahl, so as to establish their representation of the Mayor's interests, as opposed to the Village's interests, as well as their changing interpretations of the applicable law, and claims of attorney-client and work product privilege with regard to these interpretations, as well as Mr. Bey's participation in what the Village Council claims were executive sessions, in order to accurately and fully present Chief Barga's appeal.
13. In my opinion as an attorney, it is necessary to solicit testimony from the individual Village Council members in order to establish the above-referenced facts, in order to accurately and fully present Chief Barga's appeal.

FURTHER AFFIANT SAYETH NAUGHT.


Dwight D. Brannon

Sworn to and subscribed in my presence by Dwight D. Brannon, Esq. this 22^d day of December, 2020.


Notary Public

KEVIN A. BOWMAN, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date.
Section 147.03 O. R. C.

**IN THE COMMON PLEAS COURT OF CHAMPAIGN COUNTY, OHIO
CIVIL DIVISION**

<p>ERICA BARGA</p> <p style="padding-left: 40px;">Appellant</p> <p>Vs.</p> <p>VILLAGE COUNCIL OF THE VILLAGE OF SAINT PARIS</p> <p style="padding-left: 40px;">Appellee.</p>	<p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p>	<p>CASE NO. 2020CV142</p> <p>(Judge Dennis J. Langer,</p> <p>by assignment)</p> <p>⋮</p>
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FILED
 2021 JUL -6 PM 2:43
 PENNY S. UNDERWOOD
 COMMON PLEAS COURT
 CHAMPAIGN COUNTY, OHIO

SUPPLEMENTAL MOTION OF APPELLANT TO SUPPLEMENT THE RECORD

Now comes the Appellant, Erica Barga, by and through her attorney, and moves this Honorable Court to allow and Order further supplementation of the record to reflect what was actually presented during the hearings of November 16, 19, and 23 2020, both before the public hearing and open meeting and executive session on the charges heard by the Village Council and those attorneys present. Also, all requested supplementation is presented.

The first exhibit, formerly thought to be Exhibit 29, attached hereto as Exhibit 1 and included in the official record was distributed to all Appellee’s counsel and Council, was previously hand marked by Appellant’s counsel during the hearing as Exhibit 29 but is not contained in Appellant’s exhibits either by a mistake or clerical error. It is being offered now as Exhibit “34”. It is a four-part Demand for a Public Hearing, for Taxpayers Action, and for Dismissal. Counsel for the Appellant had marked the Exhibit in ink as “29” and placed it his own copy of the record, but evidently it was not entered as Exhibit 29 in the official court reporter’s record. The motion/demand was passed out to all the Village Council, three attorneys, and court reporter. While all other motions and memoranda (Ex. 25-28) were filed in the official transcript,

this one was evidently inadvertently left out. See affidavit of Barga, attached as Exhibit 2. The Appellees do not claim they have not seen it or discussed it, and indeed, they filed a rebuttal memorandum to it but claim that it is not part of the official record. Obviously, regardless of whether a motion or memorandum was designated as an “Exhibit” and attached to the transcript, if it was submitted to counsel (as Exhibit 1 was—see Tr. at pp. 4-5), it must be included as part of the record. See App. R. 9(A)(1) (“The original papers and exhibits thereto filed in the trial court, the transcript of proceedings, if any, including exhibits, and a certified copy of the docket and journal entries prepared by the clerk of the trial court shall constitute the record on appeal in all cases.”) Therefore, supplementation by the Appellant is necessary and requested.

What was actually then marked as Exhibit 29 by the court reporter, is an email and report of Office Eddie Hammond regarding a domestic violence call.

The official court reporter was contacted by email and she was unable to help, as she explained in her email response attached as Ex. 3. She indicated she did not prepare indexes in the transcripts because sometimes she could not tell what was being marked as exhibits. In this case, there was error in not officially marking it. She did not stop the attorneys to correct the record or inquire into what was actually being marked as exhibits.

In support of the request for this exhibit and the documentation of the request on advice of counsel for an open, public hearing, is attached Barga Exhibit 4, an email sent with attached Exhibit “29” or now proposed Exhibit 34 by Erica Barga prior to the hearing demanding a completely public and open meeting. This is part of the Appellee’s public record that was not returned to Barga or her counsel. It is requested that the document be labeled as Exhibit 35 and the Village retrieve it from the Village’s official file in this case and make it part of the official record

The Appellant has submitted her affidavit on the disbursement of former Exhibit 29, attached, and her filing of the demand for public and open hearing, which statutorily prohibits any part, including deliberations, to be conducted in executive, or closed, session. This is factual and significant to Appellant's case, as will be discussed in the later brief.

The issue of Mr. Bey's participation was documented in the official record, as well as the executive session during deliberations. See Appellant's filing of March 9, 2021 for supplementation. Documenting the demand for public and open meetings, in the transcript of the proceeds at pages 4-5 and 708, video transcript beginning at 1:06 and lasting into the deliberations.

The Appellant and counsel have signed affidavits, as well as the counsel verifying these facts for purposes of supplementation of the record and accuracy and conformity with Champaign County Local Rule 4.15. (See, Ex. 2 and Ex. 8) Council members and their lawyers, for the vast majority of the time, simply failed to review the motions and memoranda and Village Council overruled them on Daniel Bey's advice.

This attorney wants a clear record of what steps that were undertaken to keep the entire meeting open and public without any executive session. Appellant Exhibit 25 also addresses those issues on pages 1 and 3-6. Also the facts and procedure of the process need to be fully before this Court.

Another issue that has been brought to Appellant's counsel's attention by counsel for Appellee is the completeness of what the court reporter actually marked as Exhibit 29, which is an email and narrative from Office Eddie Hammond regarding a domestic violence call on November 2, 2020. (See email from Lynette Dinkler dated 6/25/21 attached as Ex. 5) As can be seen in the transcript, prior to marking Exhibit 29, counsel for the Appellant actually showed a video of the encounter at the hearing as documented in the transcript at pp. 496-497. While the video was

included in Exhibit 29, the court reporter did not include the actual video as part of the record. Counsel for the Appellant would therefore request that the actual video be marked as Exhibit 36 as a supplement to what was marked as Exhibit 29. It was late and evidently Appellant's counsel had the number 29 stuck in his mind.

It is therefore moved that the Honorable Court Order additional supplementation those requested to date by allowing supplementation of:

Appellant's Exhibit 34, the motion and memorandum of November 16, 2020 attached hereto.

Appellant's Exhibit 35, the document, or e-mail, from Appellant to the village that is in possession of Appellee.

Appellant's exhibit 36 which is the body cam video viewed by Village Council at the hearing and is the body cam video of the interaction of Mayor Brenda Cook and Office Eddie Hammond referenced in the transcript at pp. 426-427.

The Appellant gives notice to again supplement the record with affidavits of December 28, 2020, and is renewed and/or incorporated in this motion to supplement in its entirety.

The Findings of Fact and Conclusions of Law filed by Council for the Village on January 11, 2021 with Appellee's memorandum should be marked Appellee's Exhibit 25 and made a demonstrative part of the record (which it already is a part of the record but not numbered. See 1/11/21 filing by Appellee). The Appellant does not agree to the accuracy or admissibility of all this document but it will be referred to by both parties.

The Minutes of Proceeding for the Council meetings of November 16, 19, and 23, 2020, although contested by Appellant as to content and accuracy, was filed by the Village on January 11, 2021 as part of the record. It is requested this document be filed as Village Appellee Exhibit 26 for reference.

The Minutes of the Record of Proceedings for Council for the meetings of November 16, 19, and 23 was filed by the Village/Appellee on 1/11/21. It is requested that this be titled Appellee/Village Exhibit 27, again without agreement to its accuracy, as part of the official record.

The Appellant Barga also reincorporates the motion she filed on March 9, 2021 which supplements the record with body cam videos which were not obtainable by her, or her attorney, by subpoena due to the police department files being locked and unavailable to anyone during the disciplinary hearing.

Requested are the following exhibits labeled herein as Exhibit 6 but requested to be renumbered as Appellant Exhibit 37 (See attached exhibit 6). While this exhibit is a video of Village Council meeting of December 7, 2020, only the last 10 minutes of the video are relevant.

Exhibit 7 to the March 9, 2021 pleading, requested to be renumbered as Appellant Exhibit 38 and Exhibit 8 to the same pleading, requested to be renumbered Exhibit 39, video made 6/18/20.

Exhibits 37 and 38 while made after the hearing are relevant to the nullification, impeachment and validity of the verdict after other evidence was presented about it and council persons asked for the resignation of Mayor and said the procedure of the disciplinary hearing would not have been allowed, and other matters. Evid. R. 606 on judgment and further impeachment, as related to administrative law will be discussed in the Appellee memorandum in support due July 21, 2021, as well as the right to examine the council persons and Mr. Bey as supplemental witnesses. Appellee also incorporates the memorandum and exhibits identified as supplemental in the March 9, 2021 pleading in part to supplement the record. Further, all persons identified in Exhibits filed with transcript below are identified as persons who may testify live at any de novo hearing and not merely through the hearsay document.

The affidavit and list of her previously proposed supplemental exhibits, which included most of the exhibits already used at the hearings of November 16, 19, and 23 and reflecting some of the additional exhibits that will be requested for supplementation. A list of said exhibit s(Exhibit 7) were sent to counsel for Appellant on June 30, 2021 for the unemployment compensation hearing. This list is attached and the same additional proposed supplemental exhibits for this appeal will be also utilized in the supplementation process, if necessary

This Honorable Court can allow supplementation of any exhibit proposed and thereby open the entire matter for a de novo hearing upon allowing any supplementation. While repeating the law in the March 9, 2021 memorandum, a review of the law of the Second District in *Cahill v. Bd of Zoning Appeals of City of Dayton*, 30 Ohio App. 3d 236, 30 Ohio B. 394, 507 N.E. 2d 411 (2nd Dist. 1986)sets forth the standard for a de novo hearing in the event the Court does not grant judgment to Appellant.

R.C. 2506.03 governs the scope of evidence reviewing in the hearing of an administrative appeal under Chapter 2506. It states that review is confined to the evidence submitted in the administrative hearing unless any one of five circumstances apply. R.C. 2506.03(A)(1)-(5). If, however, any of those circumstances apply, the Court is required to conduct a de novo hearing at which any party may introduce additional evidence or cross-examine witnesses who testified at the original hearing. R.C. 2506.03(B) states:

If any circumstance described in divisions (A)(1) to (5) of this section applies, the court shall hear the appeal upon the transcript and additional evidence as may be introduced by any party. At the hearing, any party may call, as if on cross-examination, any witness who previously gave testimony in opposition to that party.

The Court in *Gonda v. Austintown Twp. Bd. Of Zoning Appeals*, 7th Dist. No. 05 MA 14, 2006-Ohio-670, ¶¶ 31-33, explained how the statute allows for introduction of any relevant evidence if any of the statutory bases in R.C. 2506.03(A) (1)-(5) are met:

“R.C. 2506.03 contains a liberal provision for the introduction of new or additional evidence to be heard by a reviewing court. R.C. 2506.03 does not limit the parties’ right to request that additional evidence be presented. On the contrary, either party may request, or the court on its own motion may require, that additional evidence be presented.”

“In the present case, because the commissions failed to file conclusion of fact supporting their resolution denying the annexation, the common pleas court was permitted to hear and consider evidence in addition to the transcript of the hearing before the commissioners.”

“R.C. 2506.03 permits ‘such additional evidence as may be introduced by any party.’ Words in a statute must be given their common, plain, and ordinary meaning unless a contrary intention clearly appears or is otherwise indicated. Considering the ordinary meaning of the terms in R.C. 2506.03, we conclude this section does not limit the parties in an appeal to only calling witnesses who previously testified. Such a requirement would severely limit the reviewing court’s ability to obtain information additional to the transcript of the hearing before the commissioners. We conclude that the petitioners could call a witness to testify at the court hearing even if that witness was not called to testify at the hearing before the commissioners. In this way the reviewing court, in considering the appeal, will have both the transcript of the hearing before the commissioners and the additional evidence presented at the court hearing.” (Citations omitted) *Id at 381-382*.

Id. quoting *In re Annexation of Certain Territory*, 82 Ohio App. 3d 377, 612 N.E. 2d 477 (1992).

The Court continued:

We agree with *Cahill* [v. Board of Zoning Appeals of City of Dayton, 30 Ohio App. 3d 236, 30 Ohio B. 394, 507 N.E. 2d 411 (2d Dist. 1986)] and *Annexation of Certain Property*. As *Annexation of Certain Property* states, the Ohio Supreme Court has previously stated that R.C. 2506.03 “makes liberal provision for the introduction of new or additional evidence if one of the exceptions in that statute applies. *Cincinnati Bell, Inc. v. Village of Glenadale*(1975), 42 Ohio St. 2d 368, 370, 328 N.E. 2d 808; see also *State ex rel. Chagrin Falls v. Geauga Cty. Bd. Of Commrs.*, 96 Ohio St. 3d 400, 2002 Ohio 4906 at p. 13, 75 N.E. 2d 512. This is important for two reasons.

First, the Ohio Supreme Court has recognized that R.C. 2506.03 allows a party to introduce new evidence. This means a party is not limited to reproducing the evidence introduced at the administrative hearing, as may be necessary if the transcript contains errors or omissions. Rather, the party now can introduce evidence which the administrative agency did not have the opportunity to hear.

Second, the Ohio Supreme Court has recognized that the language in R.C. 2506.03 is “liberal.” That statute does not limit the type of evidence which may be introduced once an exception has been met. Instead, it allows the trial court to decide the case on the administrative record and “such additional evidence as may be introduced by any party.”

* * *

A trial court's review of an administrative decision under R.C. Chapter 2506 is only static if none of the exceptions in R.C. 2506.03 apply. Once those exceptions apply, the court is free to hear any new evidence introduced by the parties in order to determine whether an administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence. Therefore, the trial court erred as a matter of law when it refused to allow gonad to introduce additional evidence.

Id. at ¶¶ 34-37. This is the interpretation of the statute followed within the Second District. See, *Cahill v. Bd. Of Zoning Appeals*, 30 Ohio App. 3d 236, 237, 507 N.E. 2d 411, 413 (2d Dist. 1986).

Appellant Barga therefore gives notice of her Motion to Supplement the Record, as previously filed and additionally with the Court's new scheduling order, with the aforesaid described and hereto attached list of witnesses and other evidentiary material.

It is prayed the Court receive the supplemental evidence with the transcript and original exhibits and determine the need for a complete de novo hearing in the event the Court does not reverse the decision and grant judgment to the Appellant on the state of the record and law applicable to the case below to be submitted.

The Appellant will fashion an appropriate pleading to the Court, not in JNOV or summary judgment, but on appeal that recognizes the appellate rights to judgment based upon the law and record applicable at this time when Appellant files her final brief on or before August 11, 2021 on the supplementation.

Respectfully submitted



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Kevin A. Bowman, #0068223
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Matthew C. Schultz, #0080142
Jason P. Matthews, LLC
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Dayton, Ohio 45402
P. (937) 608-4368 F. 1-888-577-3589
matt@daytonemploymentlawyers.com
Attorneys for Appellant/Relator

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the forgoing was served by electronic mail upon counsel for Appellee the Village of Saint Paris, this 2d day of July, 2021. A courtesy copy has also been provided to Hon. Dennis Langer via email and counsel for the Village at the address below:

Lynnette Dinkler
DINKLER LAW OFFICE, LLC
5335 Far Hills Avenue, Suite 123
Dayton, OH 45429
Attorney for Village of Saint Paris


Dwight D. Brannon

429.

Supp
by
Kurtz

B BRANNON
& ASSOCIATES

130 West Second Street Suite 900
Dayton, Ohio 45402-1590
Telephone: 937.228.2306 • Fax: 937.228.8475
www.branlaw.com

DWIGHT D. BRANNON
DOUGLAS D. BRANNON
DAVID D. BRANNON
KEVIN A. BOWMAN

IN RE: MARSHALL/POLICE CHIEF ERICA BARGA
Disciplinary Matters/Legal Actions

FROM: DWIGHT D. BRANNON, Attorney for Chief Barga

TO: VILLAGE OF ST. PARIS OHIO, c/o Attorney Daniel Bey

- I. DEMAND FOR A PUBLIC HEARING ON ANY AND ALL DISCIPLINARY HEARINGS, SUSPENSIONS, AND MEETINGS AND HEARINGS (R.C. 9.84, Right to Counsel) WITH DUE PROCESS COMPLIANCE (R.C. 733.35-733.39, 737.171)
- II. DEMAND FOR PULBIC HEARING ON NOVMEBER 16, 2020 at 7:30 P.M. UNDER R.C. 121.22 (G); All rights under R.C. 737
- III. DEMAND FOR TAXPAYER ACTIONS
- IV. DEMAND FOR IMMEDIATE DISMISSAL OF CHARGES FOR VIOLATION OF R.C. 737.37 (Majority Vote of Village Council Required for Suspension Pending Hearing); *State v. Baldine*, 91 Ohio App. 284 (1951) See hn. 5 and 6; *Mastick v. Lakewood*, 18 O.C.C. 407 (1910)

Please be advised that I will be representing St. Paris Marshall/Police Chief Barga in all legal matters against Mayor Brenda Cook, and thereby the Village of St. Paris. The determination of any additional defendants in the action on her behalf will be dependent on Council's decisions and actions. I am requesting that Council members follow the patently clear law and remedy the egregious wrong and illegalities of Mayor Brenda Cook. Subsequently suggested taxpayer actions, as requested in writing, should be initiated.



These matters clearly implicate an ignorance or plain disregard for Mayor Cook's understanding of the law concerning her duties as Mayor in relationship to the rights and duties of Chief Barga. The unlawful and ultra vires conduct of the Mayor has caused what is a failure to lawfully communicate. The Mayor's illegal conduct is grounds for statutory removal, a taxpayer's suit, and liability for injunctive, mandamus, declaratory, removal and damage actions. She and her conduct jeopardize the Village's financial condition and standing within Champaign County and the state.

First, the Chief has all the duties, responsibilities, and rights under R.C. 737.15, 737.18, and 737.19. All of the actions of the Mayor for which she seeks discipline violate those in the statutes and the duties of a sworn Ohio Police Officer.

The Mayor's responsibilities to generally supervise as the Police Chief do not include those expressly conferred upon the Marshall. This Mayor is not a police officer and while having very general statutory supervision on limited matters of the police department, cannot directly, or indirectly, enforce the law or, in her case, contest the enforcement with Village police officers. Conservator of the peace is not a general right to assist as a police officer or to run the police department. The Mayor, like the Marshall or any other police officer in the state, must possess a certificate from the Ohio Peace Officer training commission. See R.C. 109.70. She does not and would not qualify.

One of the great problems is that the Mayor not only wants to mismanage the Marshall and police officers but she wants to unlawfully dismiss and/or question arrests and traffic tickets issued to her relatives and associates. The problem with the Marshall began when she cited the Mayor's brother for OVI. The Mayor wanted to know why she didn't just take him home. He was convicted per the exhibits enclosed. She also has demanded other officers to appear and

explain why they issue traffic citations. She demands the Marshall and all officers to respond to her immediately and discuss anything she wishes about the performance of their job. She insists she is their supervisor. As the enclosed exhibits detail, she is completely irrational, intimidating, and outside the authority of her office. She, not the Marshall, should be removed from office. She has violated the criminal law, as well as civil one.

Ms. Barga has received a right to sue letter for the sexual discrimination (you just out to resign and go home to take care of your kids), hostile work environment, intentional infliction of emotional distress, violation of civil rights, and other unconscionable torts. She should be compensated. The attorney fees and damages should be recovered from her and not just the Village and their insurer. It is the law. She has no right to spend money on legal fees for her personal vendettas, or otherwise.

The Mayor has suspended the Marshall illegally, without even getting the majority approval of Council required under R.C. 737.37, making the disciplinary hearing a nullity and reinstatement immediately required. Please do so without allowing this Mayor to usurp, not only the Marshall's power, but even that of the legislation.

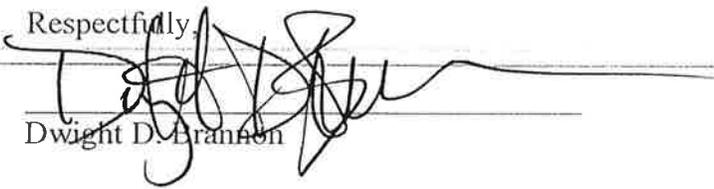
After investigation and review of materials and discussions with the prior mediator, I could go on but I have just been retained and will do so only as needed. I have extensive experience and numerous reported cases in the field of police matters, which I'll gladly recite if you wish. Mayor Cook is a disease and there is a cure. Please be part of the cure.

Please review the previously cited and following additional statutes that define the law and rights of my client: R.C. Sections 109.77, 3.07 through 3.10, 733.01, 733.02, 733.03, 733.04, 733.13, 733.23, 733.24 (Chief Conservator of the Peace), 733.34, 733.35, (General Supervisor), 733.36, 733.37 (Suspension pending hearing), 733.39, 733.48 (legal counsel),

733.56 (Injunction), 733.57 (Specific Performance) 733.58 (Mandamus), 733.581 and 733.59 (Taxpayer), 733.60 (S/L), 733.61, 733.72 to 733.75 (Charges against Municipal Officers in Probate Court), 733.76 735.05, 735.271, (Village Administrator) 737.01, 737.02, 737.06 (Police Chief's right to stationing and transferring), 737.15 (Village Marshall), 737.171 (Removal), 737.18 (Marshall is executive head).

The additional actions Chief Barga and/or others citizens may take may be discussed. Please review the voluminous enclosures.

Respectfully,


Dwight D. Brannon

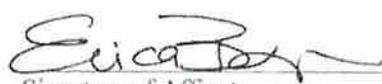
State of Ohio
County of Montgomery

I, Erica Barga, sent an email to Spencer Mitchell and Marc McGuire with the Village of Saint Paris on November 16, 2020 at 10:07 a.m., demanding a public hearing with any and all witnesses necessary and for them to be present live. Upon arrival at the opening of the hearing on November 16, 2020, I passed out copies of the document dated November 16, 2020, which included:

- I. Demand for a public hearing on any and all disciplinary hearings, suspensions, and meetings and hearings (R.C. 9.84 Right to Counsel) with due process compliance (R.C. 733.35-733.39, 737.171).
- II. Demand for public hearing on November 16, 2020 at 7:30 p.m., under R.C. 121.22(G); all rights under R.C. 737.
- III. Demand for taxpayer actions.
- IV. Demand for immediate dismissal of charges for violation of R.C. 737.37 (Majority Vote of Village Council Required for Suspension Pending Hearing); State v. Baldine, 91 Ohio App. 284 (1951) See hn. 5 and 6; Mastick v. Lakewood, 18 O.C.C. 407i (1910).

I didn't bring have enough copies of this document, so Fiscal Officer, Marc McGuire, made additional copies in his office. Copies of this document were given to all council members, Daniel Bey, Shannon Wahl and Marc Fishel.

Dated this 30 day of June, 2021.


Signature of Affiant

Sworn to and subscribed before me, this 30th day of June, 2021.


Notary Public
My Commission Expires 06/30/2023



Deb Walters

From: Kathy Wysong <wysongkathy@gmail.com>
Sent: Monday, June 28, 2021 1:41 PM
To: Dwight Brannon
Subject: Re: Erica Barga

I am sorry, I am not able to help. I filed the original exhibits with the Court and I did not do indexes on the transcripts because sometimes I could not tell what was being marked as exhibits. So whatever is in the original exhibits is what I have.

Kathy S. Wysong, RPR
Independent Court Reporter

On Mon, Jun 28, 2021 at 11:10 AM Dwight Brannon <dwightbrannon@branlaw.com> wrote:

Dear Kathy:

Can you find this exhibit? I hurriedly marked Exhibit 29 on it, probably mistakenly. It was offered as a memorandum, perhaps in combination with another one on the first day of hearings. Instead, I may have offered it when I offered my other memorandums, Exhibit 25, 26, 27, 28 and then just marked it Exhibit 29 by mistake – or maybe not. Exhibit 29 is an email from Eddie Hammond and I may have mistakenly marked it as 29 as well. Can you help. Dwight.

Dwight Brannon

BRANNON & ASSOCIATES

130 W. Second St. Suite 900

Dayton, OH 45402

Telephone: (937) 228-2306

Facsimile: (937) 228-8475

E-Mail: dwalters@branlaw.com



Deb Walters

From: Erica <ericabarga@yahoo.com>
Sent: Monday, June 28, 2021 10:27 AM
To: Dwight Brannon
Subject: Fwd: Public Hearing 11/16/20 7:30 p.m.

Begin forwarded message:

From: Erica Barga <ericabarga@yahoo.com>
Date: November 16, 2020 at 10:07:03 AM EST
To: spencer.mitchell@stparisohio.org, Marc McGuire <marc.mcguire@stparisohio.org>
Cc: Dwight Brannon <dbrannon@branlaw.com>
Subject: Public Hearing 11/16/20 7:30 p.m.

Mr. Mitchell and Mr. McGuire,

I have consulted with my Attorney, Dwight Brannon, who will be present with me and our witnesses at the Public Hearing this evening. I demand a public hearing with any and all witnesses necessary and for them to be present live. Also, all witnesses will be cross examined live. The public meeting is statutorily required with or without covid.

My attorney especially requests the presence of Mayor Brenda Cook and Solicitor Daniel Bey.

Furthermore, I request for the Fiscal Officer, Marc McGuire, to file this email and provide a file stamped copy to myself and my attorney upon our arrival this evening.

Respectfully,

Erica Barga



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& ASSOCIATES

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DWIGHT D. BRANNON
DOUGLAS D. BRANNON
DAVID D. BRANNON
KEVIN A. BOWMAN

IN RE: MARSHALL/POLICE CHIEF ERICA BARGA
Disciplinary Matters/Legal Actions

FROM: DWIGHT D. BRANNON, Attorney for Chief Barga

TO: VILLAGE OF ST. PARIS OHIO, c/o Attorney Daniel Bey

- I. DEMAND FOR A PUBLIC HEARING ON ANY AND ALL DISCIPLINARY HEARINGS, SUSPENSIONS, AND MEETINGS AND HEARINGS (R.C. 9.84, Right to Counsel) WITH DUE PROCESS COMPLIANCE (R.C. 733.35-733.39, 737.171)
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November 16, 2020

Page 3

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733.56 (Injunction), 733.57 (Specific Performance) 733.58 (Mandamus), 733.581 and 733.59 (Taxpayer), 733.60 (S/L), 733.61, 733.72 to 733.75 (Charges against Municipal Officers in Probate Court), 733.76 735.05, 735.271, (Village Administrator) 737.01, 737.02, 737.06 (Police Chief's right to stationing and transferring), 737.15 (Village Marshall), 737.171 (Removal), 737.18 (Marshall is executive head).

The additional actions Chief Barga and/or others citizens may take may be discussed. Please review the voluminous enclosures.

Respectfully,



Dwight D. Gramann

Deb Walters

From: Lynnette Dinkler <Lynnette@dinkler-law.com>
Sent: Friday, June 25, 2021 2:46 PM
To: Dwight Brannon; Kevin Bowman; matt@daytonemploymentlawyers.com; Deb Walters
Cc: Tina Sabo
Subject: Barga / St Paris Admin Appeal - exhibits
Attachments: Barga Exhibit 29.pdf

Dwight and Kevin –

I wanted to be sure to point out to you in the transcript where the attached Exhibit 29 was marked there is reference to video being played. If you played two separate videos (I have not watched Exhibit 24 yet and will do so Monday) at the hearing, then you may need to supplement the video played at this juncture in the proceeding.

I have confirmed that the Village did not receive a copy of the video played where Exhibit 29 was marked into evidence and, for that reason only, could not enter it into the Record of Proceedings.

If there is another video, let us know and I will ask Tina to send Deb a link to upload it to us so that we can discuss how to proceed on that separate matter.

Thanks.

Lynnette



DINKLER LAW

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lynnette@dinkler-law.com
Dinkler Law Office, LLC
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Dayton, OH 45429
(937) 609-9627 (cell)
(937) 426-4200 (office)
(866) 831-0904 (fax)
www.dinkler-law.com



**IN THE CHAMPAIGN COUNTY COMMON PLEAS COURT
CIVIL DIVISION**

ERICA BARGA, et al.

Appellants/Relators,

Vs.

**VILLAGE COUNCIL OF THE
VILLAGE OF SAINT PARIS**

Appellee/Respondent

CASE NO. 2020-CV-142

(Judge Nick A. Selvaggio)

(Magistrate Scott D. Schockling)

**NOTICE OF FILING ELECTRONIC
EXHIBITS**

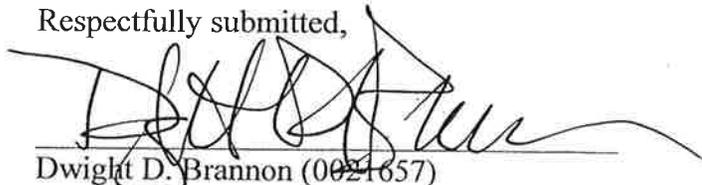
2021 MAR -9 PM 3:27

FILED

Now come the Appellants/Relators and do hereby give notice of filing the attached electronic exhibits in support of Appellants/Relators Reply in Response to Appellee's Memorandum in Opposition to Appellants Motion to Supplement the Record; Motion to Grant Appellant Judgment on the Pleadings of Summary Judgment Based Upon the Hearing Transcript with Exhibits and Affidavit of Chief Barga with Exhibits:

EXHIBIT 5	BARGA AFFIDAVIT EXHIBIT 27	STONEROCK TRAFFIC OFFENSE (Hearing Transcript Ex. 1)
EXHIBIT 6	BARGA AFFIDAVIT EXHIBIT 193	VIDEO ON VILLAGE ASKING FOR MAYOR'S RESIGNATION (12/7/20)
EXHIBIT 7	BARGA AFFIDAVIT 194	SAFETY COMMITTEE VIDEO (12/14/20) (Additional to Hearing Transcript)
EXHIBIT 8	BARGAR AFFIDAVIT EXHIBIT 112	Randy smith statements (6/18/20)

Respectfully submitted,



Dwight D. Brannon (0021657)
BRANNON & ASSOCIATES
130 W. Second St. Suite 900
Dayton, OH 45402



5-F	Email from Erica Barga to Brenda Cook dated 8/22/19 regarding call records
5-G	Email from Erica Barga to Brenda Cook dated 1/28/20 regarding schedules
5-H	Email from Erica Barga to Brenda Cook dated 3/15/20 regarding schedules due to Covid-19
5-I	Email from Erica Barga to Brenda Cook dated 6/16/20 regarding schedules due to Covid-19
6	St. Paris Employee Handbook
7-A	Email to Brenda Cook from Erica Barga dated 3/14/19 regarding salary exempt status
7-B	Email from Erica Barga dated 3/19/19 regarding salary exempt
7-C	Email from Erica Barga from Brenda Cook dated 11/18/19 regarding salary exempt status
7-D	E-Mail chain regarding salary exempt status dated 10/23/19
7-E	E-Mail from Erica Barga to Brenda Cook dated 3/5/20 regarding salary exempt status
7-F	Memo to Brenda Cook and Village Council from Village Administration regarding Salary exempt employees
8-A	Email from Erica Barga dated 3/4/20 regarding hours of work
8-B	Email to Erica Barga from Brenda Cook dated 4/8/20
8-C	Email to Brenda Cook from Erica Barga responding to Cook 4/8/20 email
8-D	Email chain between Erica Barga and Brenda Cook regarding Barga vacation request 5/27-6/2/20
8-E	Email to Brenda Cook from Erica Barga regarding work hours
8-F	Email to Brenda Cook and Spencer Mitchell dated 7/1/20 stating Barga would be out sick
8-G	Medical Record from Kettering Health Network stating that Erica Barga may return to work on 7/19/20
8-H	Order of Isolation to Erica Barga dated 7/8/20
8-I	Email chain between Brenda Cook and Erica Barga 7/8-7/13/20 regarding illness
8-J	Email from Erica Barga to Brenda Cook with leave request form dated 7/14/20
8-K	Email from Brenda Cook to Erica Barga dated 7/14/20 regarding leave request
8-L	Order of Quarantine to Erica Barga dated 9/1/20
8-M	Email from Erica Barga to Brenda Cook dated 9/1/20 regarding hours of work
8-N	Email from Brenda Cook to Erica Barga dated 9/1/20 advising Barga she did not need to file a sick leave form
8-O	Email from Erica Barga to Brenda Cook dated 9/14/20 regarding hours of work.

8-P	Email from Erica Barga to Brenda Cook dated 9/18/20 regarding hours of work
8-Q	Email from Erica Barga to Brenda Cook dated 9/23/20 regarding hours of work
8-R	Email from Erica Barga to Brenda Cook dated 9/25/20 regarding son's injury at school
8-S	Email from Erica Barga to Brenda Cook dated 10/14/20 regarding child illness and hours of work
8-T	Email from Erica Barga to Brenda Cook dated 10/28/20 regarding hours of work
9-A	Erica Barga calendar dated December 2019 regarding calls and work at home not included in totals
9-B	Erica Barga calendar dated January 20 regarding calls and work at home not included in totals
9-C	Erica Barga calendar dated February 20 regarding calls and work at home not included in totals
9-D	Erica Barga calendar dated March 20 regarding calls and work at home not included in totals
9-E	Erica Barga calendar dated July 20 regarding calls and work at home not included in totals
10-A	Employee Leave Request form for 8/5/20
10-B	Employee Leave Request form for 8/10/20
10-C	Employee Leave Request form for 8/12/20
10-D	Employee Leave Request form for 8/24-8/30/20
10-E	Employee Leave Request form for 8/25-8/26/20
10-F	Employee Leave Request form 8/27-8/28/20
10-G	Employee Leave Request form 8/31-9/6/20
11-A	Erica Barga hours of work 8/24-8/30/20
11-B	Erica Barga hours of work 8/31-9/6/20
11-C	Erica Barga hours of work 9/7-9/13/20
12	Barga statement of time of work for July and August 20
13	Police Schedule September 20
14-A	St. Paris Police Department Payroll 8/24-8/30/20
14-B	St. Paris Police Department Payroll 9/7-9/13/20
14-C	St. Paris Police Department Payroll 9/14-9/20/20
14-D	St. Paris Police Department Payroll 9/21-9/27/20
15-A	Email from Erica Barga to Brenda Cook dated 11/7/19 regarding meeting of 1/8/2019
15-B	Email from Brenda Cook to Erica Barga, and Spencer Mitchell dated 1/6/20 regarding biweekly meetings
15-C	Email from Brenda Cook to Erica Barga and Spencer Mitchell dated 3/4/20 regarding meeting 3/6/20

15-D	Email from Erica Barga to Brenda Cook dated 3/5/20 regarding 3/6/20 meeting
15-E	Email chain between Erica Barga and Brenda Cook regarding April 21, 20 meeting
15-F	Email from Brenda Cook to Erica Barga dated 8/21/20 regarding meeting 8/24/20
15-G	Email chain between Brenda Cook and Erica Barga regarding meeting of 9/11/20
15-H	Email to Erica Barga from Brenda Cook regarding meeting for 10/19/20
15-I	Email from Erica Barga to Brenda Cook regarding meeting for 10/19/20
16	Mayor-Chief Weekly Meeting Agendas
17	Brenda Cook notes regarding handbook
18	Email from Brenda Cook to Erica Barga dated 4/1/20 regarding 24/7 coverage
19	Email from Erica Barga dated 11/6/18 regarding meeting with Brenda Cook
20	Email from Brenda Cook to Erica Barga dated 12/20/18 regarding visit to Cincinnati Children's
21	Email from Erica Barga dated 5/13/19 regarding meeting with Officer Clingman
22	Email from Brenda Cook to Erica Barga dated 8/31/20 regarding Directives and Assignments for August 31, 20
23	Report from Family Health Services Behavioral Offices dated 11/19/20
24	Letter to Chief Barga from Kevin Talebi, Champaign County Prosecuting Attorney dated 1/23/19
25	Email to Erica Barga from Brenda Cook dated 9/23/20 regarding training sessions
26	Email from Erica Barga to Brenda Cook dated 8/24/20 regarding Performance Improvement Plan
27-A	Letter from Jeffrey Kruithoff to Brenda Cook dated 12/20/19
27-B	Emails to Erica Barga from Jeffrey Kruithoff regarding meetings with Brenda Cook
28-A	Ohio Civil Rights Commission Filing DYE6(28680)021120
28-B	Erica Barga submission to Investigator Ricky Boggs dated 6/29/20
28-C	Ohio Civil Rights Commission Letter of Determination dated 9/24/20
28-D	Ohio Civil Rights Commission Filing DAYE6(28873)06292020
28-E	Ohio Civil Rights Commission Letter of Determination Dated 9/24/20
28-F	EEOC Inquiry Number 473-2020-01371
28-G	EEOC Dismissal and Notice of Rights dated 10/21/20
29-A	Letter of Reprimand dated 12/10/19
29-B	Memorandum dated 2/29/20 from Barga to St. Paris Council appealing reprimand of 12/10/19
30-A	Letter of Reprimand dated 2/11/20

30-B	Memorandum dated 2/19/20 from Barga to St. Paris Council appealing reprimand of 2/19/20
31-A	Letter of Reprimand dated 2/26/20
31-B	Memorandum from Barga dated 2/26/20 appealing reprimand of 2/26/20
32	Letter from Erica Barga to St. Paris Council dated 3/2/20 regarding Concerns
33	Letter from Erica Barga to St. Paris Council members 8/25/20 regarding Brenda Cook
34	Notice of Administrative Leave dated 11/2/20
35	Memorandum from Brenda Cook to Officer Eddie Hammond dated 11/2/2020
36	Petition to Save our Police-Restore Chief Erica
37	Letter to Council Members from Susan Tauble dated 11/18/20
38	Letter to Council Members from Ben Hackley dated 11/19/20
39	Court records involving Robert Cook regarding incident of 10/9/17
40	Records regarding ticket issued to Brett Stonerock

IN THE COMMON PLEAS COURT OF CHAMPAIGN COUNTY, OHIO
CIVIL DIVISION

ERICA BARGA

Appellant

Vs.

VILLAGE COUNCIL OF THE VILLAGE:
OF SAINT PARIS

Appellee.

: CASE NO. 2020CV142
: (Judge Dennis J. Langer,
: by assignment)

: AFFIDAVIT OF DWIGHT BRANNON

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

Now comes Dwight D. Brannon, after being duly cautioned and sworn and based upon first-hand knowledge and his understanding of the facts and law that the pleadings filed herewith a true and accurate.


DWIGHT D. BRANNON

Sworn to before me, a notary public, and subscribed in my presence this 2nd day of July, 2021.




Notary Public



§ 2744.01 Definitions.

As used in this chapter:

(A) “Emergency call” means a call to duty, including, but not limited to, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer.

(B) “Employee” means an officer, agent, employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of the officer’s, agent’s, employee’s, or servant’s employment for a political subdivision. “Employee” does not include an independent contractor and does not include any individual engaged by a school district pursuant to section 3319.301 of the Revised Code. “Employee” includes any elected or appointed official of a political subdivision. “Employee” also includes a person who has been convicted of or pleaded guilty to a criminal offense and who has been sentenced to perform community service work in a political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, and a child who is found to be a delinquent child and who is ordered by a juvenile court pursuant to section 2152.19 or 2152.20 of the Revised Code to perform community service or community work in a political subdivision.

(C)

(1) “Governmental function” means a function of a political subdivision that is specified in division (C)(2) of this section or that satisfies any of the following:

(a) A function that is imposed upon the state as an obligation of sovereignty and that is performed by a political subdivision voluntarily or pursuant to legislative requirement;

(b) A function that is for the common good of all citizens of the state;

(c) A function that promotes or preserves the public peace, health, safety, or welfare; that involves activities that are not engaged in or not customarily engaged in by nongovernmental persons; and that is not specified in division (G)(2) of this section as a proprietary function.

(2) A “governmental function” includes, but is not limited to, the following:

(a) The provision or nonprovision of police, fire, emergency medical, ambulance, and rescue services or protection;

(b) The power to preserve the peace; to prevent and suppress riots, disturbances, and disorderly assemblages; to prevent, mitigate, and clean up releases of oil and hazardous and extremely hazardous substances as defined in section 3750.01 of the Revised Code; and to protect persons and property;

(c) The provision of a system of public education;

(d) The provision of a free public library system;

(e) The regulation of the use of, and the maintenance and repair of, roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, and public grounds;

(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;

(g) The construction, reconstruction, repair, renovation, maintenance, and operation of buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses;

(h) The design, construction, reconstruction, renovation, repair, maintenance, and operation of jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code;

(i) The enforcement or nonperformance of any law;

- (j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;
- (k) The collection and disposal of solid wastes, as defined in section 3734.01 of the Revised Code, including, but not limited to, the operation of solid waste disposal facilities, as “facilities” is defined in that section, and the collection and management of hazardous waste generated by households. As used in division (C)(2)(k) of this section, “hazardous waste generated by households” means solid waste originally generated by individual households that is listed specifically as hazardous waste in or exhibits one or more characteristics of hazardous waste as defined by rules adopted under section 3734.12 of the Revised Code, but that is excluded from regulation as a hazardous waste by those rules.
- (l) The provision or nonprovision, planning or design, construction, or reconstruction of a public improvement, including, but not limited to, a sewer system;
- (m) The operation of a job and family services department or agency, including, but not limited to, the provision of assistance to aged and infirm persons and to persons who are indigent;
- (n) The operation of a health board, department, or agency, including, but not limited to, any statutorily required or permissive program for the provision of immunizations or other inoculations to all or some members of the public, provided that a “governmental function” does not include the supply, manufacture, distribution, or development of any drug or vaccine employed in any such immunization or inoculation program by any supplier, manufacturer, distributor, or developer of the drug or vaccine;
- (o) The operation of mental health facilities, developmental disabilities facilities, alcohol treatment and control centers, and children’s homes or agencies;
- (p) The provision or nonprovision of inspection services of all types, including, but not limited to, inspections in connection with building, zoning, sanitation, fire, plumbing, and electrical codes, and the taking of actions in connection with those types of codes, including, but not limited to, the approval of plans for the construction of buildings or structures and the issuance or revocation of building permits or stop work orders in connection with buildings or structures;
- (q) Urban renewal projects and the elimination of slum conditions, including the performance of any activity that a county land reutilization corporation is authorized to perform under Chapter 1724. or 5722. of the Revised Code;
- (r) Flood control measures;
- (s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;
- (t) The issuance of revenue obligations under section 140.06 of the Revised Code;
- (u) The design, construction, reconstruction, renovation, repair, maintenance, and operation of any school athletic facility, school auditorium, or gymnasium or any recreational area or facility, including, but not limited to, any of the following:
 - (i) A park, playground, or playfield;
 - (ii) An indoor recreational facility;
 - (iii) A zoo or zoological park;
 - (iv) A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility;
 - (v) A golf course;
 - (vi) A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged;
 - (vii) A rope course or climbing walls;

(viii) An all-purpose vehicle facility in which all-purpose vehicles, as defined in section 4519.01 of the Revised Code, are contained, maintained, or operated for recreational activities.

(v) The provision of public defender services by a county or joint county public defender's office pursuant to Chapter 120. of the Revised Code;

(w)

(i) At any time before regulations prescribed pursuant to 49 U.S.C.A 20153 become effective, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in a zone within a municipal corporation in which, by ordinance, the legislative authority of the municipal corporation regulates the sounding of locomotive horns, whistles, or bells;

(ii) On and after the effective date of regulations prescribed pursuant to 49 U.S.C.A. 20153, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in such a zone or of a supplementary safety measure, as defined in 49 U.S.C.A 20153, at or for a public road rail crossing, if and to the extent that the public road rail crossing is excepted, pursuant to subsection (c) of that section, from the requirement of the regulations prescribed under subsection (b) of that section.

(x) A function that the general assembly mandates a political subdivision to perform.

(D) "Law" means any provision of the constitution, statutes, or rules of the United States or of this state; provisions of charters, ordinances, resolutions, and rules of political subdivisions; and written policies adopted by boards of education. When used in connection with the "common law," this definition does not apply.

(E) "Motor vehicle" has the same meaning as in section 4511.01 of the Revised Code.

(F) "Political subdivision" or "subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission appointed under section 339.14 of the Revised Code, board of hospital commissioners appointed for a municipal hospital under section 749.04 of the Revised Code, board of hospital trustees appointed for a municipal hospital under section 749.22 of the Revised Code, regional planning commission created pursuant to section 713.21 of the Revised Code, county planning commission created pursuant to section 713.22 of the Revised Code, joint planning council created pursuant to section 713.231 of the Revised Code, interstate regional planning commission created pursuant to section 713.30 of the Revised Code, port authority created pursuant to section 4582.02 or 4582.26 of the Revised Code or in existence on December 16, 1964, regional council established by political subdivisions pursuant to Chapter 167. of the Revised Code, emergency planning district and joint emergency planning district designated under section 3750.03 of the Revised Code, joint emergency medical services district created pursuant to section 307.052 of the Revised Code, fire and ambulance district created pursuant to section 505.375 of the Revised Code, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under section 343.01 or 343.012 of the Revised Code, community school established under Chapter 3314. of the Revised Code, county land reutilization corporation organized under Chapter 1724. of the Revised Code, the county or counties served by a community-based correctional facility and program or district community-based correctional facility and program established and operated under sections 2301.51 to 2301.58 of the Revised Code, a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated, and the facility governing

board of a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated.

(G)

(1) “Proprietary function” means a function of a political subdivision that is specified in division (G)(2) of this section or that satisfies both of the following:

(a) The function is not one described in division (C)(1) (a) or (b) of this section and is not one specified in division (C)(2) of this section;

(b) The function is one that promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by nongovernmental persons.

(2) A “proprietary function” includes, but is not limited to, the following:

(a) The operation of a hospital by one or more political subdivisions;

(b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery;

(c) The establishment, maintenance, and operation of a utility, including, but not limited to, a light, gas, power, or heat plant, a railroad, a busline or other transit company, an airport, and a municipal corporation water supply system;

(d) The maintenance, destruction, operation, and upkeep of a sewer system;

(e) The operation and control of a public stadium, auditorium, civic or social center, exhibition hall, arts and crafts center, band or orchestra, or off-street parking facility.

(H) “Public roads” means public roads, highways, streets, avenues, alleys, and bridges within a political subdivision. “Public roads” does not include berms, shoulders, rights-of-way, or traffic control devices unless the traffic control devices are mandated by the Ohio manual of uniform traffic control devices.

(I) “State” means the state of Ohio, including, but not limited to, the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, colleges and universities, institutions, and other instrumentalities of the state of Ohio. “State” does not include political subdivisions.

History

141 v H 176 (Eff 11-20-85); 141 v H 205, § 1 (Eff 6-7-86); 141 v H 205, § 3 (Eff 1-1-87); 142 v H 295 (Eff 6-10-87); 142 v H 815 (Eff 12-12-88); 142 v S 367 (Eff 12-14-88); 143 v H 656 (Eff 4-18-90); 144 v H 210 (Eff 5-1-92); 144 v H 723 (Eff 4-16-93); 145 v H 152 (Eff 7-1-93); 145 v H 384 (Eff 11-11-94); 146 v H 192 (Eff 11-21-95); 146 v H 350 (Eff 1-27-97); 147 v H 215 (Eff 6-30-97); 148 v H 205 (Eff 9-24-99); 149 v S 108, § 2.01 (Eff 7-6-2001); 149 v S 24, § 1 (Eff 10-26-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v S 108, § 2.03 (Eff 1-1-2002); 149 v S 24, § 3 (Eff 1-1-2002); 149 v S 106. Eff 4-9-2003; 150 v S 222, § 1, eff. 4-27-05; 151 v H 162, § 1, eff. 10-12-06; 2014 SB 172, § 1, eff. Sept. 4, 2014; 2016 hb158, § 1, effective October 12, 2016.

R.C. 2744.01 (Page, Lexis Advance through File 13 of the 135th General Assembly (2023-2024))

§ 705.15 Powers of legislative authority.

A majority of all members of the legislative authority of a municipal corporation constitutes a quorum, but a smaller number may adjourn from day to day and compel the attendance of absent members. The affirmative vote of a majority of the members of the legislative authority is necessary to adopt any motion, ordinance, or resolution, and on the passage of every ordinance or resolution the vote shall be taken by “yeas” and “nays” and entered upon the journal. Each proposed ordinance or resolution shall be in written or printed form, and shall contain not more than one subject which shall be clearly stated in the title. General appropriation ordinances may contain the various subjects and accounts for which moneys are appropriated. No ordinance, unless it is declared an emergency measure, shall be passed until it has been read on three separate days, the first and second reading of which may be by title only, and if such measure is printed and a copy thereof placed on the desk of each member the third reading may be by title only. The rule requiring every ordinance to be read on three separate days may be suspended by a three-fourths vote of all members elected or appointed to the legislative authority, taken by “yeas” and “nays” on each ordinance and entered on the journal.

History

GC § 3515-54; 103 v 767(779), Const Art VI, § 10; 110 v 78; Bureau of Code Revision. Eff 10-1-53.

R.C. 705.15 (Page, Lexis Advance through File 13 of the 135th General Assembly (2023-2024))

§ 2506.01 Appeal from final order, adjudication, or decision of political subdivision officer or division.

(A) Except as otherwise provided in sections 2506.05 to 2506.08 of the Revised Code, and except as modified by this section and sections 2506.02 to 2506.04 of the Revised Code, every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, 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 as provided in Chapter 2505 of the Revised Code.

(B) The appeal provided in this section is in addition to any other remedy of appeal provided by law.

(C) As used in this chapter, “final order, adjudication, or decision” means an order, adjudication, or decision that determines rights, duties, privileges, benefits, or legal relationships of a person, but does not include any order, adjudication, or decision from which an appeal is granted by rule, ordinance, or statute to a higher administrative authority if a right to a hearing on such appeal is provided, or any order, adjudication, or decision that is issued preliminary to or as a result of a criminal proceeding.

History

127 v 963 (Eff 9-16-57); 141 v H 412. Eff 3-17-87; 151 v H 23, § 1, eff. 8-17-06.