

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-001987-MR

RICHARD PHILLIPS

APPELLANT

v. APPEAL FROM LINCOLN CIRCUIT COURT
HONORABLE WILLIAM T. CAIN, JUDGE
ACTION NO. 96-CI-000033

CITY OF STANFORD, KENTUCKY;
JACK R. WITHROW; GENEVA OWENS;
JOHN HALL; STEVE LUCAS;
J.S. DAWSON; SHEILA KIDD;
and, DON YOUNG

APPELLEES

OPINION REVERSING IN PART, VACATING IN PART,
AND REMANDING

*** **

BEFORE: KNOPF, KNOX, AND SCHRODER, JUDGES.

KNOX, JUDGE: Appellant, Richard Phillips, appeals from a judgment of the Lincoln Circuit Court dismissing his claims of procedural due process violations under KRS 15.520, for lack of jurisdiction, and upholding the Stanford City Council's decision to fire him from the Stanford City police force. We reverse the order of the circuit court dismissing appellant's claims of due process violations, vacate the judgment of the court upholding the Stanford City Council's decision, and remand this matter for further review.

The record reveals these facts. Appellant was hired by the Stanford City Police Department in May 1989, serving in the capacity of police officer. During the course of his employment, appellant owned and maintained a race car, competing in racing events from time to time. On occasion, he solicited sponsorship of the vehicle from local businesses. Those businesses which sponsored the race car contributed either funds, services, or parts.

Apparently, Doug Rayburn, a district manager for several Sav-A-Lot stores in the area, one of which was located in Stanford, voiced an interest in sponsoring the race car, although it is unclear whether it was Rayburn who first approached appellant concerning sponsorship or whether appellant solicited Rayburn's assistance. Nonetheless, on behalf of the local Sav-A-Lot store, Rayburn decided to sponsor the vehicle. In May 1995, Rayburn contacted appellant to let him know a sponsorship check was available for pick-up. The check for \$300 was made to the order of the "Stanford Police [De]pt., c/o Richard Phillips,"¹ and was drawn on the account of "Lincoln County Foods, Inc., d/b/a Sav-A-Lot Discount Foods." Appellant picked up the check, endorsed his name on the back of it, deposited it into his personal bank account, and used the funds to maintain his race car.

Two (2) months later, at 7 A.M. on the morning of July 13, 1995, just after appellant's shift had ended, appellee Don

¹The check appears to name "Stanford Police Apt., c/o Richard Phillips" as payee.

Young, chief of police, informed appellant that appellee Jack Withrow, mayor of Stanford, had a pressing matter which he wanted to take up with appellant immediately. Shortly thereafter, the mayor and Chief Young proceeded to question appellant concerning appellant's race car and the manner in which appellant solicited sponsors. Apparently, the mayor read aloud from a sworn statement submitted by Doug Rayburn setting forth the allegations that: (1) appellant had solicited sponsorship of the race car while in uniform; (2) Rayburn had assumed the car belonged to the City of Stanford; and, (3) had Rayburn known the car was not "tied in to the City," and had he known the check "was in fact for [appellant's] personal gain," he would not have sponsored the car on behalf of the local Sav-A-Lot store. While the mayor discussed Rayburn's statement with appellant and questioned him about it, he did not provide a copy of it to appellant at that time. However, at the end of their meeting, according to Chief Young, the mayor informed appellant he was suspended without pay pending investigation of the matter.

Five (5) days later, on July 18, 1995, appellant received two (2) letters, both of which were dated the same day, and the first of which was signed by the mayor:

Due to the complaint filed against you (copy attached), you are suspended without pay from your duties as a police officer. This suspension will continue through August 3, 1995. A hearing will be held at 6:30 P.M. on August 3, 1995 in the councilroom at Stanford City Hall, 305 East Main Street.

Pending the outcome of that hearing, a decision will be made concerning your employment status with the City of Stanford.

Attached to the mayor's letter was a second letter, signed by Chief Young and notarized, stating:

Subject: Complaint of Misconduct and Dishonesty

This formal complaint charges you with misconduct and dishonesty by soliciting/obtaining funds for an alleged Stanford Police Department race car which does not exist.

This occurred [sic] about mid May 1995 and was recently brought to my attention.

It appears that simultaneous with his receipt of the above two (2) letters, appellant also received a copy of Doug Rayburn's sworn statement from which the mayor had read aloud on July 13th. Additionally, on July 18th or at some point thereafter, appellant received a copy of a second statement, sworn to and submitted by Sav-A-Lot's store manager, Marty Hayes. In his statement, Hayes alleged that "on or about the third week of May a police officer dressed in full uniform by the name of Butch Phillips picked a check up presented to him by me, Raymond (Marty) Hayes, for sponsorship of a race car for the Stanford Police Department."

On August 3, 1995, the Stanford City Council met in closed session to consider the matter. Appellant was present at the hearing, unrepresented by counsel. He had subpoenaed no witnesses, claiming he did not know he had the right to do so and had not been informed he could do so. The City Council called only two (2) witnesses to testify, Chief Don Young and Marty

Hayes.² Chief Young testified directly from Doug Rayburn's statement. Marty Hayes testified that his knowledge of the matter came only from conversations he had overheard when appellant and Rayburn were in discussion. While Hayes conceded he had never been a party to any discussions whatsoever with either appellant or Doug Rayburn concerning the race car, he testified he had, in fact, overheard appellant inform Rayburn the car belonged to the police department.

Appellant questioned both Chief Young and Marty Hayes and, in turn, was questioned by city council members. He denied being in uniform on each and every occasion he discussed the race car with Doug Rayburn. He further denied soliciting sponsorship of the race car on behalf of the police department, and testified that Rayburn knew, as did all other business sponsors in town, the vehicle was privately owned. He testified that while he pulled the check out of the envelope in which it was handed him, he did not pay much attention to the name on the check, other than to note his name was there. He further testified he did not know what to expect at the hearing, the mayor's having refused to discuss the matter with him. Finally, he testified:

I probably should not have cashed the check, but I do not feel that that is worth losing my job over. I mean, racing to me is a hobby. I would not put my job, my lifeline, at stake for three hundred dollars. I mean, I did know that the check was going to be for three hundred dollars because Doug came back to me probably about the second or third time that we talked, and told me that the most that he could do, first he said the most he

²Doug Rayburn was not present to testify nor does it appear the City Council required his presence.

could do was two hundred; he came back a time later and said he might be able to go another hundred. So, I did know that three hundred dollars was the most they were going to sponsor. And to me, that's not worth risking my job to lie about.

The City Council and its attorney went into closed deliberations for approximately ten (10) minutes, after which appellant was informed the Council voted to fire him. In February 1996, pursuant to KRS 15.520(2),³ appellant filed suit in Lincoln Circuit Court against the city, the mayor, the council members, and the police chief, contesting their decision to fire him. Appellant not only alleged the decision was unsupported by substantial evidence in the record, but also alleged the procedural due process protections afforded him under KRS 15.520, known as the "policeman's bill of rights," had been violated. Specifically, he alleged:

(1) while KRS 15.520(1)(b) required that he be notified in writing of the reasons for his suspension within 24 hours of being suspended, he was not notified in writing until 5 days after he was suspended;

(2) he was interrogated in the matter by the mayor and Chief Young without notice and after his shift had ended, in violation of KRS 15.520(1)(c), requiring that interrogation occur

³KRS 15.520(2):

Any police officer who shall be found guilty by any hearing authority of any charge, may bring an action in the Circuit Court in the county in which the local unit of government may be located to contest the action of that hearing authority, and the action shall be tried as an original action by the court.

while the officer is on duty, and only after a request for interrogation has been made in writing, followed by a 48-hour waiting period;

(3) he was not advised he had the right to remain silent and the right to counsel prior to being questioned by the mayor and Chief Young, in violation of KRS 15.520(1)(d);

(4) the City Council failed to secure the appearance of Doug Rayburn, the complainant, at the hearing, in violation of KRS 15.520(1)(h)(3), the consequence of which should have been, under KRS 15.520(1)(h)(4), dismissal of Rayburn's complaint against him; and,

(5) he was not informed of his right to be represented by counsel at the hearing and his right to subpoena witnesses thereto, in violation of KRS 15.520(1)(h)(5) and (1)(h)(6).

In November 1996, appellees moved to dismiss appellant's procedural due process claims, arguing that pursuant to Brady v. Pettit, Ky., 586 S.W.2d 29 (1979), the circuit court was limited to determining whether the evidence supported the decision of the City Council. Appellees maintained the court had no jurisdiction to address appellant's due process claims. On November 22, 1996, the court dismissed appellant's due process claims for lack of jurisdiction, and scheduled a trial on the issue of whether the City Council had acted arbitrarily. Pursuant to CR 59, appellant asked the court to reconsider its order of dismissal, arguing he had every right to attack the process by which he had been fired, particularly when that

process is specifically identified and mandated by statute. However, the motion was denied.

A trial was conducted on June 30, 1997, at which appellant was present and was represented by counsel. In addition to his own testimony, appellant called three (3) witnesses to testify on his behalf, the first of whom was Bobby Durham, the officer who responded to Doug Rayburn's complaint and took Rayburn's statement. It appears that Officer Durham's testimony was intended to rebut the City Council's position that the complaining individual in this matter, for purposes of KRS 15.520(1)(h)(3), was Chief Young, not Doug Rayburn, and as such, Rayburn's presence was not required at the City Council hearing.⁴ Officer Durham testified that Rayburn did, in fact, make a complaint against appellant prior to giving his sworn statement, and that it was this complaint which led to appellant's dismissal. The circuit court, however, refused to consider this testimony, and all other testimony that went to appellant's due process claims, having dismissed those claims prior to trial.

The second witness, Randall Reynolds, jointly owns the race car at issue with appellant, and testified to certain conversations he and appellant had with Doug Rayburn concerning the car. Appellant's third witness, his wife, also testified as to certain conversations between appellant and Rayburn which she witnessed.

⁴While Chief Young brought formal charges of misconduct and dishonesty against appellant, we believe the complainant in this case was Doug Rayburn, who was specifically asked to submit a sworn statement, pursuant to KRS 15.520(1)(a)(2).

In its judgment of July 7, 1997, the court found that the City Council did not act arbitrarily when it fired appellant for misconduct and dishonesty, and that there was substantial evidence presented to the City Council to support the action.

KRS 15.520(1) states:

In order to establish a minimum system of professional conduct of the police officers of local units of government of this Commonwealth, the following standards of conduct are stated as the intention of the General Assembly to deal fairly and set administrative due process rights for police officers of the local unit of government and at the same time providing a means for redress by the citizens of the Commonwealth for wrongs allegedly done to them by police officers covered by this section[.]

KRS 15.520(1) (emphasis added). Further, KRS 15.520(1)(h) provides: "When a hearing is to be conducted by any appointing authority, legislative body, or other body as designated by the Kentucky Revised Statutes, the following administrative due process rights shall be recognized and these shall be the minimum rights afforded any police officer charged[.]" (Emphasis added).

We agree with appellees that appellant was entitled only to a quasi trial de novo and that, as such, the court's review of the matter was "limited to a determination of whether in light of all the evidence the decision of the administrative body is arbitrary." City of Henderson Civil Serv. Comm'n v. Zubi, Ky., 631 S.W.2d 632 (1982). See also Brady v. Pettit, Ky., 586 S.W.2d 29, 33 (1979) ("The trial court's review is limited to a determination of whether the administrative body acted *arbitrarily*"). Further, we agree with appellees that "the test for arbitrariness as in all reviews of actions by administrative

bodies is based on the absence of substantial evidence to support the action in question, or is based on the presence of proof so overwhelming that relief must be granted to the claimant.”

Stallins v. City of Madisonville, Ky. App., 707 S.W.2d 349, 351 (1986) (citations omitted).

However, we disagree with appellees’ contention that the circuit court did not have jurisdiction to resolve appellant’s due process claims. Violations of due process rights committed in the course of decisionmaking by an administrative body may render the decision itself arbitrary. See Commonwealth Transp. Cabinet v. Cornell, Ky. App., 796 S.W.2d 591 (1990). Clearly, KRS 15.520 addresses, identifies, and mandates the very rights appellant argues were violated by the authorities and the City Council throughout the process of suspending him and, ultimately, firing him. If, in fact, appellant’s due process rights were violated, the court “may find the [City Council’s] action was arbitrary.” Id. at 594.⁵

“Judicial review [shall be] limited to a review of the transcript of the proceedings below and any other evidence which is relevant to the issue of arbitrariness.” City of Louisville v. Milligan, Ky., 798 S.W.2d 454, 458 (1990) (emphasis added). For the foregoing reasons, we reverse the order of the Lincoln Circuit Court dismissing appellant’s due process claims for lack of jurisdiction, vacate the judgment of the court entered July 7,

⁵While KRS 15.520(1)(h)(9) provides the police officer with the option of addressing alleged procedural violations before the hearing authority, we do not believe that if he does not do so in that particular forum, he is foreclosed from doing so at the circuit court level. KRS 15.520(2).

1997, and remand this matter for hearing on the issue of
arbitrariness, which shall encompass any and all evidence

relevant to appellant's due process claims.

ALL CONCUR.

BRIEF FOR APPELLANT:

Edward E. Dove
Lexington, Kentucky

BRIEF FOR APPELLEES:

Edmund J. Benson
Lexington, Kentucky