

RENDERED: OCTOBER 29, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000019-MR

LARRY MOORE

APPELLANT

v. APPEAL FROM NELSON CIRCUIT COURT
HONORABLE CHARLES C. SIMMS III, JUDGE
ACTION NO. 08-CI-00722

CITY OF NEW HAVEN; MAYOR
TESSIE CECIL; BOBBY JOHNSON,
COMMISSIONER; FREDDY DEWITT,
COMMISSIONER; RUTH FAULKNER,
COMMISSIONER; AND MICHAEL
WOLF, COMMISSIONER

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE , JUDGE; HENRY AND ISAAC,¹ SENIOR JUDGES.

¹ Senior Judges Michael L. Henry and Sheila R. Isaac sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

ISAAC, SENIOR JUDGE: Larry Moore appeals from an order of the Nelson Circuit Court granting summary judgment in favor of the City of New Haven *et al.*² on Moore's claim that his termination as the police chief for the City was in violation of KRS 15.520, also known as the Police Officers' Bill of Rights. For the following reasons, we affirm.

In 2005, Moore and the City of New Haven executed an employment agreement regarding Moore's employment as the police chief. In 2008, Moore was terminated for various reasons, which included insubordination. Thereafter, Moore filed an action alleging his termination was in violation of KRS 15.520.

Approximately one year after Moore filed his complaint, the matter came before the trial court on cross-motions for summary judgment. The trial court granted summary judgment in favor of the City, holding that the City had the authority to terminate Moore; Moore was an at-will employee who could be discharged at any time, with or without notice and with or without cause, per the terms of the employment agreement executed between Moore and the City; and KRS 15.520 did not apply. This appeal followed.

Summary judgment shall be granted only if "the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of

² Mayor Tessie Cecil; Bobby Johnson, Commissioner; Freddy DeWitt, Commissioner; Ruth Faulkner, Commissioner; Michael Wolf, Commissioner. Hereinafter, collectively referred to as "the City."

law.” Kentucky Rules of Civil Procedure (CR) 56.03. The trial court must view the record “in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest, Inc. v.*

Scansteel Serv. Ctr., Inc., 807 S.W.2d 476, 480 (Ky. 1991) (citations omitted).

Further, “a party opposing a properly supported summary judgment motion cannot defeat it without presenting at least some affirmative evidence showing that there is a genuine issue of material fact for trial.” *Id.* at 482 (citations omitted).

On appeal from a granting of summary judgment, our standard of review is “whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Lewis B & R Corp.*, 56 S.W.3d 432, 436 (Ky.App. 2001) (citations omitted). Because no factual issues are involved and only legal issues are before the court on a motion for summary judgment, we do not defer to the trial court and our review is *de novo*. *Hallahan v. Courier-Journal*, 138 S.W.3d 699, 705 (Ky.App. 2004).

First, Moore claims the trial court erred by holding the City had the authority to terminate him for insubordination under KRS 83A.080. Specifically, he argues that KRS 83A.080 vests the authority to terminate police officers solely in the mayor, rather than the commissioners of the City, who terminated him. We disagree.

KRS 83A.080(3) provides, in part:

All nonelected city officers shall be appointed by the executive authority of the city and, except in cities of the first class, all these appointments shall be with approval of the city legislative body if separate from the executive authority. The officers may be removed by the executive authority at will unless otherwise provided by statute or ordinance.

Further, KRS 83A.130(9) provides: “The mayor shall be the appointing authority with power to appoint and remove all city employees, including police officers, except as tenure and terms of employment are protected by statute, ordinance or contract” Thus, “KRS 83A.080(2) and 83A.130(9) permit a local executive authority such as a mayor to terminate the employment of a nonelected city official such as a police officer only if there is no statute which provides otherwise.” *City of Madisonville v. Sisk*, 783 S.W.2d 885, 886 (Ky.App. 1990).

In this case, the record reflects that Moore was terminated at the August 21, 2008, meeting of the New Haven Board of Commissioners, of which the mayor is a member. Thus, under KRS 83A.080, Moore was properly terminated by the mayor under the executive authority conferred to the mayor by statute.

Furthermore, Moore and the City executed a contract designating Moore as an at-will employee of the City, to which the mayor was a signatory. The employment agreement provides in part as follows:

7. Termination

- a) At-Will Employment. Both the Employee [Moore] and the City understand and expressly agree

that this Agreement and the Employee's employment as Police Chief of the City of New Haven may be terminated by either the Employee or by the City at any time, with or without notice and with or without cause.

Thus, the contractual agreement executed between Moore and the City, with the mayor as signatory, expressly states that the City may terminate his employment at any time, with or without notice and with or without cause.

Accordingly, this claim of error is without merit.

Next, Moore claims the trial court erred by granting summary judgment in favor of the City because he was not afforded a hearing pursuant to KRS 15.520 prior to being terminated. We disagree.

KRS 15.520 sets forth

standards of conduct . . . 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). The statute "specifically sets out the standards and administrative due process rights which apply to any hearing conducted by a statutorily appointed authority or body regarding any complaint of police misconduct." *Sisk*, 783 S.W.2d at 886.

Moore cites the case of *City of Munfordville v. Sheldon*, 977 S.W.2d 497 (Ky. 1998), in support of his argument that he was entitled to a hearing under KRS 15.520. In *Sheldon*, the Court held that a hearing was required under KRS

15.520 since the police chief was terminated based on a citizen's complaint. However, the Court emphasized that its "holding merely forbids a mayor or other local executive authority from receiving a citizen's complaint against a police officer, then firing the officer based on that complaint . . . without ever affording the officer a right to publicly defend against the complaint as required by KRS 15.520." *Id.* at 499. Since Moore was not terminated as a result of a citizen's complaint, the holding in *Sheldon* is not persuasive to his case.

In addition, we note that the Court in *Sheldon* distinguished the case from *McCloud v. Whitt*, 639 S.W.2d 375 (Ky.App. 1982), in which this court held that KRS 15.520 did not apply to the removal of the police chief because the removal "was not predicated upon any complaint of professional misconduct, KRS 15.520(1)(a), or upon any charge involving violation of any local unit of government rule or regulation, KRS 15.520(1)(e), but resulted from action by the mayor under the discretionary power given him by KRS 82.080(2)." *Id.* at 377. Similarly, in this case KRS 15.520 does not apply since Moore's removal was not based on a citizen's complaint.

The order of the Nelson Circuit Court is affirmed.

ACREE, JUDGE, CONCURS.

HENRY, SENIOR JUDGE, CONCURS IN RESULT ONLY.

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