

[Cite as *Myer v. Hoops*, 2004-Ohio-6136.]

COURT OF APPEALS
PERRY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

PETER J. MYER

Plaintiff-Appellee

vs.

DAVID HOOPS, ET AL.

Defendants-Appellants

: JUDGES:
: Hon. Sheila G. Farmer, P.J.
: Hon. John W. Wise, J.
: Hon. Julie A. Edwards, J.

: Case No. 04CA03

: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 02CV00090

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

November 15, 2004

APPEARANCES:

For Plaintiff-Appellee

For Defendants-Appellants

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Farmer, P.J.

{¶1} Appellant, David Hoops, was a volunteer firefighter and a trustee for Thorn Township in Perry County, Ohio. Prior to February 9, 2002, appellant resigned his position as a volunteer firefighter.

{¶2} On March 8, 2002, appellee, Peter Myer, a member of the Thorn Township EMS, filed a complaint claiming appellant's position as a volunteer firefighter and his service as a township trustee were incompatible. Appellee sought an injunction to invalidate all votes relating to fire and emergency medical services cast by appellant while he was a volunteer firefighter. By judgment entry filed May 9, 2002, the trial court found appellant's resignation was ineffective because he had participated in a training fire session. Therefore, the trial court invalidated appellant's vote pertaining to the adoption of the Fire and EMS Governmental Policies Handbook 2002, and granted the injunction as to appellant's prior actions. An amended entry was filed on October 8, 2002 to address the issue of costs.

{¶3} On October 8, 2003, appellee filed a motion for contempt, claiming appellant continued to vote on fire and emergency medical services issues in violation of the trial court's May 9, 2002 order. A hearing was held on January 21, 2004. The parties discussed an agreed entry with the trial court. Subsequently, an agreed entry was sent to appellant. Appellant refused to sign it. Nevertheless, the trial court signed the entry and filed it as a final order on January 29, 2004.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶5} "THE COURT OF COMMON PLEAS ERRED WHEN IT ORDERED THAT APPELLANT HOOPS COULD NOT, AT ANY TIME IN THE FUTURE, VOTE ON ISSUES RELATING TO FIRE AND EMERGENCY MEDICAL SERVICES."

II

{¶6} "THE COURT OF COMMON PLEAS ERRED WHEN IT DETERMINED THAT APPELLANT HOOPS COULD NOT VOTE ON ANY ISSUES RELATING TO FIRE AND EMERGENCY MEDICAL SERVICES WHILE SERVING AS A VOLUNTEER FIREFIGHTER."

III

{¶7} "THE COURT OF COMMON PLEAS ERRED WHEN IT DETERMINED THAT THE POSITIONS OF TOWNSHIP TRUSTEE AND VOLUNTEER FIREFIGHTER FOR THE SAME TOWNSHIP ARE INCOMPATIBLE."

I, II, III

{¶8} These assignments of error challenge the trial court's order of January 29, 2004. Before considering the issues raised by these assignments, it is necessary to address the appropriateness of this appeal. For the following reasons, we find the appeal sub judice to lack merit.

{¶9} The trial court filed its original decision on the injunction request on May 9, 2002. Thereafter, on September 30, 2002, appellee requested that the trial court submit a final appealable order to include costs. The trial court complied and filed an amended entry on October 8, 2002. In this amended entry, the trial court found the position of township trustee and volunteer firefighter created a conflict of interest and as a result,

the trial court invalidated appellant's vote on the Fire and EMS Governmental Policies Handbook 2002 Resolution. Although the decision had limited scope, it nevertheless established a conflict of interest. Because neither party filed an appeal, the trial court's decision became law of the case.

{¶10} On October 8, 2003, appellee filed a motion for contempt regarding the amended entry. The trial court filed an entry on January 29, 2004, which is the subject of this appeal. From an examination of the transcript of the contempt hearing filed instanter, the January 29, 2004 entry was an agreed entry by both parties. Appellant was represented by the prosecuting attorney who initiated the following agreement into the record:

{¶11} "Your Honor, it's -- it's my understanding that the contempt citation would not be pursued provided that an agreement is put on the record that we both -- the trustee from the -- this would be from the May of 2002 to the present that dealt with fire department issues would be considered void and that he refrain from voting on any fire department issues in the future, including making a motion or seconding a motion.

{¶12} "And if I may clarify, the prohibition against voting would not prohibit him from being an advocate for the department with the board, the other board members, including suggesting that certain action be taken or certain equipment be purchased or certain personnel be placed on the department. And if that -- if my understanding is accurate, I believe Mr. Hoops is in agreement with that.

{¶13} ****

{¶14} "Your Honor, it's my understanding that whether he resign now or not, he would not be allowed to vote on [fire department] township issues. So I believe it's his

intention to remain on the department. If -- if he could resign and vote on those issues, he would permanently resign the department. But it's my understanding that, even if he resigns, the Court feels that he would not be permitted to vote on [fire department] township issues. So he would -- he would remain an active member of the board." T. at 2-3.

{¶15} The trial court asked appellee if the agreement was his understanding and appellee replied in the affirmative. T. at 3, 4. Thereafter, the trial court stated the following without objection:

{¶16} "Okay. Based upon that agreement, then, the Court will ask to have an entry forwarded to the Court by the plaintiff signed by defense within ten days; and once that is forwarded to the Court and signed, then that will be the order of the Court." T. at 4.

{¶17} Although appellant did not sign the agreed entry, the record does not indicate that he preserved any issue for appeal. Because appellant invited the error and consented to it, he waived any legitimate objection on appeal.

{¶18} Based upon our review of the record and proceedings, we deny all of the assignments of error.

{¶19} The judgment of the Court of Common Pleas of Perry County, Ohio is hereby affirmed.

By Farmer, P.J.

Wise, J. and

Edwards, J. concur.

JUDGES

SGF/db 1019

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JUDGMENT ENTRY

CASE NO. 04CA03

For the reasons stated in the Memorandum-Opinion on file, the judgment of the Court of Common Pleas of Perry County, Ohio is affirmed.

JUDGES