

OPINIONS OF THE SUPREME COURT OF OHIO

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The State ex rel. Schneider, Appellant, v. Board of Education of North Olmsted City School District, Appellee.

[Cite as State ex rel. Schneider v. N. Olmsted City School Dist. Bd. of Edn. (1992), Ohio St.3d .]

Mandamus seeking back pay, benefits and interest for wrongful discharge -- Res judicata applies when back pay issue decided in previous mandamus case granting reinstatement. (No. 91-919 -- Submitted October 13, 1992 -- Decided December 14, 1992.)

Appeal from the Court of Appeals for Lorain County, No. 89CA004683.

William J. Schneider, appellant, an employee of the Board of Education of the North Olmsted City School District, appellee, was terminated by the board in 1981. His appeal ultimately resulted in a disaffirmance of the termination. See N. Olmsted Bd. of Edn. v. N. Olmsted Civ. Serv. Comm. (1983), 13 Ohio App.3d 201, 13 OBR 249, 468 N.E.2d 749. However, he was not reinstated by the board.

In 1984, Schneider filed a mandamus action against the board in the Ninth District Court of Appeals, but that court transferred the case to the Eighth Appellate District. The Eighth Appellate District ruled it lacked jurisdiction over the action and dismissed it.

Schneider thereafter filed a motion to reinstate his mandamus complaint in the Ninth District, and the court granted the motion. He sought reinstatement and back pay.

On January 28, 1987, the Ninth District Court granted a writ of mandamus, ordering the board to reinstate Schneider. As to back pay, it stated:

"Schneider has failed to submit evidence sufficient to establish his claim to back pay and benefits with certainty. Such a dearth of evidence not only makes it impossible for this court to calculate the amount of the sums allegedly owed, but whether they are owing at all. Consequently, this court declines to issue a writ of mandamus requiring the recovery of compensation. However, a writ shall issue ordering the respondents to reinstate Schneider to his prior position."

The board appealed this decision, alleging that the Eighth

District's dismissal decision was res judicata to the action and barred the Ninth District decision. However, in State ex rel. Schneider v. N. Olmsted Bd. of Edn. (1988), 39 Ohio St.3d 281, 530 N.E.2d 206, we rejected this argument and affirmed the Ninth District's judgment. Schneider did not appeal the Ninth District's ruling on back pay.

The board reinstated Schneider but has not paid him back pay. Schneider filed this complaint for a writ of mandamus in the Court of Appeals for Lorain County, seeking net back pay, benefits, and interest, totaling at least \$228,399.54. The court of appeals dismissed the case because the back pay question had been adjudicated in the January 28, 1987 decision and was res judicata.

This matter is before this court upon an appeal as of right.

Francis X. Cook Co., L.P.A., and Francis X. Cook, for appellant.

Squires, Sanders & Dempsey, Timothy J. Sheeran, Jeffrey J. Wedel and David K. Smith, for appellee.

Per Curiam. Schneider argues that he could not have established back pay with certainty in the previous mandamus action because he had not yet been reinstated. The board responds that the court of appeals could and did decide on back pay in the previous mandamus case and that, consequently, res judicata precludes Schneider from relitigating this issue here.

We have permitted a wrongfully excluded employee to obtain back pay in a mandamus action after he has been reinstated, Monaghan v. Richley (1972), 32 Ohio St.2d 190, 61 O.O.2d 425, 291 N.E.2d 462, State ex rel. Hamlin v. Collins (1984), 9 Ohio St.3d 117, 9 OBR 342, 459 N.E.2d 520, and (1981), 65 Ohio St.2d 63, 19 O.O.3d 259, 418 N.E.2d 398; we have also decided cases combining the two remedies in one mandamus action, State ex rel. Rose v. James (1991), 57 Ohio St.3d 14, 565 N.E.2d 547, and State ex rel. Fenton v. Dept. of Human Serv. (1992), 63 Ohio St.3d 481, 589 N.E.2d 11. In the former cases, reinstatement was accomplished via appeal, and back pay could not be addressed in the appellate setting. Consequently, the court allowed mandamus. However, in the latter cases, reinstatement and back pay were both achieved through mandamus. Thus, the court of appeals could entertain both questions in one mandamus action.

Here, Schneider asked the court of appeals to decide the back pay question in the previous mandamus action, and the court complied. However, it decided the issue against Schneider, because he had not presented sufficient evidence to prove his claim. Schneider did not appeal this finding and, thus, faces defeat in this case for two reasons.

First, he had an adequate remedy at law--appealing the back pay decision. In State ex rel. Cartmell v. Dorrian (1984), 11 Ohio St.3d 177, 178, 11 OBR 491, 492, 464 N.E.2d 556, 558, we stated:

"The fact that appellant failed to timely pursue his right of appeal does not make that remedy inadequate. If that were the case, this criterion for a writ of mandamus would be met whenever the opportunity to pursue another adequate remedy

expired. Would-be appellants could thwart the appellate process simply by ignoring it."

Second, res judicata bars recovery. In *State ex rel. Witsamen v. Maumee Valley Guidance Ctr., Inc.* (1983), 6 Ohio St.3d 26, 6 OBR 22, 450 N.E.2d 1180, we held that failure to pursue an appeal in the underlying case prevents a collateral attack on the judgment in mandamus under res judicata.

Accordingly, we affirm the judgment to dismiss the complaint.

Judgment affirmed.

Moyer, C.J., Sweeney, Holmes, Wright, H. Brown and Resnick, JJ., concur.

Douglas, J., dissents.