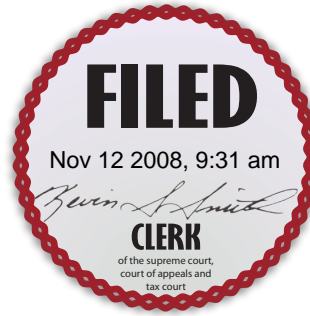


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

AARON SPARKS,)
)
Appellant-Petitioner,)
)
vs.)
)
MAYOR BART PETERSON, THE CITY)
OF INDIANAPOLIS, THE INDIANAPOLIS)
METROPOLITAN POLICE DEPARTMENT,)
et al.)
)
Appellee-Respondent.)

No. 49A02-0806-CV-548

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Thomas J. Carroll, Judge
Cause No. 49D06-0711-PL-047130

November 12, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Aaron Sparks appeals the trial court's dismissal of his complaint against Mayor Bart Peterson, the City of Indianapolis, Indianapolis Metropolitan Police Department, Police Chief Michael Spears, Sheriff Frank Anderson, Deputy Chief Joseph B. McAtee, and Deputy Chief Clifford Myers (collectively, Appellees). Sparks presents three issues for review, which we consolidate and restate as: Did the trial court properly dismiss Sparks's complaint pursuant to Ind. Trial Rule 12(B)(1) and/or T.R. 12(B)(6)?

We affirm.

An agreement (the Contract) between the City of Indianapolis and the Fraternal Order of Police, Lodge #86, the exclusive bargaining representative for all ranks of the Indianapolis Metropolitan Police Department (IMPD), became effective on January 1, 2007. Sparks was at all times pertinent to this case an employee and officer of IMPD. As an IMPD officer, Sparks's employment relationship was governed by the Contract.

On or before April 5, 2007, the Internal Affairs Division of IMPD completed an investigation into allegations that Sparks was engaged in illegal gambling activities. Under the terms of the Contract, discipline must be imposed no later than thirty days after completion of such an investigation or no discipline may be imposed as a result of the alleged misconduct. On May 6, 2007,¹ Sparks was notified that he would receive a one-day suspension for the alleged misconduct. On July 25, 2007, Sparks was notified that his suspension would be for five days rather than one day. On August 1, 2007, Sparks requested a hearing before the Board of Captains, and on August 4, 2007, he filed a formal grievance regarding his discipline. His grievance was denied on August 24, 2007.

¹ Sparks was off work from May 3 through May 5.

Seventy days later, on November 2, 2007, Sparks filed his complaint against Appellees. In his complaint, Sparks claimed that the Appellees' actions in imposing discipline violated his right to due process under article 1, section 12 of the Indiana Constitution (Count I) and the terms of the Contract under which he was employed (Count II).² On December 19, 2007, the Appellees moved to dismiss Sparks's complaint, arguing that his lawsuit was an appeal over which the court lacked jurisdiction because the discipline imposed was only a five-day suspension. The Appellees further argued as a basis for dismissal that the action was untimely because an appeal from a disciplinary action must be made within thirty days of the action taken.³ It was also argued that, except for the City of Indianapolis, the other named defendants were not proper defendants in the action.⁴ The trial court held a hearing on the Appellees' motion to dismiss on February 2, 2008. The trial court issued an order on February 25, 2008 dismissing Spark's complaint. The trial court

² We note that the Contract provides two different procedures to be followed depending on the nature of the officer's employment claim. If the officer's claim is that that "the other party" has breached the Contract, then the claim "shall be processed through this contract grievance procedure", that being a four-step process beginning with the officer's supervisor, then moving to officer's Deputy Chief, before a representative of the F.O.P. may appeal to the Grievance Board and finally the Sheriff for a final and binding decision. *Appellant's Appendix* at 34. If the officer's claim involves a disciplinary matter, the officer "shall pursue the grievance process set forth in the General Orders" *Id.*

On October 7, 2008, Sparks filed an Objection to Inclusion of Private Documents Outside the Official Record and Motion to Strike references to the General Orders on grounds that the General Orders are "not public record, are not published contracts or laws and are not a part of the record before this court." The Appellees filed a response to Sparks's Motion to Strike on October 24, 2008. We note here our denial of Sparks's motion by separate order. We further point out that we resolved the issue presented without reference to the disputed material.

³ Ind. Code Ann. § 36-8-3.5-18(b)(1) (West, Premise through 2007 1st Regular Sess.) provides that where an appeal to the circuit or superior court may be taken under subsection (a), "[t]he verified appeal must be filed within thirty (30) days after the date on the board's decision."

⁴ I.C. § 36-8-3.5-18(b)(2) provides that where an appeal to the circuit or superior court may be taken under subsection (a), "the unit shall be named as the sole defendant." Here, the unit would be the City of Indianapolis.

concluded that it lacked jurisdiction and also determined that because Sparks had no contract with any of the Appellees, he could not maintain his claim. Sparks now appeals.

The applicable standard of review for T.R. 12(B)(1) motions to dismiss for lack of subject matter jurisdiction is a function of what occurred in the trial court. *GKN Co. v. Magness*, 744 N.E.2d 397 (Ind. 2001). “That is, the standard of review is dependent upon: (i) whether the trial court resolved disputed facts; and (ii) if the trial court resolved disputed facts, whether it conducted an evidentiary hearing or ruled on a ‘paper record.’” *Id.* at 401. If the facts before the trial court are not in dispute, then the question of subject matter jurisdiction is purely one of law. *GKN Co. v. Magness*, 744 N.E.2d 397. Under those circumstances no deference is afforded the trial court’s conclusion because “appellate courts independently, and without the slightest deference to trial court determinations, evaluate those issues they deem to be questions of law.” *Id.* at 401. Thus, our review in such cases is de novo. *GKN Co. v. Magness*, 744 N.E.2d 397.

We begin with I.C. § 36-8-3.5-18(a), which provides that “[a] member who is aggrieved by a decision of the commission to suspend him for a period greater than ten (10) calendar days, demote him, or dismiss him may appeal to the circuit or superior court of the county in which the unit is located.” In other words, judicial review of a police officer suspension is available only when the suspension is greater than ten calendar days. This statute is grounded in sound public policy, i.e., the General Assembly did not want Indiana’s courts to become entangled in cases involving minor discipline, in which category the General Assembly placed suspensions of less than ten calendar days. Here, there is no

dispute that Sparks received only a five-day suspension. Judicial review of such disciplinary actions is thus not available.

Sparks's attempts to frame the claims in his complaint as unrelated to disciplinary matters are unavailing. In determining whether Sparks's complaint raises claims involving disciplinary matters, we afford no weight to Sparks's characterization of his claims as a violation of due process or as breach of contract. Rather, we will evaluate the nature of the underlying substantive claim set out in the complaint, considering the substance and central character of the complaint, the rights and interests involved, and the relief demanded. *Alvarado v. Nagy*, 819 N.E.2d 520 (Ind. Ct. App. 2004).

Sparks's complaint itself contradicts his claim that his complaint is unrelated to disciplinary matters. The basis of Sparks's claims is the Appellees' alleged failure to provide him with the procedures he claims were required prior to imposing a five-day suspension as discipline. Sparks recounts the circumstances and timeline of the initial discipline followed by imposition of a five-day suspension. Sparks then alleges that he was not granted his right to appeal the determination, to appear at a hearing and present evidence, subpoena witnesses or present his testimony for consideration. He ultimately claims that the Appellees' failure to adhere to the terms of the Contract violated his due process rights and constituted a breach of contract. As a result, Sparks claims that he has suffered a loss of pay, a diminution of future earning capacity, and an impairment of his ability to advance beyond grade. The gist of Sparks's complaint, the harm suffered, and the relief he requested are directly related to the discipline imposed, i.e., the five-day suspension. As noted above, in such case, judicial

review is not available. We therefore conclude that the trial court properly granted the Appellees' motion to dismiss for lack of subject matter jurisdiction.

Judgment affirmed.

DARDEN, J., and BARNES, J., concur