RENDERED: OCTOBER 18, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001650-MR

LT. ED ROBINSON, CITY OF MT. VERNON, KENTUCKY POLICE DEPARTMENT — APPELLANT

v.

APPEAL FROM ROCKCASTLE CIRCUIT COURT
HONORABLE DAVID A. TAPP, JUDGE
ACTION NO. 16-CI-00244

CITY OF MT. VERNON, KENTUCKY; MAYOR MIKE BRYANT, INDIVIDUALLY; MAYOR MIKE BRYANT, IN HIS OFFICIAL CAPACITY; CLIFFORD MULLINS, IN HIS OFFICIAL CAPACITY; WAYNE BULLOCK, IN HIS OFFICIAL CAPACITY; JAMIE ANDERKIN BRYANT, IN HER OFFICIAL CAPACITY; SHELLEY RAINES LEWIS, IN HER OFFICIAL CAPACITY; JACKIE WEAVER, IN HIS OFFICIAL CAPACITY; AND SHARON SAYLOR, IN HER OFFICIAL CAPACITY — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, CHIEF JUDGE; NICKELL AND L. THOMPSON, JUDGES.

L. THOMPSON, JUDGE: Lt. Ed Robinson, City of Mt. Vernon, Kentucky Police Department ("Appellant") appeals from a summary judgment entered by the Rockcastle Circuit Court in favor of City of Mt. Vernon, Kentucky, *et al.*, ("Appellees"). Appellant argues that the circuit court improperly concluded that Mt. Vernon Mayor Mike Bryant ("the Mayor") was correct in his application of Kentucky Revised Statutes ("KRS") 15.520 to Appellant's disciplinary proceeding. For the reasons addressed below, we AFFIRM the judgment on appeal.

Facts and Procedural History

Appellant is a police officer employed by the city of Mt. Vernon, Kentucky ("the city"). On June 29, 2016, the city notified Appellant that he was suspended from employment with pay based on several allegations of misconduct. The city informed Appellant that he was entitled to a hearing pursuant to KRS 15.520, and that his employment was subject to termination.

The Mayor conducted a disciplinary hearing on July 25, 2016. It was alleged that Appellant committed several violations of Section 4(c) of the Mt. Vernon police personnel manual including conduct unbecoming a member of the police force, unsatisfactory work and/or attitude, the accumulation of minor infractions, the failure to provide security during an event with Kentucky Governor Matt Bevin, and improper behavior at Rockcastle Regional Hospital when

Appellant allegedly placed a nurse in handcuffs in a joking or flirtatious manner. Appellant was represented by counsel at the hearing where testimony was adduced.

Thereafter, the Mayor rendered written findings of fact in which he concluded that while in uniform, Appellant engaged in flirtatious horseplay on more than one occasion with a nurse at Rockcastle Regional Hospital. The Mayor found that Appellant handcuffed the nurse to a cabinet and also handcuffed her hands behind her back. The nurse's employment with the hospital was terminated as a result. The Mayor also found that on June 17, 2016, Appellant was requested to provide security at an event at which the Governor, a Congressman, and other dignitaries were present, but Appellant's physical position and demeanor rendered him unable to see or prevent any threat to the safety of those in attendance. No evidence was presented that Appellant slept on duty, nor that there was an accumulation of minor infractions.

Based on the findings, the Mayor suspended Appellant without pay for four weeks. In addition, Appellant was not allowed to continue providing security at the hospital and was ordered to complete an ethics and sexual harassment training course. Appellant then prosecuted an appeal to the Rockcastle Circuit Court, culminating in cross-motions for summary judgment. On October 12, 2018, the circuit court entered an order denying Appellant's motion and granting Appellees' motion. In support of the order granting summary judgment in

favor of Appellees, the court determined that as a police officer, Appellant was entitled to the due process protections set out in KRS 15.520. Citing *Stallins v. City of Madisonville*, 707 S.W.2d 349, 350 (Ky. App. 1986), the circuit court determined that the standard of review shifts the burden of proof to the aggrieved employee and limits the circuit court's review to the issue of whether the agency's decision was arbitrary. Upon considering this issue, the circuit court found that Appellant received notice of the proceeding, was represented by counsel, and received a full and fair hearing, including counsel's examination of witnesses; therefore, Appellant received the due process to which he was entitled. It sustained the Mayor's action suspending Appellant for four weeks, and this appeal followed.

Arguments and Analysis

The focus of Appellant's claim of error is his contention that KRS 15.520 "no longer applies to disciplinary actions" that originate from within a police department or by the Mayor. He maintains that on July 1, 2018, the legislature amended KRS 15.520 to remove the word "individual" when referring to those alleging officer misconduct and inserted in its place the word "citizen." The substance of his argument is that the July 1, 2018 amendment rendered KRS 15.520 applicable only to "citizen" complaints and not to departmental or mayoral complaints of officer misconduct. Incongruously, Appellant goes on to argue that even though KRS Chapter 15 was not applicable to the claim of misconduct, the

city nevertheless had a duty to properly adhere to its requirements after initiating the proceeding against him. He contends that from the outset, it was not clear who was running the hearing; that a hospital security officer was improperly allowed to give hearsay evidence; that mandatory affidavits under KRS 15.520(3) were not submitted; and that the Mayor should have held himself in contempt for acting as "charger, prosecutor, fact-finder and adjudicator." Appellant goes on to argue that the circuit court erred in failing to conclude that the Mayor was biased and should have recused himself from the proceedings. In sum, Appellant asserts that genuine issues of material fact remain for adjudication on these issues and that summary judgment was improperly entered.

KRS 15.520(4)(a) states,

> When an officer is accused of an act or omission that would constitute a violation of law enforcement procedures by any individual within the law enforcement agency employing the officer, including supervisors and elected or appointed officials of the officer's employing agency, the employing agency shall conform the conduct of any investigation to the provisions of subsection (5) of this section, shall formally charge the officer in accordance with subsection (6) of this section, and shall conduct a hearing in accordance with subsection (7) of this section before any disciplinary action shall be taken against the officer.

Subsection (7) provides that, "[U]nless waived by the charged officer in writing, a hearing shall be conducted by the officer's appointing authority to determine whether there is substantial evidence to prove the charges and to

determine what, if any, disciplinary action shall be taken if substantial evidence does exist." Subsection (7) entitles the officer to elements of due process including written notice of the charges, copies of sworn statements or affidavits, the opportunity to obtain counsel, and the opportunity to present and cross-examine witnesses. Finally, a finding of guilt may be appealed to the circuit court for arbitrariness, and from the circuit court's ruling to the Court of Appeals. KRS 15.520(8)(a) and (b).

It is noteworthy that KRS 15.520(4) applies not only to citizen complaints, but also to claims of "an act or omission that would constitute a violation of law enforcement procedures *by any individual within the law enforcement agency employing the officer, including supervisors and elected or appointed officials of the officer's employing agency*[.]" KRS 15.520(4)(a) (emphasis added). In the matter before us, Appellant was charged with violation of Mt. Vernon's "Police Manual Policy 2-2015." Appellant was reprimanded by the Chief of Police and subsequently formally charged by the Mayor, *i.e.*, an elected official of the officer's employing agency. KRS 15.520(4)(a). In conformity with KRS 15.520(5)-(7), Appellant received notice of the charge and the hearing, was allowed the opportunity to obtain counsel, and was able to present and cross-examine witnesses.

On appeal to the circuit court, the standard of review shifts the burden of proof to the aggrieved employee and limits the court's review to whether the agency's action was arbitrary. *Stallins,* 707 S.W.2d at 350. "If an administrative agency's findings of fact are supported by substantial evidence of probative value, they must be accepted as binding and it must then be determined whether or not the agency has applied the correct rule of law to the facts so found." *Liquor Outlet, LLC v. Alcoholic Beverage Control Board*, 141 S.W.3d 378, 381 (Ky. App. 2004) (citation omitted). "Substantial evidence means evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men." *Kentucky Retirement Systems v. Bowens*, 281 S.W.3d 776, 780 (Ky. 2009) (citation and internal quotation marks omitted).

We find no error in the Rockcastle Circuit Court's conclusion that Appellant was availed of the statutory matrix set out in KRS 15.520, and its conclusion that the Mayor's decision was supported by substantial evidence. The evidence of Appellant handcuffing the nurse in the presence of hospital patients, albeit in a flirtatious or joking manner, taken alone is sufficient to sustain the Mayor's findings.

The matter is before us on the entry of summary judgment. Summary judgment "shall be rendered forthwith 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 law." Kentucky Rules of Civil Procedure ("CR") 56.03. "The record must be viewed 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 Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Summary judgment should be granted only if it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor. *Id*. "Even though a trial court may believe the party opposing the motion may not succeed at trial, it should not render a summary judgment if there is any issue of material fact." *Id.* Finally, "[t]he standard of review on appeal of a summary judgment 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." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996).

Conclusion

When viewing the record in a light most favorable to Appellant and resolving all doubts in his favor, we conclude that there was no genuine issue as to any material fact and Appellees were entitled to a judgment as a matter of law. The proceeding against Appellant was conducted in conformity with KRS 15.520, and the record contains substantial evidence sufficient to support the Mayor's

findings and disciplinary action. We find no error. For the foregoing reasons, we AFFIRM the summary judgment of the Rockcastle Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEES:
Jerry J. Cox Mt. Vernon, Kentucky	Bobby L. Amburgey Mt. Vernon, Kentucky