

NOT DESIGNATED FOR PUBLICATION

JAMES DARBY * **NO. 2006-CA-0569**
VERSUS * **COURT OF APPEAL**
CITY OF NEW ORLEANS, * **FOURTH CIRCUIT**
DEPARTMENT OF POLICE, * **STATE OF LOUISIANA**
AND EDWIN COMPASS, *
SUPERINTENDENT OF
POLICE * * * * *

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2005-10997, DIVISION "N-8"
Honorable Ethel Simms Julien, Judge

* * * * *

Judge Dennis R. Bagneris, Sr.

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(Court composed of Judge James F. McKay III, Judge Dennis R. Bagneris, Sr., and Judge Terri F. Love)

MCKAY, J., DISSENTS

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FEBRUARY 14,

2007

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AFFIRMED

This is an appeal taken by the City of New Orleans from a judgment of the district court, which issued a writ of mandamus directing appellants to reinstate plaintiff, James Darby, to his employment.

FACTS:

Mr. Darby was a Police Officer with permanent status for the New Orleans Police Department. Mr. Darby was terminated by the New Orleans Police Department in February 1998. Thereafter, Mr. Darby appealed his termination with the Civil Service Commission pursuant to the Civil Service Rules.

On August 15, 2000, after a two day hearing, the Civil Service Commission rendered a decision ordering the New Orleans Police Department to reinstate Mr. Darby to his former position with full back pay and all other emoluments of employment. The City of New Orleans did not appeal the Civil Service Commission decision, thus, the decision is final. However, to this date, the City of New Orleans has not taken any steps to comply with the judgment.

On August 16, 2005, Mr. Darby filed a petition for writ of mandamus in order for the New Orleans Police Department to comply with the Civil Service Commission's judgment and to reinstate him to his former position with full back pay and other emoluments. On February 10, 2006, the trial court granted Mr. Darby's petition for writ of mandamus. The City of New Orleans now appeals.

DISCUSSION

The issue on appeal is whether the writ of mandamus was the proper procedure to enforce the Civil Service Commission's judgment.

An employee with permanent status in the classified city civil service may be disciplined only for cause expressed in writing. La. Const. art. X, § 8(A). He may appeal from such disciplinary action to the Civil Service Commission, and the burden of proof on appeal, as to the facts, is on the appointing authority. La. Const. art. X, § 8(A); *Walters v. Department of Police of the City of New Orleans*, 454 So.2d 106, 112-113 (La. 6/25/84).

On appeal, the Civil Service Commission has a duty to decide if the appointing authority had good or lawful cause for taking disciplinary action, and, if so, whether the punishment is commensurate with the offense.

Walters, 454 So.2d at 113.

In this case, the Civil Service Commission granted Mr. Darby's

appeal and ordered the City of New Orleans Police Department to reinstate Mr. Darby to his former position with full back pay and all other emoluments of employment. The City of New Orleans neither challenged this order with the Commission, nor did it appeal this ruling.

When the City of New Orleans Police Department failed to comply with the Civil Service Commission's ruling to reinstate Mr. Darby to his former position with full back pay, Mr. Darby properly filed a writ of mandamus to enforce the Civil Service Commission's final judgment. See *Ricca v. City of Baton Rouge*, 450 So.2d 1032 (La. App. 1 Cir. 5/30/84) (where the court held that a writ of mandamus was the proper procedure to enforce the legal authority granted to the Civil Service Board); *Robinson v. City of Baton Rouge*, 566 So.2d 415 (La. App. 1 Cir. 6/26/90) (where the court found that a writ of mandamus is the proper method for enforcing a final order of the Board).

For these reasons, we find that a writ of mandamus was the proper procedure to enforce the legal authority of the Civil Service Commission's ruling so as to enable Mr. Darby to be reinstated to his former position with full back pay and all other emoluments.

AFFIRMED