STATE OF MICHIGAN

COURT OF APPEALS

CITY OF MADISON HEIGHTS,

Petitioner-Appellee/Cross-Appellee,

v

RICHARD M. CRAZE,

Respondent-Appellant/Cross-Appellee,

and

MADISON HEIGHTS CIVIL SERVICE COMMISSION,

Respondent-Appellee/Cross-Appellant.

UNPUBLISHED
December 14, 2010

No. 293042
Oakland Circuit Court
LC No. 2008-090254-AS

Before: WILDER, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

Respondent-appellant/cross-appellee, Richard M. Craze (Craze), appeals as of right an order denying superintending control in this dispute over termination of employment with petitioner-appellee/cross-appellee City of Madison Heights (petitioner) and respondent-appellee/cross-appellant, Madison Heights Civil Service Commission (the Commission). The Commission cross-appeals as of right[1] the same order. We affirm.

Craze, a former Madison Heights police officer, first argues that the trial court lacked subject matter jurisdiction to hear petitioner's complaint for superintending control because petitioner has no right to appeal the Commission's decision under MCL 38.514(1). We disagree.

[1] Although the Commission filed a claim of cross appeal on July 30, 2009, quite inexplicably, it adopts petitioner's brief, yet asks that this Court reverse the trial court's order of June 22, 2009.

"Both subject-matter jurisdiction and statutory interpretation issues raise questions of law that are considered de novo on appeal." *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 98; 693 NW2d 170 (2005). "In general, subject-matter jurisdiction has been defined as a court's power to hear and determine a cause or matter." *In re Estate of Lager*, 286 Mich App 158, 162; 779 NW2d 310 (2009). "If a court lacks subject-matter jurisdiction, its acts and proceedings are invalid." *City of Riverview v Sibley Limestone*, 270 Mich App 627, 636; 716 NW2d 615 (2006). Pursuant to Const 1963, art 6, § 13:

> The circuit court shall have original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law; power to issue, hear and determine prerogative and remedial writs; supervisory and general control over inferior courts and tribunals within their respective jurisdictions in accordance with rules of the supreme court; and jurisdiction of other cases and matters as provided by rules of the supreme court.

See also MCL 600.605. In addition, pursuant to Const 1963, Art VI, § 28:

> All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are *judicial or quasi-judicial* and affect private rights or licenses, *shall be subject to direct review by the courts as provided by law*. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. [Emphasis added.]

MCL 38.501 *et seq*. (referred to as "Act 78"), addresses the creation of civil service commissions for police officers and firefighters. MCL 38.514(1) states, in relevant part:

> The tenure of each person holding an office, place, position, or employment under this act shall be only during good behavior and efficient service, and *any person may be removed or discharged, suspended without pay, and deprived of vacation privileges or other special privileges by the civil service commission* for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment to the public, neglect of duty, a violation of this act or of the rules of the commission, or for any other failure of good behavior, or for any other acts of misfeasance, malfeasance, or nonfeasance in office. . . . If the person sought to be removed or reduced demands it, the civil service commission shall grant him or her a public hearing . . . . At the hearing, the burden shall be upon the removing officer to justify his or her action. . . . *If the civil service commission sustains the action of the removing officer, the person removed shall have an immediate right of appeal to the circuit court of the county in which the city, village, or municipality is situated* . . . . [Emphasis added.]

When this Court engages in statutory interpretation,

> the primary purpose . . . is to give effect to legislative intent. Legislative intent is determined by reviewing the language of the statute. When the language is unambiguous, we presume the Legislature intended the meaning plainly expressed. A statute is construed by considering both the plain meaning of a critical word or phrase and its placement, purpose, and grammatical context within the statute. Every word, phrase, and clause must be given effect. [*Riverview*, 270 Mich App at 631-632 (internal citations omitted).]

As provided above, MCL 38.514(1) states that an officer terminated by a civil service commission can appeal the decision, but, as Craze correctly notes, the statute does not address a course of action for a city to appeal a decision. Nevertheless, "[b]ecause the Legislature has not provided for appeal from municipal civil service boards, review is by complaint for superintending control." *In re Payne*, 444 Mich 679, 687; 514 NW2d 121 (1994). Moreover, "[t]he process of seeking an order of superintending control is not an appeal. It is an original civil action designed to require the defendant to perform a clear legal duty." *Beer v Fraser Civil Serv Comm*, 127 Mich App 239, 242; 338 NW2d 197 (1983). "A superintending control order enforces the superintending control power of a court over lower courts or tribunals. A circuit court has jurisdiction to issue orders of superintending control over administrative tribunals of a judicial or quasi-judicial nature." *Id*. at 243; MCR 3.302. As in the case at bar, "a city civil service commission acts in a quasi-judicial capacity when it renders a decision on an appeal by a removed employee." *Id*. See also *Barham v Workers' Compensation Appeal Bd*, 184 Mich App 121, 127-129; 457 NW2d 349 (1990). Therefore, the circuit court had jurisdiction to hear petitioner's complaint for superintending control.

Craze next argues that petitioner lacked standing to file a complaint for superintending control because it could not show an injury resulting from the Commission's order. We disagree.

Whether a party has standing is a question of law subject to de novo consideration on appeal. *Nat'l Wildlife Fed'n v Cleveland Cliffs Iron Co*, 471 Mich 608, 612; 684 NW2d 800 (2004), overruled on other grounds by *Lansing Sch Educ Ass'n v Lansing Bd of Ed*, ___ Mich ___; ___ NW2d ___ (2010), slip op at 1. "[A] litigant has standing whenever there is a legal cause of action." *Lansing Sch Educ Ass'n*, ___ Mich at ___; slip op at 34.

> Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. [*Id.*, slip op at 35.]

As it relates to an order for superintending control "a party . . . must still have standing to bring the action." *Beer*, 127 Mich App at 243. "A party lacks standing to bring a complaint for superintending control where [the] plaintiff has shown no facts whereby it was injured." *Id*. Nevertheless, "where the party challenging the commission's action is *the city itself* . . . there exists a sufficient interest in the outcome to insure sincere and vigorous advocacy so as to confer standing." *Id*. at 243-244 (emphasis added). More specifically, as is the case here, "[t]he city . . . as the political unit employing the police officer, *is directly affected by the commission's*

decision that the employee may not be dismissed." *Id*. at 244 (emphasis added). Furthermore, in *Core v Traverse City*, 89 Mich App 492; 280 NW2d 569 (1979), where a firefighter was terminated after engaging in illegal hunting activities, this Court found that, "public trust in the members of the fire department is essential for its efficient operation. [The plaintiff firefighter's] actions were detrimental to that trust . . . ." *Id*. at 497-498. Because the Commission decided that Craze could not be dismissed and Craze's actions violated the public trust, petitioner can show injury sufficient to confer standing.

Craze next argues that the trial court erred in determining that both the Commission's order of January 8, 2008, and its supplemental findings of December 8, 2008, were not supported by substantial evidence. We disagree.

The circuit court should accept findings of a municipal civil service commission that are supported by substantial evidence. *In re Payne*, 444 Mich at 682-683. A circuit court "should assume superintending control over a municipal civil service board . . . when the record of the adjudicative hearing does not contain substantial evidence to support the finding." *Id.* at 690. "'Substantial evidence' has a classic definition: the amount of evidence that a reasonable mind would accept as sufficient to support a conclusion. While it consists of more than a scintilla of evidence, it may be substantially less than a preponderance." *Id*. at 692. This Court's review of the circuit court's decision is to determine whether the court "applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the . . . factual findings." *Boyd v Civil Serv Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996). This standard "is indistinguishable from the clearly erroneous standard of review . . . . [A] finding is clearly erroneous when, on review of the whole record, this Court is left with the definite and firm conviction that a mistake has been made." *Id*. at 234-235.

Petitioner terminated Craze for taking a Home Depot merchandise card from a suspect's garage during a drug raid in which Craze participated while on assignment to the Oakland County Sheriff's Department ("OCSD") Narcotics Enforcement Team ("NET"). Petitioner determined that Craze violated the following work rules: Rule 4:4, Conduct Unbecoming Department Personnel;[2] Rule 4:5, Conformance to Laws;[3] Rule 4:39, Processing Property and Evidence;[4] and Rule 4:44, Truthfulness.[5]

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[2] "Personnel shall conduct themselves, at all times, both on and off duty, in such a manner as to reflect most favorably on the Department. Conduct Unbecoming Department personnel shall include that which brings or may bring, the Department into disrepute or reflects discredit upon the employee or the department, which impairs the efficient operation of the department."

[3] "(A) Personnel shall obey all laws of the United States and of any State or local jurisdiction. (B) A conviction for a violation of any criminal act shall be prima facie evidence of a violation of this section."

[4] "(A) Property or evidence that has been discovered, gathered, or received in connection with departmental responsibilities will be processed in accordance with established departmental guidelines. (B) Personnel shall not convert to their own use, manufacture, conceal, falsify, destroy, remove, tamper with, or withhold any property or evidence in connection with an

Craze appealed his termination to the Commission, which held a hearing, and then, on January 9, 2008, issued an opinion. The Commission observed that Craze took the Home Depot merchandise card, determined that it was worth $125, and used it to purchase items for his personal use. The Commission declared that these acts were "clearly inappropriate" and required that Craze "be severely punished." The Commission determined that petitioner had sustained its burden in proving that Craze's actions violated Rule 4:4, Conduct Unbecoming Department Personnel. However, the Commission determined that petitioner had not met its burden of proof regarding Rule 4:5, Conformance to Laws, Rule 4:39, Processing Property and Evidence, and Rule 4:44, Truthfulness. The Commission nevertheless reiterated that Craze's conduct warranted "severe sanction," and ruled that he be reinstated "without any back pay and without any accrued benefits. From the date of termination until the date of issuance of this Opinion and Order, January 9, 2008."

The trial court did not analyze the facts as they applied to each alleged work rule violation and draw conclusions, but rather, it found that the Commission failed "to identify substantial evidence underlying its findings" for Rules 4:39, 4:44, and 4:5. The court thus remanded "the matter to [respondent] Commission for more specific findings regarding the substantial evidence supporting their conclusion that petitioner failed to demonstrate that [respondent] Craze violated these three rules."

On appeal, Craze argues that the Commission's findings were based on substantial evidence, and therefore, the trial court erred in not upholding them and instead, remanding to the Commission for further fact finding. Craze asserts that petitioner, by adopting Act 78 (to MCL 38.501 *et seq*.), has chosen the Commission to be the agency for enforcing civil service requirements. According to Craze, in the instant case, reasonable minds may differ regarding whether discharge or suspension was the appropriate punishment and the trial court and petitioner failed to consider that Craze had an outstanding record and lack of prior disciplinary action. Thus, Craze concludes that the trial court erred when it failed to affirm the Commission's January 9, 2008, order. We disagree.

We agree with the trial court that, with respect to Rule 4:5, Conformance to Laws, the Commission discussed only the fact that Craze had been acquitted of larceny from a building,[6] and did not consider whether Craze's conduct constituted the violation of any other laws. Regarding Rule 4:39, Processing Property and Evidence, although the Commission notes that OCSD Sergeant Bart Wilson testified that he would not have included the merchandise card on the property tabulation sheet from the raid had Craze in fact presented it, the Commission did not

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investigation or other police action, except in accordance with established departmental guidelines. (C) Disposition of property and/or evidence shall be made in accordance with established departmental guidelines."

[5] "All personnel shall be truthful in all respects, in their conduct or actions, related to their employment and operations of the Department."

[6] The elements of larceny in a building, MCL 750.360, are "(1) an actual or constructive taking, (2) an asportation, (3) with a felonious intent, (4) of someone else's property, (5) without that person's consent, (6) in a building." *People v McFarland*, 165 Mich App 779, 781; 419 NW2d 68 (1988).

consider the fact that Rule 4:39(B) instructs that "*personnel shall not convert to their own use*, manufacture, *conceal*, falsify, destroy, *remove*, tamper with, or withhold *any property or evidence in connection with an investigation or other police action*, except in accordance with established departmental guidelines." (Emphasis added.)

Finally, in its findings for Rule 4:44, Truthfulness, the Commission does consider many more facts than it did for the other rules, namely, the varying statements that Craze made during his initial interrogation by the OCSD and then in the Madison Heights Police Department's internal disciplinary interview. However, in the process of considering these various statements, the Commission glossed over Craze's initial denial of his actions, which runs afoul of Rule 4:4: "All personnel *shall be truthful in all respects*, in their conduct or actions, related to their employment and operations of the Department." Therefore, the trial court did not clearly err in finding that the Commission failed to support its conclusions in its January 9, 2008, opinion with substantial evidence.

On remand, the Commission issued supplemental findings of fact, concluding, again, that its findings were based upon substantial evidence. Regarding Rule 4:5, Conformance to Laws, the Commission first stated that its determination of whether petitioner met its burden of proof was based on what was presented at the hearing. According to the Commission, "[a]t the time of discharge, the focus of [petitioner's] contention . . . was that [respondent] Craze was charged with a felony of larceny in a building." The Commission noted that Craze had been acquitted of this charge in September 2007, and stated, "we believe that it would be . . . inappropriate for us to determine based upon the evidence presented at the hearing, what additional crimes, if any, [respondent] Craze could have been charged with and convicted of stemming out of this incident. . . ." The Commission thus concluded that petitioner failed to meet its burden of proof because "*at the time the card was taken* (i) there was no indication of value and (ii) no indication of ownership, *so there was no intent to permanently deprive the owner of the property . . . .*" (Emphasis added.)

The Commission next found that petitioner did not meet its burden of proof regarding a violation of Rule 4:39, Processing Property and Evidence because (1) the sergeant in charge of the investigation would not have included the Home Depot merchandise card on the search warrant tabulation sheet "because it had no monetary or evidentiary value," and (2) "[respondent] Craze's taking of the card was on his own personal accord and not pursuant to his responsibility relating to 'property or evidence in connection with an investigation or police action.'" Finally, the Commission found that petitioner did not meet its burden of proof regarding Rule 4:44, Truthfulness, because Craze's different answers regarding whether he committed an unlawful act were not, in fact, conflicting, and furthermore, even though he initially denied taking the card, this denial lasted only "a matter of seconds." Thus, the Commission concluded that its findings were supported by substantial evidence and reiterated its decision that Craze should be punished by a suspension without pay and benefits rather than termination.

The trial court, on the other hand, disagreed, and, in an opinion and order after remand to the Commission, ruled that the Commission's findings were not supported by substantial evidence. The court first stated that, regarding Rule 4:5, Conformance to Laws, the Commission focused solely on the question of whether Craze committed larceny in a building, while ignoring the fact that petitioner determined that Craze violated MCL 750.157p.[7] The court concluded, "the undisputed evidence establishes that [respondent] Craze admitted to taking the card and using it. Further, there is no evidence that he knew the rightful owner of the card, much less obtained the owner's permission. Considering these facts, the violation of the law is clear . . . ."

When addressing Rule 4:39, Processing Property and Evidence, the trial court noted that the Commission relied on "the testimony of the sergeant in charge of the investigation that he would not have noted the Home Depot Card on the evidence log because it had no evidentiary value and it had no obvious monetary value." Nevertheless, the court observed that Rule 4:39 states that police officers "shall not convert to their own use, manufacture, conceal, falsify, destroy, remove, tamper with, or withhold any property or evidence in connection with an investigation. . . ." Thus, "[b]ased on the undisputed evidence that [respondent] Craze took the card and used it to make personal purchases, [respondent] Craze plainly violated this rule by converting property connected to an investigation for his own use." Finally, regarding Rule 4:44, Truthfulness, the court ruled that Craze's initial denial of taking the card, however "fleeting," did not change the fact that such a denial was "plainly untruthful."

The trial court concluded that, because the Commission's findings were not supported by substantial evidence, the court could issue an order of superintending control. The court noted, however, that the Commission had authority under MCL 38.514(1) to impose discipline on an employee and determine whether an employee should be terminated, and further, the Commission's decision regarding the appropriate penalty is not subject to the substantial evidence test because it does not involve findings of fact. Thus, the court ruled that, since it had reversed the Commission's findings regarding the work rule violations, it was remanding the matter a second time, "for consideration of the appropriate discipline." We find the trial court's reasoning persuasive and conclude that the trial court did not clearly err.

Finally, Craze argues that the trial court improperly substituted its findings of fact and, consequently, forced the Commission to impose termination rather than suspension, which is a violation of Act 78. We disagree.

A trial court must determine whether a commission's findings were supported by substantial evidence. *In re Payne*, 444 Mich at 682-683. The trial court did not substitute its findings of fact; it essentially determined that the Commission *ignored* the facts, i.e., the

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[7] MCL 750.157p states: "A person who has in his or her possession, or under his or her control, or who receives from another person a financial transaction device with the intent to use, deliver, circulate, or sell the financial transaction device, or to permit, cause, or procure the financial transaction device to be used, delivered, circulated, or sold, knowing the possession, control, receipt, use, delivery, circulation, or sale to be without the consent of the device holder, is guilty of a felony."

substantial evidence that *petitioner* had presented in support of its decision to terminate Craze. In so doing, the Commission failed to produce substantial evidence in support its own decision. This Court's review of the trial court's decision is to determine whether the court "applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the . . . factual findings." *Boyd*, 220 Mich App at 234. This Court reviews for clear error, *id*. at 234-235, and in light of the above discussion, we are not left with a definite and firm conviction that a mistake has been made. Furthermore, as is clear from the trial court's opinion and order, the court properly remanded for a reconsideration of discipline; it did not require that a specific type of discipline be imposed. See *Core*, 89 Mich App at 503 ("Since we are unable to say that the commission would have upheld plaintiff's discharge had they not considered [improper evidence], we must remand the case. The commission is to render its decision without taking that conduct into account.")

On remand, the Commission issued its April 14, 2009 opinion upholding Craze's discharge:

> Numerous cases stand for the proposition that the Commission has the authority to decide the reasonableness of any discipline recommended and impose[] lesser discipline, if warranted. . . . [H]owever, we are now required to substitute the findings of fact made by the Court, in lieu of our own . . . . Based upon the Court's determination that Craze violated all four (4) work rules, rather than one (1) work rule, we believe that we have no alternative under these circumstances, but to uphold the City's decision to discharge Craze.

As previously noted, we disagree with the Commission's characterization that the trial court substituted its findings of fact for the Commission's. The trial court had concluded that the record of the adjudicative hearing did not contain substantial evidence to support the Commission's findings concerning the Rules 4:5, 4:39 and 4:44 and we agree. Upon second remand, the Commission had discretion to impose the punishment it deemed appropriate in light of the four rule violations. While the use of the phrase "we have no alternative" could be read as a failure to recognize its discretion, counsel for the Commission conceded at oral argument that the Commission fully recognized that at the time it issued this opinion, it retained discretion as to the appropriate sanction. The opinion makes clear that the Commission determined that the appropriate punishment for violation of all four work rules was discharge. Thus, we agree with the trial court that "there is nothing apparent on the face of the Commission's decision that would take it outside the principled range of outcomes."

Affirmed. Petitioner may tax costs as the prevailing party. MCR 7.219.

/s/ Kurtis T. Wilder
/s/ Deborah A. Servitto
/s/ Douglas B. Shapiro