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NO. COA06-439

NORTH CAROLINA COURT OF APPEALS

Filed: 21 November 2006

RONALD L. RADCLIFFE,
Petitioner,

v.

Harnett County
No. 04 CVS 01303

CITY OF DUNN, a municipal
corporation,
Respondent.

Appeal by petitioner from order entered 9 December 2005 by Judge Ripley E. Rand and cross-appeal by respondent from orders entered 25 April 2005 by Judge James Floyd Ammons, Jr., 25 July 2005 by Judge Jack A. Thompson, and 9 December 2005 by Judge Ripley E. Rand in Harnett County Superior Court. Heard in the Court of Appeals 13 November 2006.

Capitol District Law Offices, by Reagan H. Weaver and Pope & Tart, by P. Tilghman Pope, for petitioner-appellant/cross-appellee.

Hendrick, Eatman, Gardner & Kincheloe, L.L.P., by Thomas M. Morrow and Stacy M. Race, for respondent-appellee/cross-appellant.

LEVINSON, Judge.

In May of 2004, Ronald L. Radcliffe (petitioner), an employee of the City of Dunn, was serving as a captain of the Dunn Police Department when he was suspended and subsequently demoted to the

rank of sergeant. Petitioner appealed his suspension and demotion to Dunn City Manager Michael Uskiewicz. After conducting a hearing, City Manager Uskiewicz affirmed the decision to suspend and demote petitioner.

On 9 July 2004, petitioner filed a petition in the Superior Court, Harnett County, for "Judicial Review of the final decision in his case pursuant to the provisions of Article IV of Chapter 150B-43, et seq.[,]" and asked the court to reverse the decision of City Manager Uskiewicz. City of Dunn (respondent) answered and moved to dismiss the petition for judicial review for lack of subject matter jurisdiction. A hearing was held before Judge James Floyd Ammons, Jr., who denied respondent's motion to dismiss on 25 April 2005. Respondent filed a motion for summary judgment and Judge Jack Thompson denied the motion on 25 July 2005.

Judge Ripley E. Rand held a hearing on the petition for judicial review on 28 November 2005. In his order filed 9 December 2005, Judge Rand found that he was bound by the earlier rulings of Judges Ammons and Thompson which provided that the court had subject matter jurisdiction to address the petition. Consequently, the order upheld respondent's decision to suspend and demote petitioner based on findings that petitioner was an at-will employee of the Dunn City Police Department. Petitioner filed notice of appeal from Judge Rand's order on 6 January 2006 and respondent filed a notice of cross-appeal of Judge Rand's Order on 17 January 2006.

The dispositive issue on appeal is whether the trial court had

subject matter jurisdiction to hear petitioner's petition for judicial review.

Section 150B-43 of the Administrative Procedures Act concerns the right to judicial review and provides:

Any person who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute.

N.C. Gen. Stat. § 150B-43 (2005). Our courts have held that in order to have standing for judicial review, five requirements must be satisfied: (1) the petitioner is an aggrieved party; (2) there was a final agency decision; (3) the decision was the result of a contested case; (4) all administrative remedies have been exhausted; and (5) there is no adequate procedure for judicial review under another statute. *Charlotte Truck Driver Training School v. N.C. DMV*, 95 N.C. App. 209, 212, 381 S.E.2d 861, 862 (1989).

The definition of an "agency" under the Administrative Procedures Act follows:

[A]n agency or an officer in the executive branch of the government of the State and includes the Council of the State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.

N.C. Gen. Stat. § 150B-2(1a) (2005) (emphasis added).

Here, the City of Dunn is a unit of local government and does

not fall under the definition of "agency" within the G.S. § 150B-2(1a). The superior court, therefore, lacked subject matter jurisdiction to hear the petition, and the respondent's motion to dismiss for lack of subject matter jurisdiction should have been granted.

Reversed.

Judges TYSON and BRYANT concur.

Report per Rule 30(e).