**[Cite as *Ratini v. Windham School Dist. Bd. of Edn.*, 2004-Ohio-6697.]**

**THE COURT OF APPEALS**

**ELEVENTH APPELLATE DISTRICT**

**PORTAGE COUNTY, OHIO**

| | | |
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| ALFRED RATINI, II, | : | **O P I N I O N** |
| Plaintiff-Appellant, | : | **CASE NO. 2004-P-0043** |
| - vs - | : | |
| WINDHAM EXEMPTED VILLAGE SCHOOL DISTRICT BOARD OF EDUCATION, | : | |
| Defendant-Appellee. | : | |

Civil Appeal from the Court of Common Pleas, Case No. 2002 CV 0774.

Judgment: Affirmed.

*Robert C. Meeker*, Blakemore, Meeker & Bowler Co., L.P.A., 19 North High Street, Akron, OH 44308 (For Plaintiff-Appellant).

*Dennis M. Whalen* and *Mari Alice Zacharyasz*, Whalen & Compton Co., L.P.A., 565 Wolf Ledges Parkway, P.O. Box 2020, Akron, OH 44309-2020 (For Defendant-Appellee).

DONALD R. FORD, P.J.

**{¶1}** Appellant, Alfred Ratini, II, appeals from the May 20, 2004 judgment entry of the Portage County Court of Common Pleas, granting appellee's, Windham Exempted Village School District Board of Education's, motion for summary judgment.

**{¶2}** Appellant's limited teaching contract was terminated on June 27, 2002, pursuant to R.C. 3319.16 for "other good and just cause."

**{¶3}** On July 10, 2002, appellant filed a complaint against appellee alleging breach of contract and a violation of R.C. 3319.16.[1] On January 7, 2003, the magistrate bifurcated appellant's two claims. The magistrate determined that the R.C. 3319.16 administrative appeal should proceed to judgment first and that appellee was to file an answer to the breach of contract claim within twenty-eight days. Appellee filed an answer on February 5, 2003.

**{¶4}** A hearing was held before the magistrate on June 9, 2003. Pursuant to her August 14, 2003 decision, the magistrate determined that appellee did not err in adopting the referee's recommendation and terminating appellant's limited teaching contract with respect to the R.C. 3319.16 administrative appeal issue. Appellant did not file an objection to the magistrate's decision. The trial court adopted the magistrate's decision on August 29, 2003, and stated in its judgment entry that appellant's breach of contract claim remained pending.[2]

**{¶5}** On March 12, 2004, appellee filed a motion for summary judgment on appellant's breach of contract claim pursuant to Civ.R. 56(C). Appellant filed his response in opposition to appellee's motion for summary judgment on March 31, 2004. In her April 28, 2004 decision, the magistrate granted appellee's motion for summary judgment. Appellant did not file an objection to the magistrate's decision.

**{¶6}** Appellant was employed by appellee as a math teacher at Windham High School under a limited teaching contract for the 2001-2002 school year. On October 11, 2001, an unannounced lockdown was initiated by the principal, Carol Kropinak

1. Initially, on April 10, 2002, a hearing was held before a referee, who recommended that appellant's teaching contract be terminated. On June 27, 2002, appellee adopted the referee's recommendation.
2. Regarding the R.C. 3319.16 administrative issue, appellant filed a notice of appeal with this court on September 30, 2003. On November 21, 2003, appellant filed a notice of dismissal. Accordingly, this court dismissed the appeal on December 15, 2003.

("Kropinak"), in which a search for controlled substances was conducted in cooperation with the Windham and Garrettsville Police Departments. During the search of the parking lot, police dogs were alerted to two faculty owned vehicles, one of which belonged to appellant. Appellant was escorted from class by Kropinak and led to the parking lot where he was met by two police officers.

**{¶7}** Officer Dale Korman ("Officer Korman"), an officer with the Windham Police Department ("WPD"), testified for appellee at the hearing before the referee that he had a conversation with appellant as they walked to appellant's vehicle. According to Officer Korman, appellant said, "I believe I know why you want to see me[.]" Officer Korman responded, "Why do you think that is?" Officer Korman indicated that appellant said, "Well, I have a gun in the car."

**{¶8}** When they arrived at appellant's unlocked vehicle, Officer Korman told Officer Gerardi what appellant said regarding the gun. Officer Korman searched the driver's side and Officer Gerardi looked for the gun on the passenger side of appellant's car. Officer Korman indicated that there was clutter in appellant's vehicle. Officer Korman explained that after asking appellant where the gun was, Officer Gerardi located it. It was loaded and under a radio and clothes on the front seat in a box inside of a white grocery style bag.

**{¶9}** Appellant was then escorted to the office of appellee's superintendent, Ronald Dunlevy ("Dunlevy"). Dunlevy, Kropinak, and Officer Girardi spoke with appellant regarding the incident at issue. Dunlevy testified for appellee that appellant had a trance-like stare on his face and was very slow to respond to questions, which was a little frightening. Dunlevy stated that he had a concern for the safety of the teachers, staff, students, and himself.

**{¶10}** According to Kropinak, during questioning in Dunlevy's office, appellant indicated that he lives in a rural area and shot at a raccoon who was trying to kill his chickens on the morning at issue. Kropinak said that appellant stated that after he shot the raccoon, he reloaded the gun and put it back in his car. Kropinak expressed concern for the well-being of appellant, the staff, the students, and herself. Appellant was suspended with pay pending further investigation and was not permitted on school property until further notice.

**{¶11}** Two weeks after the incident, on October 25, 2001, appellant filed a written statement at the WPD, which contained a different reason as to why the loaded gun was in his vehicle. In his statement, appellant explained that his father's car had broken down, and he had been borrowing two of appellant's vehicles. Appellant indicated that his father carries a firearm on the front seat when he goes out of town or when he does farm chores. Appellant stated that he drove his old wagon on the morning at issue. Appellant said that at about 6:15 a.m., he threw some clothes and his boom box on the front passenger seat, apparently on top of the gun which he could not see because it was dark outside. According to appellant, he had shot a raccoon that morning using a rifle. Appellant stated that when confronted at school, he realized that his father must have used his wagon instead of his brown car. Appellant stressed that his father is old, not doing very well, and did not want the police to pay him a surprise visit.[3] Therefore, appellant decided to take the blame on the day of the incident.

**{¶12}** Pursuant to its May 20, 2004 judgment entry, the trial court adopted the magistrate's April 28, 2004 decision, granting appellee's motion for summary judgment.

3. Appellant indicated that his mother ended up in the hospital and later died of a heart attack after police confronted her after two individuals attacked their cows. Appellant believes that that incident affected his father.

Appellant did not file an objection to the magistrate's decision. Appellant filed a timely notice of appeal and makes the following assignment of error:

**{¶13}** "The referee, [appellee] and, in exercising appellate review under R.C. 3319.16, the magistrate and [trial] court erred as a matter of law in their application of 'other good and just cause' standard."

**{¶14}** In his sole assignment of error, appellant argues that the trial court erred in its application of R.C. 3319.16. Appellant contends that the term "other good and just cause" contained in R.C. 3319.16 is not an independent cause for termination but must be read in conjunction with "gross inefficiency or immorality" or "willful and persistent violations of reasonable regulations of the board of education."

**{¶15}** A teacher's breach of contract claim alleging an improper termination of that party's teaching contract will not lie as a collateral attack where statutory law provides for an exclusive remedy in the form of an administrative appeal. *Lakota Local School Dist. Bd. of Edn. v. Brickner* (1996), 108 Ohio App.3d 637, 642. Here, appellant's breach of contract claim is identical to his R.C. 3319.16 administrative claim. Pursuant to her April 28, 2004 decision, which was adopted by the trial court on May 20, 2004, the magistrate stated that: "[i]n his administrative appeal, [appellant] argued that there was not 'good and just cause' to terminate his contract because he did not 'knowingly' have the gun in his car. The [m]agistrate found otherwise in her previous decision. Now, [appellant] argues the same thing – that it was his father who placed the gun in the car, that he did not know the gun was in the car, and therefore, that there was no 'good and just cause' to terminate his teaching contract. This precise issue has already been decided." We agree. Appellant's exclusive remedy was his R.C. 3319.16

administrative appeal. Thus, appellant is collaterally estopped from relitigating the same issue here. *Kelly v. Georgia-Pacific Corp.* (1989), 46 Ohio St.3d 134, 137.

**{¶16}** Additionally, we must note that appellant failed to file objections to the magistrate's decision.

**{¶17}** Civ.R. 53(E)(3)(b) provides in pertinent part that: "*** [a] party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law unless the party has objected to that finding or conclusion under this rule."

**{¶18}** In the instant matter, the trial court stated in its May 20, 2004 judgment entry that: "[u]pon consideration of the [m]agistrate's [d]ecision, the [c]ourt determines that there is no error of law or other defect on the face of said [d]ecision, and therefore the [c]ourt adopts said [d]ecision as the [c]ourt's own." It is undisputed that appellant filed no objections to the magistrate's August 14, 2004 or April 28, 2004 decisions.[4] We stated in *Kistler v. Kistler*, 11th Dist. No. 2003-T-0060, 2004-Ohio-2309, at ¶22, that: "[i]f a party fails to file objections to a magistrate's decision in accordance with Civ.R. 53, such claim or objection is waived for purposes of appeal, and an appellant may not then challenge the court's adoption of the magistrate's factual findings on appeal. *Aurora v. Sea Lakes, Inc.* (1995), 105 Ohio App.3d 60, 66 ***." (Parallel citation omitted.) Here, pursuant to Civ.R. 53(E)(3)(b), appellant waived his right to appeal the trial court's adoption of those findings of fact and conclusions of law. See *Group One Realty, Inc. v. Dixie Internatl., Co.* (1998), 125 Ohio App.3d 767, 768-769. Therefore, appellant's

4. Both the August 14, 2004 and April 28, 2004 magistrate's decisions set out the fourteen-day objection rule and cited Civ.R. 53(E). Again, appellant filed a previous appeal with this court with respect to a violation of R.C. 3319.16, regarding the "other good and just cause" standard. Appellant later filed a notice of dismissal, and, accordingly, we dismissed the appeal. Here, appellant's breach of contract claim is identical to his administrative claim. Again, appellant filed the instant appeal but did not file objections to the magistrate's April 28, 2004 decision.

failure to file objections to the magistrate's decision further precludes this court from addressing his assignment of error on the merits.

**{¶19}** For the foregoing reasons, appellant's sole assignment of error is not well-founded. The judgment of the Portage County Court of Common Pleas is affirmed.

CYNTHIA WESTCOTT RICE, J.,

ROBERT A. NADER, J., Ret.
Eleventh Appellate District,
sitting by assignment.

concur.