[Cite as *State ex rel. Hopkins v. Chartrand*, 2012-Ohio-5438.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

STATE ex rel. JOHN HOPKINS, et al.,	:	**PER CURIAM OPINION**
Relators,	:	**CASE NO. 2011-G-3016**
- vs -	:	
KEVIN CHARTRAND, GEAUGA COUNTY CORONER	:	
Respondent.	:	

Original Action for Writ of Mandamus.

Judgment: Writ denied, without prejudice.

Timothy R. Obringer and *Shawn W. Maestle*, Weston Hurd, LLP, The Tower at Erieview, 1301 East Ninth Street, Suite 1900, Cleveland, OH 44114-1862 (For Relators).

David P. Joyce, Geauga County Prosecutor, *Laura A. LaChapelle*, Assistant Prosecutor, and *Susan T. Wieland*, Assistant Prosecutor, Courthouse Annex, 231 Main Street, Chardon, OH 44024, and *Timothy T. Reid*, Mansour, Gavin, Gerlack & Manos Co., LPA, 55 Public Square, Suite 2150, Cleveland, OH 44122 (For Respondent).

PER CURIAM.

{¶1} This action in mandamus is presently before this court for final disposition of the parties' competing motions for summary judgment. Upon considering each side's respective evidentiary materials and legal arguments, we hold that respondent, Geauga County Coroner Kevin Chartrand, has demonstrated that he is entitled to prevail on the

sole mandamus claim because the merits of this case are not ripe for final determination at this time. Specifically, his evidentiary materials show that the substance of the claim cannot be properly addressed until the administrative appeals of relators, John Hopkins and Gregg Boyles, have been fully litigated.

{¶2} Respondent has served as the Geauga County Coroner for approximately six years, after initially being appointed in August 2006 and thereafter being duly elected to the office. Even prior to respondent's appointment, both relators had been employed at the coroner's office as investigators/clerks. Although the essential duties of relators overlapped to some degree, Hopkins had the most seniority in the office and, thus, did act as a supervisor over Boyles for some purposes.

{¶3} Upon taking charge of the coroner's office, respondent retained relators as investigators/clerks and did not alter their respective duties. However, in early February 2011, respondent gave written notice to each relator that he would be "laid off" from his position at the conclusion of that month. As the reason for the terminations, the written notice stated that it had become necessary to abolish the position of investigator/clerk due to a lack of proper funding. Additionally, the notice indicated that, even though both relators had the right to displace other county employees, there was no comparable job available at that time.

{¶4} Almost immediately after the layoffs had taken effect, respondent began to utilize deputies with the Geauga County Sheriff's Department to perform certain tasks which previously fell within the scope of relators' employment. Many of these tasks pertained to conducting investigations into the deaths of individuals. In order to ensure that the tasks were performed adequately, respondent provided training to the deputies

through a power-point slide presentation.

{¶5} Within days of receiving notice of the abolishment of their positions, each relator filed an appeal with the State Personnel Board of Review. In moving to dismiss both appeals, respondent argued that relators could not contest the layoffs or the status of their positions before the Board of Review because they were unclassified employees for the county. A state administrative law judge overruled the motion to dismiss in each appeal, concluding that the Board of Review would have the general authority to review the decision to abolish the positions if relators were classified employees for the county. As a result, the administrative law judge scheduled a record hearing in each appeal to determine the nature of each relator's employment with the coroner's office.

{¶6} While their administrative appeals remained pending, relators initiated the instant action for a writ of mandamus before this court. As part of the allegations in their petition, they asserted that respondent's use of the deputy sheriffs to perform the duties of the coroner's office constituted an impermissible conflict of interest. Relators further asserted that, since they were "classified" employees and were still able to perform the tasks that had been delegated to the deputies, respondent had a legal obligation under R.C. 124.327 to "recall" them and terminate the layoffs. For their ultimate relief, relators sought the issuance of a writ requiring respondent to reinstate them to their respective positions as investigators/clerks.

{¶7} After considerable delay occurred in the completion of discovery, both sides submitted their respective motions for summary judgment on the entire claim for the writ. In both motions, the parties have presented substantial argumentation on the issue of whether relators have a clear legal right to be recalled to their prior positions in

the coroner's office. In conjunction with their argumentation, each side has addressed the underlying point concerning the legal propriety of respondent's decision to utilize the deputies in the performance of his responsibilities. In asserting that they are entitled to have their layoffs terminated, relators have maintained that respondent has essentially "appointed" the deputies as employees of the coroner's office, and that the deputies are under his supervision in performing the various tasks. On the other hand, respondent has contended that, in assisting him with the "death" investigations, the deputies merely are fulfilling part of their existing duties as employees of the sheriff's office, and that he does not exercise any direct control over them.

{¶8} Upon reviewing the other arguments asserted by respondent in his motion for summary judgment, this court concludes that it would be improper to render a final ruling regarding relators' eligibility to be recalled at this time. Specifically, we hold that respondent has established that the "recall" issue is not ripe for determination before us until relators' administrative law appeals have been finally adjudicated. That is, no final decision on the merits of the mandamus claim can be made until the State Personnel Board of Review has determined whether relators were classified or unclassified county employees.

{¶9} As was previously noted, relators' petition cited R.C. 124.327 in support of their basic assertion that they were entitled to be recalled to their prior positions in the county coroner's office. Division (A) of this statute generally provides that "employees" who have been subject to a layoff must be placed upon an appropriate layoff list for their classification. Division (B) then states, in pertinent part:

{¶10} "An employee who is laid off retains reinstatement rights in the agency

from which the employee was laid off. Reinstatement rights continue for one year from the date of layoff. During this one-year period, in any layoff jurisdiction in which an appointing authority has an employee on a layoff list, the appointing authority shall not hire or promote anyone into a position within that classification until all laid-off persons on a layoff list for that classification who are qualified to perform the duties of the position are reinstated or decline the position when it is offered. * * *"

{¶11} As the wording of the foregoing quote readily indicates, R.C. 124.327 does not expressly define the type of "employees" to which the statute was intended to apply. However, our review of the other provisions in R.C. Chapter 124 clearly shows that the statutory scheme sets forth a civil service system which governs the rights of individuals who are employed as public servants in the state of Ohio. Regarding the scope of this system, R.C. 124.01(A) defines the term "civil service" as including all positions of trust or employment with, inter alia, the state, cities, and counties.

{¶12} The various provisions throughout R.C. Chapter 124 address a variety of employment topics, such as a procedure for layoffs and the calculation of benefits. Yet, as the Supreme Court of Ohio has recognized, the mere fact that a person is employed by the state or a county does not mean that the various statutory rights are applicable to him:

{¶13} "R.C. 124.11 divides the civil service into the classified and unclassified service. Positions in the classified service are those for which merit and fitness can be determined by examination. Employees in the classified service can only be removed for good cause and only after the procedures enumerated in R.C. 124.34 and the rules and regulations thereunder are followed. Positions in the unclassified service require

qualities that the General Assembly has deemed not determinable by examination. *Employees in the unclassified service do not receive the protections afforded employees in the classified service*." (Emphasis added.) *Yarosh v. Becane*, 63 Ohio St.2d 5, 9 (1980).

{¶14} In this case, relators specifically alleged in their petition that both of them held positions which placed them in the classified service. Given the basic distinction drawn in *Yarosh* between classified service and unclassified service, the significance of this factual allegation to the merits of relators' mandamus claim cannot be understated. That is, if relators were classified employees, they would be entitled to be recalled under R.C. 124.327 if the sheriff deputies are deemed to have actually become employees of the coroner's office. On the other hand, if they were unclassified employees, they would have no rights to reinstatement under the statute.

{¶15} In light of the foregoing, it is impossible for this court to properly dispose of relators' mandamus claim without determining their correct classification for purposes of R.C. Chapter 124. In essentially asserting that it would be inappropriate for this court to go forward on the "classification" issue, respondent states that the State Personnel Board of Review is presently in the process of making a factual determination on this particular point in the two pending administrative law appeals. In support of his statement, respondent has attached to his motion for summary judgment certified copies of a procedural order issued by an administrative law judge in each of the two appeals. A review of the two copies readily indicates that the procedural order expressly provides that a hearing would be held in each appeal for the purpose of taking evidence on the issue of whether each relator was a classified or unclassified county

employee.

{¶16} In their various summary judgment submissions, relators have not tried to contest the fact that the Board of Review intends a dispositive ruling on the question of their classification. Moreover, there is no dispute that both administrative law appeals were instituted approximately three months before the filing of this action in mandamus. Thus, the critical issue before this court concerns whether the Board's final decision on the "classification" point would be binding upon us for purposes of this original action.

{¶17} The scope of the authority of the Board of Review is delineated under R.C. 124.03. Pursuant to division (A)(2) of this statute, the Board of Review is authorized to hear appeals relating to the classification of any position in the civil service system. In light of the broad nature of this grant of power, the Board of Review is empowered to make the initial finding of whether the position in question is classified or unclassified. *See State ex rel. Fenwick v. Finkbeiner*, 72 Ohio St.3d 457, 459 (1995); *Krickler v. City of Brooklyn*, 149 Ohio App.3d 97, 2002-Ohio-4278, ¶10.

{¶18} Given that the "classification" issue is properly before the Board of Review in the context of an administrative appeal, the question then becomes whether its final determination on the issue can have any "res judicata" effect. As a general proposition, "[t]he doctrine of *res judicata* precludes the relitigation of a point of law or fact at issue between the same parties or their privies." (Emphasis sic.) *Wells v. General Motors Corp.*, 69 Ohio App.3d 433, 437 (8th Dist.1990). Under Ohio law, the doctrine applies to decisions rendered in state administrative proceedings. *Id*. Moreover, the Supreme Court of Ohio has expressly followed the doctrine to preclude a collateral attack upon a final order of the State Personnel Board of Review. See *State ex rel. Bingham v. Riley*,

6 Ohio St.2d 263, 264 (1966).

{¶19} One specific exception to the foregoing general analysis has been noted by the Supreme Court. In *State ex rel. Rose v. Ohio Dept. of Rehab. & Correction*, 91 Ohio St.3d 453, 455 (2001), the Supreme Court recognized that a decision of the Board of Review can be subject to a collateral attack in a mandamus action when a party to the administrative proceeding did not have the statutory right to appeal the matter to a court of common pleas.

{¶20} However, under the undisputed facts of the instant case, the statutory right to appeal the Board's ultimate ruling does exist. As previously mentioned, relators filed their respective administrative appeals to contest the propriety of their layoffs and/or the abolishment of their positions. The courts of this state have consistently indicated that a final ruling of the Board of Review on these particular topics is directly appealable under R.C. 119.12. *See Pitts v. Ohio Dept. of Transportation*, 67 Ohio St.2d 378, 382 (1981); *Hertzfield v. Medical College of Ohio*, 145 Ohio App.3d 616, 619 (8th Dist.2001). More importantly, a statutory right to appeal exists regarding a decision of the Board of Review on a "classification" dispute, and the appeal constitutes an adequate remedy at law. See *Fenwick*, 72 Ohio St.3d at 459, citing *State ex rel. Weiss v. Indus. Comm.*, 65 Ohio St.3d 470 (1992).

{¶21} Applying the foregoing discussion to the situation in this action, there can be no dispute that the State Personnel Board of Review is the appropriate entity under the law to decide whether either relator was a classified employee for purposes of the Ohio civil service system. Furthermore, once the Board has rendered its determination and all possible appeals have been fully litigated, the final ruling as to the "classification"

issue can never be subject to a collateral attack before this court because the doctrine of res judicata will apply. Thus, given that a valid decision as to relators' "reinstatement" rights under R.C. 124.327 cannot be made until the "classification" issue has been fully resolved, it is impossible to proceed on the merits of the mandamus claim at this time.

{¶22} "'For a cause to be justiciable, there must exist a real controversy presenting issues which are ripe for judicial resolution and which will have a direct and immediate impact on the parties.'" *Hoffman v. Fraser*, 11th Dist. No. 2010-G-2975, 2011-Ohio-2200, ¶66, quoting *State v. Stambaugh*, 34 Ohio St.3d 34, 38 (1987) (Douglas, J., concurring in part and dissenting in part). In order for a claim to be ripe for determination, it cannot be predicated upon a future event that might not ever occur, or might not occur as anticipated. *State v. Duncan*, 8th Dist. No. 85367, 2006-Ohio-691, ¶9, quoting *Texas v. United States*, 523 U.S. 296, 300 (1998).

{¶23} In *State ex rel. Elyria Foundry Co. v. Indus. Comm.*, 82 Ohio St.3d 88, 89 (1998), the Supreme Court of Ohio applied the doctrine of ripeness to uphold the denial of a writ of mandamus. As the basis for its decision, the Supreme Court concluded that, until two underlying issues were resolved in the pending administrative proceeding, the primary question asserted in the mandamus claim was purely hypothetical and, hence, unripe for judicial review. As part of its discussion of the doctrine of ripeness, the *Elyria Foundry* court emphasized:

{¶24} "Ripeness 'is peculiarly a question of timing.' *Regional Rail Reorganization Act Cases* (1974), 419 U.S. 102, 140, * * *. The ripeness doctrine is motivated in part by the desire 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies (* * *).'

Abbott Laboratories v. Gardner (1967), 387 U.S. 136, 148. * * *. As one writer has observed:

{¶25} "'The basic principle of ripeness may be derived from the conclusion that "judicial machinery should be conserved for problems which are real or present and imminent, not squandered on problems which are abstract or hypothetical or remote." (* * *) The prerequisite of ripeness is a limitation on jurisdiction that is nevertheless basically optimistic as regards the prospects of a day in court: the time for judicial relief is simply not yet arrived, even though the alleged action of the defendant foretells legal injury to the plaintiff.' Comment, Mootness and Ripeness: The Postman Always Rings Twice (1965), 65 Colum.L.Rev. 867, 876." *Id*.

{¶26} In the present matter, relators have built their entire mandamus claim on the assertion that they were classified employees prior to their layoff; i.e., they contend that they are entitled to reinstatement under R.C. 124.327 because respondent is legally obligated to recall a "classified" employee before he can "hire" the sheriff deputies to do the same job. But, given that the State Personnel Board of Review has not rendered a final ruling on the point, any question as to the extent of relators' reinstatement rights must be viewed as purely hypothetical at this stage.

{¶27} In maintaining that the action should still go forward, relators have not tried to contest the basic authority of the Board of Review to hear and decide the question of their proper classification. Additionally, they have not denied that they will have the ability to appeal the Board's final order if it is not in their favor. Rather, they assert that their mandamus claim is presently ripe for determination because the Board does not have the statutory authority to grant the specific relief they seek under their petition

before this court: i.e., their immediate reinstatement to their prior positions under R.C. 124.327.

{¶28} As to this point, this court would simply indicate that it is not necessary for the claims or causes of action in the two separate proceedings to be identical before res judicata will apply. Under Ohio law, the doctrine of res judicata includes the concept of issue preclusion, under which a party will be barred from re-litigating a specific issue if it was actually tried and determined in the first action. *P.M.D. Land Co. v. Warner Realty, Inc.*, 11th Dist. No. 2011-T-0058, 2012-Ohio-1274, ¶14-15. Thus, the crucial point is not whether the relief sought in both proceedings is identical, but whether the factual issues are the same. In this action, respondent has shown that the Board of Review will hear and decide the same fact which relators would have to establish before they would be entitled to a writ of mandamus.

{¶29} In this regard, this court would further note that, even though a state administrative appeal might involve more delay and inconvenience than an action in mandamus, the administrative proceeding is still considered an adequate legal remedy which generally forecloses a party's right to seek such a writ. *See State ex rel. Kingsley v. State Employment Relations Bd.*, 130 Ohio St.3d 333, 2011-Ohio-5519, ¶20. In the context of the instant matter, this means that a mandamus action cannot be employed to pre-empt the authority of the Board of Review to decide the "classification" issue. In other words, the question of whether relators are legally entitled to be reinstated will not become ripe for resolution until the "classification" determination in the administrative proceeding becomes final.

{¶30} Furthermore, it must be emphasized that the denial of the writ in this case

will not deprive relators of the ability to maintain a new mandamus action if their claim ever becomes ripe for determination. That is, if the administrative appeals are decided in relators' favor, but they still believe that they have not been accorded complete relief, they would not be barred from filing a new original action before this court.

{¶31} As a final point, this court would note that, while the parties' two competing motions for summary judgment were pending in this case, respondent moved this panel to take judicial notice of two written decisions that had been issued by the administrative law judge in the administrative appeals. As to the relevancy of the decisions, we would indicate that the actual substance of the administrative law judge's ruling regarding the "classification" issue is not pertinent to whether the mandamus claim has become ripe for review; thus, the judge's ruling has not been considered in disposing of the motions for summary judgment. Instead, the only important point is that the recent issuance of the two decisions confirms that the State Personnel Board of Review has not rendered a binding final order on the controlling factual issue. For this limited purpose, the motion to take judicial notice is granted.

{¶32} Pursuant to the foregoing discussion, this court concludes that, in relation to the question of whether relators' mandamus claim is ripe for review, respondent has demonstrated that there are no factual disputes as to any material fact, and that he is entitled to prevail on the sole claim as a matter of law. That is, respondent has shown that the mandamus claim will not be ripe for final disposition until the State Personnel Board of Review has issued a binding final order on the issue of whether relators were classified or unclassified employees with the coroner's office. Accordingly, on this basis alone, respondent's motion for summary judgment is granted. It is the order of this

court that judgment is hereby entered, without prejudice, against relators on their entire mandamus petition, with the caveat that the action can be re-filed if the claim for relief ever becomes ripe for determination.

CYNTHIA WESTCOTT RICE, J., MARY JANE TRAPP, J., THOMAS R. WRIGHT, J., concur.