

[Cite as *Bartolet v. Moore*, 2010-Ohio-4632.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DONALD BARTOLET
Plaintiff-Appellant

-vs-

CONNIE MOORE, ET AL.

Defendants-Appellees

JUDGES:
Hon. William B. Hoffman, P.J.
Hon. John W. Wise, J.
Hon. Patricia A. Delaney, J.

Case No. 2009CA00306

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Case No. 2009CV02110

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

September 27, 2010

APPEARANCES:

For Plaintiff-Appellant

For Defendants-Appellees

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Canton, Ohio 44702

ANDREW L. ZUMBAR
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470 East Market Ave.
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Hoffman, P.J.

{¶1} Plaintiff-appellant Donald Bartolet appeals the November 30, 2009 Judgment Entry of the Stark County Court of Common Pleas in favor of Defendant-appellee Connie Moore, in the official capacity as Civil Service Commissioner; Toni Middleton, in the official capacity as Mayor of City of Alliance; and Scott Griffith, in the official capacity as the Chief of Alliance Police Department.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant was most recently appointed to the Alliance Police Department as a Probationary Patrolman on April 16, 2008. The appointment was subject to a one year probationary period as specified by the rules of the Civil Service Commission of the City of Alliance. Appellant was originally employed by the Alliance Police Department in 1992, but left his employment in 2003 (after having successfully served the probationary period), when he was hired by a police agency in Dublin, Ohio.

{¶3} On February 19, 2009, the Alliance Police Department administered a Sergeant's Promotional Exam. Appellant sat for the exam. Based upon the test result and his presumed seniority, Appellant would have been the highest scoring applicant. However, he was notified by letter of March 18, 2009, he was ineligible for the promotion due to his probationary status.

{¶4} Appellant filed a request for an injunction restraining Appellees from certifying another applicant until his eligibility was determined. On November 30, 2009, the Stark County Court of Common Pleas entered judgment in favor of Appellees as to Appellant's claims. Appellant filed a notice of appeal on December 21, 2009. No stay of execution was requested, either in this Court or in the trial court. In the interim, on

December 7, 2009, the Alliance Civil Service Commission certified the Sergeant's Promotional List, promoting the highest ranking candidate to the position of sergeant.

{¶15} Appellant assigns as error:

{¶16} "I. THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT FOUND DONALD BARTOLET WAS A PROBATIONARY APPOINTMENT IN THE CIVIL SERVICE OF OHIO AND NOT A PERMANENT, TENURED APPOINTMENT WHEN HE TOOK THE PROMOTIONAL EXAMINATION ON FEBRUARY 19, 2009 AND THEREFORE HE WAS INELIGIBLE FOR PROMOTION."

{¶17} Initially, we note, Appellant's sole prayer before the trial court requested an injunction restraining Appellees from proceeding with any certification of the position of sergeant until his eligibility is determined.

{¶18} As stated above, the promotional list was certified by the Alliance Civil Service Commission on December 7, 2009. Accordingly, the argument raised in the within appeal is moot.¹

By: Hoffman, P.J.

Wise, J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

¹ While the issue is capable of repetition, we do not find it one necessarily evading review.

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DONALD BARTOLET

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-vs-

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Defendants-Appellees

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JUDGMENT ENTRY

Case No. 2009CA00306

For the reason stated in our accompanying Opinion, this appeal is ordered dismissed as being moot. Costs to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY