

[Cite as *Fisher v. Stonelick Twp.*, 2010-Ohio-4944.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

ERIC FISHER,	:	
Plaintiff-Appellant,	:	CASE NO. CA2010-05-037
- vs -	:	<u>OPINION</u> 10/12/2010
STONELICK TOWNSHIP, et al.,	:	
Defendants-Appellees.	:	

CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2009CVF01806

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appellees

POWELL, J.

{¶1} Eric Fisher asks this court to overturn the judgment of the Clermont
County Common Pleas Court affirming a decision to remove him from Stonelick
Township's Fire Department. We decline Fisher's request and affirm the common
pleas court because its decision was supported by a preponderance of reliable,

probative, and substantial evidence.

{¶2} Fisher argues in his single assignment of error that the common pleas court erred when it affirmed the termination decision of the Stonelick Township Board of Trustees because the board's decision was illegal, arbitrary, capricious, unreasonable, and unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record.

{¶3} Fisher was a lieutenant with the fire department and an emergency medical technician (EMT)-paramedic. Fisher was fired by the trustees over an incident in May 2009 in which he responded in a life squad to a single-vehicle rollover accident with then Assistant Chief Greg Williams. The vehicle involved in the rollover accident was an ambulance returning a patient home from treatment. Fisher's certification as an EMT-paramedic was the highest emergency medical technician certification level and a level higher than Williams, who was an EMT-Intermediate.

{¶4} According to the decision of the common pleas court, Fisher conducted an initial assessment of the patient before handing off the care of the patient to Williams. Fisher drove the squad to the hospital. He acknowledged that he performed only certain functions during his initial assessment of the patient and didn't tell Williams about his assessment findings because Williams was around the patient most of the time.

{¶5} The common pleas court found that Fisher acknowledged certain protocols for patient care were not followed and he would have performed certain functions had he remained in the back of the squad, caring for the patient. It was stated that some of the functions not performed on this patient included obtaining and monitoring her blood pressure with a cuff, starting an intravenous line, pain

management, and notifying the hospital that they were en route with a trauma patient.

{¶16} Williams stated that the patient was afraid and gripping the sides of the cot so tightly he could not obtain a blood pressure reading with a cuff. He said he would not have felt comfortable staying in the back with the patient had he known the extent of her injuries.

{¶17} Fisher stated that Williams was capable of providing patient care. He said Williams never informed him that he was unable to complete the appropriate care. Based on Fisher's assessment of the situation at the scene, he told the trustees there was no difference in the level of care that would be provided for the patient by him or Williams.

{¶18} R.C. 505.38(A) states that the board of trustees of a township employs firefighters and fixes their compensation. Appointees can be removed from office as provided in R.C. 733.35 to R.C. 733.39.¹ To initiate removal of a firefighter, R.C. 505.38(A) provides that the trustees should designate the fire chief or a private citizen to investigate the conduct and prepare the necessary charges as directed by R.C. 733.35 to R.C. 733.39.

{¶19} R.C. 733.35 states that an "officer" may be removed if he has been guilty, in the performance of his duty, of bribery, misfeasance, malfeasance, nonfeasance, misconduct in office, gross neglect of duty, gross immorality, or habitual drunkenness.² R.C. 733.36 provides for a hearing of the charges before the proper legislative authority, which in this case is the township board of trustees.

1. R.C. 505.38(A).

2. See *Bowman v. Butler Twp. Bd. of Trustees*, 185 Ohio App.3d 180, 2009-Ohio-6128, ¶12.

{¶10} If the employment of a member of the fire department is terminated, the person may appeal the decision of the board to the common pleas court of the county in which the fire department is situated to determine the sufficiency of the removal.³

{¶11} According to the record, Fisher was charged with both malfeasance and misfeasance of duty. This court, relying on the Ohio Supreme Court case of *State ex rel. Neal v. State Civil Service Commission*, explained that "misfeasance" is the improper doing of an act that a person might lawfully do and "malfeasance" is the doing of an act that a person ought not to do at all.⁴

{¶12} R.C. 2506.01(A) states, except as otherwise provided, every final order, adjudication, or decision of any officer, board, commission, or other division of any political subdivision of the state may be reviewed by the common pleas court of the county in which the political subdivision is located.

{¶13} According to R.C. 2506.04, the common pleas court considers the whole record, including any new or additional evidence admitted under R.C. 2506.03, and determines whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence.⁵

{¶14} The common pleas court may affirm, reverse, vacate, or modify the decision or remand the matter to the body appealed from with instructions to enter a

3. R.C. 505.38(A).

4. *In re Removal of Kuehnle*, 161 Ohio App.3d 399, 2005-Ohio-2373, ¶86, citing *State ex rel. Neal v. State Civ. Serv. Comm.* (1947), 147 Ohio St. 430, 434.

5. *Bowman*, 2009-Ohio-6128 at ¶13.

decision consistent with the findings or opinion of the court.⁶

{¶15} A subsequent appeal to the court of appeals, under R.C. 2506.04, is more limited in scope.⁷ The appellate court is required to affirm the common pleas court, unless the court of appeals finds, as a matter of law, that the decision of the common pleas court is not supported by a preponderance of reliable, probative and substantial evidence.⁸

{¶16} The *Kisil* court noted that R.C. 2506.04 grants a more limited power to the court of appeals to review the judgment of the common pleas court only on "questions of law."⁹ In reviewing questions of law, the appellate court considers whether the common pleas court abused its discretion.¹⁰

{¶17} The common pleas court found that, despite use of the term "malfeasance" by one of the trustees, there wasn't a preponderance of substantial, reliable, and probative evidence in the record to support a finding of malfeasance. The common pleas court, however, found there was the requisite evidence in the record to support a finding of misfeasance of duty to terminate Fisher's employment.

{¶18} The common pleas court noted the findings by the trustees related to what one trustee termed Fisher's "poor judgment" as the paramedic at the scene. According to the common pleas court, there was no procedure dictating that the EMT with the highest certification ride in the back of the life squad and administer patient care. However, the common pleas court observed that the trustees in deciding to

6. R.C. 2506.04; see, also, *Dudukovich v. Lorain Metro. Hous. Auth.* (1979), 58 Ohio St.2d 202, 207.

7. *Kisil v. City of Sandusky* (1984), 12 Ohio St.3d 30, 34.

8. *Id.*

9. *Id.* at fn. 4.

10. *Bowman* at ¶14, citing *Kisil* at 34.

terminate Fisher's employment, "felt, based on the accident the patient went through, and the fact that she was in some distress and morbidly obese, that Lt. Fisher, who was the first to assess the patient and the paramedic on the scene, should have made the choice to stay with the patient and, by not making that choice, he showed an indifference to patient care."

{¶19} The common pleas court stated, "Based on all of the testimony and evidence before it, the Board's decision to terminate the appellant's [Fisher] employment with the Stonelick Township Fire Department was not illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of the evidence."

{¶20} Applying our limited review, we find, as a matter of law, the decision of the common pleas court is supported by a preponderance of reliable, probative, and substantial evidence, and that the court did not abuse its discretion in upholding the decision to terminate Fisher's employment.

{¶21} Judgment affirmed.

{¶22} Pursuant to Loc.R. 6(A), we removed this appeal from the accelerated calendar and placed it on the regular calendar for purposes of issuing this opinion.

YOUNG, P.J., and BRESSLER, J., concur.