AFFIRM; and Opinion Filed December 7, 2016.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-15-00874-CV

TERESA WARD COOPER AND JAY SANDON COOPER, Appellants
V.
CITY OF DALLAS, TEXAS, Appellee

On Appeal from the 14th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-13-02287-A

MEMORANDUM OPINION

Before Justices Francis, Stoddart, and Schenck
Opinion by Justice Schenck

Teresa Ward Cooper ("Cooper") appeals a judgment affirming the City of Dallas' (the "City") decision to terminate Cooper's employment. Cooper raises several issues to challenge the underlying findings supporting her termination. The City responds with a cross-issue arguing as an alternative to affirming the district court's judgment that the district court should have dismissed Cooper's appeal. Additionally, Teresa's husband Jay Sandon Cooper ("Mr. Cooper") appeals the district court's decision to grant the City's motion to strike his plea in intervention. We overrule all issues on appeal from all parties, and we affirm the district court's judgment. Because all issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

FACTUAL AND PROCEDURAL BACKGROUND

The City hired Cooper as a Dallas police officer in 1988. On October 7, 2002, she requested a leave of absence and applied for short-term disability benefits to receive treatment

for generalized anxiety disorder. Cooper's short-term disability status was approved, but when she did not return to work as scheduled, the City terminated her employment for excessive absences, inability to come to work, and job abandonment. Cooper appealed her termination to Administrative Law Judge Fred Ahrens ("ALJ Ahrens") who determined while Cooper had violated the City's personnel rules, her termination was improper because there had been no Internal Affairs Division ("IAD") investigation as required by the police department's general orders. On February 20, 2004, ALJ Ahrens ordered appellant reinstated to her previous status of being on leave without pay. Unhappy with being reinstated without pay, Cooper appealed ALJ Ahrens's decision to the district court, which found substantial evidence to support the administrative law judge's decision, and then to this Court, which affirmed the district court's judgment. *Cooper v. City of Dallas*, 229 S.W.3d 860, 863 (Tex. App.—Dallas 2007, pet. denied).

On October 5, 2004, Cooper's psychologist, Dr. S.A. Somodevilla, wrote a letter to Deputy Chief of Police Daniel Garcia releasing Cooper to return to duty contingent upon the results of a fitness-for-duty evaluation. A few days later, Deputy Chief Garcia wrote to Cooper informing her the department scheduled an appointment for her to be evaluated by Dr. J. Randall Price on October 18, 2004. When Cooper failed to keep that appointment, Deputy Chief Brian Harvey issued a direct order for her to attend a second appointment scheduled on November 4, 2004, which she again failed to attend. Deputy Chief Harvey issued another direct order to Cooper to attend a third scheduled appointment on December 6, 2004, and he further ordered her to sign, without alteration, any and all document or paperwork Dr. Price deemed necessary to complete the evaluation. Cooper appeared for the December 6, 2004 appointment, but when Dr. Price presented her with a form for her signature that included her consent to release the results of the evaluation to her employer, Cooper included the phrase "under duress without giving

consent" next to her signature. Because she failed to give her consent to treatment, Dr. Price terminated the appointment.

Cooper was ordered to attend yet another appointment with Dr. Cary Conaway on January 13, 2005, but instead of attending that appointment, she applied to the federal district court to enjoin the City from ordering her to report to a doctor of the City's choosing. The court denied her application and commented it was "astounded . . . [at] the number of times that appointments have been set." Following the federal judge's decision, Cooper's attorney wrote to the City's attorney and proposed that Cooper be allowed to select her own doctor and proposed a series of deadlines. The City's attorney responded that the City denied the proposal and pointed out that an order had issued requiring that Cooper attend an evaluation with Dr. James Shupe on February 4, 2005. Cooper then faxed a letter to Deputy Chief Harvey, saying that she would be out of town on January 1st through January 9th, 2005, which Cooper later stated was meant to be February 1st through February 9th. In all events, Cooper failed to report to the evaluation scheduled on February 4, 2005.

On February 17, 2005, Deputy Chief Harvey wrote to Cooper, informing her that since she had refused to comply with the orders to attend five separate appointments with three different doctors, her status was changed from approved leave without pay to unapproved leave without pay. From May 20, 2005, to June 21, 2005, the IAD issued Cooper three separate written, direct orders to report to IAD to respond to the allegations against her. Cooper failed to report to the IAD on any of these dates. The IAD's investigation found Cooper committed six instances of insubordination: three for failure to obey orders to report to fitness-for-duty evaluations, and three for her failure to obey orders to report to IAD. Chief of Police David Kunkle terminated Cooper's employment on August 30, 2005, citing her violations of the City's personnel rules and the Dallas Police Department ("DPD") code of conduct.

Cooper appealed her termination to the City Manager who upheld the decision of the Chief of Police to terminate Cooper's employment. Cooper then appealed her termination to an administrative law judge, Willie Mae Crowder ("ALJ Crowder"), who found Cooper committed six separate instances of insubordination as alleged and upheld Cooper's termination in a decision dated February 16, 2012.[1] Cooper filed a motion for rehearing, which ALJ Crowder denied. On February 25, 2013, Cooper filed this lawsuit in the district court, seeking a substantial-evidence review of ALJ Crowder's decision, and asserting state and federal claims against the City and Kimberly Owens ("Owens"), the detective who conducted the IAD investigation. The City and Owens removed the lawsuit to federal court where they filed a motion for summary judgment, seeking dismissal of all claims. On September 9, 2014, the federal court granted the motion, and dismissed all claims as barred by res judicata except the substantial-evidence review of ALJ Crowder's decision, which the court remanded to state district court.[2]

The day before the state district judge heard arguments on the substantial-evidence review of ALJ Crowder's decision, Cooper's husband Mr. Cooper filed a plea in intervention. The next day, the City moved to strike Mr. Cooper's plea in intervention, which the district judge did. The judge then heard arguments from Cooper and the City regarding the substantial-evidence review, after which the district judge found substantial evidence existed to support ALJ Crowder's decision. Cooper and her husband Mr. Cooper filed a joint notice of appeal. On appeal, Cooper argues ALJ Crowder's decision was not supported by substantial evidence and

[1] In the intervening years between her termination and her appeal to ALJ Crowder, Cooper participated in various legal actions and appeals that are not relevant to the issues presented in this case.

[2] In her Findings, Conclusions, and Recommendation, Magistrate Judge Renee Toliver detailed the four employment-related lawsuits Cooper filed in federal and state courts against the City, including a suit filed in federal court challenging her August 30, 2005 termination. *Cooper v. City of Dallas*, 3:13-CV-1330-N-BK, 2014 WL 4428384, at *1 (N.D. Tex. Aug. 14, 2014), *report and recommendation adopted*, 3:13-CV-1330-N-BK, 2014 WL 4428385 (N.D. Tex. Sept. 9, 2014). The magistrate judge found that all claims except Cooper's appeal from ALJ Crowder's decision arose out of the same subject matter as Cooper's previous state and federal actions, i.e. the conditions of her employment with the City and her ultimate firing. *Id.* at *4.

raises additional issues regarding the lawfulness of the orders, alleged errors committed during the hearing before ALJ Crowder, and alleged violations of the state and federal constitutions. Both Cooper and Mr. Cooper filed their briefs pro se.[3]

MR. COOPER'S INTERVENTION

We first address Mr. Cooper's appeal of the district court's grant of the City's motion to strike his plea in intervention. Mr. Cooper argues the judge denied him due process by evicting him from the courtroom and by granting the City's motion to strike while Mr. Cooper was outside the courtroom.

Rule 60 of the Texas Rules of Civil Procedure provides that any party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party. TEX. R. CIV. P. 60. "After a motion to strike a petition for intervention is filed, the intervenor should be given an opportunity to explain, and show proof of, his interest in the lawsuit." *Grizzle v. Texas Commerce Bank, N.A.*, 38 S.W.3d 265, 273 (Tex. App.—Dallas 2001), *rev'd on other grounds*, 96 S.W.3d 240 (Tex. 2002) (concluding the court abused its discretion by striking an intervenor's claim without affording her an opportunity to respond to the motion to strike).

We review a trial court's decision to strike a party's intervention for abuse of discretion. *In re Lumbermens Mut. Cas. Co.*, 184 S.W.3d 718, 722 (Tex. 2006). Under Rule 60, a party may intervene if the intervenor could have brought the action or any part thereof in his own name. *In re Union Carbide Corp.*, 273 S.W.3d 152, 155 (Tex. 2008). It is an abuse of discretion to strike a plea in intervention if (1) the intervenor meets the above test, (2) the intervention will not

[3] We construe liberally pro se pleadings and briefs; however, we hold pro se litigants to the same standards as licensed attorneys and require them to comply with applicable laws and rules of procedure. To do otherwise would give a pro se litigant an unfair advantage over a litigant who is represented by counsel. *Washington v. Bank of New York*, 362 S.W.3d 853, 854 (Tex. App.—Dallas 2012, no pet.).

complicate the case by an excessive multiplication of the issues, and (3) the intervention is almost essential to effectively protect the intervenor's interest. *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990) (citing TEX. R. CIV. P. 60).

As described above, Mr. Cooper filed his plea in intervention the day before the judge heard arguments on the review of ALJ Crowder's decision. The next day, Mr. Cooper filed an amended trial brief, and the City served and filed a motion to strike Mr. Cooper's plea in intervention. Mr. Cooper's plea in intervention listed his request to recover "his community interest" as the only basis for his intervention. His trial brief, which was titled as "Intervenor's Trial Brief; Plaintiff's First Amended Trial Brief," failed to raise any arguments or allege any facts to support his own interest in the lawsuit. The judge allowed the City's attorney to argue the motion, at which point Mr. Cooper interrupted and continued to do so until the judge directed the bailiff to remove him from the courtroom. After hearing argument from the City and "[t]aking the entirety of the Plea in Intervention on its face as all the facts therein were true," the judge granted the motion to strike Mr. Cooper's intervention. At that point, the judge invited Mr. Cooper back into the courtroom and informed him of the ruling and its basis.

On appeal, Mr. Cooper argues the judge denied him due process by depriving him of a meaningful hearing and opportunity to make his objections to the City's motion to strike. Assuming error, rule 44.1(a) of the Texas Rules of Appellate Procedure provides that "[n]o judgment may be reversed on appeal on the ground that the trial court made an error of law unless the court of appeals concludes that the error complained of probably caused the rendition of an improper judgment . . . ." The only basis Mr. Cooper asserted to the trial court or on appeal for his intervention is his "community interest." Even assuming that factual allegation is true, Mr. Cooper's interest is in his spouse's personal earnings, which are under Cooper's "sole management, control, and disposition." TEX. FAM. CODE ANN. § 3.102 (West 2016). Courts

have held that an employee spouse, because of his exclusive managerial power over personal earnings, has the sole authority to bring an action for recovery of the community property under his sole management. *See Bell v. Moores*, 832 S.W.2d 749, 752 (Tex. App.—Houston [14th Dist.] 1992, writ denied) (citing *Lester v. United States*, 487 F.Supp. 1033, 1040 (N.D. Tex. 1980) (applying Texas law); *Weatherford v. Elizondo*, 52 F.R.D. 122, 128 (S.D. Tex. 1971) (applying Texas law)). Accordingly, Mr. Cooper's pleadings fail to allege facts to support a cause of action in his own name. *See In re Union Carbide Corp.*, 273 S.W.3d at 155. Moreover, on appeal, Mr. Cooper asserts that he and his wife are aligned in the litigation. Thus, Mr. Cooper has failed to show how his interest was separate from his wife's or why his intervention was "almost essential to effectively protect [his] interest." *See Guar. Fed. Sav. Bank*, 793 S.W.2d at 657.

Even if error occurred when the trial court failed to provide Mr. Cooper with an opportunity to respond to the City's motion to strike, there is no reversible error under the circumstances presented in this case. TEX. R. APP. P. 44.1(a); *but see Grizzle*, 38 S.W.3d at 273 (reversing where the petition in intervention alleged facts which, if true, would provide intervenor with standing to bring action on her own accord and where the intervention was essential to effectively protect the intervenor's claims). Accordingly, we overrule Mr. Cooper's sole issue.

THE CITY'S CROSS-ISSUE

Before responding to Cooper's arguments, the City contends Cooper's appeal should be dismissed because she failed to meet her burden of providing the trial court with a complete record of the ALJ hearing in accordance with the City's Code. Our analysis of a city's ordinances such as the City's Code is guided by the same rules of construction that we use to construe statutes. *City of Dallas v. Blanton*, 200 S.W.3d 266, 277 (Tex. App.—Dallas 2006, no

pet.). Our primary duty is to carry out the intentions of the municipality's legislative body. *Id.* We look first to the plain meaning of the words. *Id.* If the language is unambiguous, we interpret the ordinance using its plain language unless that interpretation leads to absurd results. *Id.*

The City contends that because Cooper filed audiotapes of the hearing instead of a transcript, she did not satisfy her burden of providing the trial court with a complete record for review and thus this Court must dismiss her appeal. Sections 34-40(f)(2)(D) and (E) of the City's Code provide as follows.

> (D) The appealing party shall, at its expense, furnish to the court a copy of the complete hearing record to be presented to the . . . administrative law judge, including but not limited to pleadings, hearing transcripts, exhibits, orders, and all evidence admitted during the hearing.
>
> (E) If the appealing party fails to provide the court with any material required by Paragraph (2)(d) of this subsection, the appeal *must* be dismissed.
>
> DALLAS CITY CODE, § 34-40(f)(2)(D), (E).

We note that the plain language of section 34-40(f)(2)(D) requires a "complete hearing record" but non-exclusively lists "hearing transcripts" as one of many forms the copy of the hearing record may take. Nothing in the above language indicates audiotapes could not be submitted instead of hearing transcripts. Accordingly, we overrule the City's cross-issue and proceed to the merits of Cooper's issues on appeal.

SUBSTANTIAL-EVIDENCE REVIEW

I. *Standard of Review & Applicable Law*

The City is governed by its own civil-service provisions under its charter and ordinances, which provide that after an employee's discipline is upheld by the City Manager, the employee may appeal to an administrative law judge and then to a state district court. *Cooper*, 229 S.W.3d at 863. A district court reviews the administrative law judge's decision under the substantial-evidence standard. *Id.* at 864. The issue for the reviewing court is not whether the agency

reached the correct conclusion, but rather whether there is some reasonable basis in the record for the action taken by the agency. *R.R. Comm'n v. Torch Operating Co.*, 912 S.W.2d 790, 792 (Tex. 1995). Substantial evidence requires only more than a mere scintilla. *Id.* at 792–93. An administrative decision may be sustained even when the evidence preponderates against it. *Mireles v. Tex. Dep't of Pub. Safety*, 9 S.W.3d 128, 131 (Tex. 1999).

II. ***Discussion***

A. Cooper's violations of the Dallas Police Department Code of Conduct and the Dallas City Code Personnel Rules

In her first twelve issues, Cooper argues the findings that she violated section 4.5 of the Dallas Police Department Code of Conduct and section 34-36(b)(10)(A) of the Dallas City Code on November 4, 2004; December 6, 2004; February 4, 2005; May 4, 2005; June 7, 2005; and June 28, 2005, should not have been upheld on appeal. DALLAS CITY CODE, § 34-36(b)(10)(A). Section 4.5 of the Dallas Police Department Code of Conduct provides that "[n]o employee shall fail or deliberately refuse to obey a lawful order given by a supervisory member." Section 34 of the Dallas City Code contains the City's personnel rules. Section 34-36(b)(10)(A) provides:

> [t]he following types of conduct are unacceptable and may be cause for corrective discipline in the form of reprimand, suspension, demotion, or discharge . . . willful failure or refusal to follow the specific orders or instructions of a supervisor or higher authority; provided that if the employee believes an instruction or order is improper, the employee should obey the instruction or order and file a grievance later . . . .

The record contains Cooper's filing of over four hundred pages of documents she presented as "the administrative record" for the district court's review. These documents include letters from Deputy Chief Harvey to Cooper, ordering her to attend appointments to undergo fitness-for-duty evaluations on November 4, 2004; December 6, 2004; and February 4, 2005, as well as shipping receipts showing the letters were delivered to Cooper on November 4, 2004; November 23, 2004; and January 26, 2005. Also included are reports from the IAD that Cooper

failed to attend the appointments during November and February, and that at the December 6, 2004 appointment, she signed the informed consent form "under duress, without giving consent." The record contains orders for Cooper to report to the IAD on May 24, 2005; June 7, 2005; and June 28, 2005, to address the allegations she was insubordinate for failing to comply with the orders related to the scheduled fitness-for-duty evaluations. Additionally, the record contains IAD reports that Cooper failed to report to the IAD as ordered. We conclude the foregoing constitutes more than a scintilla of evidence to support ALJ Crowder's decision and thus overrule Cooper's first twelve issues.

B. Cooper's Status as an Employee

In her thirteenth issue, Cooper argues the Chief of Police purported to remove her from employment although the City did not prove she was an employee who was unfit for her assignment as required by section 501.00 A of Dallas Police Department General Order 500. Section 501.00 A provides that the Dallas Police "Department will remove from employment those individuals who prove to be unfit for their assignment . . . ." Cooper urges that section 501.00 A requires that the Dallas Police Department must have given her an assignment before she could have been found "unfit for [her] assignment." She raises additional arguments that she was not an employee at the time of her termination or on the days she was charged with insubordination by pointing to several sections of the Dallas City Code and Dallas City Charter.[4]

In her ruling, ALJ Crowder comments that despite Cooper's argument she was not an employee, she submitted a payroll record exhibit showing she remained an employee of the City of Dallas Police Department from February 20, 2004, until August 30, 2005. Cooper does not

[4] Cooper also argues she could not have been an "employee" while she was not paid by the City, citing the Fair Labor Standards Act. These arguments were raised before the federal court and were dismissed with prejudice when the court granted the City's motion for summary judgment. *Cooper v. City of Dallas*, 3:13-CV-1330-N-BK, 2014 WL 4428384, at *5 (N.D. Tex. Aug. 14, 2014), *report and recommendation adopted*, 3:13-CV-1330-N-BK, 2014 WL 4428385 (N.D. Tex. Sept. 9, 2014). Accordingly, they were not before the state district court and are not before this Court on appeal.

point to any evidence or offer any citations to the record to support her argument that she was not an employee when she was ordered to attend the fitness-for-duty evaluations or to report to the IAD. Further, Cooper filed at the district court a copy of her Original Application for Temporary Restraining Order and Temporary and Permanent Injunction and Motion to Quash and Brief in Support ("Application") with the federal court on January 13, 2005. In the Application, Cooper affirmatively stated "[a]t all times relevant hereto, Plaintiff has been a police sergeant with the Dallas Police Department." Attached to the Application is an affidavit signed by Cooper in which she states she read the Application and that every statement contained therein was true and correct. Additionally, the record contains a letter from Deputy Chief Harvey dated February 17, 2005, in which he informs Cooper her leave without pay status was no longer approved, thus changing her status to unapproved leave without pay. Accordingly, we conclude the record contains more than a scintilla of evidence to support ALJ Crowder's finding that Cooper was an employee at all relevant times.

C. Administrative Law Judge's Decision

In her fourteenth issue, Cooper argues ALJ Crowder's decision was arbitrary, capricious, unlawful, and not supported by substantial evidence. We have already concluded above that ALJ Crowder's decision was indeed supported by substantial evidence, and Cooper offers no additional basis for overturning the decision as arbitrary, capricious, or unlawful.[5] Accordingly, we overrule this issue.

ADDITIONAL ISSUES

Throughout her brief, Cooper raises additional arguments or "reasons" in support of the foregoing issues. We construe Cooper's brief liberally and address these additional issues she

[5] We note that this is not the correct standard of review. That standard has been set forth above in this opinion. The authority Cooper relies on for this standard is that of a supreme court opinion reviewing a decision reached by a school district's board of trustees. *Montgomery Indep. Sch. Dist. v. Davis*, 34 S.W.3d 559, 561 (Tex. 2000) (citing TEX. EDUC. CODE § 21.207(a) (West 2000).

has raised. *Washington v. Bank of New York*, 362 S.W.3d 853, 854 (Tex. App.—Dallas 2012, no pet.) (holding that appellate courts must liberally construe pro se pleadings and briefings while holding them to the same standards as licensed attorneys).

1. *Lawfulness of Orders and Letter of Discharge*

Cooper raises numerous arguments that appear to be related to the lawfulness of the letter of discharge, the letters ordering Cooper to attend fitness-for-duty evaluations, and the letters directing Cooper to report to IAD. These arguments are not supported by the record or the authority she cites. For example, she argues the City waived the first investigation alleging disrespect to a supervisor and cites to a letter from the City in the record wherein the City agrees to not move forward with the allegation Cooper violated section 4.6. While it is true the letter of discharge included an allegation that Cooper violated section 4.6, the letter also included allegations that Cooper violated section 4.5, which the administrative law judge found to be well taken in her ruling.

As another example, Cooper complains it was unlawful to issue an order that would force Dr. Price to require Cooper to waive her confidentiality in violation of section 611.002 of the Texas Health & Safety Code that provides communications between a patient and a professional are confidential. TEX. HEALTH & SAFETY CODE ANN. § 611.002 (West 2010). We note this Court has already concluded that a doctor's examination of a person solely for the benefit of a third party, such as to determine the person's fitness for employment, does not create a physician–patient relationship because the purpose is not to provide treatment for the examinee. *Anderson v. City of Dallas*, No. 05-04-01449-CV, 2005 WL 1540162, at *4 (Tex. App.—Dallas July 1, 2005, no pet.) (mem. op.); *see also* § 611.004(a)(4) (West 2010) ("A professional *may* disclose confidential information only to a person who has the written consent of the patient . . . .") (emphasis added).

Finally, Cooper argues the orders to report to IAD were memoranda and thus could not serve as the basis for an insubordination charge. She points to the DPD general order that states memoranda "will not be a part of the directive system" and concludes that since the letters were each titled "memoranda" she could not have been found in violation of an "order." Regardless of whether such directions to report to IAD could not have been orders Cooper was found to have violated, there remains substantial evidence in the record to support the ALJ's decision to affirm Cooper's termination for violating the orders to attend fitness-for-duty evaluations.

2. *Harmless Errors*

Cooper also raises several complaints related to the administrative law judge proceedings that she fails to support with any arguments as to what harm such alleged errors caused. For example, she complains ALJ Crowder's denial of her motion for a directed verdict amounted to "impermissibly shifting the burden to Cooper." Even assuming this were so, the record contains substantial evidence that Cooper committed the violations as alleged. Accordingly, any error committed in improperly placing the burden of proof on Cooper in connection with an intervening motion was harmless. *Dallas Cty. Civil Serv. Comm'n v. Woertendyke*, No. 05-96-01460-CV, 1999 WL 521684, at *6 (Tex. App.—Dallas July 23, 1999, no pet.) (not designated for publication). Next, Cooper urges ALJ Crowder based her decision on irrelevant facts. While Cooper refers to where these "irrelevant facts" are in the record, she fails to establish that ALJ Crowder actually based her decision on these facts. Further, even assuming ALJ Crowder considered some irrelevant facts, the record contains substantial evidence that Cooper committed the violations as alleged. *R.R. Comm'n*, 912 S.W.2d at 792.

Additionally, Cooper alleges ALJ Crowder did not follow the rulings of the previous administrative law judge Ahrens and thus violated the law-of-the-case doctrine. However, she has not presented this Court—nor have we found—any authority applying this doctrine from one

ALJ decision to another. Neither has Cooper established ALJ Crowder actually failed to follow any substantive rulings of ALJ Ahrens that would have affected the outcome.

Finally, Cooper complains ALJ Crowder was not an attorney, arguing her right to due process was "not something that just any lay person can grasp" and that she adversely affected fundamental fairness. The City's Code provides that an administrative law judge may be "a person who has at least five years experience (sic) adjudicating hearings of personnel decisions." DALLAS CITY CODE, § 2-164. Cooper does not cite—nor has this Court found—any authority requiring the administrative law judge to be a licensed attorney. Nor does she explain how ALJ Crowder's lack of a license to practice law affected the fundamental fairness of the proceedings.

3. *Complaints Belied by the Record*

Cooper makes various arguments that are belied by a review of the record. She argues Deputy Chief Harvey did not timely complain about the violations on November 4 and December 6 of 2004. However, the record contains a personnel complaint control sheet that notes the date the complaints about these incidents was received was December 20, 2004, well within the sixty-day limit established by section 502.00 A of General Order 500. Cooper argues the letters ordering her to report to the IAD on May 24, 2005; June 7, 2005; and June 28, 2005, should have been considered as requests for discovery in litigation that she should have been protected from due to her May 16, 2005 motion for protection and to quash, which she asserts was still outstanding during those appointments. However, review of the record reveals a May 20, 2005 letter from Cooper's attorney to the state district court in which the motion was filed advising the trial court that Cooper "hereby withdraws Plaintiff's Motion for Protection and to Quash . . . ."

We similarly overrule complaints that Cooper makes without pointing us to any evidence supporting her claims. For example, she argues the City failed to follow its own reinstatement

policy, complaining she was not assigned to a position within the Dallas Police Department that was the same classification and grade as her original position and that the Personnel and Development Division Commander did not meet with Cooper within five days of Cooper presenting herself for work on October 5, 2004. The record before us is voluminous, consisting of eighty-five volumes of clerk's record and six volumes of reporter's record, and we have no duty to search such a voluminous record without guidance from the appellant to determine whether an assertion of reversible error is valid. *Noell v. City of Carrollton*, 431 S.W.3d 682, 705 (Tex. App.—Dallas 2014, pet. denied).

4. *Due Process Complaints*

Cooper argues the City applied new policies and procedures to her reinstatement and that the Dallas Police Department did not follow the procedure set forth by its own general orders to reinstate her after ALJ Ahrens ordered her to be reinstated. She also complains DPD wrongfully amended its general orders after ALJ Ahrens' order issued to remove language prohibiting the DPD from requiring Cooper to see a specific psychologist.

On February 20, 2004, ALJ Ahrens' ordered Cooper be reinstated to "leave without pay status until March 1, 2004" and that if Cooper presented herself to return to work prior to the expiration of her leave without pay status, then section 404.01 C of DPD General Order 400 would apply. Section 404.01 C provides in relevant part that "Department policy requires returning sworn members of the Department to undergo a fitness-for-duty evaluation before being re-armed and reassigned to duty." Section 432.01 defines fitness-for-duty evaluation and provides in subsection I that an employee could not be ordered to see a specific psychologist until January 11, 2005, when section 432.01 was amended to remove the prohibition on ordering an employee to see a specific psychologist. City Personnel Rule 34-22.1(b) provides "[a]n employee may be required to submit to a physical and/or mental examination by a city-selected .

. . psychologist, in order to evaluate the employee's current mental or physical status as it relates to the ability to perform the employee's job duties." DALLAS CITY CODE, § 34-22.1(b). Additionally, the letters ordering Cooper to attend evaluations with specific psychologists referenced City Personnel Rule 34-22.1(b) rather than section 432.01 of the general orders. Nothing in ALJ's statements on the record or in his orders indicates City Personnel Rule 34-22.1(b) could not have been applied to Cooper's evaluation.

5. *Right to Counsel*

Additionally, Cooper asserts she was deprived of a right to counsel in violation of her "Weingarten rights," which she argues were conferred by section 506.01 of the DPD General Order 500. She points to notes from the disciplinary hearing on August 22, 2005, which indicate that when she asked if she was being denied counsel in the hearing and Chief Kunkle "informed her that she did not have a right to counsel in the administrative hearing." In *NLRB v. Weingarten,* the United States Supreme Court held that the National Labor Relations Act granted private-sector employees the right to have a union representative present at an investigatory interview when the employee reasonably believes the interview could result in disciplinary action. *NLRB v. Weingarten,* 420 U.S. 251, 260 (1975). In *City of Round Rock v. Rodriguez,* the Texas Supreme Court examined whether the Texas Labor Code similarly conferred a representative right to public-sector employees in Texas. *City of Round Rock v. Rodriguez,* 399 S.W.3d 130, 139–40 (Tex. 2013). The *Rodriguez* court concluded that the labor code did not confer that right on public-sector employees in Texas. *Id.* at 140.

6. *Cooper's Other Constitutional Arguments*

Cooper complains City Personnel Rule 34-22.1(b) violates article XI, section 5 of the Texas Constitution and that it and General Order 432.01 are unconstitutional because they "purport to authorize persons who are not members of the judiciary to require a mental

evaluation" of persons the City asserts are its employees. DALLAS CITY CODE, § 34-22.1(b). However, as the City points out, the federal court addressed and dismissed Cooper's state and federal constitutional complaints as barred by res judicata. *Cooper v. City of Dallas*, 3:13-CV-1330-N-BK, 2014 WL 4428384, at *4 (N.D. Tex. Aug. 14, 2014), *report and recommendation adopted*, 3:13-CV-1330-N-BK, 2014 WL 4428385 (N.D. Tex. Sept. 9, 2014).

7. *ALJ's Decisions to Exclude or Admit Evidence*

Cooper complains the ALJ wrongfully admitted or excluded evidence. She argues the ALJ wrongfully excluded evidence by refusing to take judicial notice of a City ordinance Cooper asserts would establish the City's one-year delay to schedule Cooper's appeal, by excluding evidence regarding Cooper's grievances and the DPD's court-notify system, by limiting Cooper's testimony regarding her performance and previous employment record with the City, by excluding evidence of the City's inability to serve Dr. Shupe at the address at which Cooper was directed to attend a fitness-for-duty evaluation, and by sustaining the City's objections to Cooper's request to summon the City's director of human resources to cross-examine Deputy Chief Harvey. Cooper does not cite where in the record she first requested the ALJ to take judicial notice of a City ordinance, only her legal brief wherein she describes her request for judicial notice and she requests a ruling thereon. Similarly, she fails to cite where in the record the ALJ "refused to accept evidence" regarding Cooper's grievances, where in the record the ALJ excluded evidence regarding the court-notify system, or where in the record the ALJ excluded evidence of the inability of the City to serve Dr. James Shupe. Accordingly, Cooper has failed to properly brief these issues. TEX. R. APP. P. 38.1(i). Further, as previously noted, the record before us is voluminous, and we have no duty to search a voluminous record without guidance from the appellant to determine whether an assertion of reversible error is valid. *Noell*, 431 S.W.3d at 705.

As for Cooper's arguments regarding the ALJ's decisions to sustain the City's objections and overrule Cooper's objections, Cooper fails to argue how even if the ALJ erred in those decisions, what evidence would have been admitted that would have affected the outcome of the ALJ's overall decision to affirm her termination. TEX. R. APP. P. 44.1(a)(1).

VARIOUS MOTIONS

Related to this appeal, Cooper and her husband Mr. Cooper filed two joint motions together prior to submission, a "Motion to Vacate Order of Submission" and a "Motion to Take Judicial Notice." These motions were deferred to the submission panel, and we now deny them as moot. After submission, Cooper and Mr. Cooper filed a joint "Motion for Sanctions." We deny the motion for sanctions.

CONCLUSION

We affirm the trial court's decision to strike Mr. Cooper's petition in intervention, overrule the City's cross-issue, overrule Cooper's issues, deny Cooper and Mr. Cooper's motions, and affirm the judgment of the trial court.

/David J. Schenck/
DAVID J. SCHENCK
JUSTICE

150874F.P05

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

TERESA WARD COOPER, Appellant	On Appeal from the 14th Judicial District Court, Dallas County, Texas
No. 05-15-00874-CV V.	Trial Court Cause No. DC-13-02287-A. Opinion delivered by Justice Schenck,
CITY OF DALLAS, TEXAS, Appellee	Justices Francis and Stoddart participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee CITY OF DALLAS, TEXAS, recover its costs of this appeal from appellant TERESA WARD COOPER.

Judgment entered this 7th day of December, 2016.