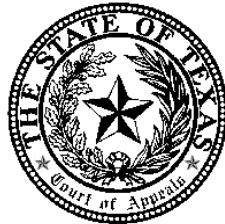


Reversed and Remanded and Memorandum Opinion filed January 27, 2011



In The
Fourteenth Court of Appeals

NO. 14-10-00239-CV

**CITY OF HOUSTON AND CHARLES MCCLELLAND, IN HIS OFFICIAL
CAPACITY AS CHIEF OF POLICE OF THE HOUSTON POLICE
DEPARTMENT, Appellants¹**

V.

DARRELL H. STROUSE, Appellee

**On Appeal from the 164th District Court
Harris County, Texas
Trial Court Cause No. 2004-71559**

MEMORANDUM OPINION

This appeal is from a final order signed December 28, 2009, granting Appellee's Motion for Summary Judgment. Through that summary judgment order, the trial court determined "the hearing examiner was not within his authority and jurisdiction to order

¹ Charles McClelland was appointed Chief of Police of the Houston Police Department on April 14, 2010. Therefore, pursuant to Rule 7.2 of the Texas Rules of Appellate Procedure, McClelland, in his official capacity as Chief of Police of the Houston Police Department, is substituted as a party in this appeal. *See* TEX. R. APP. P. 7.2.

the demotion of [Appellee].” Further, the trial court’s summary judgment order revised the hearing examiner’s award. The trial court denied Appellants’ motion for reconsideration by written order on January 28, 2010, and motion for new trial by written order on February 18, 2010.

On February 19, 2010, the Texas Supreme Court decided *City of Waco v. Kelley*, 309 S.W.3d 536 (Tex. 2010). In *Kelley*, the Texas Supreme Court determined that the appropriate remedy when a third-party hearing officer exceeds her jurisdiction is to vacate the decision and order a rehearing because of the scope of review authorized under Section 143.057(j) of the Texas Local Government Code. *Id.* at 550–51.²

On March 1, 2010, after the *Kelley* decision and after the trial court signed orders resolving both the outstanding motions for reconsideration and for new trial, Appellants filed a motion for reconsideration of their motion for new trial in light of *Kelley*. In his response, Appellee requested that the trial court grant Appellant’s motion to reconsider. Thus, it is clear from the record that the trial court did not make any rulings in light of the *Kelley* decision.

On appeal, Appellants and Appellee agree that the trial court’s summary judgment order must be reversed in light of *City of Waco v. Kelley*. They do not agree, however, on whether this court should include specific instructions in an opinion reversing the trial court’s judgment. Appellee asks this Court to order the trial court to remand the case to the hearing examiner. Appellants suggest this Court instruct the trial court that it does not have jurisdiction to remand to the hearing examiner.

This Court declines both invitations to supplant the trial court’s initial determination of the appropriate course under *City of Waco v. Kelley*. The decision of the trial court granting summary judgment is reversed and the case is remanded to the trial

² TEX. LOC. GOV’T CODE ANN. § 143.057(j) (West 2008).

court for proceedings consistent with this opinion.

/s/ Sharon McCally
Justice

Panel consists of Justices Anderson, Seymore, and McCally.