

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00198-CV

CITY OF BEAUMONT, TEXAS, Appellant

V.

JAMES MATHEWS, Appellee

On Appeal from the 60th District Court
Jefferson County, Texas
Trial Cause No. B-185,387

MEMORANDUM OPINION

Without conducting an evidentiary hearing, a hearing examiner reinstated firefighter James Matthews to his employment with the City of Beaumont. *See* Tex. Loc. Gov't Code Ann. §§ 143.001-.363 (West 2008 & Supp. 2010). We conclude that the hearing examiner exceeded his jurisdiction.

THE PROCEEDINGS

When a firefighter is involuntarily suspended, the officer may appeal the suspension to either the Civil Service Commission or an independent third-party hearing examiner. Mathews chose the latter. *See* Tex. Loc. Gov't Code Ann. §§ 143.053(a),(b);

143.057(a) (West 2008). After Mathews filed a motion to dismiss the suspension and the City filed its response, the hearing examiner reinstated Mathews and ordered back pay. Contending the hearing examiner exceeded his authority, the City appealed the decision to the district court. The district court dismissed the City's appeal for lack of jurisdiction, and ordered the City to comply with the hearing examiner's decision. The City appealed.

THE ISSUES

In issues one and two, the City argues that the hearing examiner exceeded his jurisdiction by deciding to reinstate Mathews on the basis of "numerous substantial material procedural defects/omissions" in the notice and by acting contrary to the requirements of Chapter 143. The City maintains that this ground for reinstatement is contrary to the Local Government Code. Section 143.052(f) provides that the hearing examiner may order a firefighter's reinstatement if the City's notice fails to state the firefighter's act or acts that allegedly violated the civil service rules. Tex. Loc. Gov't Code Ann. § 143.052(f). The City maintains that, although the hearing examiner referenced section 143.052(f) in his decision, he did not cite to any aspect of subsection (f) that was violated, and he concluded that the notice "arguably omitted any reference to the '*specific*' civil service rule(s)" Mathews allegedly violated. The City asserts that the "Legislature did not provide the remedy of automatic reinstatement based on a finding of 'numerous substantial material procedural defects/omissions' and an 'arguable' violation of § 143.052(f)." The City also argues that even if the hearing examiner's decision is

based on an alleged violation of section 143.052(f), the hearing examiner exceeded his jurisdiction because he reinstated Mathews on a ground for which section 143.052 does not permit automatic reinstatement. Mathews's motion to dismiss contended the City failed to state specific rules that were violated.

Failure to state the violated rules is a ground cited in section 143.052(e), not in section 143.052(f). *See* Tex. Loc. Gov't Code Ann. §§ 143.052(e),(f). Subsection (f) allows the hearing examiner to reinstate Mathews if the City's notice failed to state the act or acts that violated the rules. “[W]hen the Legislature includes a right or remedy in one part of a code but omits it in another, that may be precisely what the Legislature intended,’ and ‘we must honor that difference.’” *City of Desoto v. White*, 288 S.W.3d 389, 396 (Tex. 2009) (quoting *P.P.G. Indus., Inc. v. JMB/Houston Ctrs. Partners Ltd. P’ship*, 146 S.W.3d 79, 84 (Tex. 2004)). The City gave notice of Mathews's acts that were the basis of the suspension. The alleged notice violations did not authorize automatic reinstatement under section 143.052(f).

Mathews contends that the statute requires some “connectivity,” “some linkage” between the acts and the rules. One case he relies on is *City of Austin v. Villegas*, 603 S.W.2d 282 (Tex. Civ. App.—Beaumont 1980, writ ref'd n.r.e.). *Villegas* quotes *City of San Antonio v. Poulos*, in which the Texas Supreme Court states, “‘The better procedure for a Department Head in such a situation would be to consider separately each rule which was alleged to have been violated and then state the precise factual basis for the

violation.” *Villegas*, 603 S.W.2d at 283-84 (quoting *Poulos*, 422 S.W.2d 140, 145 (Tex. 1967)). *Poulos* indicates that a “better procedure” may be to state the rule and then its precise factual basis. *Poulos*, 422 S.W.2d at 145. The court held in *Villegas* that where there is at least one valid charge against a plaintiff and the Commission finds the facts presented support the charge, then the charge is valid, and it is immaterial that one or more of the additional charges may be defective. *Villegas*, 603 S.W.2d at 285. Neither *Poulos* nor *Villegas* authorizes automatic reinstatement without an evidentiary hearing when notice is given of the act or acts that violated the rules.

Mathews relies on *City of Waco v. Kelley*, 309 S.W.3d 536, 544 (Tex. 2010), which describes section 143.052(c), (e) as “requiring a department head who suspends an officer to file a written statement with the commission giving the reasons for the suspension, identifying each civil service rule allegedly violated, and describing the acts alleged to have violated each rule identified[.]” Describing the City’s approach as a “scatter-shot approach,” Mathews argues the City must “tell the fire fighter which act ‘connects’ into which rule, so that the fire fighter knows which act/rule needs to be addressed and what the menu of charges looks like.”

Section 143.052(e) requires the notice to set out the acts by the firefighter and the rules those acts violated. The City’s notice did both. Section 143.052(f) provides that if the notice does not set out the act or acts, then the firefighter is to be reinstated. Here, the alleged violations arose out of a confrontation following an accident. The City’s written

statement gave Mathews notice of both the alleged acts and the rules that were allegedly violated by those acts.

A hearing examiner must follow the law set by the Legislature. *See City of Pasadena v. Smith*, 292 S.W.3d 14, 20 (Tex. 2009); *see also generally Kelley*, 309 S.W.3d at 543; Tex. Loc. Gov't Code Ann. § 143.057(f). “The Act tightly structures disciplinary procedures, outcomes, and appeal processes.” *City of Waco*, 309 S.W.3d at 545. The hearing examiner did not follow the statute in reinstating Mathews, but acted contrary to it. He reinstated Mathews without an evidentiary hearing, although the notice stated the acts for which Matthews was charged. The hearing examiner exceeded his jurisdiction. We sustain issues one and two.

We need not address the City's constitutional challenges. If a case may be resolved on a non-constitutional issue, we address that issue before any constitutional challenges. *See In re B.L.D.*, 113 S.W.3d 340, 349 (Tex. 2003).

Because the hearing examiner's decision exceeded his jurisdiction, the decision is void. *See City of Waco*, 309 S.W.3d at 550-52. The appropriate remedy is to vacate the hearing examiner's decision and order a rehearing. *See id.* at 552. The judgment of the district court is reversed, and the case is remanded to that court for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

DAVID GAULTNEY
Justice

Submitted on June 30, 2011
Opinion Delivered August 31, 2011

Before McKeithen, C.J., Gaultney and Horton, JJ.