

IN THE SUPREME COURT OF OHIO

KELLY BLAIR,

Appellant,

vs.

**BOARD OF TRUSTEES OF
SUGARCREEK TOWNSHIP,**

Appellee.

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CASE NO. 2011-0864

**ON APPEAL FROM THE SECOND
DISTRICT COURT OF APPEALS
FOR GREENE COUNTY, OHIO
CASE NO. 2010-CA-0003**

**NOTICE OF DECISION AND ENTRY GRANTING MOTION TO CERTIFY A
CONFLICT**

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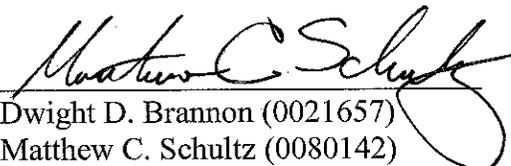
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FILED
JUN 02 2011
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SUPREME COURT OF OHIO

Now comes Appellant, Kelly Blair, and hereby gives notice, pursuant to S. Ct. Prac. R. 4.4, that his Motion to Certify a Conflict, filed April 18, 2011, in the Second District Court of Appeals in *Blair v. Board of Trustees of Sugarcreek Township*, Case No. 2010-CA-0003, has been granted by the Second District Court of Appeals in a Decision and Entry dated May 27, 2011. A copy of the Decision and Entry is attached.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing was served on the following by regular U.S. Mail, this 31st day of May, 2011.

Elizabeth A. Ellis, Esq.
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IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

KELLY BLAIR :
Plaintiff-Appellant : C.A. CASE NO. 2010 CA 3
v. : T.C. NO. 06CV811
BOARD OF TRUSTEES :
OF SUGARCREEK TOWNSHIP, et al. :
Defendant-Appellee :
:

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DECISION AND ENTRY

Rendered on the 27th day of May, 2011.
.....

DWIGHT D. BRANNON, Atty. Reg. No. 0021657 and MATTHEW C. SCHULTZ, Atty. Reg. No. 0080142, 130 West Second Street, Suite 900, Dayton, Ohio 45402
Attorney for Plaintiff-Appellant

THOMAS C. MILLER, Atty. Reg. No. 0075960, Civil Division Chief, Greene County Prosecutor's Office, 55 Greene Street, First Floor, Xenia, Ohio 45385 and EDWARD J. DOWD, Atty. Reg. No. 0018681 and DAWN M. FRICK, Atty. Reg. No. 0069068, One Prestige Place, Suite 700, Miamisburg, Ohio 45342
Attorneys for Defendant-Appellee
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PER CURIAM:

Pursuant to App.R. 25, plaintiff-appellant, Kelly Blair, moves this court for an order

certifying a conflict between our decision in *Blair v. Board of Trustees of Sugarcreek Township*, Greene App. No. 2010 CA 3, 2011-Ohio-1725, (*Blair II*) and the decision rendered by the Seventh District in *Staley v. St. Clair Township Board of Trustees* (Dec. 15, 1987), 7th Dist. No. 87-C-44. The appellee, Board of Trustees of Sugarcreek Township, has filed a memorandum in opposition to the appellant's motion.

Section 3(B)(4), Article IV of the Ohio Constitution governs motions seeking an order to certify a conflict and provides: "Whenever the judges of a Court of Appeals find that a judgment upon which they have agreed is in conflict with the judgment pronounced upon the same question by any other Court of Appeals of this state, the judges shall certify the record of the case to the Supreme Court for review and final determination." See, also, *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 1993-Ohio-223, syllabus, rehearing denied by *Whitelock v. Cleveland Clinic Foundation* (1993), 67 Ohio St.3d 1420.

At least three conditions must be met before and during the certification of a case to the Supreme Court pursuant to Section 3(B)(4), Article IV of the Ohio Constitution. "First, the certifying court must find that its judgment is in conflict with the judgment of the Court of Appeals of another district and the assigned conflict must be upon the same question. Second, the alleged conflict must be on a rule of law - - not facts. Third, the journal entry or opinion of the certifying court must clearly set forth that rule of law which the certifying court contends is in conflict with the judgment on the same question by other district Courts of Appeals." *Id.* at 596.

Additionally, factual distinctions between cases are not a basis upon which to certify a conflict. *Id.* at 599. "For a Court of Appeals to certify a case as being in conflict with another case, it is not enough that the reasoning expressed in the opinions of the two

Courts of Appeals be inconsistent; the judgments of the two courts must be in conflict.”
State v. Hankerson (1989), 52 Ohio App.3d 73, ¶ 2 of the syllabus.

Appellant proposes the following question be certified:

“Under R.C. 505.49(B), does a township chief of police, who moved from a position as a certified township police officer to the position as township chief of police, have the right to keep his employment as a certified township police officer after being removed as township chief of police other than for cause by the township commission, even if R.C. 505.49(C) does not apply to the township?”

The appellee in its memorandum in opposition to the motion to certify, suggests that our previous decision did not specifically rule regarding appellant’s status as a former certified police officer, but that this was simply “discussed” in our opinion. Specifically, the appellee states “this court determined that ‘Blair did not administratively appeal anything regarding his status as a former certified police officer with Sugarcreek Township’ *Blair II* at ¶ 18.” This excerpt is misleading. What we said, in the clause immediately preceding that portion of the sentence quoted by the appellee, is that “[t]hus, if we stopped here, . . .” The fact is we did not stop there, but went on to hold that appellant was a former certified police officer with the township and is not automatically entitled to return to the classified service in the position that he held previous to his appointment as chief. *Id.* ¶ 24.

In *Staley*, the township terminated the employment of Staley who was then serving as chief; prior to service as chief he had been a patrolman and sergeant. Staley argued that while the board may remove him as chief without cause, “because he was a certified police officer, the board could not properly terminate his employment with the township without complying with R.C. 505.491, 505.495.” *Staley*, *supra*. The court held that since

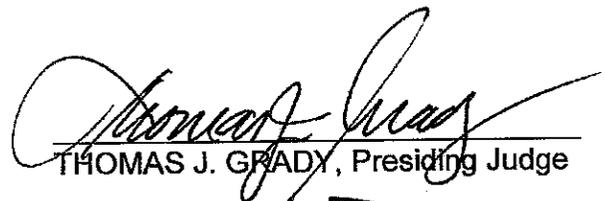
Staley was not accused of misconduct and "is a certified police officer," the Board may terminate his employment as a township police officer only under the conditions set forth in R.C. 505.491-505.495.

Although our holding in *Blair I*¹ was that Blair was never terminated as a constable, we did hold in *Blair II* that Blair, who was a certified police officer prior to his appointment and subsequent removal as chief, was not automatically entitled to return to his previous position. This appears to be in conflict with the holding of *Staley* that, absent termination pursuant to R.C. 505-491-495, the terminated chief was entitled to remain a certified police officer.

We therefore certify the following rule of law as being in conflict with the judgment on the same question by another district Court of Appeals:

"A certified township police officer who is appointed chief and then is terminated as chief, other than for cause in a township where R.C. 505.49(C) is not applicable, does not have the automatic right to return to the position he held prior to his appointment as chief."

IT IS SO ORDERED.


THOMAS J. GRADY, Presiding Judge


MIKE FAIN, Judge


JEFFREY E. FROELICH, Judge

¹*Blair v. Board of Trustees of Sugarcreek Township*, Greene App. No. 08CA16, 2008-Ohio-5640.

Copies mailed to:

Dwight D. Brannon
Matthew C. Schultz
Thomas C. Miller
Edward J. Dowd
Dawn M. Frick
Hon. Michael Buckwalter