

ORIGINAL

IN THE SUPREME COURT OF OHIO

KELLY BLAIR,

Appellant,

vs.

BOARD OF TRUSTEES OF  
SUGARCREEK TOWNSHIP,

Appellee.

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CASE NO. 11-0960

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

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NOTICE OF CERTIFIED CONFLICT OF APPELLANT KELLY BLAIR

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JUN 08 2011  
CLERK OF COURT  
SUPREME COURT OF OHIO

## NOTICE OF CERTIFIED CONFLICT

Now comes Appellant, Kelly Blair, and hereby gives notice, pursuant to S. Ct. Prac. R. 4.1, of his appeal of the Second District Court of Appeals' decision in *Blair v. Board of Trustees of Sugarcreek Township*, 2nd Dist. No. 2010-CA-0003, 2011-Ohio-1725. The Second District Court of Appeals, in a Decision and Entry dated May 27, 2011, has certified a conflict between its decision in *Blair* and the decision of the Seventh District Court of Appeals in *Staley v. St. Clair Township Bd. of Trustees* (Dec. 15, 1987), 7th Dist. No. 87-C-44; on the following rule of law:

“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.”

Appellant respectfully requests that this Supreme Court accept jurisdiction over this appeal, and reverse the decision of the Second District Court of Appeals in this case. Appellant further requests that this appeal be consolidated with Appellant's discretionary appeal of the decision of the Second District Court of Appeals, currently awaiting a decision on jurisdiction under Case No. 2011-0864. A copy of the Decision and Entry granting the Motion to Certify a Conflict is attached, as well as the Second District Court of Appeals' decision in *Blair*, and the Seventh District Court of Appeals' decision in *Staley*.

Respectfully submitted,



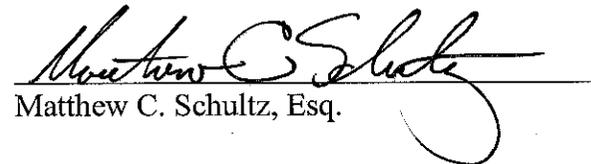
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the forgoing was served on the following by regular U.S. Mail, this 7th day of June, 2011.

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IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

KELLY BLAIR

Plaintiff-Appellant

v.

BOARD OF TRUSTEES  
OF SUGARCREEK TOWNSHIP, et al.

Defendant-Appellee

C.A. CASE NO. 2010 CA 3

T.C. NO. 06CV811

.....  
**DECISION AND ENTRY**

Rendered on the 27<sup>th</sup> 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

.....  
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), 7<sup>th</sup> 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

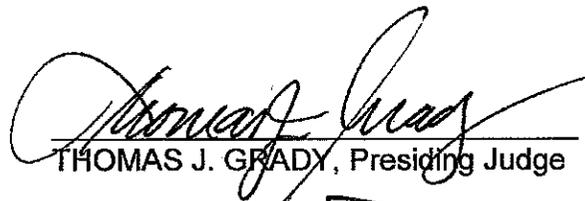
Staley was not accused of misconduct and "is a certified police officer," the Board may terminate his employment as a township police officer only under the conditions set forth in R.C. 505.491-505.495.

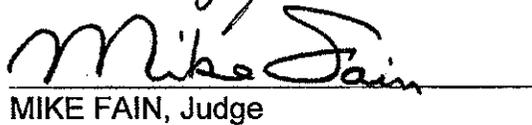
Although our holding in *Blair I*<sup>1</sup> was that Blair was never terminated as a constable, we did hold in *Blair II* that Blair, who was a certified police officer prior to his appointment and subsequent removal as chief, was not automatically entitled to return to his previous position. This 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

---

<sup>1</sup>*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

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2011 APR -8 AM 11:18

COURT OF APPEALS  
SECOND APPELLATE DISTRICT  
CLERK OF COURTS

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

KELLY BLAIR :

Plaintiff-Appellant :

v. :

BOARD OF TRUSTEES  
OF SUGARCREEK TOWNSHIP, et al. :

Defendant-Appellee :

C.A. CASE NO. 2010 CA 3

T.C. NO. 06CV811

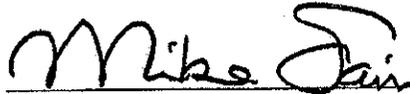
FINAL ENTRY

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Pursuant to the opinion of this court rendered on the 8th day of  
April, 2011, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

THOMAS J. GRADY, Presiding Judge



MIKE FAIN, Judge



JEFFREY E. FROELICH, Judge

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THE COURT OF APPEALS OF OHIO  
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Hon. Michael Buckwalter  
Common Pleas Court  
45 N. Detroit Street  
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11-04-1285

**FILED**

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COURT OF APPEALS  
GREENE COUNTY, OHIO

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

KELLY BLAIR :

Plaintiff-Appellant :

v. :

BOARD OF TRUSTEES  
OF SUGARCREEK TOWNSHIP, et al. :

Defendant-Appellee :

C.A. CASE NO. 2010 CA 3

T.C. NO. 06CV811

(Civil appeal from  
Common Pleas Court)

OPINION

Rendered on the 8<sup>th</sup> day of April, 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

FROELICH, J.

The essential facts of this case were set out in our opinion in a prior appeal. *Blair*

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THE COURT OF APPEALS OF OHIO  
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*v. Board of Trustees of Sugarcreek Township, Greene App. No. 08CA16, 2008-Ohio-5640.*

(Blair I) In that appeal by the Board, we reversed a judgment of the trial court in which the court had found that the township trustees were prevented from terminating Blair from his appointment as police constable without prior notice and hearing. We found that Blair was not terminated as a police constable and remanded "the case for further proceedings."

On remand, a magistrate found that Blair was not terminated from his constable's position, "but even if he was terminated, he would not be entitled to back pay for that designation, because no compensation was attached to that position." The magistrate also stated that the "Township was not required to offer him a position in the police department that he held prior to his appointment as chief." Blair filed objections to the magistrate's decision. The trial court overruled his objections and dismissed Blair's R.C. Chapter 2506 appeal.

FIRST ASSIGNMENT OF ERROR

"THE TRIAL COURT ERRED BY HOLDING THAT KELLY BLAIR HAD NO RIGHT OF RETENTION AS A CERTIFIED POLICE OFFICER.

"I. MR. BLAIR'S AMENDED NOTICE OF APPEAL WAS SUFFICIENT TO RAISE HIS STATUS AS A CERTIFIED POLICE OFFICER AS A BASIS FOR HIS APPEAL.

"II. MR. BLAIR'S STATUS AS A CERTIFIED POLICE OFFICER ENTITLES HIM TO REINSTATEMENT TO HIS LAST POSITION BEFORE BECOMING TOWNSHIP POLICE CHIEF UPON HIS REMOVAL AS CHIEF."

SECOND ASSIGNMENT OF ERROR

"THE TRIAL COURT ERRED BY HOLDING THAT THIS COURT OF APPEALS HAD HELD THAT KELLY BLAIR WAS NOT TERMINATED FROM HIS POSITION AS

04-1228

POLICE CONSTABLE WITH THE SUGARCREEK TOWNSHIP POLICE DEPARTMENT.”

THIRD ASSIGNMENT OF ERROR

“THE TRIAL COURT ERRED BY HOLDING THAT THE POSITION OF POLICE CONSTABLE WITH THE SUGARCREEK TOWNSHIP POLICE DEPARTMENT WAS AN UNPAID POSITION.”

We previously held:

“It is undisputed that Blair served as chief of police at the pleasure of the Trustees, R.C. 505.49(B), and therefore the Trustees could remove Blair from that position as they did, without prior notice or hearing. Courts have held that, in that event, any separate status the employee enjoys as a certified police officer is nevertheless subject to a relevant notice and hearing requirement. *Staley v. St. Clair Twp. Bd. Of Trustees*, (Dec. 18, 1987), Columbiana App. No. 87-C-44. Absent a satisfaction of such requirements, the employee must be retained in that other position. *Smith v. Fryfogle* (1982), 70 Ohio St.2d 58.” *Blair, supra*, at ¶16.

The notice and hearing requirements to which we referred are codified in R.C. 509.01(B), which provides for designation as police constable persons who are certified as having completed an approved basic training program, and that such constables may be removed or suspended only under the conditions and by the procedures in R.C. 505.491 to 505.495. Those sections set out basic due process requirements of notice and opportunity to be heard and require findings that support the action taken. The parties agreed with the magistrate at the March 2007 hearing that its purpose was to take “evidence relating to whether or not Kelly Blair is a constable or police chief.” (Tr. pg. 3). The trustees, pursuant to R.C. 505.49(B)(2), chose to appoint Blair chief and, later, to

designate him as a constable (he had not previously been designated as constable). His position as a constable does not exist necessarily because he was appointed chief, like some sort of emolument. Regardless, since R.C. 509.01(B) and R.C. 505.49(B)(3) are identically worded, it does not matter whether his designation as a police constable was pursuant to R.C. 509.01(B) or R.C. 505.49(B)(2). He still is entitled to the procedures set forth in R.C. 505.491 and 505.495 before he can be terminated as a constable. It is not disputed that Blair was not provided with such statutory due process.

This, however, is not the issue before us since we found in *Blair I*, at ¶17, that Blair was never terminated as a constable. Thus we reversed the magistrate and court's decisions that he was terminated, but that it had been done improperly for failure to comply with R.C. 509.01.

On remand, the magistrate, probably out of an abundance of caution, allowed evidence whether Blair was constructively discharged as a constable, even if he had not been discharged as a constable as a result of a formal Resolution by the trustees. The arcane intricacies of bar, res judicata, collateral estoppel, claim or issue preclusion, or law of the case aside, the question of whether Blair had been terminated - by any means - has been argued and decided. To the extent Appellant then or now argues that he had been constructively terminated, as opposed to a termination by a Township Resolution, the question was resolved by *Blair I*. Appellant's Second Assignment of Error is overruled.

Further, based on the record of the hearings, we cannot say that the magistrate and judge's finding that no compensation attached to the constable position was an abuse of discretion. Appellant's Third Assignment of Error is overruled.

The First Assignment of Error asserts that the court after remand erred by not

finding that Blair was entitled to reinstatement as a certified police officer with the township when he was terminated as chief of police. The Appellant argues that any automatic surrender, upon being appointed chief, of the tenure and due process protections that a certified police officer enjoys creates a "destructive disincentive for experienced police officers ever to accept such a promotion." (Appellant's Brief, p. 14). He cites *Staley v. St. Clair Township Board of Trustees* (December 15, 1987), Columbiana County No. 87-C-44 for the principle that "a patrolman, other police district employee, or police constable. . . may be removed or suspended only under the conditions and by the procedures. . . set forth in the Revised Code" which, it is agreed, were not followed in Blair's case.

The first part of the First Assignment states that Blair's "Amended Notice of [Administrative] Appeal was sufficient to raise his status as a certified police officer." His brief, pg. 7, argues that "paragraph 8, references both Mr. Blair's status as a constable and a certified officer. . ." and that he was "removed from office in violation of the law." This, according to the brief, "is, in a nutshell, the entire purpose of Kelly Blair's appeal after remand."

Blair's Amended Notice of Administrative Appeal appeals "from the decision of the Trustees enforced on September 18, 2006, terminating Appellant's employment." As we stated in *Blair I*, Resolution 2006-09-18-12, adopted on September 18, 2006, refers to Blair's service "as an unclassified employee of Sugarcreek Township in the capacity of Chief of Police since April 25, 1998. . . [and determines] to remove Kelly E. Blair as Chief of Police." *Id.* ¶15. The only decision on September 18, that Blair could administratively appeal, therefore, was his termination as chief. Believing the Township had also terminated him as a constable, Blair appealed that action (and we subsequently held that

11-04-1226

he was not terminated as a constable).

Further, in his Amended Notice of Administrative Appeal, paragraph 7, he states he "is a police constable who was awarded a certificate attesting to his satisfactory completion of an approved basic training program. . .[and thus] he was named constable by Sugarcreek Township Trustees in 1998. . .[and that he] has been removed from office. . .without following the procedures set forth in the Ohio Revised Code for constables." Paragraph 8 is identical with the exception of the last sentence which alleges that he "has been terminated. . ." whereas paragraph 7 says he "has been suspended and will be terminated. . ."

There is no reference in the Notice to "certified police officer" or "police officer." It does mention that he completed a basic training program, but such completion does not ipso facto make one a "certified police officer," or even a "police officer," let alone one that was employed and terminated as such by the township, and is just as consistent with his appealed termination as a constable. Similarly, the allegation that he was wrongfully "removed from office" can only be read as referencing his position as a "police constable." A further indication of grounds of the original administrative appeal is that at the 2007 hearings, Blair testified as to his belief that when he became chief he gave up any position in the classified service as a certified police officer employee of the township. He stated that he believed "that becoming a constable gave [him] job security with the township" (Tr. pg. 34) and that "every chief I worked for told me to make sure that if you become chief you become a constable. That is the only protection you have." (Tr. pg. 34).<sup>1</sup> Thus, if we

<sup>1</sup>This testimony was "clarified" in the 2009 hearings when Appellant testified that his belief that he had the right to return to his old job figured into his decision to take the job as chief (April 30, 2009, transcript pg. 35).

11-04-1227

stopped here, we would hold that Blair did not administratively appeal anything regarding his status as a former certified police officer with Sugarcreek Township.

The confusion arises from dicta in *Blair I*: "Blair argues that he enjoys certain rights as a certified police constable and/or former certified police officer of which the Trustees' action deprived him. That contention involves issues the trial court did not reach. Blair may present evidence on those matters in the course of future proceedings." *Id.* ¶18. Construing this broadly, the parties, on remand, presented evidence and briefs regarding whether Blair had any rights as a "former certified police officer."

Removal or suspension of a "certified police office" is governed by R.C. 505.49(B)(3):

"Except as provided in division (D) of this section, a patrol officer, other police district employee, or police constable, who has been awarded a certificate attesting to the satisfactory completion of an approved state, county, or municipal police basic training program, as required by section 109.77 of the Revised Code, may be removed or suspended only under the conditions and by the procedures in sections 505.491 to 505.495 of the Revised Code. Any other patrol officer, police district employee, or police constable shall serve at the pleasure of the township trustees. In case of removal or suspension of an appointee by the board of township trustees, that appointee may appeal the decision of the board to the court of common pleas of the county in which the district is situated to determine the sufficiency of the cause of removal or suspension. The appointee shall take the appeal within ten days of written notice to the appointee of the decision of the board."

R.C. 505.49(C)(1) provides that division (B) does not apply to larger townships that

have a civil service commission; instead such townships are required to comply with the procedures in Chapter 124 of the Revised Code. R.C. 505.49(C)(2) then provides that, in such a township, a person appointed as chief who is removed or who resigns "shall be entitled to return to the classified service on the township police department, in the position that person held previous to the person's appointment as chief of police." Both parties agree that Sugarcreek is not such a township; therefore, R.C. 505.49(B)(3) governs the return of a certified police officer to Sugarcreek Township.

If the certified police officer employed by a township as such who is appointed chief is always still a certified police officer employed by a township as such even when employed as chief of police, there is no need for R.C. 505.49(C), regardless of the size of the township. The statute gives a right to a chief in larger townships to return to his or her position "held previous" which implies that as chief he or she does not hold the position. Further, even this right is not imposed by the legislation on smaller townships without a civil service commission.

To the extent the Assignments of Error raise issues concerning Blair's alleged current status as a "certified police officer," Appellant was a former certified police officer employee 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.

The judgment of the trial court will be affirmed.

FAIN, J.,

GRADY, P.J., dissenting:

In the prior appeal, *Blair v. Board of Trustees of Sugarcreek Township*, Greene App.

11-04-1229

No. 08CA16, 2008-Ohio-5640 ("Blair I"), we found that, Plaintiff-Appellant Blair had not been removed or suspended from his position as a police constable. That finding reflected the fact that the resolution of Defendant-Appellee Board of Trustees of Sugarcreek Township (the "Board") removing Blair from his position as chief of police made no reference to Blair's position as a constable.

On remand, the trial court found that Blair, even if he was not terminated from his constable's position, has no right that can be vindicated by proceedings pursuant to R.C. 505.491 to 505.495, to which Blair insists he is entitled pursuant to R.C. 509.01(B), because Blair benefitted from no compensation or other emolument of office from his constable's position. In the present appeal, the Board agrees with that finding, and points out that Blair's designation as a constable was done by the Board pursuant to R.C. 505.49(B)(2), adjunct to his appointment as chief of the township police district. The Board argues that Blair's removal as chief therefore encompassed his removal from his constable's position.

R.C. 509.01(B) provides that persons designated police constables who also hold a training certificate, as Blair does, "may be removed or suspended only under the conditions and by the procedures in sections 505.491 to 505.495 of the Revised Code." The adjunct designation of police chiefs as constables authorized by R.C. 505.49(B)(2) incorporates the protections of that section by reference with respect to removal or suspension of constables designated pursuant to R.C. 505.49(B)(2). Those same protections with respect to suspension or removal also appear in R.C. 505.49(B)(3).

R.C. 505.491 states:

"Trustees to prefer charges against delinquent police personnel

"Except as provided in division (D) of section 505.49 or in division (C) of section 509.01 of the Revised Code, if the board of trustees of a township has reason to believe that a chief of police, patrol officer, or other township police district employee appointed under division (B) of section 505.49 of the Revised Code or a police constable appointed under division (B) of section 509.01 of the Revised Code has been guilty, in the performance of the official duty of that chief of police, patrol officer, other township police district employee, or police constable, of bribery, misfeasance, malfeasance, nonfeasance, misconduct in office, neglect of duty, gross immorality, habitual drunkenness, incompetence, or failure to obey orders given that person by the proper authority, the board immediately shall file written charges against that person, setting forth in detail a statement of the alleged guilt and, at the same time, or as soon thereafter as possible, serve a true copy of those charges upon the person against whom they are made. The service may be made on the person or by leaving a copy of the charges at the office or residence of that person. Return of the service shall be made to the board in the same manner that is provided for the return of the service of summons in a civil action."

In *Smith v. Fryfogle* (1982), 70 Ohio St.2d 58, the Supreme Court considered the predecessor version of R.C. 505.49(C)(2), which contained the same reference to the protections afforded by R.C. 505.491 to 505.495. *Smith* distinguished the "quasi-judicial" action of a board of trustees in removing or suspending a police chief for the causes in R.C. 505.491 from the board's exercise of its "executive function" when removing a chief who serves at the pleasure of the board, without cause. *Smith* states: "R.C. 505.491 applies to the chief, among others, but only when the trustees have reason to believe the officer is guilty of neglect of duty or other named offense." *Id.*, at 60. (Emphasis supplied.)

The statutory provision that township chiefs of police serve at the pleasure of the board of trustees in R.C. 505.49(B)(2) does not, by its terms, extend to constables. However, the holding in *Smith* is not limited to removal or suspension of chiefs. With respect to the applicability of R.C. 505.491 to 505.495, *Smith* applies to chiefs, "among others." Those others reasonably include any other employee of the police district, including police constables. As a result, the quasi-judicial causes and procedures in R.C. 505.491 to 505.495 apply to the removal or suspension of such persons only when done for cause, specifically the causes in R.C. 505.491. Any other removal or suspension of an officer by the board is an executive function, to which those sections have no application.

Blair's contention that his removal from his position as police constable, whether actual or constructive, may only be done pursuant to R.C. 505.491 to 505.495, is inconsistent with and contrary to the holding in *Smith*. Furthermore, it could lead to absurd results the General Assembly never intended. R.C. 505.49(B)(2) directs a township board of trustees to "appoint a chief of police for the district, determine the number of patrol officers and other personnel required by the district, and establish salary schedules and other conditions of employment for the employees of the police district." That mandate would authorize a board to order a reduction in force for fiscal reasons, terminating some of its employees. To limit the board's power to do that by requiring the board to then comply with the quasi-judicial procedures in R.C. 505.491 to 505.495 governing removal or suspension for cause would unreasonably hamstring the board in its exercise of the executive authority conferred by R.C. 505.49(B)(2).

Having said all of that, we remain confronted by the Board's failure to terminate Blair from his constable's position. Notwithstanding the fact that Blair was so designated

pursuant to R.C. 505.49(B)(2), adjunct to his appointment as chief, Blair's termination as chief did not likewise terminate his constable's position. Each position is recognized by statute, and each therefore reasonably requires a termination from that position to be effective. The Board's failure to terminate Blair from his constable's position not only leaves him in a state of limbo in that regard. It also presents a risk of liability for the Board should Blair exercise the remaining authority the Board conferred on him in some improper way. It could conceivably also work to the Board's detriment by extending the basis for calculating Blair's retirement benefits and the Board's contribution to his public retirement account.

For the foregoing reasons, I would remand the case to the Board for the purpose of considering whether the Board should adopt a resolution terminating Blair from his designated position as a police constable.

.....

Copies mailed to:

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

11-04-1233

STATE OF OHIO, COLUMBIANA COUNTY  
IN THE COURT OF APPEALS  
SEVENTH DISTRICT

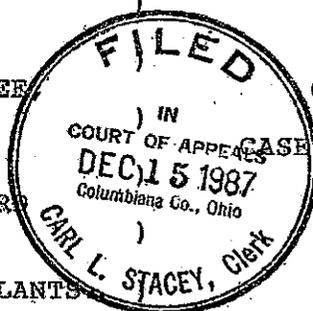
IN THE MATTER OF  
STEPHEN A. STALEY,

PLAINTIFF-APPELLEE,

- VS -

THE ST. CLAIR TOWNSHIP BOARD  
OF TRUSTEES, ET AL,

DEFENDANTS-APPELLANTS.



OPINION

CASE NO. 87-C-44

CHARACTER OF PROCEEDINGS: Civil Appeal from the Common Pleas Court, Case No. 87-CIV-547

JUDGMENT: Affirmed

APPEARANCES:

For Plaintiff-Appellee: James T. Hartford  
91 W. Taggart St.  
P. O. Box 85  
East Palestine, Ohio 44413

For Defendant-Appellant: Robert Herron  
Prosecuting Attorney  
Andrew A. Beech  
Asst. Prosecuting Attorney  
Columbiana County Courthouse  
Lisbon, Ohio 44432

Hon. Edward A. Cox,  
Hon. Joseph E. O'Neill,  
Hon. Joseph Donofrio, JJ.

Dated: December 15, 1987

COX, P.J.

This is a properly perfected appeal from a judgment of the Columbiana County Court of Common Pleas in favor of plaintiff-appellee, Stephen Staley. The court reversed a decision by defendant-appellant, St. Clair Township Board of Trustees, which terminated appellee's employment with the township.

From January, 1986 to May 5, 1987, Stephen Staley served as St. Clair Township Chief of Police. Before 1986, the township employed appellee as a patrolman and, later, as a sergeant with the police department, and appellee had been awarded a certificate attesting to satisfactory completion of an approved Ohio Peace Officer basic training program as required by R.C. 109.77.

On April 29, 1987, the Board of Trustees called a special meeting set for May 5, 1987, to take orders and payment for road oil. At this special meeting, the Board held an executive session to discuss personnel, and terminated appellee's employment with St. Clair Township. The Board notified appellee of his termination in a letter dated May 5, 1987.

Appellee appealed the Board's decision to the Columbiana County Court of Common Pleas. That court reversed the Board's decision and reinstated appellee.

Appellant filed a timely notice of appeal to this Court on September 23, 1987. Following this Court's denial for a stay of execution of judgment, the matter was ordered to proceed on appeal in expedited form.

Appellant's two assignments of error are stated in the form of legal propositions:

The actions of the St. Clair Township Board of Trustees terminating the employment of Stephen A. Staley, taken at the special meeting of May 5, 1987, were valid and in compliance with section 121.22 of the Ohio Revised Code.

R.C. 121.22 states, in part:

"(A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings, unless the subject matter is specifically excepted by law."

Subsection (F) of R.C. 121.22 provides that "[a] public body shall not hold a special meeting unless it gives at least twenty-four hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action."

Appellant maintains that the Board provided the required notice when it announced on April 28 that it would hold a special meeting on May 5 to purchase road oil. According to appellant, once a special meeting has been announced, the Board may hold an executive session for another purpose. Appellee disagrees, but both parties rely on R.C. 121.22(G), which states:

"(G) The members of a public body may hold an executive session only at a regular or special meeting for the sole purpose of the consideration of any of the following matters:

"(I) Unless the public employee, official, licensee, or regulated individual requests a public hearing, to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official,

licensee, or regulated individual. Except as otherwise provided by law, no public body shall hold an executive session for the discipline of an elected official for conduct related to the performance of his official duties or for his removal from office."

Appellant submits that R.C. 121.22(G) allows the Board to announce a special meeting for one purpose and then to hold an executive session for the purpose of discussing personnel. However, the statute simply allows the Board to hold an executive session for the purpose of discussing personnel "[u]nless the public employee \* \* \* requests a hearing \* \* \*." Without prior notice, this limitation would be meaningless. Moreover, appellant's interpretation of R.C. 121.22(G) contradicts subsection (A) of this statute. Appellant misconstrued R.C. 121.22.

## II

The actions of the St. Clair Township Board of Trustees terminating the employment of Stephen A. Staley were in compliance with the procedures outlined in sections 505.49 to 505.495 of the Ohio Revised Code.

Appellant argues that Smith v. Eryfogle (1982), 70 Ohio St. 2d 58 supports this second proposition. In Smith, the Knox Township Trustees removed Charles E. Smith as chief of police and requested him to continue to serve the township as a certified peace officer. The Trustees demoted Smith at a public meeting without affording him the statutory due process procedure outlined in R.C. 505.49.1 - 505.49.5.

The Ohio Supreme Court upheld Smith's demotion. The Court concluded that this procedure need only be followed to remove a police chief where misconduct is alleged. Otherwise,

R.C. 505.49(A) permits the township trustees to remove the chief at their discretion.

Appellee admits that the Board may remove him as chief of police, but argues that because he was a certified peace officer, the Board could not properly terminate his employment with the township without complying with R.C. 505.49.1 - 505.49.5. Smith, supra did not settle this issue because the trustees in that case allowed the former chief to continue his employment as a peace officer.

R.C. 505.49(A), however, supports appellee's argument. The statute provides, in part:

"A patrolman, other police district employee, or police constable, who has been awarded a certificate attesting to satisfactory completion of an approved state, county, or municipal police basic training program, as required by section 109.77 of the Revised Code, may be removed or suspended only under the conditions and by the procedures in sections 505.491[505.49.1] to 505.495[505.49.5] of the Revised Code." (Emphasis added)

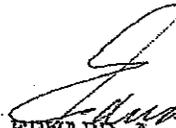
R.C. 505.49(A) also provides that the chief of police serves at the Board's pleasure. The Board must only follow the procedure set forth in R.C. 505.491 to 505.495 either to remove the police chief where misconduct is alleged, or to remove or suspend a certificated police district employee. Here, appellee is not accused of misconduct. Mr. Staley is a certificated peace officer. The Board may terminate appellee's employment as a township police officer only under the conditions set forth in R.C. 505.491-505.495.

For the foregoing reasons, the judgment of the trial court is affirmed.

O'Neill, J., concurs.

Donofrio, J., concurs.

APPROVED:



EDWARD A. COX, PRESIDING JUDGE