

ORIGINAL

IN THE SUPREME COURT OF OHIO

<b>RICHARD O. PIETRICK,</b>	)	Case No. 2013-0052
	)	
Appellee	)	<i>On Appeal from the Eighth District</i>
	)	<i>Court of Appeals, Cuyahoga County,</i>
v.	)	<i>Ohio</i>
	)	
<b>CITY OF WESTLAKE,</b>	)	<i>Court of Appeals Case No. 98258</i>
<b>CIVIL SERVICE COMMISSION, et al.</b>	)	

APPELLEE RICHARD PIETRICK'S MEMORANDUM IN OPPOSITION TO MOTION FOR RECONSIDERATION

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 SUPREME COURT OF OHIO

## MEMORANDUM IN OPPOSITION TO MOTION FOR RECONSIDERATION

The 'motion' filed by Appellants Westlake Civil Service Commission and City of Westlake (collectively "the City") is without merit and must be denied. Supreme Court Practice Rule 11.2 ("motion for reconsideration") (incorrectly cited by the City as Rule 18.02) clearly states that "[a] motion for reconsideration shall not constitute a reargument of the case[.]" yet the very same arguments previously rejected by this Court are exactly what the City has submitted for reconsideration. In fact, the City's 'motion' is nothing more than the supplemental or reply memorandum in support of jurisdiction it was prohibited from filing by S.Ct. Prac. R. 3.3.

Regardless, as before, the City's entire argument rests on an obviously faulty premise. The City suggests the Eighth District's decision sets some precedent which it clearly does not. The Eighth District merely reviewed the trial court's decision for an abuse of discretion and found none. The trial court's decision was supported, *inter alia*, by the findings of the City's own independently hired investigator, who had determined that there were no criminal or ethical violations. As the Eighth District explained:

Here, as previously noted, the trial court found that Pietrick demonstrated extremely poor judgment, as opposed to committing acts of misfeasance, malfeasance, nonfeasance, neglect of duty, and failure of good behavior. The trial court's finding was consistent with the determination of the outside law firm, which concluded that Pietrick had not done anything criminal and had not done anything that was likely an ethical violation.

(Pgs. 13-14).

Further dispensing with the City's alleged concerns relative to the precedential value of the case history, the trial court's findings and citations to the evidence for support of its decision were hardly limited to the lack of any criminal or ethical

violations. Indeed, the trial court explicitly found that Appellee Rick Pietrick (“Pietrick”) did not violate any written rule or policy; that there were no specific directives or guidelines discouraging the practices at issue; that Pietrick never issued any orders or otherwise instructed that the subject repairs be made; that, in the instances when the mechanics communicated that they could not or would not comply with the request, Pietrick took no adverse employment action against them; and that when an objection was finally made to the long-standing practice, Pietrick immediately ceased making any such requests and offered to do whatever is necessary to address any concerns. (R.19, pg.9). In its released decision and based upon the foregoing findings, the court of appeals held that the conclusion reached by the “the trial court in its de novo authority amounts to a well-reasoned decision and is not unreasonable[.]” (Pg. 9).

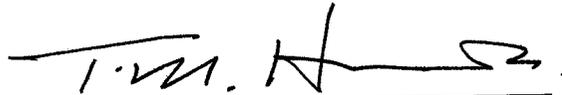
As further noted by the Eighth District (pg. 10), the trial court *also* rightfully took into account that the issues with the subject repairs were made at a time when tensions were running high in the City and that these tensions were particularly apparent between the City’s Mayor and Pietrick. As acknowledged by the trial court, the Mayor obviously had other motivations for removing Pietrick from his office as Fire Chief, although the only basis for the demotion which he chose to pursue was the issue relative to the favors Pietrick had requested of the mechanics. (R.19, pgs 9-10).

Perhaps most importantly, the Eighth District approved (pg. 10) of the trial court placing great emphasis on Pietrick’s tenure with and dedicated service to the Westlake Fire Department. The trial court correctly noted the absence of *any* prior discipline in Pietrick’s unblemished record of service. (R.19, pg.10).

The Eighth District took all of these considerations into account and found no abuse of discretion in the trial court upholding the discipline with a modified penalty. The City now attempts to twist the Eighth District's decision into a precedent it did not set. The City cannot specifically cite to the portion of the Eighth District's decision that "criminal or unethical behavior is a pre-requisite under §124.34 to a finding of neglect of duty or failure of good behavior" because only twisting the released opinion well beyond its "logical extension" can it be read to stand for any such proposition.

Based on all of the foregoing, Pietrick respectfully requests that this Court deny the City's motion for reconsideration.

Respectfully submitted,



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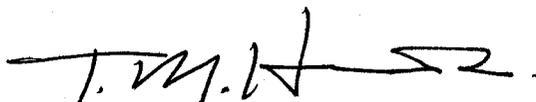
**CERTIFICATE OF SERVICE**

A copy of the foregoing Memorandum in Response has been sent by regular U.S.

Mail on this 23<sup>rd</sup> day of May, 2013 upon the following:

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