

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>	)	
	)	
Appellant.	)	

APPELLEE'S MOTION TO DISMISS APPEAL AS MOOT

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## MOTION TO DISMISS

### A. **Statement of Relevant Facts**

Prior to the start of this ongoing dispute, Appellee Richard Pietrick held the civil service rank of Fire Chief for the City of Westlake ("the City"). This litigation was instigated when the City's Mayor, Dennis Clough ("Mayor Clough") demoted Pietrick to the rank of basic firefighter. The adverse employment action was affirmed by the City's civil service commission. Pietrick filed an administrative appeal to the Cuyahoga County Court of Common Pleas pursuant to R.C. 124.34 and R.C. 119.12. Upon review of the record on appeal and the arguments of the parties, the common pleas court modified the administrative decision under review and ordered that Pietrick be reinstated to the position of Captain with full back pay.

The City immediately sought and obtained a stay on judgment pending its appeal to the Eighth District Court of Appeals. On December 20, 2012, the Eighth District announced and journalized its decision affirming the order issued by the trial court. Pietrick immediately filed a motion with the trial court to set a hearing date to determine back wages due, as granted but not specified in the common pleas court's earlier order. The City submitted opposition to the motion, attaching the notice of appeal and motion for stay of judgment it filed with this Court following the release of the Eighth District's decision. Pietrick's motion remains pending with the trial court.

While still considering whether jurisdiction over the appeal would be accepted, this Court denied the City's motion for stay of judgment. Without any further filings by Pietrick, the City then unilaterally and voluntarily took action which now renders its appeal moot inasmuch as it concerns the order of reinstatement to the rank of Captain.

Specifically, in lieu of reinstating Pietrick to one of the Shift Captain positions, with fire suppression duties, the City created a new administrative “Day Captain” civil service position and appointed Pietrick thereto. (See Exhibit A, 3/15/13 letter of appointment). The City also tendered payment for back wages.<sup>1</sup>

The ‘Day Captain’ position is a 40 hour per week (Monday – Friday) civil service position created by City Council immediately prior to the appointment. Although reinstatement to the rank of Captain as contemplated by the common pleas court’s order certainly was intended to be to one of the three ‘Shift Captain’ (i.e. 24 hours on shift, 48 hours off shift) positions, the City desired to unilaterally control the nature of the appointment and voluntarily passed a new ordinance to create the “Day Captain” position. Pietrick reluctantly but willingly accepted the civil service appointment and has, in accordance therewith, undertaken the accompanying duties and responsibilities.

#### **B. Law and Argument**

This Court has stated that “[w]here the trial court rendering judgment has jurisdiction of the subject matter of the action and of the parties, and where fraud has not intervened, and the judgment is voluntarily paid and satisfied, payment puts an end to the controversy and takes away from the defendant the right to appeal or prosecute error or even to move for vacation of judgment.” *In re Appropriation for Highway Purposes: Rauche v. Noble* (1959), 169 Ohio St. 314, 316, quoting *Lynch v. Lakewood City School Dist. Bd. of Edn.* (1927), 116 Ohio St. 361. In *Rauche*, the judgment of the trial court

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<sup>1</sup> The back pay check provided by the City was based upon its own unilateral determination as to the amount owed. The trial court had not specified the amount of back pay due in its order of reinstatement. Pietrick has not deposited or cashed the check, but has instead held it pending either an agreement on the amounts owed or a determination by the common pleas court of the same.

was satisfied by the defendant on the day that the Court of Appeals affirmed the judgment. *Id.* Because the judgment had been satisfied, this Court determined that the cause had been rendered moot and dismissed the appeal. *Id.* at 316-317.

Following this Court's lead in *Rauche* and *Lynch*, multiple Ohio appellate courts have found the doctrine of mootness to apply in situations where an appellant fails to obtain a stay of execution of the trial court's ruling and action is taken by the parties in accordance with any such motion's denial. See, e.g., *Redmond v. City Council of City of Columbus* (10 Dist.), 2006-Ohio-2199, at ¶ 6. Here, the City failed to obtain a stay of execution following the release of the Eighth District's decision affirming the order of the common pleas court and action was voluntarily and deliberately taken, in the form of the subject civil service appointment being made, in accordance with the denial of the City's motion.

The City may suggest to this Court that the judgment has not been fully satisfied because it put a stop payment order on the check it tendered for back pay. However, the common pleas court never specified the amount of back pay due and the City appealed its decision before the parties could come to an agreement or before a hearing could be held to determine the appropriate amount. Back pay, therefore, is not at issue in this appeal. The subject of this appeal concerns the common pleas court's decision to reinstate Pietrick to the rank of Captain, which the City has already done. As a matter of law, back pay commensurate with that rank follows. There can be no question as to whether Pietrick is *entitled* to back wages. This Court has consistently held that, when a member of the classified civil service is wrongfully discharged, the public employer is under a "*clear legal duty*" to compensate that employee for the time lost from his or her public

employment. See *State ex rel. Bush v. Spurlock* (1992), 63 Ohio St.3d 453 (string citations omitted and emphasis added). This common pleas court's judgment "establishes the wrongfulness of the job actions taken[.]" *Id.*

**C. Conclusion**

Based on the foregoing, Pietrick respectfully requests that this Honorable Court dismiss the City's appeal as moot.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

A copy of the foregoing Motion has been sent by regular U.S. Mail on this 18<sup>th</sup> day of July, 2013 upon the following:

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The City of **Westlake** Ohio

DENNIS M. CLOUGH, MAYOR



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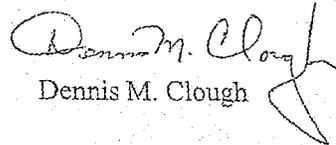
March 15, 2013

Mr. Richard Pietrick  
800 Brick Mill Run  
#314  
Westlake, Ohio 44145

Richard Pietrick:

Please be advised that you have been appointed to the position of Captain within the fire department and shall report to Assistant Chief Hughes at 8:00 a.m. Monday, March 18, 2013 for duty.

Sincerely,

  
Dennis M. Clough

DMC/mjm

cc: Assistant Chief Jim Hughes ✓

