

No. 2015-0604

In the Supreme Court of Ohio

ORIGINAL ACTION FOR WRIT OF PROHIBITION

STATE ex rel. CHESTER TOWNSHIP, ET AL.,

Relators,

v.

**THE HONORABLE TIMOTHY J. GRENDALL, JUDGE
GEAUGA COUNTY COURT OF COMMON PLEAS, PROBATE DIVISION**

Respondent.

**RESPONDENT THE HONORABLE TIMOTHY J. GRENDALL'S
RESPONSE TO RELATORS' MOTION FOR EMERGENCY STAY
AND EXPEDITED ALTERNATIVE WRIT**

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INTRODUCTION

This original action for writ of prohibition improperly seeks appellate review of a non-final, non-appealable order that was entered by Geauga County Common Pleas Court Probate Judge, Timothy J. Grendell, in the case of *In re Chester Township Park District*, Case No. 84PC000139. As discussed more fully below, the underlying Probate Court case was commenced in 1984 by the Chester Township Board of Trustees by the filing of an application to create a township park district under Ohio Revised Code Chapter 1545. (See Application of Chester Township Trustees under R.C. Chapter 1545, Case No. 84-PC-139, Apx. 2).¹ There is no dispute that the Geauga County Probate Court has subject matter jurisdiction over the underlying action. Rather, this writ of prohibition action seeks to challenge whether the Probate Court “is exceeding his lawful jurisdiction” by “allegedly imposing certain duties and fees upon the Relators (not merely the Park District).” (See Relators’ Motion, pp. 1, 4).

This is an improper use of the writ of prohibition remedy, which is an extraordinary remedy that “is not routinely or easily granted.” *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 336, 686 N.E.2d 267 (1997). Indeed, as discussed more fully below, it is well-established that, “absent a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party challenging the court’s jurisdiction possesses an adequate remedy by appeal.” *Id.*; *Lingo v. State of Ohio*, 138 Ohio St.3d 427, 2014-Ohio-1052, 7 N.E.2d 1188, ¶ 41 (citing *State ex rel. Miller v. Lake County Court of Common Pleas*, 151 Ohio St. 397, 86 N.E.2d 464, paragraph three of syllabus (1949)). Moreover, where, as here, a lower court has general subject-matter jurisdiction over the case, any errors relating to

¹ All references to “Apx.” shall be to the Appendix that is attached to Relators’ Complaint.

whether it properly exercised its jurisdiction by granting certain relief is the type of error that can be remedied by a post-judgment appeal. *State ex rel. West v. McDonnell*, 139 Ohio St.3d 115, 2014-Ohio-1562, 9 N.E.3d 1025, ¶ 24 (“Any error [in ordering the forfeiture of the entire Scranton Road property] was an error in the exercise of jurisdiction, rather than an action undertaken in the absence of subject-matter jurisdiction”); *State ex rel. Obojski v. Perciak*, 113 Ohio St.3d 486, 2007-Ohio-2453, 866 N.E.2d 1070, ¶ 22 (question of whether trial judge had the jurisdiction to approve a settlement agreement “would be mere errors in the exercise of subject matter jurisdiction rather than errors establishing the lack of subject matter jurisdiction”). Accordingly, the Court should deny the Relators’ Motion for Emergency Stay and Expedited Alternative Writ, and dismiss the Complaint for Writ of Prohibition.

Indeed, in this case, dismissal is particularly appropriate because the Eleventh District Court of Appeals has previously held that the underlying order at issue is not a final, appealable order because it “does not fully and finally resolve the issue appellant challenges.” *See In the Matter of Chester Twp. Park Dist.*, 11th App. Geauga No. 2014-G-3242, 2015-Ohio-1210, ¶ 7 (copy attached as Respondent’s Exhibit 1). The specific relief that Relators are challenging in this prohibition action, therefore, has not yet even been finally determined by the Probate Court, and thus, as the Eleventh District has held, Relators lack standing to challenge the underlying order on appeal. *Id.* at ¶ 8. The Court should not permit Relators to circumvent this dismissal order by filing an original prohibition action with this Court. Accordingly, for this additional reason, the Court should deny Relators’ Motion for Emergency Stay and Expedited Alternative Writ and dismiss the Complaint for Writ of Prohibition.

STATEMENT OF FACTS

A. The Creation of the Chester Township Park District.

As set forth in the attached Docket, the underlying Probate Court case was originally commenced by the Chester Township Trustees in 1984 through the filing of an application for the creation of a park district under R.C. Chapter 1545 with the Geauga County Court of Common Pleas, Probate Division (the “Probate Court”). (See Respondent’s Exhibit 2, Docket in Case No. 84-PC-139, Geauga County Probate Court, Application by Resolution of Chester Township Trustees, dated 4/2/1984). Under R.C. 1545.02, an “[a]pplication for the creation of a park district shall be made to the probate judge of the county within which the district is to be located.” *Id.* Here, because the proposed park district was located in Geauga County, the Chester Township Trustees filed their application with the Geauga County Probate Court, which issued a Judgment Entry, dated May 10, 1984, that created the Chester Township Park District and granted the Board of Commissioners of the Chester Township Park District with all of the statutory authority granted by Ohio law. (See Judgment Entry, dated May 10, 1984, Apx. 6-8).

After the Chester Township Park District was created in 1984, the Probate Court did not lose all subject-matter jurisdiction. Rather, it continued to maintain jurisdiction over the case, including but not limited to the continuing authority to appoint the park commissioners and to remove any park commissioner “at the discretion of the probate judge, either upon complaint filed with such judge or upon his own motion.” (See R.C. 1545.05 and 1545.06). In this case, in fact, the Docket reflects that Geauga County Probate Case No. 84-PC-139 has remained open for over 30 years, and that the probate judges have continued to exercise jurisdiction over the case from time-to-time by, among other things, appointing, re-appointing, and removing Park District commissioners. (Ex. 2, Docket, Case No. 84-PC-139, Geauga County Probate Court).

B. The Master Commissioner's Report and Recommendation.

In March 2014, an anonymous 29-page complaint entitled, "Chester Township Park District 2013 Review," was submitted to the Chester Township Board of Trustees and to the Probate Court (the "Review"). A true and correct copy of the 29-page Review is included in the Appendix to Relators' Complaint at Apx. 110-138. Because the Review raised serious issues about whether the Chester Township Park District was operating in accordance with the Probate Court's original judgment entry and raised questions about whether one or more of the park commissioners should be removed under R.C. 1545.06, the Probate Court exercised its statutory authority under R.C. Chapter 2101 to appoint Attorney Mary Jane Trapp to serve as a Master Commissioner to investigate the issues raised by the Review and to make appropriate recommendations to the Court. (*See* Docket Entry #60, Appointment of Master Commissioner, dated March 20, 2014) (copy attached as Respondent's Exhibit 3). In this regard, R.C. 2101.06 specifically provides that the "probate judge, upon the motion of a party or the judge's own motion, may appoint a special master commissioner in any matter pending before the judge." *Id.* Moreover, the statute provides that the Master Commissioner shall have the authority to prepare a written report and recommendation that sets forth "the commissioner's conclusions on the law and the facts involved." *Id.* In so doing, R.C. 2101.07 further provides that "[t]he court shall allow the commissioner those fees that are allowed to other officers for similar services, *and the court shall tax those fees with costs.*" *Id.* (emphasis added).

Following her appointment, the Master Commissioner then proceeded to conduct an investigation of the issues raised by the 2013 Review document and submitted a comprehensive, 252-page report, with recommendations, that is included in the Appendix from Apx. 16 through Apx. 267. Upon receipt of the Master Commissioner's Report and Recommendations, the Probate Court then held a public hearing in August 2014 and invited written comments and

objections to the Master Commissioner's report and recommendations by October 2014. In this regard, the Chester Township Trustees participated in the public hearings and submitted timely comments by letter to the Probate Court Judge on October 8, 2014. (*See* Judgment Entry, dated November 26, 2014, pg. 2) (copy attached to Relators' Motion as Exhibit A). A time-stamped copy of the Chester Township's letter is attached hereto as Exhibit 4.

C. The Probate Court's Judgment Entry, dated November 26, 2014.

Upon consideration and review of the Master Commissioner's Report and Recommendations, the supporting documents, and the comments made in the Township Trustees, the Probate Court then issued a Judgment Entry on November 26, 2014, that set forth a number of Findings of Fact and Conclusions of Law. (*See* Probate Court Judgment Entry, dated November 26, 2014, Apx. 8-14). In this Judgment Entry, the Probate Court found that the Chester Township Park District was originally formed by the Geauga County Probate Court to operate as a separate governmental entity with its own separate funding sources in accordance with the statutory powers granted by the Ohio Revised Code. (*Id.*, Findings of Fact, ¶ 2-4, Apx. 9). Sometime in 2002, however, the Probate Court found that the Chester Township Trustees "terminated the dedicated inside millage" for the Township Park District, which was contrary to the purpose and intent of the original judgment entry to form a "separate, distinct, and independent governmental entity." (*Id.*, Findings of Fact, ¶ 6, Apx. 10). Indeed, in its Conclusions of Law, the Probate Court specifically found that the Township's elimination of dedicated millage "directly contravened the fundamental purpose" of the original judgment entry, which was to create an "independent Park District, free from the vicissitudes of Township government and politics." (*Id.*, Conclusions of Law, ¶ 4, Apx. 11).

In this regard, the Probate Court further concluded that the Park District Commissioners (not the Township Trustees) had the statutory authority under R.C. 1545.20 to levy up to one-

half mill for park funding purposes. (*Id.*, Conclusions of Law, ¶ 4, Apx. 11-12). In order to ensure that the Park District Commissioners are able to perform their statutory duties in accordance with the purpose and intent of the original formation documents, therefore, the Probate Court concluded that the Park District Commissioners needed to take appropriate action, as permitted by statute, to ensure that it had a dedicated source of independent funding by January 2016. (*Id.*, Conclusions of Law, ¶ 5, Apx. 12). Moreover, because the Township Trustees had wrongfully terminated the Park District’s prior millage funding in 2002, the Probate Court found that the Trustees had a duty to ensure that dedicated funds were made available “[u]ntil the Park District is able to establish an dedicated independent funding source.” (*Id.*, Conclusions of Law, ¶ 6, Apx. 12).

In addition to the termination of funding, the Probate Court also concluded that the Township Trustees circumvented the purpose and intent of the original judgment entry by entering into an agreement with the Park District, which granted the Township Trustees (not the Park Commissioners) with the authority to exercise the Park District’s levy powers under R.C. 1545.20, and which granted the Township Trustees the authority “to dictate the policies and procedures employed by the Park District Commissioners.” (*Id.*, Conclusions of Law, ¶ 7, Apx. 13). The Probate Court concluded that this “current agreement between the Township and the Park” conflicted “with the original Township application and judicial formation documents creating the Park District.” (*Id.*) Thus, the Probate Court directed the Master Commissioner to meet with the Township Trustees and the Park District Commissioners in order to formulate a new agreement that would not conflict with the statutory requirements of R.C. Chapter 1545 and the terms of the original application and judgment entry that created the Park District. (*Id.*) It

further provided that the “cost of the Master Commissioner shall be borne 75% by the Chester Township/Chester Park District and 25% by the Court.” (*Id.* at ¶ 13, Apx. 14).

D. The Township’s Appeal to the Eleventh District Court of Appeals.

Following the entry of the Probate Court’s Judgment Entry, the Chester Township Trustees filed a Notice of Appeal on December 12, 2014, to the Eleventh District Court of Appeals. (*See* Docket, Case No. 84-PC-139, Notice of Appeal, dated 12/12/14). In so doing, the Trustees also filed a Motion to Stay the November 26th Judgment Entry pending appeal, which was heard by the Probate Court on December 15, 2014. In the Stay Motion, the Township Trustees challenged whether the Probate Court had jurisdiction to grant the relief set forth in the November 26th Judgment Entry. Upon review, however, the Probate Court rejected these jurisdictional arguments, issuing a second Judgment Entry on December 15, 2014, that concluded as follows:

1. The Probate Court has continuing subject matter jurisdiction over Case No. 84PC139, including but not limited to the authority to remove Chester Township Park Board members and to oversee the Park District under R.C. 1545.05 and 1545.06.
2. The Probate Court has jurisdiction to investigate the allegations raised by the 2013 Review document because it called into question whether one or more the Park District board members should be removed and, pursuant to R.C. 1545.06, the Probate Court has the authority to remove members of the Chester Township Park District Board on the Court’s own motion.
3. The Probate Court has the inherent authority to enforce the terms of the original judgment entry creating the Park District by ensuring that it is “complied with by the Township Trustees and the Park Board” and by ensuring that Trustees’ current agreement with the Park Board does not contravene and conflict with the judgment entry by attempting “to circumvent or improperly limit the statutory authority of the Park Board and the independent nature of the Park District, as a separate governmental entity, in contravention of Judge Lavrich’s 1984 order.”

(Judgment Entry, dated December 15, 2015) (copy attached as Exhibit 5). In so doing, the Probate Court denied the stay motion because it determined that the November 26, 2014

Judgment Entry was not a final, appealable order, and that “several actions and decisions remain pending by the Master Commissioner and by the Court before an appeal is permitted.” (*Id.*).

Upon review, the Eleventh District Court of Appeals agreed with the Probate Court, issuing a Memorandum Opinion that dismissed the appeal for lack of a final, appealable order. *See In the Matter of Chester Twp. Park Dist.*, 11th App. Geauga No. 2014-G-3242, 2015-Ohio-1210 (copy attached as Exhibit 1). First, with respect to the challenge to the Probate Court’s award of costs, the Court of Appeals held that this order was not a final, appealable order because “no costs has been finally fixed,” and the underlying order “does not fully and finally resolve the issue appellant challenges.” *Id.* at ¶ 7. Moreover, because “the trial court has not yet approved and ordered payment of the Master Commissioner’s fees and costs,” the Eleventh District held that “there is no actual, immediate specified amount for which appellant is responsible.” *Id.* at ¶ 8. Accordingly, the Eleventh District held that the Township Trustees lack standing to challenge the November 26th judgment entry on appeal because [t]he pecuniary interest at issue” is “future, contingent, and speculative.” *Id.*

The Township Trustees did not file an appeal from the Eleventh District’s judgment entry to the Ohio Supreme Court. Instead, they sought to circumvent the Eleventh District’s ruling by filing a writ of prohibition that raises the same jurisdictional challenges the Probate Court’s Order of November 26, 2014, that were the subject of the appeal. In so doing, they also filed a Motion for Emergency Writ and Expedited Alternative Writ based upon the fact that the Probate Court has issued a Notice of Hearing upon remand that called a “Status Conference” on April 28, 2014, to discuss “pending matters.” (Relators’ Motion, pg. 6, Ex. B).

LAW AND ARGUMENT

A. Relators Have Failed To Establish That They Are Entitled To The Extraordinary Remedy Of A Writ of Prohibition.

Relators' Motion seeks an alternative writ of prohibition and emergency stay of the Probate Court's Order of November 26, 2014, and Notice of Hearing, dated March 31, 2015. (Relators' Motion, pg. 1, Ex. A and B). In so doing, however, Relators do not argue that the Probate Court lacks subject matter jurisdiction over the underlying case. Rather, they argue that the Probate Court lacks jurisdiction over the Chester Township Trustees and allegedly exceeded its authority by granting *some* of the relief that was set forth in the Probate Court's November 26th Judgment Entry. (Relators' Motion, pp. 5-6). In seeking "emergency" relief, however, Relators' Motion ignores the fact that the Probate Court has not yet entered a final judgment that imposes any specific duties or costs upon the Trustees, as the Eleventh District has held. Nonetheless, they seek "emergency relief" merely because the Probate Court has called a "Status Conference" to discuss "pending matters." (*Id.* at 6).

This is improper. Under Ohio law, a writ of prohibition is an extraordinary remedy that may granted only if "a court patently and unambiguously lacks jurisdiction over the cause." *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 686 N.E.2d 267 (1997). It cannot be granted to correct "an error in the exercise of jurisdiction, rather than an action undertaken in the absence of jurisdiction." *State ex rel. West v. McDonnell*, 139 Ohio St.3d 115, 2014-Ohio-1562, 9 N.E.3d 1025, ¶ 24; *see also State ex rel. Obojski v. Perciak*, 113 Ohio St.3d 486, 2007-Ohio-2453, 866 N.E.2d 1070, ¶ 22. Indeed, "absent a patent and unambiguous lack of jurisdiction," it is well-established that "a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party challenging the court's jurisdiction possesses an adequate remedy by appeal." *State ex rel. White*, 80 Ohio St.3d at 336; *State ex rel. Rootstown Local School Dist. v.*

Portage County Court of Common Pleas, 78 Ohio St.3d 489, 491, 678 N.E.2d 1365 (1997). Here, it is undisputed that the Probate Court has general subject matter jurisdiction over the case, including but not limited to the statutory jurisdiction to remove Park District commissioners upon his own Motion and the inherent authority to enforce the terms of the original judgment entry that created the Park District. In light of this fact, therefore, it automatically follows that the Probate Court has the jurisdiction “to determine the bounds of its own jurisdiction, and any error in that determination could be remedied upon appeal.” *Lingo v. State of Ohio*, 138 Ohio St.3d 427, 2014-Ohio-1052, 7 N.E.2d 1188, ¶ 41 (citing *State ex rel. Miller v. Lake Cnty. Ct. of Comm. Pleas*, 151 Ohio St. 397, 86 N.E.2d 464, syllabus ¶ 3 (1949)).

In this regard, the case law is clear that the Probate Court has the inherent authority to enforce its prior judgment entry. (Judgment Entry, dated December 15, 2014, Apx. 273-274). As this Court has explained, “We have long held that ‘[t]he power of a court to enforce its own proper orders is fundamental and inherent, as well as constitutional; necessarily so, to give it standing and afford respect and obedience to its judgment. This is upon broad ground of public policy, and without which power the judicial edifice would fall.’” *Record Publishing Co. v. Kainrad*, 49 Ohio St.3d 296, 300, 551 N.E.2d 1286 (1990) (citations omitted). Thus, it is well-established that “[a] trial court possesses the inherent authority to enforce its own judgments.” *Nies v. Fritsch Custom Builders, L.L.C.*, 186 Ohio App.3d 35, 2010-Ohio-357, 926 N.E.2d 341, ¶ 41 (1st Dist. 2010) (citing *Record Publishing Co.*); see also *State ex rel. Godale v. Geauga Cty. Court of Common Pleas*, 166 Ohio App.3d 851, 853 N.E.2d 708 (11th Dist. 2006) (subsequent change in zoning laws would have no effect upon the Geauga County Court of Common Pleas’s jurisdiction and “inherent authority to enforce its prior zoning judgments”).

Indeed, in their Motion, Relators do not argue that the Probate Court lacks the “inherent authority” to enforce its prior judgments. Rather, they simply argue that the “Respondent’s ‘inherent authority’ is not unlimited.” (Relators’ Motion, pg. 6). By making this argument, however, Relators essentially admit that the Probate Court is not patently and unambiguously without *any* jurisdiction to enforce its prior judgment entry. Rather, it simply is arguing that that the trial court erred in how it exercised its inherent authority. This is precisely the type of legal error that can and should be remedied by a post-judgment appeal, not a writ of prohibition. *See State ex rel. West*, at ¶ 24; *State ex rel. Obojski*, at ¶ 22.

Further, the Court should reject the Relators’ suggestion that the Probate Court lacks the jurisdiction “to exercise power over the Relators.” (Relators’ Motion, pg. 6). This is a meritless argument because it ignores the undisputed fact that the Township Trustees are the original parties who originally invoked the subject matter jurisdiction of the Probate Court by filing an application to create a township park district under R.C. Chapter 1545. Moreover, the Township Trustees fully participated in the underlying proceedings by filing objections, appearing at hearings, filing an appeal, and filing a stay motion with both the Probate Court and the Eleventh District Court of Appeals. Thus, as parties who initiated and participated in the underlying proceedings,² the Township Trustees clearly are subject to the Probate Court’s continuing jurisdiction to enforce its original judgment entry, and any errors relating to whether the trial

² As the parties who initiated and participated in the Probate Court proceedings, the Township Trustees ordinarily would be responsible under R.C. 2101.32 to pay all court costs. *See* R.C. 2101.32 (“In all actions or proceedings in the probate court, whether ex parte or adversary, costs may be awarded to, taxed against, and apportioned between the parties, whether on the same or adverse sides”). Such court costs include the Master Commissioner’s fees, which under R.C. 2101.07 are to be taxed as costs. *See* R.C. 2101.07 (“and the court shall tax those fees with costs”). In this case, however, the Probate Court has preliminarily determined that Chester Township/Park District shall be responsible for only 75% of the Master Commissioner’s fees.

court improperly determined or exercised its own jurisdiction are matters that may be remedied, if necessary, via a post-judgment appeal. *Lingo*, at ¶ 41; *State ex rel. Obojski*, at ¶ 22. Accordingly, the Court should deny the Relators' Motion for Emergency Stay and Expedited Alternative Writ and dismiss the Complaint for Writ of Prohibition.

B. Relators Should Not Be Permitted To Circumvent The Eleventh District's Judgment Entry.

Finally, the Court should dismiss this writ of prohibition action because it improperly seeks to circumvent the ruling by the Eleventh District Court of Appeals that the Chester Township Trustees lack standing to challenge the Probate Court's Order of November 26, 2014, at this time. *In the Matter of Chester Twp. Park District*, 2015-Ohio-1210, at ¶ 8. Here, Relators are seeking to challenge and stay two orders from Geauga County Probate Case No. 84PC000139: (1) the Probate Court's Order of November 26, 2014, and (2) the Probate Court's Notice of Hearing, dated March 31, 2015. (Relators' Motion pg. 1, Ex. A and B). The Eleventh District has already held, however, that the Chester Township Trustees lack the standing to challenge the November 26th Order because their "pecuniary interest at issue" is "future, contingent, and speculative." *Id.* at ¶ 8 (citing *Midwest Fireworks Mfg. Co., Inc. v. Deerfield Twp. Bd. of Zoning Appeals*, 91 Ohio St.3d 174, 177 (2001)). Indeed, at this juncture, the Probate Court has not yet imposed any actual duties or costs upon the Township Trustees, as the Eleventh District has already held, and the mere announcement of a "Status Conference" is hardly the type of "hardship" that might justify the extraordinary remedy of an Alternative Writ. Accordingly, for this additional reason, the Court should deny the Relators' Motion for Emergency Stay and Expedited Alternative Writ and dismiss the Complaint for Writ of Prohibition.

CONCLUSION

For these reasons, Respondent Hon. Timothy J. Grendell respectfully requests that the Court deny the Relators' Motion for Emergency Stay and Expedited Alternative Writ and dismiss the Complaint for Writ of Prohibition

Respectfully submitted,

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PROOF OF SERVICE

A copy of the foregoing *Response to Relators' Motion for Emergency Stay and Expedited Alternative Writ* was served on this 22nd day of April, 2015, via electronic mail pursuant to Civ. R. 5(B)(2)(f) upon the following counsel of record:

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/s/ Stephen W. Funk

Stephen W. Funk (0058506)

EXHIBIT 1

[Cite as *In re Chester Twp. Park*, 2015-Ohio-1210.]

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO

IN THE MATTER OF THE CREATION OF : MEMORANDUM OPINION
A PARK DISTRICT WITHIN CHESTER :
TOWNSHIP :
CASE NO. 2014-G-3242

Civil Appeal from the Geauga County Court of Common Pleas, Probate Division.
Case No. 84 PC 000139.

Judgment: Appeal dismissed.

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TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Chester Township Park District, Board of Trustees, appeals from the judgment of the Geauga County Court of Common Pleas, Probate Division, holding it responsible for 75% of uncertain sums in the form of fees and costs accrued by the Master Commissioner presiding over the underlying matter.

{¶2} The underlying case apparently resulted in the creation of the Chester Township Park District, pursuant to an application from appellant in 1984. The case

was reopened in March 2014, sua sponte, by the probate court, apparently for the purpose of appointing a Master Commissioner to investigate various issues pertaining to the operation of the Chester Township Park District. The Master Commissioner, thereafter, conducted a full review of the issues and prepared a report with recommendations.

{¶3} The probate court subsequently held a public hearing at which the Master Commissioner presented and delivered her report to the court. The court invited comments from appellant as well as from Chester Township residents. Appellant submitted comments, and on November 26, 2014, after reviewing the report and comments, the probate court issued a judgment with findings of fact and conclusions of law. In its entry, the court concluded, inter alia, the cost of the Master Commissioner shall be borne 75% by appellant and appellee, Chester Township Park District, Board of Commissioners, and 25% by the court.

{¶4} Appellant filed a notice of appeal of the probate court's judgment. Appellant moved the lower court to stay the proceedings pending the instant appeal, which was denied. Appellant subsequently moved this court for a temporary stay of the proceedings, which was granted. Appellee filed a motion to dismiss the appeal. This court additionally ordered the parties to file all memoranda on the issue of jurisdiction; namely, whether the November 26, 2014 judgment was a final, appealable order. The parties complied. Pursuant to the following analysis, we dismiss the instant appeal.

{¶5} "Pursuant to Article IV, Section 3(B)(2) of the Ohio Constitution, courts of appeals have jurisdiction only to 'affirm, modify or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district.'" *State v.*

Strickland, 11th Dist. Trumbull No. 2014-T-0049, 2014-Ohio-5622, ¶13. If a lower court's order is not final, then an appellate court does not have jurisdiction to review the matter and the matter must be dismissed. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20 (1989).

{¶6} Furthermore, standing to appeal a final order lies only on behalf of a party aggrieved by the order from which the appeal is taken. *Ohio Contract Carriers Assn., Inc. v. Pub. Util. Comm.*, 140 Ohio St.160 (1942), syllabus. A party is "aggrieved" if his or her present interest in the litigation's subject matter is "immediate and pecuniary, and not a remote consequence of the judgment." *Id.* at 161, quoting 2 American Jurisprudence, Appeal and Error, Section 50, at 942 (1936); see also *Midwest Fireworks Mfg. Co., Inc. v. Deerfield Twp. Bd. of Zoning Appeals*, 91 Ohio St.3d 174, 177 (2001). "[A] future; contingent or speculative interest is not sufficient" to confer standing to appeal. *Id.*

{¶7} First, because no cost amount has been finally fixed, the order being appealed is, in effect, inchoate. It is clear, at this point, the trial court intends to hold appellant and appellee responsible for 75% of the Master Commissioner's eventual fees and costs. To the extent that figure has not been approved and ordered into execution, however, the underlying order does not fully and finally resolve the issue appellant challenges. The judgment is functionally akin to a finding of liability without a determination of damages. In this respect, it is not a final, appealable order. See, e.g., *CitiMortgage, Inc. v. Roznowski*, 139 Ohio St.3d 299, 2014-Ohio-1984, ¶13 ("generally an order that determines liability but not damages is not a final, appealable order").

{¶18} Furthermore, the probate court has declared appellant responsible for a percentage of the Master Commissioner's costs. As just noted, that amount has not yet been determined. Because the trial court has not yet approved and ordered payment of the Master Commissioner's fees and costs, there is no actual, immediate specified amount for which appellant is responsible. The pecuniary interest at issue is therefore "future, contingent, and speculative." *Midwest Fireworks, supra*, at 177. Accordingly, appellant lacks standing at this time to challenge the issue on appeal.

{¶19} For the foregoing reasons, the instant matter is dismissed.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.

EXHIBIT 2

CRTR5925

Detail

<u>Case Number</u>	<u>Status</u>	<u>Judge</u>
84 PC 139	CLOSED	JUDGE BY ASSIGNMENT

<u>In The Matter Of</u>	<u>Action</u>
CHESTER TOWNSHIP PARK BOARD	PROBATE CIVIL

<u>Party</u>	<u>Attorneys</u>
NONE	DFNDT

CHESTER TOWNSHIP PARK BOARD
12701 CHILLICOTHE ROAD
CHESTERLAND, OH 44026

PLNTF

TRAPP, MARY J
THRASHER, DISMORE & DOLAN
1400 W 6TH ST, STE 400
CLEVELAND, OH 44113

OT

GEAUGA COUNTY PROSECUTOR
231 MAIN ST SUITE 300
CHARDON, OH 44024

OT

<u>Opened</u>	<u>Disposed</u>	<u>Case Type</u>
01/11/1994	CLOSED - CONVERSION	CIVIL

Comments:

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr	Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
1	04/02/84	APPLICATION BY RESOLUTION OF THE CHESTER TOWNSHIP TRUSTEES, PURSUANT TO OHIO REVISED CODE CHAPTER 1545. W/EXHIBITS A, B, & C.		0.00	0.00
2	04/02/84	ALL PREVIOUS DOCKET ENTRIES FOR THIS CASE CAN BE FOUND IN DOCKET 17 PG 371 TIME-STAMPED 4/2/1984 - 10/18/1993. ADDED TO COMPUTERIZED DOCKET 1/11/1994.			0.00
3	05/10/84	JUDGMENT ENTRY - HEARING MAY 10, 1984 RE: APPROVAL OF CREATION OF CHESTER TOWNSHIP PARK DISTRICT.		0.00	0.00
4	10/26/93	LETTER AND RESUME OF LINDA GRIMM TO SERVE ON CHESTER PARK BOARD VOLUME # 245 PAGE # 0			0.00
5	11/04/93	INTERVIEW SET W/LINDA GRIMM FOR 11/30/1993 @ 3:40 PM.		0.00	0.00
6	11/05/93	RECOMMENDATION BY NANCY PATTERSON		0.00	0.00

CRTR5925

Detail

84 PC 139 CHESTER TOWNSHIP PARK BOARD DEFENDANT: NONE

No.	Date of Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr	Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
7	11/08/93 RECOMMENDATION BY PATRICIA MULA		0.00	0.00
8	12/08/93 LETTER OF APPOINTMENT - LINDA GRIMM		0.00	0.00
9	12/23/93 JOURNAL ENTRY APPOINTING LINDA GRIMM TO A THREE YEAR TERM FILED VOLUME # 245 PAGE # 0			0.00
10	12/23/93 JOURNAL ENTRY-OATH FILED LINDA GRIMM VOLUME # 245 PAGE # 0			0.00
11	12/23/93 PRESS RELEASE		0.00	0.00
12	12/23/93 MAPLELEAF		0.00	0.00
13	12/30/93 NEWSPAPER ARTICLE		0.00	0.00
14	01/05/94 CHESTERLAND NEWS		0.00	0.00
15	01/21/94 WEST GEAUGA PAPER		0.00	0.00
16	12/15/94 JOURNAL ENTRY APPOINTING JOAN DICILLO TO A THREE YEAR TERM VOLUME # 258 PAGE # 0			0.00
17	12/15/94 JOURNAL ENTRY-OATH FILED VOLUME # 258 PAGE # 0			0.00
18	12/06/95 JOURNAL ENTRY APPOINTING JAMES WILLIAM PATTERSON TO A THREE YEAR TERM FILED - ISSUED TO CONCERNED PARTIES VOLUME # 278 PAGE # 0			0.00
19	12/13/95 OATH OF JAMES WILLIAM PATTERSON FILED VOLUME # 278 PAGE # 0			0.00
20	12/04/96 JOURNAL ENTRY APPOINTING ROBERT J. LAUTENSCHLEGER TO A THREE YEAR TERM FILED REEL 312			0.00
21	12/04/96 JOURNAL ENTRY-OATH FILED REEL 312			0.00

CRTR5925

Detail

84 PC 139 CHESTER TOWNSHIP PARK BOARD DEFENDANT: NONE

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr	Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
22	12/05/96	PRESS RELEASE		0.00	0.00
23	12/03/97	APPLICATION - CHARLES STEVENS		0.00	0.00
24	01/27/98	JOURNAL ENTRY APPOINTING CHARLES R. STEVENS TO THE CHESTER TOWNSHIP PARK BOARD FOR A THREE YEAR TERM COMMENCING ON JANUARY 1, 1998 JOURNAL ENTRY - OATH OF CHARLES R. STEVENS FILED REEL 312			0.00
25	01/27/98	OATH - CHARLES STEVENS		0.00	0.00
26	12/24/98	JOURNAL ENTRY APPOINTING JAMES WILLIAM PATERSON TO PARK BOARD ENDING DECEMBER 31, 2001 - ISSUED TO ALL PARTIES OATH FILED			0.00
27	12/24/98	OATH JAMES WILLIAM PATTERSON		0.00	0.00
28	12/22/99	JOURNAL ENTRY REAPPOINTING ROBERT J LAUTENSCHLEGER TO A 3 YR TERM ON THE CHESTER TOWNSHIP PARK BOARD JOURNAL ENTRY - OATH FILED ISSUED TO CONCERNED PARTIES			0.00
29	12/22/99	OATH - ROBERT LAUTENSCHLEGER		0.00	0.00
30	01/04/00	THE BALANCE OF THE ABOVE MATTER CAN BE FOUND ON REEL NO. 334			0.00
31	01/29/01	JOURNAL ENTRY - APPOINTING CHARLES R STEVENS AS A MEMBER TO THE CHESTER TOWNSHIP PARK DISTRICT			0.00
32	03/05/01	OATH OF CHARLES R STEVENS FILED			0.00
33	01/24/02	JOURNAL ENTRY APPOINTING WAYNE D WILLIAMS TO CHESTER TOWNSHIP PARK DISTRICT JOURNAL ENTRY - OATH FILED ISSUED TO CONCERNED PARTIES			0.00

CRTR5925

Detail

84 PC 139 CHESTER TOWNSHIP PARK BOARD DEFENDANT: NONE

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr	Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
34	01/24/02	OATH - WAYNE WILLIAMS		0.00	0.00
35	01/24/02	LETTER TO MICHAEL HERBST		0.00	0.00
36	01/24/02	LETTER TO KENNETH RADKE, JR		0.00	0.00
37	09/30/03	JOURNAL ENTRY APPOINTING WILLIAM C RODGERS TO PARK BOARD JOURNAL ENTRY/OATH FILED - ISSUED - JMP -			0.00
38	09/30/03	OATH - WILLIAM RODGERS		0.00	0.00
39	11/19/03	CORRECTED APPOINTMENT - WILLIAM RODGERS		0.00	0.00
40	12/05/03	JOURNAL ENTRY APPOINTING RONALD DOWNS TO THE CHESTER TOWNSHIP PARK BOARD JOURNAL ENTRY - OATH FILED - ISSUED JMP			0.00
41	12/05/03	OATH - RONALD DOWNS		0.00	0.00
42	12/01/04	RESUME - PHILLIP CHRISTOPHER		0.00	0.00
43	02/03/05	JOURNAL ENTRY APPOINTING PHILLIP CHRISTOPHER TO A THREE YEAR TERM ON THE CHESTER TOWNSHIP PARK DISTRICT CC ISSUED CHESTER TWP TRUSTEES, CHESTER TWP PARK BOARD AND PHILLIP CHRISTOPHER - JMP			0.00
44	02/03/05	JOURNAL ENTRY - OATH OF PHILLIP CHRISTOPHER JMP			0.00
45	01/13/06	JOURNAL ENTRY - FILED APPOINTING WILLIAM C. RODGERS ON A THREE YEAR TERM ON THE CHESTER TOWNSHIP PARK BOARD COMMENCING ON JANUARY 1, 2006 TO DECEMBER 31, 2008 CC ISSUED TO WILLIAM RODGERS AND THE CHESTER TWP TRUSTEES AND CHESTER TWP PARK BOARD.		0.00	0.00
46	01/13/06	JOURNAL ENTRY- OATH WILLIAM C. RODGERS FILED		0.00	0.00

CRTR5925

Detail

84 PC 139 CHESTER TOWNSHIP PARK BOARD DEFENDANT: NONE

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr	Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
47	12/29/06	JOURNAL ENTRY REAPPOINTING RONALD DOWNS TO A THREE YEAR TERM ON THE CHESTER TOWNSHIP PARK DISTRICT COMMENCING JANUARY 1, 2007 AND SHALL EXPIRE ON DECEMBER 31, 2009 JOURNAL ENTRY- OATH FILED		0.00	0.00
48	12/29/06	OATH - RONALD DOWNS		0.00	0.00
49	06/22/07	RESIGNATION - WILLIAM RODGERS		0.00	0.00
50	07/09/07	ACCEPTANCE OF RESIGNATION - WILLIAM RODGERS		0.00	0.00
51	09/06/07	JOURNAL ENTRY - OATH ENTRY APPOINTING ROBERT H DAVID TO THE CHESTER TOWNSHIP PARK BOARD TO COMPLETE THE TERM OF WILLIAM C RODGERS ENDING DECEMBER 31, 2008 - CC ISSUED REGULAR MAIL TO CHESTER TOWNSHIP TRUSTEES, CHESTER TOWNSHIP PARK BOARD AND ROBERT H DAVIS.		0.00	0.00
52	03/12/08	JOURNAL ENTRY - OATH ENTRY APPOINTING TODD BIDWELL TO THE CHESTER TOWNSHIP PARK BOARD TO COMPLETE A THREE YEAR TERM COMMENCING ON JANUARY 1, 2008 AND ENDING ON DECEMBER 31, 2010 - CC ISSUED REGULAR MAIL TO CHESTER TOWNSHIP TRUSTEES, CHESTER TOWNSHIP PARK BOARD AND TODD BIDWELL.		0.00	0.00
53	01/30/09	JOURNAL ENTRY - OATH ENTRY APPOINTING JAMES M RIZZO TO THE CHESTER TOWNSHIP PARK BOARD TO COMPLETE A THREE YEAR TERM COMMENCING ON JANUARY 1, 2009 AND ENDING ON DECEMBER 31, 2011 - CC ISSUED REGULAR MAIL TO CHESTER TOWNSHIP TRUSTEES, CHESTER TOWNSHIP PARK BOARD AND JAMES M RIZZO		0.00	0.00
54	11/20/09	JOURNAL ENTRY - OATH ENTRY APPOINTING RONALD DOWNS TO THE CHESTER TOWNSHIP PARK BOARD TO COMPLETE A THREE YEAR TERM COMMENCING ON JANUARY 1, 2010 AND ENDING ON DECEMBER 31, 2012 - CC ISSUED REGULAR MAIL TO CHESTER TOWNSHIP TRUSTEES, CHESTER TOWNSHIP PARK BOARD AND RONALD DOWNS		0.00	0.00

CRTR5925

Detail

84 PC 139 CHESTER TOWNSHIP PARK BOARD DEFENDANT: NONE

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr	Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
55	11/24/10	JOURNAL ENTRY - OATH ENTRY APPOINTING TODD BIDWELL TO THE CHESTER TOWNSHIP PARK BOARD TO COMPLETE A THREE YEAR TERM COMMENCING ON JANUARY 1, 2011 AND ENDING ON DECEMBER 31, 2013 - CC ISSUED REGULAR MAIL TO CHESTER TOWNSHIP TRUSTEES, CHESTER TOWNSHIP PARK BOARD AND TODD BIDWELL.		0.00	0.00
56	12/19/11	JOURNAL ENTRY - OATH ENTRY APPOINTING JOSEPH H WEISS JR TO THE CHESTER TOWNSHIP PARK BOARD TO A THREE YEAR TERM COMMENCING ON JANUARY 1, 2012 AND ENDING ON DECEMBER 31, 2014 - CC ISSUED REGULAR MAIL TO CHESTER TOWNSHIP TRUSTEES, CHESTER TOWNSHIP PARK BOARD AND JOSEPH H WEISS JR		0.00	0.00
57	12/28/12	JOURNAL ENTRY - OATH ENTRY APPOINTING LANCE S YANDELL TO THE CHESTER TOWNSHIP PARK BOARD TO A THREE YEAR TERM COMMENCING ON JANUARY 1, 2013 AND ENDING ON DECEMBER 31, 2015 - CC ISSUED REGULAR MAIL TO CHESTER TOWNSHIP TRUSTEES, CHESTER TOWNSHIP PARK BOARD AND LANCE S YANDELL		0.00	0.00
58	12/27/13	JOURNAL ENTRY - OATH ENTRY APPOINTING CLAY LAWRENCE TO THE CHESTER TOWNSHIP PARK BOARD TO A THREE YEAR TERM COMMENCING ON JANUARY 1, 2014 AND ENDING ON DECEMBER 31, 2016 - CC ISSUED REGULAR MAIL TO CHESTER TOWNSHIP TRUSTEES, CHESTER TOWNSHIP PARK BOARD AND CLAY LAWRENCE		0.00	0.00
59	03/20/14	DONATION PAPERWORK - DAN SMITH OF CONSOLIDATED INVESTMENT CORP.		0.00	0.00
60	03/20/14	APPOINTMENT OF MASTER COMMISSIONER OATH OF MASTER COMMISSIONER		0.00	0.00
61	06/06/14	APPOINTMENT OF TWO PARK BOARD MEMBERS		0.00	0.00
62	06/27/14	JOURNAL ENTRY - OATH ENTRY APPOINTING AL PARKER TO THE CHESTER TOWNSHIP PARK BOARD COMMENCING IMMEDIATELY AND ENDING ON DECEMBER 31, 2015 - CC ISSUED REGULAR MAIL TO CHESTER TOWNSHIP TRUSTEES, CHESTER TOWNSHIP PARK BOARD AND AL PARKER		0.00	0.00

CRTR5925

Detail

84 PC 139 CHESTER TOWNSHIP PARK BOARD DEFENDANT: NONE

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr	Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
63	06/27/14	JOURNAL ENTRY - OATH ENTRY APPOINTING RUTH PHILBRICK TO THE CHESTER TOWNSHIP PARK BOARD COMMENCING IMMEDIATELY AND ENDING ON DECEMBER 31, 2014 - CC ISSUED REGULAR MAIL TO CHESTER TOWNSHIP TRUSTEES, CHESTER TOWNSHIP PARK BOARD AND RUTH PHILBRICK		0.00	0.00
64	11/26/14	JUDGMENT ENTRY FINDINGS OF FACT CONCLUSIONS OF LAW CC: 12/1/14 CHESTER TOWNSHIP TRUSTEES/CHESTER PARK BOARD COMMISSIONERS/ MASTER COMMISSIONER MARY JANE TRAPP-MAIL; PROS-BOX		1.00	1.00
65	12/12/14	NOTICE OF APPEAL FILED		38.00	38.00
66	12/12/14	COURT OF APPEALS DOCKETING STATEMENT FILED BY JAMES R. FLAIZ.		0.00	0.00
67	12/12/14	INSTRUCTIONS FOR SERVICE FILED BY JAMES R. FLAIZ.		0.00	0.00
68	12/12/14	MOTION FOR ORDER STAYING ENFORCEMENT OF NOVEMBER 26, 2014 JUDGMENT ENTRY FINDINGS OF FACT CONCLUSIONS OF LAW DURING THE PENDENCY OF THE APPEAL FILED BY JAMES R FLAIZ.		5.00	5.00
69	12/12/14	NOTICE OF HEARING - ISSUED REGULAR MAIL TO: (N) NOTICE OF HEARING ON MOTION TO STAY SET FOR 12/15/14 @ 7:00 AM. Sent on: 12/12/2014 16:26:23.96		4.00	4.00
70	12/12/14	HEARING SCHEDULED: Event: MOTIONS HEARING Date: 12/15/2014 Time: 7:30 am Judge: GRENDALL, TIMOTHY J Location: COURTROOM A Result: HEARING HELD		0.00	0.00
71	12/15/14	ORDER FOR HEARING & NOTICE OF HEARING - ISSUED REGULAR MAIL TO: (N) NOTICE OF HEARING & ORDER FOR HEARING Sent on: 12/15/2014 09:58:41.27		4.00	4.00
72	12/15/14	HEARING SCHEDULED: Event: STATUS HEARING Date: 12/24/2014 Time: 11:00 am Judge: GRENDALL, TIMOTHY J Location: COURTROOM A Result: HEARING CANCELED		0.00	0.00

CRTR5925

Detail

84 PC 139 CHESTER TOWNSHIP PARK BOARD DEFENDANT: NONE

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
73	12/15/14	JUDGMENT ENTRY ON MOTION TO STAY FILED BY CHESTER TWP TRUSTEES	0.00	0.00
74	12/15/14	SUPPLEMENTAL JUDGMENT ENTRY	0.00	0.00
75	12/24/14	APPELLATE JUDGEMENT ENTRY RE: STAY.	0.00	0.00
76	12/31/14	JUDGMENT ENTRY - JOSEPH H WEISS, JR REAPPOINTMENT. CC: 12/31/14 J WEISS - COUNTERSERVE;CHESTER TWP PARK COMMISSION - MAIL	0.00	0.00
77	12/31/14	JOURNAL ENTRY - OATH JOSEPH H WEISS, JR. CC: 12/31/14 J WEISS - COUNTERSERVE;CHESTER TWP PARK COMMISSION - MAIL	0.00	0.00
78	12/31/14	JUDGEMENT ENTRY - RUTH PHILBRICK REAPPOINTMENT CC: 12/31/14 R PHILBRICK - COUNTERSERVE;CHESTER TWP PARK COMMISSION - MAIL	0.00	0.00
79	12/31/14	JOURNAL ENTRY - OATH RUTH PHILBRICK. CC: 12/31/14 R PHILBRICK - COUNTERSERVE;CHESTER TWP PARK COMMISSION - MAIL	0.00	0.00
80	01/28/15	REGULAR MAIL RETURNED ON AL PARKER - WRONG ADDRESS. REISSUED TO 13043 CAVES RD ADDRESS 1/28/15.	0.00	0.00
81	02/20/15	TRANSCRIPT FILED BY FRANK SCAILDONE, ATTY FOR CHESTER TWP BOARD OF TRUSTEES OF 8/25/14 HEARING PREPARED BY ANITA COMELLA, RPR, OFFICIAL COURT REPORTER. KNM	0.00	0.00
82	02/20/15	TRANSCRIPT FILED BY FRANK SCAILDONE, ATTY FOR CHESTER TWP BOARD OF TRUSTEES OF 8/26/14 HEARING PREPARED BY ANITA COMELLA, RPR, OFFICIAL COURT REPORTER. KNM	0.00	0.00
83	02/20/15	JUDGMENT ENTRY FILED RE: FILING OF TRANSCRIPT FOR APPEAL - ISSUED REGULAR MAIL TO:CHESTER PARK BOARD/CHESTER TWP TRUSTEES/F SCAILONE - MAIL; J GILLETTE - MAIL & EMAIL KNM	1.00	1.00

CRTR5925

Detail

84 PC 139 CHESTER TOWNSHIP PARK BOARD DEFENDANT: NONE

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
84	02/20/15	CASE FILED IN COURT OF APPEALS - ORIGINALS, 2 TRANSCRIPTS.	0.00	0.00
85	03/31/15	NOTICE OF HEARING -STATUES HEARING SET 4/28/15 @ 2:00 PM. Sent on: 03/31/2015 08:24:46.98 CHESTER TOWNSHIP PARK BOARD (PLAINTIFF); MARY J TRAPP (Other); CHESTER TWP TRUSTEES; CHESTER TWP CLERK; JAMES GILLETTE; FRANK SCAILDONE - MAIL; PROS-BOX	0.00	0.00
86	03/31/15	HEARING SCHEDULED: Event: STATUS HEARING Date: 04/28/2015 Time: 2:00 pm Judge: GRENDALL, JUDGE TIMOTHY J Location: COURTROOM A	0.00	0.00
87	04/01/15	OPINION FROM COURT OF APPEALS - DISMISSED	0.00	0.00
88	04/01/15	CERTIFICATE TO COPY OF JOURNAL ENTRY	0.00	0.00
89	04/01/15	TRANSCRIPTS AND ORIGINALS RETURNED FROM COURT OF APPEALS	0.00	0.00
90	04/01/15	OPINION FROM COURT OF APPEALS - DISMISSED	0.00	0.00
Totals By: COST			53.00	53.00
INFORMATION			0.00	0.00
*** End of Report ***				

EXHIBIT 3

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
GEAUGA COUNTY, OHIO

FILED
IN COMMON PLEAS COURT

2014 MAR 20 PM 12:01

PROBATE-JUVENILE
DIVISION
GEAUGA COUNTY, OHIO

IN RE:)
)
CHESTER TOWNSHIP PARK DISTRICT) JUDGE TIMOTHY J GRENDALL
)
)
) APPOINTMENT OF MASTER
) COMMISSIONER

On the Court's own motion, the Court hereby appoints attorney, Mary Jane Trapp (Atty. Reg. 0005315) Master Commissioner, to address issues raised in the Chester Township Park District 2013 (revised 3/5/2014) (the "Review") with all powers and authority as provided in O.R.C. Chapter 2101.

Said Master Commissioner shall determine, examine, and either resolve or provide to Court a proposed resolution of the Chester Township Park District issues raised in the Review, a copy of which has been provided to the Master Commissioner by the Court.

Said Master Commissioner shall have all powers and authority as provided by O.R.C. Section 2101.07.

Said Master Commissioner shall (1) file a written report with the Court containing her findings of fact and conclusions of law and (2) perform the tasks stated above, no later than July 30, 2014.

Said Master Commissioner shall be compensated by the Court at a rate of \$250.00 per hour and shall submit her statement to the Court for approval. The Court shall determine allocation of financial responsibility for reimbursement to the Court for said expenses at a later date.

Said Master Commissioner shall serve without bond.

After the Court receives the Master Commissioner's report, it will determine whether additional hearing or action is necessary and allocation of the costs.

IT IS SO ORDERED.


TIMOTHY J. GRENDALL, Judge

cc: Mary Jane Trapp
Chester Township Park Board
Chester Township Trustees
Jim Flaiz, County Prosecutor
Frank Gliha, County Auditor

FILED
IN COMMON PLEAS COURT
2014 MAR 20 PM 12: 01
PROBATE-JUVENILE
DIVISION
GEAUGA COUNTY, OHIO

EXHIBIT 4



Chester Township

Founded 1801

12701 CHILlicoTHE ROAD CHESTERLAND, OHIO 44026
(440) 729-7058
FAX (440) 729-3679

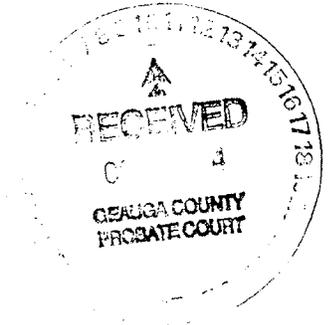
FISCAL OFFICER
Craig S. Richter

BOARD OF TRUSTEES
W.L. Bud Kinney
Michael J. Petruziello
Ken Radtke, Jr.

October 8, 2014

Honorable Judge Timothy J. Grendell
Court of Common Pleas
Geauga County
231 Main Street, Suite 200
Chardon, Ohio 44024

sent via email



RE: Master Commissioner Analysis of the Chester Township Park District Review 2013

Honorable Judge Grendell,

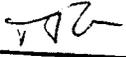
The Chester Township Board of Trustees and the Chester Township Fiscal Officer Craig Richter thank you for the opportunity to submit this letter to the Court concerning the *Master Commissioner Analysis of the Chester Township Park District Review 2013* ('MC Report').

In recent years, and due in large part, to the effort of Park Board volunteers and Secretary/Treasurer, our park has greatly improved and is enjoyed by many more people today than in prior years. The Board of Trustees (BoT) and the Fiscal Officer (FO) sincerely appreciate their efforts.

We are pleased that the Master Commissioner (MC) has incorporated a number of opportunities for improvement that include recommendations to the MC by members of the Board of Trustees and/or the Fiscal Officer. We are hopeful that moving forward the Park Board will work with the Board of Trustees in developing strategic plans and stabilized funding for the park.

The body of this letter includes several points of clarification and several questions based on the Master Commissioners Report.

ACKNOWLEDGED

BY: 
Timothy J. Grendell

October 8, 2014
Chester Board of Trustees to Probate Court
Page 2

CLARIFICATIONS

Disharmony & Politics

On page 11, the MC Review mentions disharmony between the boards, and the report states: *"The presentation of the "Review" document to the township trustees ratcheted this conflict to a new level."* The Board of Trustees and Fiscal Officer believe that statement could be improperly interpreted by the reader; inferring actions by the Board of Trustees are being taken for political purposes. The Board of Trustees and Fiscal Officer have a responsibility to address citizen concerns regarding financial accountability if brought to our attention. Failing to do so, we would be negligent in our duties. Failing to share this Review with the Park Board we would be dishonest in our relationship with them. We believe it is important for the Court to understand that evolution regarding the Review:

In late February the Chester Board of Trustees (BoT) and the Fiscal Officer received a copy of a document entitled *Chester Township Park District 2013 Review* ('Review'). An updated document, dated March 5, 2014 was received by the same parties. Trustee Radtke met with the Fiscal Officer and asked if he had also received a copy which the FO confirmed. Trustee Radtke asked the Fiscal Officer meet with another trustee and the two would meet with one Chester Park Board member and the Secretary (now Treasurer), provide them with a copy of the report and have a discussion. It was the Board of Trustees and Fiscal Officer's expectation that the outcome of that discussion would be a plan to address concerns identified in the review, and if valid, implement changes to improve the system. It was recognized by the BoT and FO that systems currently in place within Chester Township government could guide and support the Park Board. Given that park board members include two former Chester Township trustees and an attorney, we were confident that proper processes, financial procedures and fund accounting could be established with little fanfare and the system would improve. While the initial meeting did occur, followup meetings to address these matters did not happen for reasons beyond the control of the Board of Trustees.

Park Funding

Also on page 11 regarding funding, the MC Report states "These volunteers do not want to have the park district's funding become a political battle each year." The Board of Trustees strongly support volunteers, there is no intent or desire to engage in a 'political battle'

October 8, 2014

Chester Board of Trustees to Probate Court

Page 3

regarding funding or any other matter; our actions have demonstrated strong financial support. If thoughtful analysis, deliberation and discussion by the Board of Trustees regarding funding of the Park Board as part of Chester Township's budget planning is interpreted by some as a 'political battle', that is unfortunate. Between the years 2011 through 2013, taxpayers, through the Board of Trustee/General Fund have provided more than \$320,000 to the Park Board and \$100,000 has been budgeted for 2014. Prior to this time period, funding by the Board of Trustees was typically less than \$40,000 per year.

The Master Commissioner Report provided an opinion that "once the park district has in place its new fund-based accounting system with enhanced minutes, which will more simply allow the public and the township to track project expenditures and any subsequent change orders, especially during each board's budgeting process, the township trustees will no longer insist that it act as an uber authority demanding a second vetting process for each and every park district project as well as dictating the continued maintenance of park grounds and facilities."

The 1993 agreement between the Park Board and the BOT is still in effect and it clearly provides that the BOT will provide oversight as to the park district's construction and alteration plans and any contract in which a debt can be incurred or a lien obtained against the park, the lands, and improvements. The 1993 agreement has not been terminated by either party to our knowledge. Given that the Chester Park Board does not own any land, by necessity, the Park Board must interact with the Board of Trustees who represent the citizens on the property known as Parkside. The BoT's insistence on detailed financial review was driven by our concern over Park Board procedures and accounting.

QUESTIONS

Strategic Plans & Funding

The Master Commissioner is recommending a revision of the 1993 agreement. Items such as policies and procedures for regular and routine expenses; policies, procedures and approval process for capital expenditures and defining an interim funding (by the General Fund) and a long term funding mechanism (levy) are topics this Board would like to consider as part of establishing a new written agreement with the Chester Park Board. When can/should the Chester BoT meet with the Chester Park Board to consider a review and revision to this agreement as recommended by the Master Commissioner?

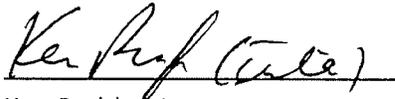
October 8, 2014
Chester Board of Trustees to Probate Court
Page 4

Funding & Financial Stability

The BoT/FO strongly agree with the Master Commissioner that the “park district and township need to work cooperatively to develop three, five and ten year strategic plans...”. This plan would be the basis for defining the interim and long term funding needs. Once those projected costs are identified, a funding plan should be established. With the loss of \$600,000 per year of annual revenue into the Township, the General Fund is operating at an annual deficit of more than \$300,000. This makes it difficult to support the park in the long term through inside millage, and it appears that a ballot measure presented to the voters is the best method for stabilized funding of our park in the long term. When can/should the Chester BoT meet with the Chester Park Board to work on these plans?

The Chester Township Board of Trustees and Chester Township Fiscal Officer are eager to move forward in working with the Chester Township Park Board, and we thank the Probate Court for Master Commissioner Trapp for your efforts.

Sincerely,



Ken Radtke, Jr.
Chairman



Ward Kinney
Vice Chairman



Michael Petruziello
Trustee



Craig Richter
Fiscal Officer

EXHIBIT 5

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
GEAUGA COUNTY, OHIO

FILED
IN COMMON PLEAS COURT

2014 DEC 15 PM 12:45

IN THE MATTER OF:

CHESTER TOWNSHIP PARK DISTRICT

) CASE NO. 84 PC 139 PROBATE-JUVENILE
) DIVISION
) JUDGE TIMOTHY J GRENDALL GEAUGA COUNTY, OHIO
)
) JUDGMENT ENTRY

On December 15, 2014, this matter came on for hearing on the Motion to Stay filed by the Chester Township Trustees (the "Trustees") along with the Trustees' premature Notice of Appeal of this Court's NOT final appealable November 26, 2014 Findings of Facts and Conclusions of Law. Present were Lance Yandell; Peggy Vitale; Joseph Weiss; Assistant Prosecutor, Bridey Matheney, attorney for the trustees; Ward Kinney; Mike Petruziello; Albert Parker; Ruth Philbrick; Clay Lawrence.

Pursuant to R.C. 1545.05 and 1545.06, this Court appoints and has the authority to remove Chester Township Park Board members and to oversee the Park District. Since 1984, this Court has maintained an open case (Case No. 84PC139) for those purposes. This Court has subject matter jurisdiction to hear this matter in that ongoing, open case.

In March 2014, the Chester Township Park District's Board brought to this Court's attention a copy of a document titled "Chester Township Park District 2013 Review" ("Review"), which called into question the conduct of the Township Park District's Board. Because of the Review, the Trustees withheld funds for the Park District in March 2014.

This Court had and has jurisdiction to hear this matter pursuant to R.C. Section 1545.06, which authorizes this Court to remove members of the Chester Township Park District Board on the Court's own motion.

To facilitate the Court's duties under R.C. 1545.06, the Court appointed former Eleventh District Court of Appeals Judge Mary Jane Trapp as Master Commissioner to investigate the matters raised by the Review. Master Commissioner Trapp filed a 252 page report, with recommendations. Jim Flaiz, Geauga County Prosecutor, indicated his agreement with this process to Joseph Weiss, Chairman of the Township Park Board.

Master Commissioner Trapp discovered that the Trustees, in 2002, improperly terminated the dedicated inside millage funding for the Chester Township Park District. This interfered with the Park Board's funding authority under R.C. 1545.20. Master Commissioner Trapp also found

that the Trustees, in the past, entered into an agreement that, in part, contravenes and conflicts with the prior order of then Geauga County Probate Court Judge Lavrich creating the Chester Township Park District. That agreement attempts to circumvent or improperly limit the statutory authority of the Park Board and the independent nature of the Park District as a separate governmental entity, in contravention of Judge Lavrich's 1984 order.

This Court has jurisdiction to make sure that Judge Lavrich's order creating the Chester Township Park District is complied with by the Township Trustees and the Park Board, as part of this Court's inherent authority to enforce its orders.

This Court's November 26, 2014 Judgment Entry Findings of Facts and Conclusions of Law is not a final appealable order that disposes of all issues, presently pending in this case. There are several issues still remaining to be decided in this case.

First, the Master Commissioner has been directed to meet with the Park Board and Trustees to address the 2015 funding and Court order- conflicting agreement issues.

Second, a hearing must be held on the Master Commissioner's fees issue. This hearing is scheduled for 11:00 A.M. on December 24, 2014.

The Trustees' Motion to Stay is denied for the following reasons:

1. The November 26, 2014 Judgment Entry Findings of facts Conclusion of Law is not a final appealable order. Therefore, the Township Trustees have no legal basis for their appeal, at this time.
2. Several actions and decisions remain pending by the Master Commissioner and the Court before an appeal is permitted.
3. The Trustees' are not likely to succeed an appeal because this Court had and has jurisdiction in this case (a) pursuant to its ongoing authority in Case No. 84PC139; (b) pursuant to R.C. 1545.06, as the Review raised issue with the performance of the Chester Township Park Board that required judicial review and consideration of possible Board member removal; (c) because this Court has the inherent power and jurisdiction to enforce Judge Lavrich's original order that created the Chester Township Park District and to prevent the contravention of that order by the Trustees; (d) because the Judgment Entry Findings of Facts and Conclusions of Law is not a final appealable order, as several issues remain to be adjudicated at the Probate Court level; (e) because enforcement of the pending interlocutory orders of this Court that the Trustees and Park Board meet with the Master Commissioner to address still

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GEAUGA COUNTY OHIO
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COMMON PLEAS COURT

pending issues will not cause adverse or prejudicial consequences to the Trustees or irreparable harm to the Trustees; and (f) because a hearing on the Master Commissioners fees issue is pending and scheduled for December 24, 2014.

4. On the other hand, a stay of the current interlocutory order of this Court requiring the Master Commissioner to facilitate funding for the Township Park District for 2015 would cause irreparable harm to the Park Board and the operation of the Park District.
5. The Trustees' Motion to Stay is not supported by any case law or any identified facts. The Trustees' stated reason for a Stay -- "to avoid adverse and prejudicial consequences" -- is not the legal standard for the granting of a Stay. The Trustees have stated no facts that a Stay is needed to prevent any irreparable harm or injury that cannot be remedied by an appeal, when timely, if appropriate.

It is well settled Ohio law and the law of this jurisdiction that a grant of jurisdiction implies the necessary and usual powers essential to effectuate the Court's orders. Pergande v. Pergande, 11th Dist. Ct. App. Case No. 90-A-1497 (April 26, 1991), citing and relying upon Hale v. Smith, 55 Ohio St. 210 (1896). Thus, a court has inherent authority to enforce its judgments and orders when such orders are not followed. Id. This Court has that authority with respect to Judge Lavrich's order creating the Park District.

Appellate Judge Cynthia Rice has succinctly recognized the inherent authority of a trial court to enforce its prior orders, stating: "The courts of Ohio have the 'inherent power' to do all things necessary to the administration of justice and to protect their own powers and processes. Omerza v. Bryant & Stratton, 2007-Ohio-5216 (11th Dist. Case No, 2006-L-147) (Judge Rice, dissent).

For each and all of these reasons, the Motion to Stay filed by the Trustees is denied.

Costs of the proceedings on the Motion to Stay are assessed to the Chester Township Trustees.

IT IS SO ORDERED.


TIMOTHY J. GRENDALL - JUDGE

cc: Chester Twp. Trustees
Chester Twp. Park Board
Geauga County Prosecutor

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11 COMMON PLEAS COURT
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PROBATE DIVISION
JUDGE COURT ROOM

Conclusion of Law

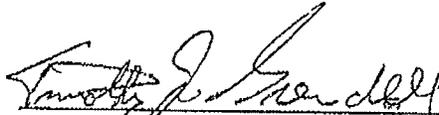
As a matter of Ohio law and for the factual reasons found above, this Court has subject matter jurisdiction to make the findings of facts and conclusions of law as stated in its November 26, 2014 Judgment Entry and herein, and to issue further orders consistent therewith.

It is well settled Ohio law and the law of this jurisdiction that a grant of jurisdiction implies the necessary and usual powers essential to effectuate the Court's orders. Pergande v. Pergande, 11th Dist. Ct. App. Case No. 90-A-1497 (April 26, 1991), citing and relying upon Hale v. Smith, 55 Ohio St. 210 (1896). Thus, a court has inherent authority to enforce its judgments and orders when such orders are not followed. Id. This Court has that authority with respect to Judge Lavrich's order creating the Park District.

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This Judgment Entry relates back to and supplements this Court's Judgment Entry Findings of Facts and Conclusions of law filed on November 26, 2014.

IT IS SO ORDERED.


TIMOTHY J. GRENDALL - JUDGE

cc: Chester Twp. Trustees
Chester Twp. Park Board
Gauga County Prosecutor

FILED
COMMON PLEAS COURT
2014 DEC 15 PM 12:45
CLERK OF COURT
JUVENILE
DIVISION
GAUGA COUNTY, OHIO