

IN THE SUPREME COURT OF OHIO

State of Ohio ex rel. Chester Township)	CASE NO.: 2015-0604
and the Chester Township Trustees)	
Michael J. Petruziello, Bud Kinney, and)	<u>RELATORS' NOTICE OF THE STATUS</u>
Ken Radtke, Jr.)	<u>OF THE LOWER COURT</u>
)	<u>PROCEEDINGS AS A SUPPLEMENT TO</u>
Relators,)	<u>THEIR REQUEST FOR AN</u>
vs.)	<u>ALTERNATIVE WRIT (STAY)</u>
)	
Honorable Timothy J. Grendell, Judge)	
Geauga County Court of Common Pleas,)	
Probate Division)	
)	
Respondent.)	

Relators Chester Township and the Chester Township Trustees (Michael J. Petruziello, Bud Kinney, and Ken Radtke, Jr.) hereby submit this supplement to apprise this Court of Respondent Probate Court Judge Timothy Grendell's recent actions that further support the issuance of an alternative writ that will operate as a stay.

On March 31, 2015, the Probate Court ordered all of the Relators to appear at a status hearing on April 28, 2015. The Relators appeared on that date with counsel, who entered a limited appearance to object to jurisdiction. During that hearing, the Probate Court unequivocally maintained it had jurisdiction over the Relators. The Relators through counsel objected to the Probate Court's jurisdiction and objected to meeting with the master commissioner to fund the park district, which is at the center of this case. (See Transcript Attached as Ex. "A.")

While the Probate Court views the meeting with the master commissioner as "suggested," the Probate Court has already improperly ordered without valid authority or jurisdiction that the Relators have "a duty to assure that adequate dedicated funds are made available to the Park District to perform the Park District's statutory duties." (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014 at ¶ 6; Apx. 12 to Comp.) In this case, the Probate Court has

made itself the arbiter of "adequate" and improperly assumed jurisdiction over the Relators-Chester Township Trustees' funding and resources, which are now forced to be expended by attending court conferences and responding to meetings with the master commissioner on a funding issue that the Probate Court has no jurisdiction over. No provision of Chapter 1545 gives any power to a probate court to issue an order to "adequately fund" a park district. Because of the ongoing efforts of the Probate Court through the master commissioner and its own orders and those likely to come, the Relators ask this Court to bring a stop to the Probate Court's efforts to exercise jurisdiction it does not have and allow the issue to be reviewed in this neutral forum.

During that status hearing, the Probate Court maintained that it may impose the master commissioner's fees on the Relators, which the Probate Court patently and unambiguously has no jurisdiction to do under Chapter 1545. Further, the Probate Court now suggests that Relators can be taxed for 100 percent of those fees. The Probate Court had already improperly ordered without valid authority or jurisdiction that the ongoing costs of the "Master Commissioner shall be borne 75% by the Chester Township/Chester Park District and 25% by the Court pursuant to its responsibilities under ORC 1545." (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014 at ¶ 13; Apx. 14 to Comp.)¹

Like the Probate Court does not have jurisdiction over a R.C. 1545 applicant to force park funding requirements, the Probate Court also cannot force on an applicant the payment of the fees of a master commissioner to examine the conduct of the Park District commissioners, which the Probate Court itself appointed. The Probate Court is a court of limited and special jurisdiction and under R.C. 1545 it has no authority to impose fees on the Township Trustees. To

¹ Although having no jurisdiction, the Probate Court's 75% "Chester Township/Chester Park District" allocation is effectively imposing that amount on Chester Township because at this point the Township almost exclusively funds the Park District.

be clear, the Relators are not litigants or parties to the Probate Court's actions against them. The Relators applied 30 years ago to create the park district under a special Chapter 1545 proceeding. After the Probate Court created the park district 30 years ago, the case was closed. The Probate Court is trying to impose fees of the master commissioner on an applicant in a proceeding that has been closed for 30 years with no applicable statutory authorization. (Though, it is true that the Probate Court has put its orders appointing or removing park district trustees over the past three decades in Geauga County Probate Court Case No.: 84PC000139.)

The Probate Court is now taking steps to enforce its order imposing a duty on the Township Trustees to "adequately" fund the Park District, and impose costs in which the Probate Court's jurisdiction is patently and unambiguously lacking. Relators offer this supplement to urge this Honorable Court to issue an alternative writ, which will operate as a stay of the proceedings. In the absence of such writ and stay, the Probate Court will continue to unlawfully assume the exercise of judicial or quasi-judicial power that is the heart of the pending writ. This Court should issue the alternative writ (stay).

Respectfully submitted,

MAZANEC, RASKIN & RYDER Co., L.P.A.

/s/ Frank H. Scialdone

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CERTIFICATE OF SERVICE

A copy of the foregoing Relators' Notice of the Status of the Lower Court Proceedings as a Supplement to their Request for an Alternative Writ (Stay) was served May 8, 2015 by depositing same in first-class United States mail, postage prepaid, to the following:

Stephen W. Funk, Esq.
Roetzel & Andress, LPA
222 S. Main Street, Suite 400
Akron, OH 44308

Counsel for Respondent The Honorable
Timothy J. Grendell, Judge Geauga County
Court of Common Pleas, Probate Division

/s/ Frank H. Scialdone

TODD M. RASKIN (0003625)
FRANK H. SCIALDONE (0075179)

Counsel for Relators State of Ohio ex rel. Chester
Township and the Chester Township Board of
Trustees Michael J. Petruziello, Bud Kinney and
Ken Radtke, Jr.

CHEST-140362\Notice of Status of Probate Court Hearing

THE STATE OF OHIO,)
COUNTY OF GEAUGA.) SS:

- - -

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION

- - -

IN THE MATTER OF:) CASE NO.
) 84 PC 139
CHESTER TOWNSHIP PARK) JUDGE TIMOTHY
DISTRICT) J. GRENDALL

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Transcript of the Status Conference
held in the above-captioned matter, before
the Honorable Timothy J. Grendell, and taken
before Angelika P. Shane, on Tuesday, the
28th day of April, 2015, at 2:05 p.m., at
the Probate Court of Geauga County, 231 Main
Street, Chardon, Ohio.

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1 APPEARANCES:

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3 ON BEHALF OF CHESTER TOWNSHIP TRUSTEES:

4

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6 Todd M. Raskin, Esq.

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13

14 ON BEHALF OF CHESTER TOWNSHIP PARK

15 BOARD:

16

17 James M. Gillette, Esq.

18 117 South Street

19 Chardon, Ohio 44024

20 440-286-7195

21

22

23 ALSO PRESENT:

24 Ken Radtke, Jr.

25 Bud Kinney

- 1 Michael J. Petruziello
- 2 Craig Richter
- 3 Joseph Weiss
- 4 Ruth Philbrick
- 5 Clay Lawrence
- 6 Mary Jane Trapp, Master Commissioner
- 7 John Karlovec, newspaper reporter

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1 P-R-O-C-E-E-D-I-N-G-S

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3 THE COURT: We are here
4 in the matter of the Chester Township Park
5 District, Geauga County, Case Number 84 PC
6 139. I'll start with Mr. Weiss. You want
7 to introduce yourself, please.

8 MR. WEISS: Joe Weiss,
9 member of the Chester Township Park
10 Commission.

11 MR. GILLETTE: Jim Gillette,
12 attorney for the Chester Township Park
13 Commission.

14 MR. RASKIN: Todd Raskin
15 on behalf of Chester Township and its
16 Trustees.

17 MR. RICHTER: Craig
18 Richter, fiscal officer for Chester
19 Township.

20 MR. RADTKE: Ken Radtke,
21 Chester Township Trustee.

22 MR. PETRUZIELLO: Mike
23 Petruziello, Chester Township Trustee.

24 MR. KINNEY: Bud Kinney,
25 Chester Township Trustee.

1 MS. PHILBRICK: Ruth
2 Philbrick, Park Commissioner.

3 MR. LAWRENCE: Clay
4 Lawrence, Chester Township Park
5 Commissioner.

6 MS. TRAPP: Mary Jane
7 Trapp, Master Commissioner.

8 THE COURT: Okay. This
9 is set for a status conference. The Court
10 has read the Eleventh District Court of
11 Appeals dismissing the appeal in this matter
12 for lack of standing. The Court is not
13 aware of any stay having been issued as of
14 2:10 today from the Ohio Supreme Court, so
15 the Court intends to have a status
16 conference.

17 The Court intends to issue no
18 rulings here today in deference to the
19 Supreme Court still reviewing this matter,
20 but I do have a couple things that I've been
21 trying to address since last December if the
22 trustees will allow me.

23 First of all, there was three
24 items left over at the end of my findings of
25 facts and conclusions of law. One was the

1 issue of 2015 funding for the Park District.
2 One was a question of an apparent conflict
3 between the trustee/commissioner agreement
4 in Judge Lavrich's original 1984 order, and
5 the third was the question of Master
6 Commissioner fees.

7 It was the Court's hope that
8 we can address these issues. It is the
9 Court's hope that we could stop the cost of
10 external lawyers for taxpayers for
11 collateral matters and simply address these
12 issues in these proceedings as the Court
13 believes this is the correct way of going,
14 and apparently so does the Eleventh District
15 Court of Appeals.

16 And my original goal was to
17 ask the Master Commissioner to meet with the
18 Township Trustees and Park Board to see if
19 they could address the issues on 2015
20 funding, if there is any, and this issue of
21 the potential or alleged conflict between
22 the agreement and the Lavrich order.

23 I guess I'll ask Mr. Raskin,
24 is there a problem with having that
25 meeting?

1 MR. RASKIN: There is a
2 problem, Your Honor, with the Court
3 exercising what we consider to be a lack of
4 subject matter jurisdiction over Chester
5 Township, its residents and the Trustees,
6 and your order compels such a meeting to
7 take place.

8 As the court's docket
9 reflects, Your Honor, I've entered a limited
10 appearance today on behalf of my clients for
11 the specific purpose of objecting to the
12 subject matter of jurisdiction of the Court
13 to take any action at all on any of the
14 three matters that are referred to in the
15 findings of fact of your judgment entry as
16 it relates to Chester Township, its
17 residents and the Trustees.

18 THE COURT: This Court
19 addressed that issue in the denial of the
20 stay on December 15th, 2014. You appealed
21 that to the Eleventh District Court of
22 Appeals. The Eleventh accepted the fact of
23 jurisdiction for purposes of taking your
24 motion.

25 You spent thousands of

1 taxpayers' dollars and the suit was
2 dismissed for lack of standing, so I will
3 ask this another way maybe more politely.

4 Will the Trustees, at the
5 suggestion of the Court, meet with the
6 Master Commissioner and the Park Board to
7 address the two issues that I discussed?

8 MR. RASKIN: No.

9 THE COURT: Okay. Next.

10 The Court has read the Revised Code Section
11 2101.07 dealing with Master Commissioner
12 fees, and that statute clearly says that
13 Master Commissioner fees shall be taxed as
14 costs.

15 The Court is also aware of
16 the case of State versus Joseph, 125 Ohio
17 St. 3rd 76 that says costs are a civil
18 obligation and any litigant becomes liable
19 for court costs if taxed by the court.

20 The Court feels that it was
21 actually being generous to the Township
22 Trustees in having them split part of the 75
23 percent portion of the costs.

24 The Court is firmly of the
25 belief that under 2107, the costs can be

1 taxed completely to this case as costs, and
2 under State versus Joseph, since the
3 Trustees have been the parties that started
4 this litigation in 1984 with their
5 application, which has been a continuous
6 jurisdiction in the case of this court, the
7 Court could assess 100 percent of the costs
8 of the Master Commissioner to the parties.
9 In this case, those parties would be the
10 Township Trustees.

11 If any party wants to brief
12 that issue to the Court, they shall have 10
13 days from today's date to do so.

14 Anything else on that issue
15 that comes before the Court?

16 Mr. Gillette, do you have
17 anything that comes before the Court?

18 MR. GILLETTE: No, Your
19 Honor, I do not.

20 MR. RASKIN: Your Honor,
21 may I be heard on that issue, please?

22 THE COURT: Sure.

23 MR. RASKIN: I would ask
24 that the Court not impose a 10 day time
25 limit for the briefing of that issue and,

1 indeed, delay the briefing of that issue
2 until such time as the Ohio Supreme Court
3 rules on the merits of the writ of
4 prohibition. I don't want anything to be
5 construed by an appellate court as
6 submitting the Township and the Trustees to
7 the jurisdiction of the Court.

8 By establishing a 10 day time
9 limitation, you put my clients in the
10 catch-22 of either risking a conclusion that
11 they have submitted to the jurisdiction of
12 the Court or not being heard on that issue,
13 and I think that that's patently unfair and
14 I would ask that the Court delay any
15 briefing schedule until after we know
16 whether or not the Ohio Supreme Court will
17 address the writ of prohibition on the
18 merits.

19 THE COURT: Counsel, that
20 would be in effect of granting you a stay
21 where one doesn't exist. First of all, as
22 this Court is of the firm belief that it has
23 jurisdiction, the Court is confident that
24 the brief that was filed in response to the
25 facially frivolous prohibition action will

1 prevail and I will not grant a stay when one
2 hasn't been granted by the Supreme Court, so
3 you would have 10 days to address the issue
4 or don't address the issue, Counsel. That
5 is your choice.

6 Mr. Gillette, do you wish to
7 be heard?

8 MR. GILLETTE: Your Honor, I
9 would agree with the Court's position.

10 THE COURT: Anything else
11 to come before the Court? If not, it's the
12 Court's intention to address these matters
13 in due course, but I will take no action
14 today other than giving you the opportunity
15 to respond to why the Trustees shouldn't pay
16 100 percent of the Master Commissioner's fee
17 pursuant to the statute in the State versus
18 Joseph case.

19 Anything else to come before
20 the Court? Then we are adjourned. Thank
21 you.

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23 (Status conference concluded at 2:18 p.m.)

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C-E-R-T-I-F-I-C-A-T-E

I, Angelika P. Shane, do hereby certify that I took the foregoing hearing, wrote the same in stenotype, and that this is a true and accurate transcript of my stenotype notes, in their entirety.



Angelika P. Shane

My Commission Expires: 6-21-15