Supreme Court of Ohio Clerk of Court - Filed June 11, 2015 - Case No. 2015-0604

IN THE SUPREME COURT OF OHIO
CASE NO.: 2015-0604

Original Action for Writ of Prohibition

STATE OF OHIO ex rel. CHESTER TOWNSHIP
and the CHESTER TOWNSHIP TRUSTEES
MICHAEL J. PETRUZIELLO, BUD KINNEY,
and KEN RADTKE, JR.

Relators

vs.

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.'S MERITS BRIEF

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I. INTRODUCTION

A probate court in all circumstances has an unyielding requirement that it must have subject matter jurisdiction before exercising judicial or quasi-judicial power. This jurisdictional requirement is of such importance that the Ohio Constitution vests this Court with original jurisdiction to stop and/or remedy such non-jurisdictional acts – specifically, through the issuance of a writ of prohibition. See Ohio Constitution, Article IV, Section 2(B)(1)(d). To correct the most egregious violations of this requirement, such as those where a public entity is forced to appear and defend itself before a court patently and unambiguously lacking jurisdiction, the Court will issue a writ to both prevent future action and to correct previous unauthorized rulings.

This case presents a clear example of judicial action despite a patent and unambiguous lack of jurisdiction. The Respondent Probate Court Judge Timothy Grendell patently and unambiguously lacked jurisdiction over Relators Chester Township Trustees to impose <u>any</u> authority over an applicant under R.C. Chapter 1545 after the creation of a park district, including but not limited to forcing the applicant to "adequately" fund the park district, and requiring the applicant to pay for a master commissioner to review the propriety of the park district commissioners' operation of that park. Ohio law is unequivocal that a probate court is a court of limited and special jurisdiction with only the powers that are granted by statute. The probate court's jurisdiction is created through Section 2101.24 of the Ohio Revised Code. This section makes <u>no</u> reference to any powers conferred to the probate court regarding park districts. Those powers are discussed exclusively in Chapter 1545 of the Ohio Revised Code. Likewise, none of the provisions of Revised Code Chapter 1545 provide that a probate court or Respondent has continuing jurisdiction over the Relators after the Probate Court created a park district – in

this case, more than 30 years ago. Indeed, the Respondent did not claim that he had statutory authority over the Relators, but relied on a mistaken conception of "inherent authority," which is not only wrong but also immaterial to establishing his judicial power here.

The Respondent's unlawful exercise of jurisdiction over the Relators Chester Township Trustees is fundamentally wrong and must be corrected. The Legislature did not give the Respondent the ability to force the Trustees to "adequately fund" a park district under Chapter 1545, or to pay for the Probate Court's examination of the conduct of the Park District Commissioners that the Probate Court itself appointed. Indeed, the Respondent's radical assertion of power over an independent political subdivision would allow the Respondent to fund the Park District to any extent he pleases – imposing the duty to pay for whatever he deems "adequate" on Chester Township. If that were not enough, the Respondent at any time could force the Township – again, a completely separate entity from the Park District – to pay tens of thousands of dollars for the Probate Court's Master Commissioner who is investigating the conduct of the Park District's Commissioners, which the Probate Court itself appointed and can remove. And, the Respondent, under his incorrect view, could do so time and time again – all at the expense of Chester Township, an entity that he has no jurisdiction over.

The Respondent ignored the absence of any statutory grant of authority, forcing the Relators to defend their lawful ability to protect the Township's resources before the Respondent/Probate Court that is completely devoid of jurisdiction. This Court must issue a writ of prohibition to vacate the Respondent's orders in this case and to prevent the Respondent from infringing upon the rights of the Relators in the future.

II. STATEMENT OF THE CASE AND FACTS

A. Statutory Background

Ohio law expressly and uniformly holds that a probate court is a court of limited and special jurisdiction that is authorized to exercise only those powers granted by statute. *Corron v. Corron*, 40 Ohio St.3d 75, 77, 531 N.E.2d 708 (1988) ("[I]t is a well-settled principle of law that probate courts are courts of limited jurisdiction and are permitted to exercise only the authority granted to them by statute and by the Ohio Constitution."). The probate court's jurisdiction is created through Section 2101.24 of the Ohio Revised Code. This section makes no reference to any powers conferred to the probate court regarding park districts. Those powers are discussed exclusively in Chapter 1545 of the Ohio Revised Code.

The following sections of Chapter 1545 of the Revised Code provide power to the probate court regarding park districts, but none of them give a probate court the power to opine that a park district is "adequately" funded, or to compel meetings regarding the funding of the Chester Township Park District, or to require the Chester Township Board of Trustees to pay for the services provided by the Master Commissioner, whose role was apparently to determine whether or not the current park commissioners should be removed:

Code Section	**Powers provided**
R.C. 1545.02	Authorizes the filing of an application to create a park district with the probate court.
R.C. 1545.03	Requires the probate court to fix a time for a hearing of the application and to publish notice of the filing of the application.
R.C. 1545.04	Authorizes the probate court to take evidence as in other cases in the probate court and requires the probate judge to hear all arguments for and against the creation of the district. Requires the probate court to create the district if the court finds: 1) that the application is signed or authorized as required in R.C. §1545.02 and 2) that the creation of the district will be conducive to the general welfare.
R.C. 1545.05	Requires that the probate court appoint commissioners for the park district.
R.C. 1545.06	Authorizes probate court judge to remove park commissioners and to fill vacant commissioner positions.
R.C. 1545.11	Requires the probate court to approve all donations of money and property to the park board.

Code Section	Powers provided
R.C. 1545.12	Requires the probate court approve the sale of any land owned by the park district.
R.C. 1545.15	Requires the probate court approve annexation of land adjoining the park district.
R.C. 1545.19	Authorizes the filing of an appeal by a neighboring property owner who has been assessed a cost of an improvement.
R.C. 1545.22	Requires county auditor or park board treasurer to send written notice if the park board has not made any deposits or expenditures in 5 years.
R.C. 1545.36	Requires that written notice of the filing of a petition to dissolve a park district has been filed be sent to the probate court. Requires board to send notice to probate court if a majority of voters support the dissolution of the park board.
R.C. 1545.37	Authorizes the filing of an application to dissolve a park district with the probate court.
R.C. 1545.38	Requires the probate court to initiate proceedings to dissolve a park district if there have been no deposits or expenditures by the park district in the past five years.
R.C. 1545.40	Requires probate court fulfill certain duties to wind down business of park district upon dissolution.

B. Background

Relators Michael J. Petruziello, Bud Kinney, and Ken Radtke Jr. are the currently elected trustees of Chester Township, Geauga County, Ohio. Relator Chester Township is an Ohio political subdivision located in Geauga County. Chester Township is a separate and distinct political subdivision from the Chester Township Park District. (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014 at p. 3; Joint Evid. at 105-106[1].) The Park District is operated by the Board of Park Commissioners that are appointed by the probate court. (*Id.*) Respondent Judge Timothy Grendell is the Geauga County Probate/Juvenile Court Judge.

More than 30 years ago on April 2, 1984, the predecessors to the current Chester Township Trustees under R.C. Chapter 1545 applied to Judge Lavrich to create a park district. (Application Under Chapter 1545; Joint Evid. 011.)

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On May 10, 1984, then Geauga County Probate Court Judge Frank Lavrich granted that application and created the Chester Township Park District under R.C. 1545.02. (Judgment Entry of May 10, 1984; Joint Evid. 016.) In doing so, the Probate Court created a new "body politic and corporate with full authority and subject to such limitations as provided by law." (*Id.*) The Park District is a separate legal entity distinct from Chester Township/Chester Township Trustees. The Probate Court also appointed three initial Park District commissioners under R.C. 1545.05. (*Id.*)

At that point, the special statutory proceeding to create the Park District was closed as to the Chester Township Trustees. Indeed, there would be nothing left to do because Chapter 1545 only provides that a probate court may accept the applicant's – in this case Chester Township's – application, review it, and approve or deny it. See R.C. 1545.02; R.C. 1545.03; R.C. 1545.04[2]; see generally Chapter 1545. As the Probate Court observed 30 years ago and even the Respondent acknowledges, upon the approval of the application the Park District a new political subdivision is created that is a separate and distinct entity.

During the three decades after the Park District's creation, the Probate Court appointed, reappointed, or removed Park District Commissioners. (See generally Docket Sheet for Case No. 84 PC 139; Joint Evid. at 001.) With the exception of the Respondent's very recent actions, the Probate Court has never tried to exercise authority over the Chester Township Trustees after the application to create the Park District was granted 30 years ago. (*Id.*)

A board of park commissioners of a park district formed under R.C. Chapter 1545 has various powers and duties related to the government of the park district. R.C. 1545.09-18. For example, a board of park commissioners has the power to acquire and dispose of land (R.C.

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1545.11-.12), to create parks, parkways, forest reservations, and other reservations (R.C. 1545.11), to exercise police powers within, and adjacent to, the lands under the board's jurisdiction (R.C. 1545.13-.132), and to adopt bylaws and rules to preserve order and protect property within the district (R.C. 1545.09). A board of park commissioners also has authority to levy taxes, subject to certification or modification of the levy by the county budget commission (R.C. 1545.20), to submit a levy directly to the electors of the park district (R.C. 1545.21), and to issue notes or bonds (R.C. 1545.211; R.C. 1545.24).

1. In March of 2014, Respondent hires a master commissioner to investigate the conduct of the Park District Commissioners.

"Parkside" is a five-acre community park located in Chester Township. In a Judgment Entry filed in what he contends is a perpetually open case [1984 case (84PC000139), through which the Park District was created], Respondent appointed a Master Commissioner (Mary Jane Trapp) to review the conduct of the Park District Commissioners related to the operation of the Park District and Parkside. (Appointment of Master Commissioner; Joint Evid. at 018.)

Respondent, citing R.C. 1545.05[3] and 1545.06[4], hired the Master Commissioner to investigate the Park District Commissioners' conduct regarding vendor payments; increased spending; park projects, plans and budget estimates; alleged failures to follow Ohio law, Park District Bylaws and the agreement between the Park District and Chester Township relating to the operation of a park district; open meeting concerns; irregularities in accounting; non-park related expenditures for goods and services; and the employment of the park secretary. (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014; Joint Evid. at 103[5].)

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The Master Commissioner conducted an investigation regarding the Park District. (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014 at 1, Joint Evid. at 103[6]; Master Commissioner's Report; Joint Evid. at 158.) The Master Commissioner asked the Chester Township Trustees to talk with her and to provide her with information, which the Trustees did. Similarly, after being asked to comment on the Master Commissioner's Report, the Trustees did that as well. Ultimately, the Master Commissioner issued a report and the Probate Court accepted the Master Commissioner's recommendations contained in the Report. (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014; Joint Evid. at 103[7].) The findings of the Report itself are largely irrelevant to the issue posed in this case as to the Township Trustees.

2. Relying on R.C. §1545.05 and §1545.06, Respondent orders the Chester Township Trustees to "adequately" fund the park district and to pay for the master commissioner's review of the Park District's commissioners.

On November 26, 2014, the Respondent issued a judgment entry accepting the Master Commissioner's report and issuing various directives as to the Park District. The Respondent's Nov. 26, 2014 Judgment Entry cites to R.C. §1545.05[8] and §1545.06[9] as the statutes that provided him with the authority to take his actions.

Shockingly and based on the purported authority of R.C. §1545.05 and §1545.06, the Respondent ordered the Relators to "adequately" fund the Park District, and ordered the Relators to pay for the fees (which are ongoing but currently, $37,070[10]) of the Master Commissioner,

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[8] Apx. 15
[9] Apx. 16
[10] (Aff. of Mary Jane Trapp at par. 17, filed June 1, 2015 with this Court.)

who the Probate Court itself appointed to review the conduct of the Park District Commissioners. (See Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014; Joint Evid. at 103[11].)

Although Chapter 1545 does not give the Probate Court ongoing authority over the Relators, the Respondent's Nov. 26, 2014 Entry ordered that the Township "has 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; Joint Evid. at 107) and ordered 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." (*Id*. at ¶ 13; Joint Evid. at 109[12].) The order also required the Township to meet with the Master Commissioner and the Park District "to formulate a new" service agreement, despite an existing 20-year agreement (*Id.* at ¶ 7, Joint Evid. at 108[13]); and to establish a new budget for the Park District, even though the Township has already approved the Park District's requested budget for 2015 for $75,000. (*Id.* at ¶ 6; Joint Evid. at 107[14].)

3. The Respondent – shortly after the Chester Trustees complain that he has no jurisdiction under Chapter 1545 – relies on "inherent" subject matter jurisdiction.

On December 15, 2014, the Probate Court issued a "supplemental" Judgment Entry. Although relying exclusively on its authority under Chapter 1545 of the Revised Code to issue its original November 26, 2014 judgment entry, the Respondent belatedly relied on his purported "inherent authority" in the Supplemental Judgment Entry. (Supplemental J. Entry of 12/15/2014; Joint Evid. at 134[15].) Chapter 1545 was -- and is -- the exclusive authority the Probate Court

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possessed with regard to the Park District. As demonstrated in this writ, the Respondent did not and does not have "inherent authority" over the Relators. Respondent mistakenly believes he has "inherent" jurisdiction to prevent the "contravention of or interference with Judge Lavrich's order" (Supplemental Judgment Entry of Dec. 15, 2014; Joint Evid. at 134[16].)

The Probate Court notified the Relators -- as well as the Park District -- that the November 26, 2014 Judgment Entry "may be an 'appealable' order." (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014 at 8; Joint Evid. at 110.) Because the Respondent exceeded his authority and to protect the record, the Relators timely filed a notice of appeal of that Judgment Entry in the Eleventh District Court of Appeals. (Notice of Appeal of 12/12/2014; Joint Evid. at 111.) On March 31, 2015, the Eleventh District dismissed the appeal for lack of a final appealable order. (*In re Chester Twp. Park*, 2015-Ohio-1210; Joint Evid. at 139.)

4. Respondent misunderstands his limited jurisdiction and maintains his jurisdictionally unauthorized actions against the Relators.

On March 31, 2015, Respondent ordered the Relators to attend a "Status Conference ... [on] all pending matters" before the Respondent on April 28, 2015 at 2 p.m. (Notice of Hearing, March 31, 2015; Joint Evid. at 138[17].)

On April 15, 2015, the Relators filed with this Court a complaint in prohibition to vacate and invalidate the actions taken by the Respondent as to the Trustees and to correct the Respondent's misunderstanding of his limited jurisdiction to prevent future jurisdictionally unauthorized actions. (Complaint in Prohibition 4/15/1015.) The Respondent at that time refused to stay its proceedings during the pendency of the proceeding before this Court. (Probate Court Hearing of April 28, 2015 at p. 9-10; Joint Evid. at 151-152.) On April 16, 2015, the Relators

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asked this Court to grant an expedited alternative writ, which the Respondent opposed. (Mot. for Expedited Alternative Writ of 4/16/2015; Respondent's Opposition of 4/22/2015.) On May 12, 2015, this Court granted the alternative writ and set a briefing schedule on the merits. (In Prohibition Entry of 5/12/2015.)

III. LAW AND ANALYSIS

The Relators are entitled to a writ of prohibition because the Respondent exercised judicial or quasi-judicial power when he patently and unambiguously lacked jurisdiction to do so.

Prohibition is a writ, issued in the name of the State to an inferior tribunal if three criteria are satisfied: 1) the inferior tribunal is about to exercise judicial or quasi-judicial power, 2) the exercise of power is unauthorized by law, and 3) no other adequate remedy exists in the ordinary course of the law. *State ex rel. Brady v. Pianka*, 106 Ohio St.3d 147, 2005-Ohio-4015, at ¶ 7; *Tatman v. Fairfield Cty. Bd of Elections*, 102 Ohio St.3d 425, 2004-Ohio-3701, at ¶ 14.

The Respondent inarguably exercised judicial power when he improperly ordered without valid authority or jurisdiction that the Relators Chester Township Trustees have "a duty to assure that adequate dedicated funds are made available to the Park District to perform the Park District's statutory duties" 30 years after the creation of the Park District, which is a separate legal entity, and to pay the Master Commissioner's fees. (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014 at ¶ 6; Joint Evid. at 107[18].) Other than approving or denying the original 1984 application to create a park district, the Probate Court had no power related to the Relators.

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As to the last two elements, where a respondent patently and unambiguously lacks jurisdiction, a relator "'need not establish the lack of an adequate remedy at law because the availability of alternate remedies like appeal would be immaterial. "' *State ex rel. Duke Energy Ohio, Inc. v. Hamilton Cty. Court*, 126 Ohio St. 3d 41, 2010-Ohio-2450, 930 N.E.2d 299, ¶ 17 (quoting *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St. 3d 368, 2008-Ohio-2637, 889 N.E.2d 500, ¶ 15). Therefore, the sole issue before the Court is whether the Respondent Probate Court Judge Timothy Grendell patently and unambiguously lacked jurisdiction over the Relators Chester Township Trustees.

<u>Proposition of Law I</u>: The Respondent Probate Court Judge Timothy Grendell patently and unambiguously lacks jurisdiction over the Relators-Chester Township Trustees.

A. A probate court is a court of limited and special jurisdiction and can only exercise jurisdiction/power that the general assembly has expressly conferred by statute.

The Respondent is exercising subject matter jurisdiction he patently and unambiguously does not have, and the assumption of jurisdiction is contrary to law. A probate court does not have jurisdiction to impose <u>any</u> authority over an applicant under R.C. Chapter 1545 after the creation of a park district, including but not limited to forcing the applicant to "adequately" fund the park district, and requiring the applicant to pay for a master commissioner to review the propriety of the park district commissioners' operation of that park. Under § 1545.02, The Legislature allows various types of entities and voters ("applicants") to apply to the probate court to create a park district.

The Relators Chester Township Trustees are not subject to the Respondent's unilateral actions against them, and the Probate Court has improperly assumed jurisdiction over the Chester Township Trustees' funding and resources by issuing orders directed to them. (*See* Judgment

Entry, Findings of Fact Conclusions of Law of 11/26/2014 at ¶ 6; Joint Evid. at 107[19].) The Probate Court's actions are unauthorized and unjustified. See R.C. Chapter 1545.

"[I]t is a well-settled principle of law that probate courts are courts of limited jurisdiction and are permitted to exercise only the authority granted to them by statute and by the Ohio Constitution." *Corron v. Corron*, 40 Ohio St.3d 75, 77, 531 N.E.2d 708 (1988); *Bishop v. Bishop*, 188 Ohio App. 3d 98, 103 (4th Dist. 2010)(The probate court is a court of limited and special jurisdiction. It has only the powers granted to it by statute.).

The probate court's jurisdiction is created through Section 2101.24 of the Ohio Revised Code. Subsection (A) lists specific areas that the probate court has exclusive jurisdiction over. This subsection lists the areas that one typically associates with the probate court, including to take the proof of wills, to appoint and remove guardians, to grant marriage licenses, to make inquests respecting persons who are so mentally impaired as a result of physical or mental illness that they are unable to manage their property and affairs effectively. This section makes no reference to any powers conferred to the probate court regarding park districts. Those powers are discussed exclusively in Chapter 1545 of the Ohio Revised Code.

The unambiguous statutory language demonstrates the Probate Court has no subject matter jurisdiction or authority over the Relators-Chester Township Trustees' funding and resources. Revised Code Chapter 1545 does not give the probate court authority or jurisdiction. Even a cursory review of Chapter 1545 reveals no section that suggests continuing authority of a probate court to impose jurisdiction over the Trustees, including but not limited to imposing funding requirements, or paying a master commissioner's fees to review the Park District's operations. See generally R.C. Chapter 1545. The Respondent has improperly assumed

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jurisdiction over the Relators' funding and resources. No provision of Chapter 1545 gives any power to a probate court to issue an order to "adequately fund" a park district, or impose fees of the master commissioner.

If the Ohio Legislature wanted to give authority to the Probate Court to impose funding requirements and to impose fees of a master commissioner on an applicant in a Chapter 1545 special proceeding, the Legislature undoubtedly would have. The law of Ohio is clear that the "wisdom of legislation is beyond the purview of the courts." *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 455 (1999). Courts cannot ignore the terms of a statute or "insert a provision not incorporated by the legislature." *Akron v. Rowland*, 67 Ohio St.3d 374, 380, 618 N.E.2d 138 (1993).

The Respondent does not have authority over an applicant to force funding requirements or to force payment of the costs of a master commissioner to examine the conduct of the Park District Commissioners, which the Probate Court itself appointed. If that were the case -- which it is not -- then a probate court could impose those same funding requirements directly over the voters, who could also apply to create a park district under Chapter 1545.

> Such application **shall either be signed by a majority of the electors** residing within the proposed district as determined by the number of electors voting at the most recent general election within such territory, **or**, in lieu thereof, **shall be authorized by resolution adopted by the board of county commissioners**, any board of **township trustees**, **or legislative authority** of any municipal corporation within such proposed district. Such application shall state the name of the proposed district, shall contain an accurate description of the territory to be included, and shall be accompanied with an accurate map or plat thereof. [Emphasis added.]

Ohio Rev. Code § 1545.02[20]. The Legislature certainly did not give a probate court the ability to force these various applicants (e.g., voters, county commissioners, etc.) to "adequately fund" a

[20] Apx. 20

park district, or pay for the examination of the conduct of the park district commissioners that a probate court appointed.

In the present case, 30 years after creating the Park District under Chapter 1545, the Probate Court has now decided to mandate the applicant (i.e., the Chester Township Trustees) to fund the Park District and pay the Master Commissioner's fees for examining the conduct of the Park District commissioners that the Probate Court itself appointed. Not only is there no statutory source for this, but the history of Ohio jurisprudence provides no support for a probate court to interject itself into the funding of the park district by invading the province of a separate public entity's finances. The Park District and the Township are two separate and distinct legal entities. (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014 at pages 3-4; Joint Evid. at 105-106.)

The Probate Court's authority over 1545 park districts cannot somehow be transmogrified into authority to compel a 1545 applicant like the Relators to "adequately" fund a park district, or to fund the Master Commissioner's review of the Park District's Commissioners' conduct.

Further, the Relators Chester Township Trustees are not subject to the Respondent's unilateral effort to force them to fund the Park District. While it is true that the Township Trustees made the original application 30 years ago, that proceeding ended upon the Probate Court's grant of the application. Indeed, the case was closed as to the applicant Chester Trustees;[21] Chapter 1545 does not provide any other authority over the applicant Chester Township Trustees. The Respondent apparently views the case as perpetually open since 1984

[21] Even the probate court's docket at the first page, which identified the parties, does not show that the Relators are a party. (Docket Sheet, Joint Evid. at 001.) Indeed, the docket states the proceeding is closed. (*Id.*) While the clerk states in her affidavit filed with this Court that the "closed" designation is merely for reporting requirements, Chapter 1545 does not give continuing jurisdiction or authority over an applicant, after the probate court granted the application creating the Park District. The case could only be closed as to the applicant.

when the application was filed. But, Chapter 1545 does not give the Probate Court ongoing authority or jurisdiction over applicants who request the creation of a park district. See generally Chapter 1545. The Probate Court merely had the authority to approve or deny the application. See R.C. 1545.02; R.C. 1545.03; R.C. 1545.04.[22] See generally Chapter 1545. While the Probate Court over the years used the 1984 case to log its orders regarding approving or removing Park District commissioners, as well as recommendation letters for potential candidates, newspaper articles (Docket Sheet, Joint Evid. at 002), the 1984 special proceeding provides no basis for the Respondent's belief he has infinite jurisdiction over the Relators-Chester Township Trustees to fund the Park District or otherwise.

Likewise, the Respondent patently and unambiguously lacks jurisdiction to require the Relators to pay the master commissioner's fees. Again, the Trustees are not litigants and are not subject to the Probate Court's unilateral action against them. The Trustees were an applicant under Chapter 1545 that made the application more than 30 years ago and whose involvement completely ended at that time. Just because the Probate Court over the years has used the 1984 case to log its orders regarding the appointment or resignation of park district commissioners does not create an open case, and it does not authorize the power to impose a master commissioner's fees on an applicant in a special Chapter 1545 proceeding.

The Probate Court is using a special Chapter 1545 proceeding that ended with the creation of the Park District 30 years ago, to take action against the Chester Township Trustees to "adequately fund" the Park District. The Probate Court's essential role under R.C. Chapter 1545 is to approve the creation of the park district and to appoint or remove park district commissioners. Here, the Respondent apparently believes that the Park District was not

[22] Apx. 12, 13, 14

"adequately funded" and that the Park District Commissioners, which the Probate Court appointed, entered into an agreement that the Court does not favor. Nevertheless, there is no jurisdictional basis for the Respondent to interject himself into the funding of the Park District by invading the province of the finances of Chester Township, a separate public entity.

B. The Respondent's arguments in support of his unlawful exercise of jurisdiction show a fundamental misunderstanding of his limited jurisdiction that must be corrected.

The Respondent's arguments in support of his unlawful exercise of jurisdiction over the Relators are fundamentally flawed and must be corrected. The Legislature did not give a probate court the ability to force the Trustees to "adequately fund" a park district, or pay for the Probate Court's examination of the conduct of the park district commissioners that the Probate Court itself appointed.

Indeed, the Respondent's radical imposition of power over an independent political subdivision would allow the Respondent to fund the Park District to any extent he pleases – imposing the duty to pay for whatever the Respondent deems "adequate" on Chester Township. If that were not enough, the Respondent could force the Township – again a completely separate entity from the Park District – to pay tens of thousands of dollars for the Respondent's Master Commissioner who is investigating the conduct of the Park District's Commissioners, which the Probate Court itself appointed and can remove. And, the Respondent, under his overstepping view, could do so time and time again – all at the expense of Chester Township or any other unsuspecting applicant under Chapter 1545.02.

This is not the law.

1. The Respondent's initial justification based on R.C. §1545.05 and §1545.06 is meritless.

The Probate Court's Nov. 26, 2014 Judgment Entry cites to R.C. §1545.05[23] and §1545.06[24] as the statutes that provided it with the authority to take its actions. (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014; Joint Evid. at 103[25].) The Judgment Entry states "Pursuant to the Probate Court's statutory responsibilities under R.C. 1545.05 and 1545.06 with respect to the Chester Township Park Board, the Court appointed Mary Jane Trapp as Master Commissioner to investigate the matters raised by the Review." (*Id*. at Joint Evid. at 103.[26])

The "responsibilities" provided to the Probate Court in those sections do not authorize the Respondent's actions. The powers provided by these provisions are narrow. R.C. §1545.05[27] provides the Probate Court with the authority to appoint three commissioners to the Park District. Section 1545.06[28] provides the Probate Court with the discretion to remove a park commissioner, but requires that a public hearing be held prior to the removal. Neither of these sections discusses funding of a Park District, nor provides the Probate Court with the power to ensure that a Park District is "adequately" funded.

The Respondent plainly does not have powers to issue orders compelling the Chester Township Board of Trustees to participate in any meetings regarding the funding of the Chester Township Park District, or to require the Chester Township Board of Trustees to pay for the services provided by the Master Commissioner, whose role was apparently to determine whether or not the current park board members should be removed.

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2. The Respondent's later reliance on what it now claims is its "inherent subject matter jurisdiction" over the Relators is also meritless.

Implicitly conceding he has no statutory authority, the Respondent on Dec. 15, 2014 supplemented his judgment entry by stating that he had "inherent subject matter jurisdiction" over the Township Trustees. Respondent mistakenly believes he has "inherent" jurisdiction to prevent what he believes is the "contravention of or interference with Judge Lavrich's order" (Supplemental Judgment Entry of Dec. 15, 2014 at 1; Joint Evid. at 134[29].)

The Probate Court in this case has gone beyond its authority as to the Chester Township Trustees. "[I]t is a well-settled principle of law that probate courts are courts of limited jurisdiction and are permitted to exercise only the authority granted to them by statute and by the Ohio Constitution." *Corron v. Corron*, 40 Ohio St.3d 75, 77, 531 N.E.2d 708 (1988); *Bishop v. Bishop*, 188 Ohio App. 3d 98, 103 (4th Dist. 2010)(The probate court is a court of limited and special jurisdiction. It has only the powers granted to it by statute.).

The Respondent's jurisdiction cannot be created or expanded beyond that expressed in the statute. Where jurisdiction is dependent upon a statutory grant, a court is without the authority to create jurisdiction when the statutory language does not. That power resides in the General Assembly. See, generally, *Waltco Truck Equipment Co. v. City of Tallmadge BZA*, 40 Ohio St. 3d 41, 43 (1988); *Penn Central Transp. Co. v. Pub. Util. Comm.*, 35 Ohio St.2d 97 (1973); *Davis v. State ex rel. Kennedy*, 127 Ohio St. 261 (1933); *Lindblom v. Bd. of Tax Appeals*, 151 Ohio St. 250 (1949); *Wachendorf v. Shaver*, 149 Ohio St. 231 (1948), paragraph five of the syllabus.

The "express grant of power must be clear, and any doubt as to the extent of the grant must be resolved against it." See *In re Guardianship of Spangler*, 126 Ohio St. 3d 339, 343,

[29] Apx. 9

2010-Ohio-2471, 933 N.E.2d 1067 (citing *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 47, 117 N.E. 6 (1917)).

The Respondent's "inherent authority" argument does not create power that does not exist. Pursuant to R.C. §2101.24(C) "the probate court has plenary power at law and equity to dispose fully of any matter that is properly before the court, unless the power is expressly otherwise limited or denied by a section of the Revised Code." As Ohio courts have recognized, "While the powers of the probate court are plenary, they are so only with respect to matters "properly before the court.'" *Roll v. Edwards*, 156 Ohio App. 3d 227, 233, 2004-Ohio-767 (4th Dist., 2004). As a result, in order for the probate court to have plenary power it must be determined that the subject matter is properly before the court. *Madigan v. Dollar Bldg. & Loan Co.*, 52 Ohio App. 553 (2d Dist., 1935). The statutory grant of plenary powers cannot be interpreted to enlarge the statutory grant of jurisdiction to the probate division. *Oncu v. Bell*, 49 Ohio App. 2d 109, 110 (9th Dist., 1976).

Plenary power has a well-defined legal meaning and significance. *Madigan*, 52 Ohio App. at 563. It means full, entire, complete, absolute. *Id.* The legislative grant of plenary power to the probate court provides the probate court with the power and authority to take that action which is necessary to fully dispose of any matter property before it. *Roll*, 156 Ohio App. 3d at 233.

Computer-assisted legal research indicates that there are no statutory provisions or law that would provide the Respondent with this exceedingly broad power to order Relators to approve a budget with "adequate" funding for the Chester Township Park District and to order Chester Township to pay for the expenses incurred by the Master Commissioner.

The Respondent's effort to create this novel and excessive power is tantamount to it creating language in Chapter 1545 that does not exist. Specifically, the Probate Court wants ongoing authority over Chester Township, even though the Respondent himself acknowledges that 30 years ago the Probate Court, under Judge Lavrich, created a new entity, separate from the Township. (Judgment Entry, Findings of Fact Conclusions of Law of 11/26/2014 at 3-4; Joint Evid. at 105-106[30]; see also, Judgment Entry of May 10, 1984; Joint Evid. at 016.)

Courts cannot under the "guise of construction" or claims of "inherent power" ignore the terms of a statute or "insert a provision not incorporated by the legislature." *Akron v. Rowland*, 67 Ohio St.3d 374, 380, 618 N.E.2d 138 (1993). The law is well established that "it is not the court's role to apply a judicially created doctrine when faced with statutory language that cuts against its applicability." *Wallace v. Ohio DOC*, 96 Ohio St.3d 266, 278, 2002-Ohio-4210.

The Respondent is trying to create authority out of an inflated and over-generalized notion of its role. If the Ohio Legislature wanted to give ongoing authority to the Probate Court over a township that applied to create a park distinct (in this case 30 years ago), the Legislature easily could and undoubtedly would have. The Supreme Court holdings of this are clear that the "wisdom of legislation is beyond the purview of the courts." *State ex rel. Ohio Academy of Trial Lawyers v. Sheward,* 86 Ohio St.3d 451, 455 (1999). This Court has also recognized: "'The primary duty of a court in construing a statute is to give effect to the intention of the Legislature enacting it.'" *Brown v. Martinelli* 66 Ohio St.2d 45, 49, 419 N.E.2d 1081, 1083 (1981). Chapter 1545 is comprehensive and does not support the effort of the Probate Court to exceed its authority. Indeed, there is no authority for a probate court imposing ongoing authority over a township in this circumstance.

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The lack of support both statutorily or otherwise is apparent in the Respondent's order trying to create a novel "inherent authority" over the Township. None of the cases the Respondent cited bear even a remote similarity to the legal or factual issue at bar. (Supplemental Judgment Entry of 12/15/2014, at 2; Joint Evid. at 135[31].)

For instance, in *Pergande v. Pergande,* 11th Dist. No. 90-A-1497, 1991 WL 70109, the domestic relations court ordered a former spouse (wife) to pay a debt. (Supplemental Judgment Entry of 12/15/2014, at 2; Joint Evid. at 135[32].) The wife did not pay, and the former husband (husband) filed a motion for show cause that the wife did not comply with the order. The appellate court simply found that the lower court had inherent authority to enforce its own orders, in that case by means of contempt. In that case, there was an outstanding order directed at the wife that had been violated in an adversarial proceeding between two litigants in a divorce proceeding. *Pergande* provides no basis for the Probate Court's unprecedented extension of power in this case. The present case derives from a special proceeding where the Township merely applied to create a park district -- a separate entity. There is no outstanding order that compels the Township to act that does -- or even could -- derive from the 30-year-old order creating the Park District. *Pergande* bears no resemblance factually or legally to the case at bar.

Similarly, the Probate Court's citation to the dissent of *Omerza v. Bryant & Stratton*, 11th Dist. No. 2006-L-147, 2007-Ohio-5216, also has no factual or legal similarity to this case. (Supplemental Judgment Entry of 12/15/2014, at 2; Joint Evid. at 135[33].) *Omerza* deals with a court's well established ability to impose sanctions, in that case for a litigant who filed a post-trial motion in defiance of his agreement with other litigants and the court. In no way does the

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[33] Apx. 10

dissent in that case, which found simply that the trial court did not abuse its discretion when it declined to impose sanctions on a party, support the Respondent's improper imposition of duties and fees on Chester Township.

Chapter 1545 does not authorize the Respondent to exercise power over the Relators-Chester Township Trustees.

3. The Respondent's suggestion that it may "tax" the "costs" of the Master Commissioner based on the Relators' application 30 years ago is also meritless.

The Respondent suggests that it may force the Township Trustees to pay for the Master Commissioner's examination of the conduct of the Park District Commissioners that the Probate Court itself appointed. (Status Conference Entry of 4/29/2015 at 1-2; Joint Evid. at 155-156.)

The Probate Court does not have jurisdiction over the Chester Township Trustees – as demonstrated – and therefore it cannot impose "costs." The Probate Court argues that it generally may appoint a master commissioner under R.C. 2101.06 and tax the fees with costs under R.C. 2101.07[34]. (Status Conference Entry of 4/29/2015 at 1-2; Joint Evid. at 155-156.) Under R.C. 2101.06[35], "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." Under R.C. 2101.07, "The court shall allow the commissioner those fees that are allowed to other officers for similar services, and the court shall tax those fees with the costs."

But, there is no "matter pending" as to the Township Trustees.

That is because the Township Trustees merely applied more than 30 years ago to create the Park District. That Probate Court granted that application more than 30 years ago. The Township Trustee's application ended when the Probate Court granted that application and

[34] Apx. 18
[35] Apx. 17

created a separate public entity (i.e., the Park District). At that point, the special statutory proceeding to create the Park District was closed as to the Relators Chester Township Trustees. Indeed, there would be nothing left to do because Chapter 1545 only provides that a probate court may accept the applicant's – in this case Chester Township's – application, review it, and approve or deny it. R.C. 1545.02; R.C. 1545.03; R.C. 1545.04[36]. As the Probate Court observed 30 years ago and even the Respondent acknowledges, upon the approval of the application the park district is a new political subdivision that is a separate and distinct entity.

Again, the Probate Court does not have authority over an applicant to force funding requirements or to force payment of the costs of a master commissioner to examine the conduct of the Park District Commissioners, which the Probate Court itself appointed. If that were the case – which it is not – then a probate court could impose those same funding requirements directly over the voters, who could also apply to create a park district under Chapter 1545. See Ohio Rev. Code Ann. § 1545.02[37] (allowing the application to be "signed by a majority of the electors" as well as by county commissioners, township trustees, etc.)

Under the Probate Court's erroneous position, the Probate Court could at any time, or times, appoint a master commissioner to review the conduct of park district commissioners that the Probate Court itself appointed, and then force the R.C. 1545.02 applicant – in this case the Chester Township – to pay tens of thousands of dollars for that review. The Probate Court – again under its position – could obtain that money time and time again from whoever the applicant was, even if the applicant had its applicant granted decades ago.

As demonstrated above, the Legislature did not grant the Probate Court ongoing authority over the applicants in a Chapter 1545 proceeding.

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If Respondent is correct – which he is not -- he could at any time hire outside counsel as a master commissioner and then tax it back to the applicant. No one would apply to create a park district if that were the case – and fortunately it is not. Those applicants would be chained to funding the Park District and paying for a master commissioner to review the conduct of the commissioners the Probate Court appointed. This is not authorized by the limited authority that Chapter 1545 gives over applicants.

In sum, the Probate Court's analysis of its own jurisdiction is flawed and should be corrected by this Court. If the Probate Court is permitted to base its jurisdiction on its belief that it can use "inherent" authority instead of what is expressly conferred by statute, or on tenuous implications rather than express statutory language, it is unclear what other unauthorized actions the Probate Court might take in the future.

IV. CONCLUSION

The Probate Court has infringed upon the Township's right to govern and protect its discretionary funding. The Probate Court has taken the extraordinary position that it may exercise "inherent authority" over the Relators Chester Trustees even in the absence of statute. On the Probate Court's mere belief, the Relators were forced to defend the autonomy of the Township before the Respondent, even though the Respondent patently and unambiguously lacked any authority over them. The Relators ask that this Court issue a writ of prohibition that vacates and invalidates the actions taken by the Probate Court as to the Trustees and correct the Probate Court's misunderstanding of its limited jurisdiction to prevent future jurisdictionally unauthorized actions.

Respectfully submitted,

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

/s/Frank H. Scialdone

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

CERTIFICATE OF SERVICE

A copy of the foregoing Merits Brief of Relators was served by depositing same in first-class United States mail, postage prepaid on June 11, 2015 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
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TODD M. RASKIN (0003625)

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

APPENDIX

Judgment Entry Findings of Fact Conclusions of Law dated 11/26/2014 ..... Apx. 1

Supplemental Judgment Entry dated 12/15/2014 ..... Apx. 9

Notice of Hearing dated 3/31/2015 ..... Apx. 11

R.C. § 1545.02 ..... Apx. 12

R.C. § 1545.03 ..... Apx. 13

R.C. § 1545.04 ..... Apx. 14

R.C. § 1545.05 ..... Apx. 15

R.C. § 1545.06 ..... Apx. 16

R.C. § 2101.06 ..... Apx. 17

R.C. § 2101.07 ..... Apx. 18

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DIVISION
GEAUGA COUNTY, OHIO

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

IN THE MATTER OF:	)	CASE NO. 84PC000139
	)	
CHESTER TOWNSHIP PARK DISTRICT	)	JUDGE TIMOTHY J. GRENDELL
	)	
	)	**JUDGMENT ENTRY**
	)	**FINDINGS OF FACT**
	)	**CONCLUSIONS OF LAW**

In March, 2014, the Probate Court received a copy of the Chester Township Park District 2013 Review (revised 3/5/2014) (the "Review"). Because of the Review, the Township Trustees at their March 7, 2014 meeting withheld funding for the Park District.

The Review raised a number of issues regarding the operation of the Park District relating to vendor payments; increased spending; park projects, plans and budget estimates; alleged failures to follow Ohio law, Park District Bylaws and the agreement between the Park District and Chester Township relating to the operation of a Park District; open meeting concerns; irregularities in accounting; non-park related expenditures for goods and services; and the employment of the park secretary.

Pursuant to the Probate Court's statutory responsibilities under R.C. 1545.05 and 1545.06 with respect to the Chester Township Park Board, the Court appointed Mary Jane Trapp as Master Commissioner to investigate the matters raised by the Review.

The Master Commissioner conducted a thorough and comprehensive review and prepared a 252 page report, with recommendations (the "Report").

The Probate Court held a public hearing at the Chester Township Fire Station at which the Master Commissioner presented a summary of her Report and delivered the Report to the Court.

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The Probate Court invited comments from Chester Township residents and the Chester Township Trustees, with a comment deadline in October, 2014.

The Chester Township Trustees timely submitted their comments by letter dated October 8, 2014.

No other public comments were submitted in writing to the Court.

Based on the Court's consideration and review of the Master Commissioner's Report and supporting documents and the Township Trustees' letter, the Court makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The Chester Township Park is vastly improved in recent years under the authority of a dedicated group of volunteer Commissioners, who have not had the benefit of a dedicated, independent financing mechanism.
2. The Chester Township Park District was formed by the Geauga County Probate Court (Judge Lavrich) in 1984 as a separate governmental entity.
3. The primary purpose for forming the Park District as a separate governmental entity was to keep politics out of the Township Park and to protect the Township Park District from the vicissitudes of township politics and government.
4. The Chester Township Park District operated until 2002 with separate identified inside millage funding, as part of its funding source.

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5. In 2002, the Township Trustees terminated the dedicated inside millage funding of the Township Park District. As a result, the Park District lost access to those dedicated funds and monies for the Park. District had to be appropriated by and obtained from the Township Trustees.
6. This loss of dedicated funds and the change in funding was and remains contrary to the original purpose for forming the Park District as a separate, distinct, and independent governmental entity, removed from the politics and control of the Township Trustees.
7. Historically, the Township Park District has operated with less formality than specified in the Park District's Bylaws and required by applicable state statutes. These formality issues include, but are not limited to, meeting minutes, financial accounting methods, and public meeting requirements.
8. For reasons apparently outside of the Park Commissioners' control, the State Auditor failed to conduct an audit of the Chester Township Park District for approximately 30 years.

Conclusions of Law

1. The Chester Township Park District is an independent body politic, duly formed by the Geauga County Probate Court to provide Chester Township residents with a public park and recreational amenities.
2. As a matter of Ohio law, the Township Park District is a separate government entity operated by a Board of Park Commissioners

appointed by the Probate Court pursuant to Ohio law, independent from the control of the Township Trustees. As so formed, dedicated annual funding of the Park District is necessary for the Park District to perform its independent statutory duties.

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3. The Township's elimination of dedicated millage funds for the Township Park District in 2002 directly contravened the fundamental purpose for creating the independent Park District, free from the vicissitudes of Township government and politics. The agreement between the Township Trustees and Township Park District, addressing construction or alteration of any permanent improvement on park lands, zoning compliance and police use, has a somewhat similar disparate impact.

4. (a) Contrary to the written comment of the Township Trustees, the funds necessary for the operation of the Township Park are separate and independent from the Township's funding needs. It is specifically for reasons such as possible Township financial management problems or financial pitfalls that the Chester Township Park District was formed separate and distinct from the control of the Township Trustees.

   (b) Pursuant to O.R.C. Section 1545.20, the Park District Commissioners have the statutory authority to levy up to one-half mill for park funding purposes. Contrary to the comment/suggestion of the Township Trustees, such statutory levy authority does <u>not</u> necessarily

require "a ballot measure presented to the voters." Moreover, the proposition advanced by the Township Trustees that such a ballot measure "is the best method for stabilized funding" of the township park is contrary to O.R.C. Section 1545.20 and is not supported by the findings of the Master Commissioner.

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(c) The statutory responsibility for establishing dedicated funding for the Township park rests with the Park District Commissioners (see O.R.C. Section 1545.20), not the Township Trustees. For that statutory reason, there is no need for the Chester Township Trustees to meet with the Park Board to work on a ballot measure (as generously suggested by the Trustees), nor do the Chester Township Trustees have any legal authority to do so.

5. To perform its statutory duties, the Park District needs to address its financial needs and take appropriate action, as permitted by statute, to assure that dedicated independent funds are available annually, starting January, 2016.

6. Until the Park District is able to establish a dedicated independent funding source, the Township Trustees, who previously (2002) unilaterally terminated the Park District's prior millage funding, have a duty to assure that adequate dedicated funds are made available to the Park District to perform the Park District's statutory duties. The Master Commissioner shall conduct a meeting with the Chester Township Trustees and Park District Commissioners to facilitate the

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finalization and approval of a 2015 Budget and funding for the Chester Township Park District.

7. The current agreement between the Township and the Park District is possibly in conflict with the original Township application and judicial formation documents creating the Park District, which set the territorial limits of the Township Park District. Such agreement cannot circumvent or improperly limit the statutory authority of the Park District Commissioners or the independent nature of the Park District as a separate governmental entity. Such agreement cannot be employed to give the Township Trustees authority over the Park Commissioners' levy authority under O.R.C. Section 1545.20 or to dictate the policies and procedures employed by the Park District Commissioners in their management of the Township Park. The Master Commissioner is directed to meet with the Township Trustees and Park District Commissioners to formulate an agreement that is consistent with and not in conflict with the authority of the Park District under O.R.C. Chapter 1545 and the initial Township application and judicial documentation forming the Park District.

8. Except as otherwise provided in this Judgment Entry, the Court adopts the findings and recommendations of the Master Commissioner submitted to the Court on August 25, 2014, as if those findings and recommendations were fully rewritten herein.

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9. The Chester Park District Commissioners must comply with the statutory bonding requirement. O.R.C. Section 1545.05.

10. The Chester Park District Commissioners must submit all donations to the Probate Court for approval pursuant to O.R.C. Section 1545.11.

11. The Court orders and directs that the Chester Township Park District Commissioners (i) comply with all applicable Ohio laws and (ii) take the actions necessary to comply with the recommendations of the Master Commissioner to the extent required to maintain compliance with applicable Ohio law.

12. The Court urges the Chester Township Park District to consider the retention of legal counsel to advise and assist the Park District, as necessary from time to time, to maintain compliance with applicable Ohio law.

13. The cost 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 O.R.C. Chapter 1545.

Under Ohio law, the Chester Township Park District, as formed by the Township, is a separate government body, independent from the control of the Chester Township Trustees. The Chester Township Park District must maintain such independence and governmental autonomy. Funding for the Township Park and all contractual interaction with the Township Trustees also must respect and maintain the independence and governmental autonomy of the Chester Township Park District. The Park District and its Board must comply with all applicable Ohio laws.

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You are hereby notified that on this date a Judgment Entry was filed that may be an "appealable" order.

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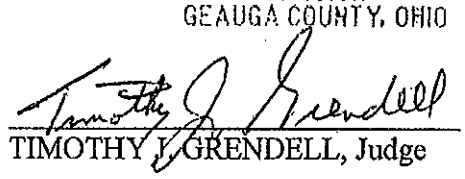
IT IS SO ORDERED.



TIMOTHY J. GRENDELL, Judge

cc: Chester Township Trustees
Chester Park Board Commissioners
Master Commissioner Mary Jane Trapp
Prosecutor

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

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GEAUGA COUNTY, OHIO

IN THE MATTER OF:	)	CASE NO. **84 PC 139**
	)	
CHESTER TOWNSHIP PARK DISTRICT	)	JUDGE TIMOTHY J GRENDELL
	)	
	)	**SUPPLEMENTAL JUDGMENT ENTRY**

In supplement to this Court's November 26, 2014 Judgment Entry Findings of Facts and Conclusions of Law:

1. This Court has subject matter jurisdiction over this matter on this following basis:
   (a) Pursuant to R.C. 1545.06, this Court had and has a duty to review the conduct and status of the Chester Township Park Board members, whose actions and conduct were challenged in the 2013 Review that was brought to this Court's attention in March, 2014. That jurisdiction includes this Court's statutory mandated jurisdiction and authority to remove members of the Park Board on the Court's own motion pursuant to R.C. 1545.06.
   (b) The Court's subject matter jurisdiction over the Chester Township Park Board stems directly from the Court's creation of the Chester Township Park District by Court judgment entry in 1984, which case has remained an open and ongoing case (Case No. 84PC139) for the Court's exercise of its board appointment, removal, and oversight authority under R.C. Chapter 1545.
   (c) This Court also has subject matter jurisdiction to issue its November 26, 2014 Judgment Entry Findings of Facts and Conclusions of Law in furtherance of the Court's inherent subject matter jurisdiction to enforce its orders, including Judge Lavrich's 1984 judgment creating the Chester Township Park District, and to present the Township Trustees' contravention of or interference with Judge Lavrich's order.

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.

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).

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. GRENDELL - JUDGE

FILED
COMMON PLEAS COURT
2014 DEC 15 PM 12:45
PROBATE-JUVENILE DIVISION
GEAUGA COUNTY, OHIO

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

FILED
IN COMMON PLEAS COURT

2015 MAR 31 AM 9:32

PROBATE-JUVENILE
DIVISION
GEAUGA COUNTY, OHIO

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

IN THE MATTER OF	)	CASE NO. 84 PC 139
	)	
	)	
CHESTER TOWNSHIP PARK DISTRICT	)	JUDGE TIMOTHY J. GRENDELL
	)	
	)	
	)	**NOTICE OF HEARING**

YOU ARE HEREBY NOTIFIED that a Status Conference has been set on all pending matters.

SAID CONFERENCE WILL BE SET BEFORE THIS COURT AT GEAUGA COUNTY PROBATE COURT, HOUSE ANNEX 2ND FLOOR, 231 MAIN ST., CHARDON, OHIO 44024 ON THE **28th day of April at 2:00 pm.**

PLEASE APPEAR AT THIS TIME

Given under my hand and seal of said Court **March 31, 2015.**

TIMOTHY J. GRENDELL, JUDGE

Karla Murray, Chief Deputy Clerk

Cc: Chester Twp. Park Board
Chester Twp. Trustees
Mary Jane Trapp, Master Commissioner
Chester Twp. Clerk
James Gillette
Prosecutor
Frank Scallone

NOHE_P

Baldwin's Ohio Revised Code Annotated
Title XV. Conservation of Natural Resources
Chapter 1545. Park Districts (Refs & Annos)
Creation of Park Districts

R.C. § 1545.02

1545.02 Application to probate judge for creation

Currentness

Application 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. Such application shall either be signed by a majority of the electors residing within the proposed district as determined by the number of electors voting at the most recent general election within such territory, or, in lieu thereof, shall be authorized by resolution adopted by the board of county commissioners, any board of township trustees, or legislative authority of any municipal corporation within such proposed district. Such application shall state the name of the proposed district, shall contain an accurate description of the territory to be included, and shall be accompanied with an accurate map or plat thereof.

CREDIT(S)

(1995 H 99, eff. 8-22-95; 1972 S 419, eff. 8-15-72; 1953 H 1; GC 2976-2)

R.C. § 1545.02, OH ST § 1545.02
Current through 2015 Files 1 to 6 of the 131st GA (2015-2016).

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Baldwin's Ohio Revised Code Annotated
Title XV. Conservation of Natural Resources
Chapter 1545. Park Districts (Refs & Annos)
Creation of Park Districts

R.C. § 1545.03

1545.03 Notice and hearing

Currentness

Upon the filing of the application provided for in section 1545.02 of the Revised Code, the probate judge shall fix a time for the hearing of such application which shall not be less than twenty nor more than forty days subsequent to the date of the filing of the application. Such judge shall publish notice of the filing of such application and the date of hearing thereof in two newspapers of general circulation within such district, or if there is but one newspaper of general circulation within such district, in such newspaper. If there is no newspaper of general circulation within such proposed district, then such judge shall post such notice in five of the most public places within such proposed district. Such notice shall be published or posted for a period of not less than fifteen days prior to the date fixed for the hearing. The hearing may be adjourned from time to time upon good cause shown.

CREDIT(S)
(1953 H 1, eff. 10-1-53; GC 2976-3)

R.C. § 1545.03, OH ST § 1545.03
Current through 2015 Files 1 to 6 of the 131st GA (2015-2016).

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Baldwin's Ohio Revised Code Annotated
Title XV. Conservation of Natural Resources
Chapter 1545. Park Districts (Refs & Annos)
Creation of Park Districts

R.C. § 1545.04

1545.04 Evidence; argument; judgment

Currentness

At a hearing on an application for the creation of a park district, evidence may be taken as in other civil cases in the probate court, and the probate judge shall hear all arguments for and against the creation of such district. If he finds that such application is signed or authorized as provided in section 1545.02 of the Revised Code, and that the creation of such district will be conducive to the general welfare, he shall enter an order creating the district under the name specified in the application.

The judge may amend or change the limits of the territory described in the application at the time of the hearing, provided that in no case shall he increase the limits or size of said district. In case any of the original territory is eliminated from the district as finally established, the boundary lines of the district as finally ordered by the court shall not divide any existing township or municipal corporation.

CREDIT(S)
(1953 H 1, eff. 10-1-53; GC 2976-4)

Notes of Decisions (3)

R.C. § 1545.04, OH ST § 1545.04
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Baldwin's Ohio Revised Code Annotated
Title XV. Conservation of Natural Resources
Chapter 1545. Park Districts (Refs & Annos)
Park Commissioners; Powers and Duties

R.C. § 1545.05

1545.05 Park commissioners; expansion of board

Currentness

(A) Upon the creation of a park district, the probate judge shall appoint three commissioners who shall take office immediately and whose terms shall expire one, two, and three years, respectively, from the first day of January next after the date of their appointment. Thereafter, their successors shall be appointed by the probate judge for terms of three years. Before entering upon the performance of the duties of the office, each commissioner shall take an oath to perform faithfully the duties of the office and shall give bond for that faithful performance in the sum of five thousand dollars. The bond shall be approved by and filed with the county auditor. The commissioners shall serve without compensation, but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

(B) Any board of park commissioners of a park district may elect to expand the membership of the board from three members to five members upon a majority vote of the board. Upon such a vote, the board shall certify to the probate judge a resolution requesting the judge to appoint two additional members to the board. The probate judge shall appoint those additional members, and they shall take office immediately upon their appointment. One member shall be appointed to a term that expires on the first day of January of the year following the year of that member's appointment, and one member shall be appointed to a term that expires on the first day of January of the second year following the year of that member's appointment. Thereafter, their successors shall be appointed by the probate judge for terms of three years.

CREDIT(S)
(2004 H 367, eff. 4-11-05; 1953 H 1, eff. 10-1-53; GC 2976-5)

Notes of Decisions (15)

R.C. § 1545.05, OH ST § 1545.05
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Baldwin's Ohio Revised Code Annotated
Title XV. Conservation of Natural Resources
Chapter 1545. Park Districts (Refs & Annos)
Park Commissioners; Powers and Duties

R.C. § 1545.06

1545.06 Removal of park commissioners; vacancy

Currentness

Any park commissioner may be removed at the discretion of the probate judge, either upon complaint filed with such judge or upon his own motion. No such removal shall be made without giving such commissioner not less than ten days' notice and a full opportunity to be heard in his own behalf in a public hearing. The order removing such commissioner shall state the reasons therefor and shall be entered upon the records of the probate court. In case of such removal, or in case of other vacancy in the office of commissioner, the vacancy shall be filled by the judge by appointment for the unexpired term.

CREDIT(S)

(1953 H 1, eff. 10-1-53; GC 2976-10c)

Notes of Decisions (2)

R.C. § 1545.06, OH ST § 1545.06
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Baldwin's Ohio Revised Code Annotated
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2101. Probate Court--Jurisdiction; Procedure (Refs & Annos)
Administration and Officials

R.C. § 2101.06

2101.06 Master commissioners; appointment and bond; duties

Effective: January 13, 2012
Currentness

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. The commissioner shall be an attorney at law and shall be sworn faithfully to discharge the commissioner's duties. When requested by the probate judge, the commissioner shall execute a bond to the state in the sum that the court directs, with surety approved by the court, and conditioned that the commissioner shall faithfully discharge the commissioner's duties and pay over all money received by the commissioner in that capacity. The bond shall be for the benefit of anyone aggrieved and shall be filed in the probate court.

The commissioner shall take the testimony and report the testimony to the court with the commissioner's conclusions on the law and the facts involved. The report may be excepted to by the parties and confirmed, modified, or set aside by the court.

CREDIT(S)
(2011 S 124, eff. 1-13-12; 1953 H 1, eff. 10-1-53; GC 10501-33, 10501-36)

Notes of Decisions (2)

R.C. § 2101.06, OH ST § 2101.06
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Baldwin's Ohio Revised Code Annotated
Title XXI. Courts--Probate--Juvenile (Refs & Annos)
Chapter 2101. Probate Court--Jurisdiction; Procedure (Refs & Annos)
Administration and Officials

R.C. § 2101.07

2101.07 Master commissioners; powers; fees

Effective: January 13, 2012
Currentness

A special master commissioner of the probate court may administer all oaths required in the discharge of the commissioner's duties, may summon and enforce the attendance of witnesses, may compel the production of books and papers, and may grant adjournments the same as the court, and, when the court directs, the commissioner shall require the witnesses severally to subscribe the witnesses' testimony.

All process and orders issued by the commissioner shall be directed to the sheriff, shall be served, and return of the process and orders shall be made as if issued by the probate judge.

The court shall allow the commissioner those fees that are allowed to other officers for similar services, and the court shall tax those fees with the costs.

CREDIT(S)
(2011 S 124, eff. 1-13-12; 1953 H 1, eff. 10-1-53; GC 10501-34, 10501-35, 10501-37)

Notes of Decisions (2)

R.C. § 2101.07, OH ST § 2101.07
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