

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
HURON COUNTY

Bellevue City School District  
Board of Education

Appellee

v.

William D. Martin, Jr., et al.

Appellant

Court of Appeals No. H-12-009

Trial Court No. CVC 2010 0727

**DECISION AND JUDGMENT**

Decided: June 28, 2013

\* \* \* \* \*

Michael J. Loughman and Ashleigh B. Elcesser, for appellee.

Dennis L. Pergram, for appellant.

\* \* \* \* \*

**SINGER, P.J.**

{¶ 1} Appellant appeals the order of the Huron County Court of Common Pleas that reversed an Ohio Unemployment Compensation Review Commission determination that appellant's employment was terminated without just cause. Because we conclude that the common pleas court applied the wrong standard of review, we reverse.

{¶ 2} In 2008, appellee, Bellevue City School District Board of Education, entered into a three year employment contract with appellant, William D. Martin, Jr., for appellant's services as superintendent of schools. In June 2009, a number of female school employees came to the school district's treasurer with complaints about the behavior of appellant and the assistant to the superintendent, Darrell Hykes.

{¶ 3} The matter was submitted to appellee's board. On July 9, 2009, the board unanimously adopted a resolution notifying appellant of its intention to terminate him from his position for "gross inefficiency, willful and persistent violations of reasonable policies of the Board of Education, and other good and just cause." The resolution referenced the board's adoption of policies prohibiting discrimination on the basis of sex, sexual harassment and fostering a hostile work environment based on sex. The resolution enumerates several purportedly inappropriate statements to the president of the teacher's union and other female school employees. Appellant was also faulted for failing to properly admonish assistant Hykes for his use of profanity and other suggestive or boorish behavior. The board suspended appellant without pay effective on the date of the resolution. Appellant filed the application for unemployment compensation that underlies this appeal shortly thereafter.

{¶ 4} While his initial unemployment compensation claim was pending, appellant elected to demand a hearing, pursuant to R.C. 3319.16, before an Ohio Department of Education hearing officer. After four days of testimony, in a 16-page decision, the hearing officer found that appellant's behavior did not constitute sexual harassment.

Moreover, appellant had not been notified of the other deficiencies alleged and, therefore, had not been afforded an opportunity to rectify such deficiencies as contractually agreed. On these findings, the hearing officer concluded that appellee had failed to prove just cause for appellant's termination. Appellee rejected the hearing officer's decision and terminated appellant's employment.

{¶ 5} As the proceedings before the Department of Education progressed, appellant's application for unemployment compensation was initially disallowed by the Ohio Department of Job and Family Services. Appellant appealed the denial of benefits and the matter was transferred to the Ohio Unemployment Compensation Review Commission.

{¶ 6} The appeal was heard before a Review Commission hearing officer at a March 5, 2010 telephonic hearing. Appellant testified and evidence was entered. After the hearing the parties stipulated to the admission of the full transcript from the Department of Education hearing. On June 16, 2010, the hearing officer issued her decision, reversing disallowance of unemployment compensation. The hearing officer found credible appellant's testimony that many of his statements had been taken out of context and carried no sexual intent. The hearing officer found that appellant's "conduct did not rise to the level of sexual harassment, or conduct sufficiently severe to warrant termination of his contract without prior notice of the deficiency." The Review Commission denied appellee's request for further review.

{¶ 7} Two actions were brought in the common pleas court. Appellant appealed his termination notice as provided for in R.C. 3319.16. Appellee filed an R.C. 4141.282 administrative appeal seeking reversal of the Review Commission's award of unemployment compensation benefits.

{¶ 8} The common pleas court dealt with the termination issue first, affirming appellee's action. That matter is now pending further appeal before this court.

{¶ 9} In the unemployment compensation appeal, the common pleas court reversed the determination of the Review Commission. The court stated: "This court has already resolved the issue of whether Martin was terminated with 'just cause' in his appeal of his termination \* \* \*. It would be incongruous to find here that the Bellevue BOE did not have 'just cause' to terminate Martin."

{¶ 10} From this judgment, appellant now brings this appeal. Appellant sets forth three assignments of error:

1. The trial court committed prejudicial error by relying on facts and decisions in other cases and by relying on a transcript that was objected to.
2. The trial court committed prejudicial error by not applying the correct standard of review.
3. The trial court committed prejudicial error in reversing the Review Commission's Decision as there was competent, credible evidence that Mr. Martin's termination was without just cause.

{¶ 11} A party dissatisfied with the final determination of the Unemployment Compensation Review Commission may appeal to a court of common pleas, which shall hear the appeal on the record certified by the commission. R.C. 4141.282(H). “If the court finds that the decision was unlawful, unreasonable, or against the manifest weight of the evidence \* \* \*” it may reverse the determination. *Id.* Whether just cause for termination of employment exists depends on the unique facts of the case. The determination of purely factual questions is primarily within the province of the hearing officer and the Review Commission. *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985). On review of purely factual questions, the common pleas court is limited to determining whether the hearing officer’s determination is supported by evidence in the record. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Services*, 73 Ohio St.3d 694, 697, 653 N.E.2d 1207 (1995). Factual findings supported by some competent, credible evidence going to the essential elements of the controversy must be affirmed. *C.E. Morris v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

{¶ 12} The appellate court’s standard of review for just-cause determinations by the Unemployment Compensation Review Commission is identical to that of the common pleas court. *Tzangas* at 696. The appeals court may reverse only if the commission’s conclusion was unlawful, unreasonable, or against the manifest weight of the evidence. *Id.* We must focus on the commission’s decision rather than the common pleas court’s and keep in mind that the Unemployment Compensation Act is to be

liberally construed in favor of beneficiaries. R.C. 4141.46; *McNeil Chevrolet, Inc. v. Unemp. Comp. Review Bd.*, 187 Ohio App.3d 584, 2010-Ohio-2376, 932 N.E.2d 986, ¶ 17 (6th Dist.).

### **I. Improper Notice**

{¶ 13} The common pleas court committed serial errors in its consideration of this matter. First, as appellant complains in his first assignment of error, the court improperly took judicial notice of its own decision in appellant's appeal from appellee's rejection of the Board of Education determination. A court may not take judicial notice of proceedings in other cases even in those instances in which the cases are between the same parties before the same court. *Kiedrowicz v. Kiedrowicz*, 6th Dist. No. H-98-049, 1999 WL 197793 (Apr. 9, 1999), *see also Diversified Mtge. Investors, Inc. v. Bd. of Revision*, 7 Ohio App.3d 157, 159, 454 N.E.2d 1330 (4th Dist.1982), *State v. Brewer*, 121 Ohio St.3d 202, 2009-Ohio-593, 903 N.E.2d 284, ¶ 22, fn. 3. Moreover, the common pleas court sits as an appeals court in these matters and "shall hear the appeal on the certified record provided by the commission." R.C. 4141.282. The court's consideration of its decision in another case is clearly outside the parameters of the record certified by the commission. Accordingly, appellant's first assignment of error is well-taken

### **II. Erroneous Standard of Review**

{¶ 14} In his second assignment of error, appellant insists that the common pleas court improperly substituted its judgment for that of the trier of fact. This appears true. Indeed the court went to lengths in its decision to opine that, because the deference

afforded hearing officers or juries is premised on the trier of facts “special position to examine mannerisms, speech, body language, etc.,” the hearing officer here should not be entitled to such deference because the hearing was conducted telephonically. “[T]his court places greater weight, in the overall determination of facts, in the report and analysis of the [Board of Education hearing officer] who not only heard four days of testimony and first hand observed the witnesses testimony in person, but who also wrote an extensive decision,” the common pleas court stated. The court makes no effort to reconcile its decision with the Board of Education hearing officer’s conclusion that termination was without just cause.

Like other courts serving in an appellate capacity, we sit on a court with limited power of review. Such courts are not permitted to make factual findings or to determine the credibility of witnesses. The duty or authority of the courts is to determine whether the decision of the board is supported by the evidence in the record. The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board’s decision. (Citations omitted.) *Irvine*, 19 Ohio St.3d at 18, 482 N.E.2d 587.

{¶ 15} The standard of review concerning factual matters is that the Review Commission’s decision must be affirmed if supported by some competent credible evidence. *Cent. Ohio Joint Voc. School Dist. Bd. v. Ohio Bur. Emp. Serv.*, 21 Ohio St.3d 5, 8, 487 N.E.2d 288 (1986). Patently, this is not the standard employed by the common

pleas court in this matter. Accordingly, appellant's second assignment of error is well-taken.

### **III. Applying Proper Standard**

{¶ 16} In his remaining assignment of error, appellant asserts that the trial court erred in reversing the decision of the Review Commission because the record contains competent credible evidence to support the finding appealed from.

{¶ 17} In the decision appealed from, the Review Commission hearing officer states that she reviewed the 1,075 page transcript from the Board of Education hearing and considered the sworn testimony of appellant. The hearing officer found credible appellant's testimony that his comments had been taken out of context, no sexual intent accompanied them and he had no idea anyone was offended. Moreover, the hearing officer noted, she considered a school board member's testimony that he had been pleased with appellant's performance until these complaints surfaced.

{¶ 18} This is competent, credible evidence by which the hearing officer could find that appellant's termination was without just cause. Accordingly, appellant's third assignment of error is well-taken.

{¶ 19} On consideration whereof, the judgment of the Huron County Court of Common Pleas is reversed. This matter is remanded to said court to apply the proper standard of review. It is ordered that appellee pay the court costs of this appeal pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

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JUDGE

Arlene Singer, P.J.

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JUDGE

Thomas J. Osowik, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.