

IN THE SUPREME COURT OF MISSISSIPPI

CITY OF JACKSON, MISSISSIPPI

APPELLANT

v.

No. 2010-CC-01057

SLADE MOORE

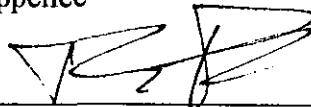
APPELLEE

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following persons are potentially interested in the outcome of this case. These representations are presented to allow the Justices of the Supreme Court of Mississippi or the Court of Appeals to determine disqualification or recusal:

1. Frank Melton, Mayor of the City of Jackson
2. Sarah O'Reilly-Evans, City Attorney
3. Horace Buckley, Chairperson Jackson Civil Service Commission
4. L. Breland Hilburn, Commissioner
5. Jackie Franklin, Commissioner
6. Jeff Weill, Councilman
7. Frank Bluntson, Councilman
8. Marshand Crisler, Councilman
9. Margaret Barrett-Simon, Councilman
10. Charles Tillman, Councilman
11. Kenneth Stokes, Councilman
12. City of Jackson, Appellant
13. Lara Gill, Office of the City Attorney
14. Pieter Teewissen, Office of the City Attorney
15. Slade Moore, Appellee
16. Dennis C. Sweet, III, Counsel for Appellee
17. Thomas J. Bellinder, Counsel for Appellee

BY:



Thomas J. Bellinder

MS Bar No. [REDACTED]

Attorney for the Appellee, Slade Moore

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STATEMENT OF THE ISSUE

- I. Did the Circuit Court err in affirming the Civil Service Commission's decision to overturn the termination of Slade Moore?

STATEMENT OF THE CASE

I. Nature of the Case

This case arises from the Appellant City of Jackson (hereinafter "Appellant" or "the City")'s appeal of the Circuit Court of the First Judicial District of Hinds County, Mississippi's (Hon. William Lutz, presiding) denial of its appeal of a March 13, 2008 Opinion and Order entered by the City of Jackson Civil Service Commission.

II. Statement of Facts

On July 18, 2006, Appellee Slade Moore (hereinafter "Sgt. Moore") was terminated from his position as a Police Sergeant with the Jackson Police Department. The City has repeatedly alleged that Sgt. Moore was terminated due to an altercation that ensued with a suspect during a routine arrest which occurred in 1997, nine (9) years prior to the termination. In the meantime, Sgt. Moore had received numerous accolades, top employment performance ratings, awards, certifications and letters of praise from the Jackson Police Department. Sgt. Moore's case was first heard by a County Court which found that his actions towards the arrestee were within the scope of his employment. On appeal, the Hinds County Circuit Court concluded that Sgt. Moore's actions were reasonable. The City of Jackson appealed that decision to the Mississippi Court of Appeals where the Circuit Court decision was upheld. Sgt. Moore then appealed his termination to the City of Jackson Civil Service Commission (the "Commission"). On

March 13, 2008, the Commission, after reviewing the court records from the prior courts decided that Sgt. Slade Moore should be “reinstated to his appropriate rank and compensation.”

III. Course of Proceedings and Disposition in the Court Below

On April 14, 2008, the City filed its Notice of Appeal with the Hinds County Circuit Court from the March 13, 2008 decision of the Commission reversing the discharge of Sgt. Moore and ordering his reinstatement. Oral arguments were held, and the Hinds County Circuit Court denied the City’s appeal. The Circuit Court entered its Order on or about June 3, 2010. The City has appealed therefrom.

SUMMARY OF THE ARGUMENT

The trial court was correct in determining that the Commission's order reversing the discharge of Sgt. Moore and ordering his reinstatement was made in good faith for cause. The trial court was also correct in determining that credible evidence existed which substantiated the Commission's action. The Appellant has failed to meet its burden of proof in showing that the Commission's decision was not made in good faith or whether credible evidence existed to support it. Other than statements of counsel, the City sets forth no absolutely support, evidence reasoning or documentation for any contention that the Commission's order was not based upon credible evidence or made in good faith.

ARGUMENT

I. Standard of Review

The Supreme Court's scope of review of the decisions of the civil service commission is limited, and the criterion is whether or not, from an examination of the record there exists credible evidence substantiating the commission's action. It is upon this basis that the Court determines whether the decision was in good faith for cause. *City of Jackson v. Froshour*, 530 So.2d 1348, 1355 (Miss.1988).

Our Constitution does not permit the judiciary of this state to retry de novo matters on appeal from administrative agencies. *Mississippi State Tax Comm'n. v. Mississippi-Alabama State Fair*, 222 So. 2d 664, 665 (Miss. 1969). The job of the Court is to determine "whether or not, from an examination of the record there exists credible evidence substantiating the [C]ommission's action." *Grant v. City of Columbus*, 812 So.2d 976, 978 (¶ 6) (Miss.2002). The Court must not reweigh the facts of the case or insert its judgment for that of the agency. *Allen v. Miss. Employment Sec. Comm'n*, 639 So.2d 904, 906 (Miss.1994).

The civil service commission reviews the employment decisions of a city to remove, suspend, demote, or discharge a civil service employee. Miss. Code Ann. § 21-31-23. A city's disciplinary action may be reversed if it was made for political reasons, religious reasons, or was not made in good faith for cause. *Id.* An administrative agency's conclusions will not be overturned on appeal "unless the agency's order 1) is not supported by substantial evidence, 2) is arbitrary or capricious, 3) is beyond the scope or power granted to the agency, or 4) violates one's constitutional rights." *Sprouse v. Miss. Employment Sec. Comm'n*, 639 So.2d 901, 902 (Miss.1994).

II. The Trial Court Did Not Err in Affirming the Civil Service Commission's Decision to Overturn the Termination of Slade Moore

The Supreme Court must not reweigh the facts of the case or insert its judgment for that of the civil service commission. *Allen*, 639 So.2d at 906. The Court in *Beasley v. City of Gulfport*, 724 So.2d 883 (Miss. 1988) expanded on this principle, stating that "It is thus clear that the scope of review of the circuit court, and of this Court, is limited, and we must ever bear in mind that it is not what the court, had it been a member of the governing authority, might have done in a particular instance, or indeed whether or not the court thinks a mistake may have been made, but instead the criterion is whether or not from an examination of the record there exists credible evidence substantiating the action taken by the city. It is upon this basis that the court determines whether or not the decision was 'in good faith for cause.'" *Beasley*, 724 So.2d at 885 (citing *City of Jackson v. Froshour*, 530 So.2d 1348, 1355 (Miss.1988)).

The Court's sole province is to determine whether the Commission's decision was in good faith for cause and whether or not there exists credible evidence substantiating the Commission's action. The Order was included in the Appellant's record excerpts, and is incorporated as if fully set forth herein. The Commission's Order set forth a detailed factual scenario, a procedural history of the litigation relevant to Sgt. Moore's termination and the reasoning for their opinion. It is clear from the record that credible evidence substantiating the Commission's reinstatement of Sgt. Moore existed, and that the decision was in good faith for cause. Appellant wholly fails to set forth any evidence in the alternative. The City also improperly seeks to have a factual determination made as to its termination of Sgt. Moore. Any arguments made in the Appellant's brief regarding whether or not the City terminated Sgt. Moore in good faith are not for this Court's

determination. Arguments made regarding the retention of Sgt. Moore guaranteeing liability for the City of Jackson assumes facts which do not exist, and assumes court ruling which have not taken place, events that have not happened and causes of action that have yet to accrue.

i. Credible Evidence

In this case, the Commission detailed the credible evidence it considered before it issued its order that Sgt. Moore's termination was erroneous and should be reversed. The Circuit Court properly recognized this credible evidence in finding that the decision should be upheld. The Commission considered the findings in the first trial heard by the Hinds County Court, the record of the Circuit Court, and the holding in the Mississippi Court of Appeals - all of which found, in one way or another, that Sgt. Moore's actions in the *Calcote* matter were within the course and scope of his employment as a police officer. A thorough investigation was done by the Commission and was sufficient to establish that he was wrongfully terminated by the Jackson Police Department; the City fails to set forth any evidence to the contrary. The Commission took testimony from Sgt. Moore, Police Chief Shirlene Anderson and others. The City failed to set forth any evidence as to the motive for Sgt. Moore's termination other than his involvement in the *Calcote* matter, some nine (9) years prior to the City's action. No internal investigation into the *Calcote* matter was ever performed by the City. The Commission had the underlying facts of *Calcote* available to them. Upon review of all of the evidence, documentation, and findings of the prior courts, the Commission found that Sgt. Moore should be reinstated to his appropriate rank and compensation. In light of all of the evidence considered by the Commission, any argument that no credible evidence existed

that substantiated the Commission's action is fatally deficient. To this end, the Commission's decision should be allowed to stand.

In addition, "There is a rebuttable presumption in favor of the action of an administrative agency, and the burden of proof is upon the [party] challenging its action." *Davis v. Public Employees' Retirement System*, 750 So. 2d 1225, 1232 (Miss. 1999); see also, *Ricks v. Mississippi State Dep't. of Health*, 719 So. 2d 173, 177 (Miss. 1998); *Mississippi Comm'n. on Env't'l. Quality v. Chickasaw Co. Bd. of Supervisors*, 621 So. 2d 1211, 1215 (Miss. 1993). After the Commission made its decision and appeal was taken, the Circuit Court heard arguments of counsel. The transcript of said arguments was included in the Appellant's record excerpts, and is incorporated as if fully set forth herein. The Circuit Court determined that the City did not meet its burden. The Circuit Court properly determined that the Commission was the fact finder. The Circuit Court stated that the fact that the City waited nine years was "obscene". Transcript, at 28. The Circuit Court stated it could not find that the Commission made any errors, and followed the intent of the statutory language.

Because the Commission, after a thorough reading of the findings of the Courts examining the case, came to its conclusion that Sgt. Moore should be reinstated, the City has the burden to prove otherwise. Inasmuch as the City has failed to demonstrate that the Commission's decision, (i) was not supported by "substantial evidence;" (ii) was "arbitrary or capricious;" (iii) "was beyond the power of the lower authority to make;" or (iv) "violated some statutory or constitutional right of the complaining party," fairness and justice would mandate that the decision be allowed to stand.

ii. Good Faith

Pursuant to Miss. Code Ann. §§ 21-31-1 et seq., it is the duty of the Commission to make determinations in regards to the employment of personnel within police departments of the various municipalities in the State of Mississippi. The seminal case interpreting this statute which concerns the finality of administrative agency decisions is *Chandler v. City of Jackson Civil Serv. Comm'n.*, 687 So. 2d 142 (Miss. 1997). In that case, appellants challenged the Commission's decision regarding appointive employment of district fire chiefs within the Jackson Fire Department. The Mississippi Supreme Court in *Chandler* first examined the relevant standard of review in cases concerning an administrative government agency. The Court said, "This Court does not interfere with a municipality's legislative authority, substituting its judgment for that of the governing body" *Id.* at 143 (quoting *Peterson v. City of McComb*, 504 So. 2d 208, 209 (Miss. 1987)) (emphasis added). Such "legislative authority," as noted in *Chandler*, is granted to the Civil Service Commission pursuant to Miss. Code Ann. § 21-31-9. That statute, in relevant part, states that it is the "duty of the civil service commission to make suitable rules and regulations . . . [which] shall provide in detail the manner of . . . reinstatements . . . and may also provide for any other matter connected with the general subject of personnel administration"

The Commission's opinion recites the standard, specifically recognizing their duty to make their decision in good faith for cause. The City wholly fails to meet its burden of proof in showing that the Commission's decision was not made in good faith or whether credible evidence existed to support it. The City's arguments are pretextual in

nature and are nothing more than empty jabs at the Commission itself. Other than claiming the Commission attempted to 'supervise or replace the intelligence, wisdom or fairness of the City's governing authorities' and that the order did not list out factors, analysis or reasons with detail sufficient to its liking, the City fails to set forth a single ground in support of these arguments. The City claims that the Opinion and Order evidenced the fact that the Commission made no investigation. This argument is completely unfounded and without merit. Other than statements of counsel, the City sets forth no absolutely support, evidence or documentation for any contention that the opinion was not based upon credible evidence or made in good faith.

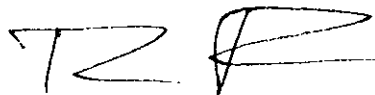
III. Conclusion

For the reasons previously set forth herein, the trial court was correct in determining that the Commission's order reversing the discharge of Sgt. Moore and ordering his reinstatement was made in good faith for cause and that credible evidence existed which substantiated the Commission's action. The Appellant has failed to meet its burden of proof in showing that the Commission's decision was not made in good faith or whether credible evidence existed to support it. For these reasons, the circuit court's decision to deny Appellant's appeal should be affirmed by this Court.

Respectfully submitted, this the 12th day of July, 2011.

SLADE MOORE

BY:

A handwritten signature in black ink, appearing to be 'TZ' followed by a stylized flourish.

Dennis C. Sweet, III
Thomas J. Bellinder

OF COUNSEL:

Dennis C. Sweet III, MSB # [REDACTED]
Thomas J. Bellinder, MSB # [REDACTED]
SWEET & ASSOCIATES
158 E. Pascagoula St.
Jackson, Mississippi 39201
Phone: (601) 965-8700
Fax: (601) 965-8719

CERTIFICATE OF SERVICE

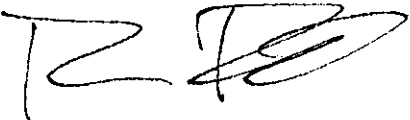
I, Thomas J. Bellinder, one of the attorneys for the Appellee, do hereby certify that I have this day delivered, via hand delivery and/or United States Mail, postage prepaid, a true and correct copy of the above and foregoing to the following:

Pieter Teeuwissen
Lara Gill
OFFICE OF THE CITY ATTORNEY
P.O. Box 2779
Jackson, MS 39207

Hon. William Lutz
Special Circuit Court Judge
c/o Hinds County Circuit Court
P.O. Box 327
Jackson, MS 39205

This the 12th day of July, 2011.

BY:



Thomas J. Bellinder