

FILED
IN COMMON PLEAS COURT

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

2016 MAY -4 AM 8: 14

PROBATE-JUVENILE
DIVISION
GEAUGA COUNTY, OHIO

IN THE MATTER OF:)

CHESTER TOWNSHIP PARK)
DISTRICT)

CASE NO.: 84 PC 000139

Judge Timothy J. Grendell

INTERIM
JUDGMENT ENTRY

This matter came before the Court on April 26, 2016. Present were: Michael J. Petruziello, Chester Township Trustee; Todd Raskin and Bridey Matheny, Attorneys for Chester Township Trustees (“Trustees”); Joseph H. Weiss, Clay Lawrence, Lance Yandell and Ruth Philbrick, Chester Township Park Board Commissioners (“Park Commissioners”); James Gillette, Attorney for the Chester Township Park Board Commissioners; Mary Jane Trapp, Master Commissioner. Chester Township Trustees Ward Kinney and Brad Radtke were served and given notice of said hearing, but were not present in Court.

The Court issued a November 26, 2014 Judgment Entry setting forth its findings of fact and conclusions of law, based upon the Master Commissioner’s recommendations. The Trustees appealed this entry to the Eleventh District Court of Appeals, who, after initially granting a stay, summarily dismissed the appeal, finding said entry not a final appealable order.

The Trustees then filed a petition for a writ of prohibition with the Ohio Supreme Court seeking to prevent this Court from issuing orders preventing the township trustees from (1) interfering with the Judgement Entry of Judge Frank Lavrich, which created the Park District pursuant to Ohio Revised Code Chapter 1545, and (2) taking action that conflicts with Ohio Revised Code Chapter 1545 as applied to the Township Park District. The Trustees also claimed that the

Court did not have legal authority to tax a portion of the Master Commissioners' fees to the Township. Ultimately, the Ohio Supreme Court unanimously denied the Trustee's writ, finding (1) the probate court did not lack jurisdiction to issue the orders where trustees eliminated a source of funds to operate the township park; (2) the probate court had authority to create a park district and to determine matters regarding its operation; and (3) the Court had authority to prevent township trustee interference with the park district's purpose. *State ex rel. Chester Twp. v. Grendell*, 2016-Ohio-1520.

This Court has reviewed the three issues still outstanding: (1) whether the Chester Township Park has adequate funding for its budget; (2) what are the master commissioner's fees to be taxed as costs; and (3) whether the 1993 Agreement between the Trustees and Park Commissioners conflicts with or violates Ohio Revised Code Chapter 1545 and Judge Lavrich's 1984 order creating the Chester Township Park.

I. Funding

Park Board Commissioner Weiss informed the Court that the Township Park District has received adequate funding to operate the township park for 2015 and expects to receive adequate funding for 2016. Mr. Weiss testified the 2016 Chester Township Park budget has been partially funded, and that he expects the Township to fund the remaining \$10,000 requested. Mr. Weiss further informed the Court that the Park District had taken the appropriate action to receive the permitted inside tax millage funds in the future. The Court hereby finds the budget issue moot.

II. Master Commissioner's Fees and Costs

The second issue presented concerns whether the \$37,220 in fees and expenses invoiced by Attorney Mary Jane Trapp for her services as Master Commissioner are reasonable and appropriate and should those fees be taxed as costs. Attorney for the Township Trustees contends he cannot

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accept or reject the fees and costs until the Trustees, themselves, can view said costs and fees. The Court heard sworn testimony from Ms. Trapp regarding what activities she conducted as Master Commissioner and how she calculated her fees, which were charged at a substantial discounted hourly rate because of the public nature of the proceedings. The Court also heard sworn testimony from Joe Svete, an attorney with more than 50 years of legal practice in Geauga County that he believed Ms. Trapp's fees and costs as Master Commissioner were reasonable.

The Court accepts the June 25, 2015 invoice submitted by Mary Jane Trapp in the amount of \$37,220.00 for her services as Master Commissioner in this matter, and taxes said \$37,220 in fees and costs as costs in this case pursuant to R.C. 2101.06 and R.C. 2101.07. Pursuant to paragraph 13 of the Court's November 26, 2014 Judgment Entry, when the Court makes its final ruling, the Court will absorb \$9,305 of those costs, the Township Trustees and Park Commissioners shall each be responsible for and shall pay \$13,957.50 for those costs per R.C. 2101.06 and R.C. 2101.07 (Trustees – 25%; Trustees – 37.5%; and Park Commissioners – 37.5%).

III. 1993 Agreement

In 2016, the Ohio Supreme Court unanimously ruled that a probate court's authority includes the ability to issue orders to enforce the entry creating the park district, including orders that impose duties on those interfering with the park district's purpose." *State ex rel. Chester Twp. v. Grendell*, 2016-Ohio-1520, at ¶30.

Pursuant to paragraph 7 of this Court's November 26, 2014 Judgment Entry, the Court hereby orders that within fifteen (15) days of the docketing of this entry, the Master Commissioner shall 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 R.C. Chapter 1545 and the initial Township application and Judge Lavrich's judicial documentation forming the Park

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District.

“Under R.C. 2101.24(C), probate courts have plenary power to “dispose fully of any matter that is properly before the court,” unless the power is expressly limited or denied by the Revised Code.” *Grendell*, at ¶28. This “surely includes the ability to issue orders to enforce the entry creating the park district, including orders that impose duties on those interfering with the park districts purposes.” *Id.*, at ¶30. As a preliminary matter and in regards to the 1993 Agreement (“Agreement”) between the Trustees and Park Commissioners, the Court finds that paragraphs 1, 3, 4, 8, and 12 of said Agreement directly conflict with state law, Judge Lavrich’s original order forming the Park District, or both. This Agreement gives the Chester Township Trustees powers that state law does not provide them. Essentially, there would be no need for Ohio Revised Code Chapter 1545, should the Agreement be permissible.

The Court finds, as to the Agreement, that:

1) Paragraph 1 conflicts with Chapter 1545 because it would allow the township trustees authority to terminate the township park district and discontinue the park district’s authority which, under R.C. 1545.35, can only be accomplished by this court or by a vote of the residents of Chester Township;

2) Paragraph 3 conflicts with R.C. 1545.14 because it hinders the township park commissioners’ ability to enter into contract and creates an unlawful veto mechanism for the township trustees to override the park commissioners’ decisions;

3) Paragraph 4 conflicts with Chapter 1545 because it essentially gives the trustees the authority to interfere with the park commissioners and their decisions involving park district matters;

4) Paragraph 8 conflicts with R.C. 1545.11 and Chapter 1545 because it interferes with the

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DIVISION
GEAUGA COUNTY OHIO

powers of the park district to take actions as permitted by state law;

5) Paragraph 12 would allow the Chester Township Trustees to take control of all Chester parks, which is in direct conflict with R.C. 1545.35 and R.C. 1545.36, which allow ~~any~~ court or people to dissolve the park district, not the township trustees.

Contract terms that violate public policy may not be enforced by Ohio courts. *Key v. Vattier* (1823), 1 Ohio 132; *Lamont Bldg. Co. v. Court* (1946), 147 Ohio St. 183, 184-185, 34 O.O. 73, 74, 70 N.E.2d 447, 448; *John Hancock Mut. Life Ins. Co. v. Hicks* (1931), 43 Ohio App. 242, 247, 183 N.E. 93, 95. Second, a contract term that hinders the purpose of a statute is void. In *Grange Mut. Cas. Co. v. Lindsey*, the Supreme Court of Ohio found a contract term void by public policy because it was “in derogation of the public policy and purpose of a statute.” Since enforcing the 1993 Agreement would work against the Chester Township residents’ statutory protected interest and the Chester Township Park Commissioners’ statutory authority, the court finds the 1993 Agreement contains numerous terms that conflict with or violate both public policy and Chapter 1545.

If the parties fail to reach an agreement, this Court will issue a final order which will supersede this interim order and modify it as appropriate.

If any party wants to be heard on the matter, they shall file a request for hearing by May 13, 2016. Each of the parties also shall have fourteen (14) days from the docket date of this entry to submit briefs on the above matters.

IT IS SO ORDERED.



TIMOTHY J. GRENDALL, JUDGE

cc: Chester Township Trustees
Prosecutor
Chester Park Commissioners

Atty. Raskin
Atty. Gillette

Mary Jane Trapp