

FILED
IN COMMON PLEAS COURT

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

2016 JUN 22 AM 10:05

PROBATE-JUVENILE
DIVISION
GEAUGA COUNTY, OHIO

IN THE MATTER OF:)
CHESTER TOWNSHIP PARK)
DISTRICT)
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)
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Case No.: 84 PC 000139

JUDGE TIMOTHY J. GRENDALL
JUDGMENT ENTRY

This matter came on for review on the Court's own motion.

On May 4, 2016, this Court issued an interim judgment entry which provided any party to this case with the opportunity to file a request for a hearing and supporting briefs by May 13, 2016. However, in spite of this opportunity, no party has chosen to submit such a request, so this final order now supersedes the May 4, 2016 Interim Judgment Entry in relevant part. Chester Township Trustees chose to submit a brief, filed on May 18, 2016.

Background

This Court issued a judgment entry on November 26, 2014 setting forth its findings of fact and conclusions of law, based upon the recommendations of the Master Commissioner. The Chester Township Trustees (hereinafter "Trustees") appealed this entry to the Eleventh District Court of Appeals, which, after initially granting a stay, dismissed the appeal, finding that the entry in question was not yet 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 governing the conduct of the Trustees, specifically this Court's orders preventing them from (1) interfering with the Judgment Entry of Judge Frank Lavrich and (2) taking action that conflicts with Ohio Revised Code Chapter 1545 as applied to the Chester Township Park District (hereinafter "Park District"). The Trustees argued that this Court did not have legal authority to tax a portion of the Master Commissioner's fees to the Township. Ultimately, the Ohio Supreme Court unanimously denied the Trustees' petition. *State ex rel. Chester Twp. v. Grendell*, 2016-Ohio-1520. The Court found that (1) probate courts do not patently and unambiguously lack jurisdiction to issue orders where township trustees eliminate a source of funds to operate a township park district; (2) probate courts have authority to create park districts and issue orders governing their operation; and (3) probate courts have authority to prevent conduct that frustrates the purposes of a park district, including orders that impose duties on those interfering with the park district's purposes (in this case, the Trustees). *Grendell*, at ¶¶30-32.

This Court has reviewed the three issues still outstanding: (1) whether the Chester Township Park District has adequate funding for its budget; (2) the total of the Master Commissioner's fees to be taxed as costs; and (3) whether the 1993 Agreement between the Trustees and the Park District conflicts with or violates R.C. Chapter 1545 and Judge Lavrich's 1984 order creating the Chester Township Park District. The Court will address each issue in turn.

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Funding Has Been Resolved and Is Now Moot

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Chester Township Park Board Commissioner Joseph H. Weiss informed the Court that the Park District has received adequate funding to operate the township park for 2015 and expects to receive adequate funding for 2016. Mr. Weiss testified that the 2016 Park District budget has been partially funded, and that he expects the Township to fund the remaining \$10,000.00 requested. Mr. Weiss further informed the Court that the Park District has taken the necessary steps to receive its permitted inside tax millage funds in the future under R.C. 1545.20. The Court hereby finds that the budget issue has been resolved and is now moot.

Assessment of Master Commissioner's Fees and Costs

The second issue presented concerns whether the \$37,220.00 in fees and expenses invoiced by attorney Mary Jane Trapp for her services as Master Commissioner are reasonable and appropriate and whether those fees should be taxed as costs. Counsel for the Trustees argues that he cannot accept or reject the fees and costs until the Trustees themselves can view said costs and fees. The Court heard sworn testimony from Mrs. Trapp regarding what activities she conducted as Master Commissioner and how she calculated her fees, which were charged at a substantially 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. He testified that in his professional opinion, Mrs. Trapp's fees and costs as Master Commissioner were reasonable.

The Court accepts the June 17, 2016 Invoice, which was submitted by Mary Jane Trapp in the amount of \$38,845.00 for her services as Master Commissioner in this

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matter, which includes services provided for the period after the Ohio Supreme Court issued its opinion. The Court hereby taxes said \$38,845.00 in fees and costs as costs in this case under R.C. 2101.06 and 2101.07. Pursuant to ¶13 of this Court's Judgment Entry of 11/26/2014, the Court shall pay \$10,386.26 of those costs, the Chester Township Trustees shall be responsible for and shall pay \$14,229.37, and the Chester Township Park District shall be responsible for and shall pay \$14,229.37 of those costs, as per R.C. 2101.07 and 2101.06.¹ The Court further orders that these funds shall be paid within sixty (60) days of the docketing of this judgment entry.

The trustees contest this Court's authority to tax the master commissioner's fees as costs to the township in their brief. Brief of Chester Township Trustees of 5/18/2016, 3-4. The Trustees' arguments center around an incorrect interpretation of their own role in the proceedings. The trustees believe (incorrectly) that they ceased to be parties to this proceeding once the park district was created. However, the Trustees have always been parties to this matter, as evidenced by, *inter alia*, the fact that they have been served copies of all orders in the case since its initiation and the fact that they have participated at hearings and filed briefs in the past in this case.

Further, the Supreme Court in *Grendell* noted that the plenary power of probate courts to dispose fully of any matter properly before them "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 district's purposes." *Grendell*, at ¶30. Because both the township trustees and the park district commissioners interfered with the park district's purposes, orders imposing duties on both groups of persons are within the

¹ This amounts to a percentage breakdown of 25% to this Court, 37.5% to the Trustees, and 37.5% to the Park District.

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permissible scope of probate court authority. By taking actions affecting the rights and duties of a separate legal and political entity (the Park District), Trustees ensured that they were well within this Court's jurisdiction to correct wrongful conduct, regardless of whether or not they are parties.

Courts have significant discretion as to how the costs of an action shall be assessed. *State ex rel. Fant v. Regional Transit Authority*, 48 Ohio St. 3d 39 (1990); *State ex rel. Estate of Hards v. Klammer*, 2006-Ohio-3670. *Klammer* is particularly relevant, because the Supreme Court in *Klammer* noted the authority of probate courts to tax master commissioner fees as costs in a case. *Klammer*, at ¶15. Additionally, Trustees' status as continuing parties to this matter means that they are liable to pay court costs if those costs are taxed as a part of this Court's judgment. *Strattman v. Studt*, 20 Ohio St. 2d 95, 103 (1969).

The 1993 Agreement Conflicts with Relevant Statutes

Under R.C. 2101.24(C), probate courts have plenary power to dispose fully of any matter that is properly before the court, unless that power is expressly limited or denied by the Revised Code. *Grendell, supra*, 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 district's purpose." *Grendell, supra*, at ¶30. The Court hereby finds that several sections of the 1993 Agreement (hereinafter "Agreement") between the Trustees and the Park District are in direct conflict with relevant portions of state law. Specifically, ¶1, ¶3, ¶4, ¶8, and ¶12 of the Agreement are in conflict with relevant state statutes, Judge Lavrich's original order forming the Park District, or both. This Agreement gives the Trustees powers over the Park District that are not provided for

by state law. Essentially, R.C. Chapter 1545 would be meaningless if the agreement were permissible.

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The Court hereby finds:

1. ¶1 of the Agreement conflicts with R.C. Chapter 1545 because it would grant the township trustees unilateral authority to terminate and discontinue the Park District, which, under R.C. 1545.35, can only be accomplished by this Court or by a vote of the residents of Chester Township.
2. ¶3 of the Agreement conflicts with R.C. 1545.14 because it hinders the ability of the Park District and its commissioners to enter into contracts and creates an unlawful veto mechanism for the Trustees to override the decisions of the Park District's commissioners.
3. ¶4 of the Agreement conflicts with R.C. Chapter 1545 because it essentially grants the trustees authority to interfere with the Park District's commissioners and their decisions in matters involving the Park District, despite the Park District's existence as a separate legal entity.
4. ¶8 of the Agreement conflicts with R.C. Chapter 1545 broadly and R.C. 1545.11 specifically because it interferes with the powers of the Park District to take actions as permitted by state law.
5. ¶12 of the Agreement conflicts with R.C. 1545.35 and 1545.36 because it allows the Chester Township Trustees to take control of all Chester Township parks, while statute permits only the Court or the people of Chester Township to dissolve the Park District, which is done without any involvement from the township Trustees.

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Contract terms that clearly conflict with statutory provisions or other public policy established by state law are not enforceable in Ohio courts. *E.g., John Hancock Mutual Life Ins. Co. v. Hicks*, 43 Ohio App. 242, 247 (10th Dist. 1931). *Cf. State Farm Mutual Automobile Ins. Co. v. Grace*, 2009-Ohio-5934, ¶16 (noting that a shift in public policy permits contracts previously impermissible as contrary to public policy). *See generally, Key v. Vattier*, 1823 Ohio LEXIS 27, at 4-5 (contract with attorney found to be against public policy and therefore void); *Lamont Building Co. v. Court*, 147 Ohio St. 183, 185 (1946) (judges must take care not to invalidate contracts unless they are clearly opposed to public policy). Because enforcing the 1993 Agreement would harm the statutorily protected interest of Chester Township residents and the clearly established statutory authority of the Chester Township Park District's commissioners, the Court finds that the 1993 Agreement contains provisions that conflict with or otherwise violate public policy, R.C. Chapter 1545, and Judge Lavrich's original order. Therefore, these provisions are impermissible.

In their brief, the Trustees argue that they are authorized to enter into agreements with other public entities. This is correct. However, the Trustees are incorrect when they interpret this statutory authorization to be the equivalent of a blank check to enter agreements of any sort, regardless of the terms of those agreements. Under Ohio law, neither the Trustees nor the Park District has the legal authority to enter into contracts that are in conflict with either specific statutes or public policy. *Hicks, supra*, at 247. Ohio law places restrictions on the types of agreements park districts may enter into.

Trustees rely on R.C. 1545.14, which simply does not permit what Trustees claim it does. Trustees claim that this section constitutes blanket authorization for park districts

to enter into agreements with other public entities, which would therefore permit the township trustees to terminate or dissolve the park district and to thereby gain ownership of the land owned by the park district. However, R.C. 1545.14 is quite explicit about the types of agreements that are permissible. It permits township park districts enter agreements to “assume control” over already-existing park lands not under the control of the park district. R.C. 1545.14.

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To “assume” in this sense of the word means “to begin (a role, duty, etc.) as a job or responsibility; to take or begin to have (power, control, etc.) in a job or situation.” Merriam-Webster Dictionary Online. Black’s Law Dictionary defines it as “to take upon one’s self.” Black’s Law Dictionary Online, 2nd Ed. Thus, R.C. 1545.14 permits township park districts to take power upon themselves over other parklands not already under their control. How Trustees see this provision as permitting the Park District to enter an agreement doing the exact opposite of the statute is hard to fathom.

Administrative or other governing bodies are restricted to the powers that are expressly granted to them. *See Davis v. State ex rel. Kennedy*, 127 Ohio St. 261 (1933); *Penn Central Transportation Co. v. Public Utilities Commission*, 35 Ohio St.2d 97, (1973). As much as Trustees would like for the Park District to have the power to enter into agreements that would serve to benefit the Township should the Park District ever be dissolved, that power is not conferred by statute. R.C. 1545.14 permits township park districts to gain control of additional park lands, not to agree to give a separate legal entity the power to dissolve the Park District and to transfer those parklands to that entity.

In their brief, Trustees make much of a quotation from *Bernardini v. Bd. Of Ed.*, 58 Ohio St. 2d 1, 4 (1979): “[I]t is the duty of [courts] to give effect to the words used in

a statute, not to delete words used or to insert words not used.” Trustees’ Brief, at 3. The irony of this citation is not lost on the Court. To accept Trustees’ argument that the 1993 Agreement is permitted by R.C. 1545.14, this Court would be required to insert the words, “or cede” into the statute, when the plain language of the statute permits park districts only to “assume control” over other park lands. This Court declines the invitation to render the English language meaningless.

As has never been contested by any party to this matter thus far, township districts are certainly permitted to enter into agreements with other public entities. However, the potential agreements are restricted in scope, because they must be otherwise in compliance with state law and not contrary to public policy. There can be no doubt that the 1993 Agreement was not within the permitted scope of agreements, because it did not deal with the park district assuming control over other parklands, but rather ceded control of the Park District to the Chester Township Trustees.

Trustees make much of the obligation of courts to give effect to the intent of parties to contracts. Trustees’ Brief, at 2-3. However, those contracts themselves are only valid if they are not prohibited by other statutory provisions.

Pursuant to ¶7 of this Court’s Judgment Entry of 11/26/2014 and page 3 of this Court’s Interim Judgment Entry of 5/4/2016, the Master Commissioner met with the Chester Township Trustees and the Commissioners of the Chester Township Park Board to attempt to formulate an agreement that consistent with and not in conflict with the authority of the Park District under R.C. Chapter 1545, as well as with the initial Township application and Judge Lavrich’s 1984 order forming the Park District. These negotiations are apparently progressing.

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The Court takes notice that Chester Township is the titleholder of the property operated by the Park Board pursuant to the 1993 Agreement. The Court also takes notice that in the Township Trustees' original application to form the Chester Township Park District, the Trustees included all of the Township territory as property "to be included within the park district."² Judge Frank Lavrich then signed the judgment entry creating the park district with jurisdictional territorial authority over all township parks within Chester Township. Thus, pursuant to the actions taken by the Township Trustees and Judge Lavrich in 1984, all township lands used for township park purposes, regardless of the record ownership, are under the jurisdiction of the Park Board. The agreement between the Trustees and the Park Board simply formalizes this previously-adjudicated fact.

This Court hereby finds that paragraphs 1, 3, 4, 8, and 12 of the 1993 Agreement are contrary to state law and contrary to public policy. Consequently, the Court hereby orders that these paragraphs of the 1993 Agreement shall be **unenforceable and without legal effect**. The Court hereby orders that the Chester Township Trustees and the Commissioners of the Chester Township Park Board, and their agents, employees, attorneys, and all other persons in active concert or participation with them are **permanently restrained and enjoined** from enforcing or acting on the basis of paragraphs 1, 3, 4, 8, and 12 of the 1993 Agreement, and are permanently restrained and enjoined from otherwise violating, directly or indirectly, the provisions of R.C. Chapter 1545 and the order issued by Judge Frank Lavrich creating the Park District with jurisdiction over all of Chester Township. This ruling is entered pursuant to and

² The Township Trustees could have limited the geographic scope of the proposed township park district in their application. They chose not to do so.

consistent with the Ohio Supreme Court's decision in *State ex rel. Chester Twp. v. Grendell*, 2016-Ohio-1520.

The Court hereby taxes the Master Commissioner's fees and expenses as costs in the amount of \$38,845.00 as follows: The Chester Township Trustees shall be responsible for and shall pay \$14,229.37, and the Chester Township Park District shall be responsible for and shall pay \$14,229.37 of those costs, as per R.C. 2101.06 and 2101.07. The Court shall pay all remaining master commissioner fees and expenses. These costs shall be paid within sixty (60) days of the docketing of this order.

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

IT IS SO ORDERED.


TIMOTHY J. GRENDALL, Judge

cc: Chester Township Trustees
APA Matheny
Chester Park Commissioners
Atty. Gillette
Mary Jane Trapp, Esq.

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