

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

FILED
IN COMMON PLEAS COURT

2014 DEC 15 PM 12:45

IN THE MATTER OF:)
) CASE NO. **84 PC 139** PROBATE-JUVENILE
)) DIVISION
CHESTER TOWNSHIP PARK DISTRICT) JUDGE TIMOTHY J GRENDALL GEAUGA COUNTY, OHIO
))
) **JUDGMENT ENTRY**

On December 15, 2014, this matter came on for hearing on the Motion to Stay filed by the Chester Township Trustees (the "Trustees") along with the Trustees' premature Notice of Appeal of this Court's NOT final appealable November 26, 2014 Findings of Facts and Conclusions of Law. Present were Lance Yandell; Peggy Vitale; Joseph Weiss; Assistant Prosecutor, Bridey Matheney, attorney for the trustees; Ward Kinney; Mike Petruziello; Albert Parker; Ruth Philbrick; Clay Lawrence.

Pursuant to R.C. 1545.05 and 1545.06, this Court appoints and has the authority to remove Chester Township Park Board members and to oversee the Park District. Since 1984, this Court has maintained an open case (Case No. 84PC139) for those purposes. This Court has subject matter jurisdiction to hear this matter in that ongoing, open case.

In March 2014, the Chester Township Park District's Board brought to this Court's attention a copy of a document titled "Chester Township Park District 2013 Review" ("Review"), which called into question the conduct of the Township Park District's Board. Because of the Review, the Trustees withheld funds for the Park District in March 2014.

This Court had and has jurisdiction to hear this matter pursuant to R.C. Section 1545.06, which authorizes this Court to remove members of the Chester Township Park District Board on the Court's own motion.

To facilitate the Court's duties under R.C. 1545.06, the Court appointed former Eleventh District Court of Appeals Judge Mary Jane Trapp as Master Commissioner to investigate the matters raised by the Review. Master Commissioner Trapp filed a 252 page report, with recommendations. Jim Flaiz, Geauga County Prosecutor, indicated his agreement with this process to Joseph Weiss, Chairman of the Township Park Board.

Master Commissioner Trapp discovered that the Trustees, in 2002, improperly terminated the dedicated inside millage funding for the Chester Township Park District. This interfered with the Park Board's funding authority under R.C. 1545.20. Master Commissioner Trapp also found

that the Trustees, in the past, entered into an agreement that, in part, contravenes and conflicts with the prior order of then Geauga County Probate Court Judge Lavrich creating the Chester Township Park District. That agreement attempts to circumvent or improperly limit the statutory authority of the Park Board and the independent nature of the Park District as a separate governmental entity, in contravention of Judge Lavrich's 1984 order.

This Court has jurisdiction to make sure that Judge Lavrich's order creating the Chester Township Park District is complied with by the Township Trustees and the Park Board, as part of this Court's inherent authority to enforce its orders.

This Court's November 26, 2014 Judgment Entry Findings of Facts and Conclusions of Law is not a final appealable order that disposes of all issues, presently pending in this case. There are several issues still remaining to be decided in this case.

First, the Master Commissioner has been directed to meet with the Park Board and Trustees to address the 2015 funding and Court order- conflicting agreement issues.

Second, a hearing must be held on the Master Commissioner's fees issue. This hearing is scheduled for 11:00 A.M. on December 24, 2014.

The Trustees' Motion to Stay is denied for the following reasons:

1. The November 26, 2014 Judgment Entry Findings of facts Conclusion of Law is not a final appealable order. Therefore, the Township Trustees have no legal basis for their appeal, at this time.
2. Several actions and decisions remain pending by the Master Commissioner and the Court before an appeal is permitted.
3. The Trustees' are not likely to succeed an appeal because this Court had and has jurisdiction in this case (a) pursuant to its ongoing authority in Case No. 84PC139; (b) pursuant to R.C. 1545.06, as the Review raised issue with the performance of the Chester Township Park Board that required judicial review and consideration of possible Board member removal; (c) because this Court has the inherent power and jurisdiction to enforce Judge Lavrich's original order that created the Chester Township Park District and to prevent the contravention of that order by the Trustees; (d) because the Judgment Entry Findings of Facts and Conclusions of Law is not a final appealable order, as several issues remain to be adjudicated at the Probate Court level; (e) because enforcement of the pending interlocutory orders of this Court that the Trustees and Park Board meet with the Master Commissioner to address still

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pending issues will not cause adverse or prejudicial consequences to the Trustees or irreparable harm to the Trustees; and (f) because a hearing on the Master Commissioners fees issue is pending and scheduled for December 24, 2014.

4. On the other hand, a stay of the current interlocutory order of this Court requiring the Master Commissioner to facilitate funding for the Township Park District for 2015 would cause irreparable harm to the Park Board and the operation of the Park District.
5. The Trustees' Motion to Stay is not supported by any case law or any identified facts. The Trustees' stated reason for a Stay -- "to avoid adverse and prejudicial consequences" -- is not the legal standard for the granting of a Stay. The Trustees have stated no facts that a Stay is needed to prevent any irreparable harm or injury that cannot be remedied by an appeal, when timely, if appropriate.

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).

For each and all of these reasons, the Motion to Stay filed by the Trustees is denied.

Costs of the proceedings on the Motion to Stay are assessed to the Chester Township Trustees.

IT IS SO ORDERED.


TIMOTHY J. GRENDALL - JUDGE

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

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