

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

PAUL SMITH,
Appellant,

vs.

MONTOURSVILLE AREA
SCHOOL DISTRICT,
Appellee.

: No. 19-0507

:

:

: CIVIL ACTION:

: Admin. Agency Appeal

:

: *Appeal from School*

: *District Board of Directors*

MEMORANDUM OPINION

Before the Court is Appellant Paul Smith's ("Appellant") appeal challenging Appellee Montoursville Area School District's ("Appellee") Board of Directors' (the "Board") finding that the "change in [Appellant's] job title from *Technology Coordinator to Administrative Assistant to the Technology Department* is not a demotion and was not arbitrary, discriminatory or based on improper consideration[,] but rather was lawful and justified."¹ Following briefing, argument was held on August 12, 2019 before this Court. The matter is now ripe for review.

A brief overview of the procedural posture of this matter is appropriate as this is Appellant's third appeal and the subject matter spans three separate civil dockets. On September 11, 2017, Appellee's superintendent notified Appellant by letter ("Notice of Dismissal Charges and Right to Hearing") that she would be recommending to Appellee's Board that Appellant be dismissed for cause as a nonprofessional employee. Appellant was placed on unpaid administrative leave. Appellant requested a hearing. His hearing spanned three days: October 16, 2017, October 19, 2017, and November 15, 2017. Ultimately, the Board found that dismissal was not warranted and Appellant

¹ Record, vol. 1, Exhibit B, at 52 (Feb. 26, 2019).

returned to work on December 7, 2017.² However, the Board's decision was silent on whether it approved of Appellant's unpaid administrative leave. On January 4, 2018, Appellant filed his first appeal (CV-2018-0054) challenging the Board's failure to provide him back pay and benefits for the period when he was on unpaid administrative leave (September 11, 2017 - December 6, 2017).

On January 5, 2018, Appellant was notified by letter from Appellee's solicitor ("Notice of Intent to Recommend Job Title and Job Duty Modification") that Appellee's superintendent would be recommending to the Board that Appellant's job title and duties be modified.³ On January 9, 2018, the Board approved the superintendent's recommendation. On January 24, 2018, Appellant contested the modification as no hearing had occurred.⁴ On February 2, 2018, the board advised Appellant that his request for a hearing was denied.⁵ On February 9, 2018, Appellant filed his second appeal (CV-2018-0197) challenging Appellee's refusal to grant a hearing related to the modification of his job title and job duties, which he asserted were equivalent to a demotion.⁶

On April 24, 2018, addressing the appeals in reverse order, this Court ruled ("April Opinion") that Appellant was entitled to a hearing before Appellee's Board on the superintendent's recommendation to revise Appellant's job title and job description.⁷ On June 1, 2018, the Court found ("June Opinion") that Appellee had violated Appellant's

² *Paul Smith v. Montoursville Area School District*, No. 18-054, Appeal of Local Agency Adjudication, Exhibit A, at 26 (Jan. 4, 2018).

³ *Paul Smith v. Montoursville Area School District*, No. 18-197, Appeal of Local Agency Adjudication & Refusal by Local Agency to Grant a Hearing, ex. D, at 1 (Feb. 9, 2018).

⁴ *Id.*, Ex. G.

⁵ *Id.*, Ex. H.

⁶ *Id.* at 6-7.

⁷ *Paul Smith v. Montoursville Area School District*, No. 18-197, Opinion & Order: Motion to Dismiss Appeal 4 (Lyco. Com. Pl. Apr. 24, 2018) [hereinafter "April Opinion"].

due process rights related to the dismissal hearing by denying Appellant a “fully compliant *Loudermill* hearing and the benefits of Section 514’s requirement that notice come from the Board.”⁸ In its June Opinion, the Court reiterated that “ ‘nonprofessional public school employees have a property right in their expectation of continued employment, as defined in Section 514, and the Board must comply with procedural due process safeguards when dismissing them for cause.’ ”⁹

The present appeal raises the following issues:

- 1) Appellant was denied the fair notice and impartial tribunal that due process requires;
- 2) The Findings [that] Appellant testified falsely about his education technology coordinator job description and[;] therefore[,] that he was not credible[,] are arbitrary and capricious;
- 3) The evidence is overwhelming that the “certification” rationale for demotion was a fabrication by Superintendent Bason;
- 4) The demotion of Appellant is invalid because it was founded on improper considerations and was arbitrary and capricious; and
- 5) As this Court had previously ruled, Appellant had a right to a hearing.¹⁰

This Opinion only addresses Appellant’s fifth issue as the Court agrees with Appellee that Appellant does not possess a property right in his job title or former duties as an “Educational Technology Coordinator.”¹¹ Upon reconsideration of the precedent surrounding the due process rights of nonprofessional employees, this Court now believes the holding expressed in its April Opinion regarding due process was

⁸ *Paul Smith v. Montoursville Area School District*, No. 18-054, Opinion & Order: Motion to Dismiss Appeal 6-7 (Lyc. Com. Pl. June 1, 2018) [hereinafter “June Opinion”].

⁹ *Id.* (quoting *Lewis v. Sch. Dist. of Philadelphia*, 690 A.2d 814, 817 (Pa. Commw. Ct. 1997)).

¹⁰ Appellant’s Brief Table of Contents (July 1, 2019) [hereinafter “Appellant’s Brief”].

¹¹ Appellee’s Brief 13 (July 30, 2019). Appellant argues that “Educational Technology Coordinator” was his original position’s title. Appellant’s Brief at 17. For reasons that will be made clear below, the Court need not address this argument.

erroneous.¹² Although the Court sympathizes with Appellant’s inherent belief that he has been wronged and the tenets of due process demand a hearing, the Pennsylvania legislature has not provided such a remedy through the Commonwealth’s Public School Code of 1949 (“PSC”).

Pursuant to Pennsylvania Administrative Agency Law (“AAL”), “[n]o adjudication of a local agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard.”¹³ The AAL defines “adjudication” as:

Any final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made. The term does not include any order based upon a proceeding before a court or which involves the seizure or forfeiture of property, paroles, pardons or releases from mental institutions.¹⁴

The Pennsylvania Supreme Court has held that under the AAL a governmental employee does not possess a “personal or property right” in his employment position unless the employee can point to a contract or statute that asserts the employee has a “legitimate expectation of continued employment” in the employment position.¹⁵

Regarding employment with the Commonwealth, the Supreme Court has further opined,

[A]s a general rule, Pennsylvania law holds that “employees are at-will, absent a contract, and may be terminated at any time, for any reason or

¹² The “clearly erroneous” exception to the law of the case doctrine allows this Court to reconsider its former ruling. See *Samer v. Dashner*, 2016 WL 831003, at *2 (Pa. Commw. Ct. Mar. 3, 2016); accord *Com. v. Starr*, 664 A.2d 1326, 1332 (Pa. 1995). Also, the Court does not believe that the law of the case doctrine’s aim of promoting judicial economy and ensuring uniformity are affronted by this Court’s reconsideration of its own ruling under these circumstances. *Starr*, 664 A.2d at 1331. Further, the due process issue is procedurally before this Court as Appellee devoted more than ten (10) pages arguing the issue and Appellant also confronts the issue, relying on his *Brief in Opposition to Motions to Dismiss* submitted under docket number 18-0197. Appellant’s Brief at 30.

¹³ 2 Pa.C.S.A. § 553 (1978).

¹⁴ 2 Pa.C.S.A. § 101 (2007).

¹⁵ *Werner v. Zazyszny*, 681 A.2d 1331, 1336 (Pa. 1996) (internal citations omitted).

for no reason.” This general rule is not abrogated just because the employee is a governmental worker since one does not have a *per se* right in governmental employment.¹⁶

That is, the “at-will doctrine creates a strong presumption that a contractual employment relationship does not exist, and it impedes an employee's ability to bring a cause of action for the termination of the employment relationship.”¹⁷ As no contractual right has been asserted here, the Court turns to the PSC to determine whether Appellant possesses a statutory right to contest his demotion.

Article XI of the PSC governs “professional employes” and expressly requires a hearing before the board of school directors if the employee does not consent to his or her proposed demotion.¹⁸ Conversely, the PSC is silent on a “nonprofessional” employee’s due process rights, except for the right afforded every employee when he or she is dismissed for cause:

The board of school directors in any school district, except as herein otherwise provided, shall after due notice, giving the reasons therefor, and after hearing if demanded, have the right at any time to remove any of its officers, employes, or appointees for incompetency, intemperance, neglect of duty, violation of any of the school laws of this Commonwealth, or other improper conduct.

“Removal” has been defined as “ ‘discharge or dismissal.’ ”¹⁹

Appellee concedes that he does not meet the definition of a “professional employee” as defined by the PSC.²⁰ Based on a plain reading of the PSC, it is clear that nonprofessional employees do not enjoy the same privileges as professional

¹⁶ *Id.* at 1335 (internal citations omitted).

¹⁷ *Gilmore v. Borough of Kutztown*, 2015 WL 6474335, at *7 (Pa. Commw. Ct. Oct. 16, 2015).

¹⁸ 24 P.S. § 11-1151 (1963).

¹⁹ *Moriarta v. State Coll. Area Sch. Dist.*, 601 A.2d 872, 873–74 (Pa. Commw. Ct. 1992).

²⁰ 24 P.S. § 11-1101 (“The term ‘professional employe’ shall include those who are certificated as teachers, supervisors, supervising principals, principals, assistant principals, vice-principals, directors of vocational education, dental hygienists, visiting teachers, home and school visitors, school counselors,

employees.²¹ A nonprofessional employee's statutory right to a hearing is limited to dismissal for cause under § 5-514.²² Because the PSC does not expressly grant nonprofessional employees a statutory right to a hearing in cases of nonconsensual demotion, Appellant cannot claim that he possessed a "personal or property right" under the AAL that was violated when his job title and duties were altered without a hearing.

In this Court's April Opinion, it held that an "adjudication" under the AAL applies to this case because a decision regarding Appellant's "privileges," versus his "property rights," was at issue.²³ The Court also relied on *DeLuca v. Hazleton Police Department* to support the alternative proposition that Appellant's diminished reputation would implicate the AAL under the "stigma-plus" test.²⁴ Regarding the former, the Supreme Court has held that the "privileges" term under the AAL's "adjudication" moniker does not entitle an at-will employee to an administrative hearing.²⁵ Concerning the latter, *DeLuca's* "stigma-plus" test is not applicable to Appellant's circumstances.

The Court in *DeLuca* found that the "stigma-plus" test was satisfied because the plaintiff had the "stigma" of being suspended from a tow truck rotation based on allegations of criminal activity that deeply tarnished his reputation, as well as the "plus" factor of a "legitimate expectation" of continued employment by remaining on the tow

child nutrition program specialists, school librarians, school secretaries the selection of whom is on the basis of merit as determined by eligibility lists and school nurses.").

²¹ *Delliponti v. DeAngelis*, 681 A.2d 1261, 1264 (Pa. 1996) ("The Commonwealth Court held that the plaintiff was a nonprofessional employee, and as such, section 514 of the Public School Code, Act of March 10, 1949, P.L. 30, as amended, provided only limited statutory protection from dismissal." (citing *Sergi v. Pittsburgh School Dist.*, 368 A.2d 1359, 1361 (Pa. Commw. Ct. 1977) (internal citation omitted))).

²² See *Kozlosky v. Lakeland Sch. Dist.*, 2008 WL 9401270, at *3 (Pa. Commw. Ct. Apr. 18, 2008) ("this Court has also held that Section 514 provides only limited statutory protection for nonprofessional employees").

²³ April Opinion at 3.

²⁴ *Id.* (quoting *DeLuca v. Hazleton Police Dep't*, 144 A.3d 266, 277 (Pa. Commw. Ct. 2016)).

²⁵ See *Werner*, 681 A.2d at 1337.

truck rotation.²⁶ In the present case, no “plus” factor exists because Appellant does not possess a statutory right to contest his demotion and; therefore, by extension, does not possess a legally enforceable “legitimate expectation” of continued employment.²⁷

In the June Opinion, the Court relied on *Lewis v. School District of Philadelphia* for the proposition that § 5-514 grants nonprofessional public school employees a property right under the AAL that entitles them to a hearing in matters of dismissal.²⁸ This Court’s reliance on *Lewis* was correct because the Commonwealth Court of Pennsylvania’s reasoning in *Lewis* pertained to the *dismissal* of the plaintiff, a custodian with the School District of Philadelphia.²⁹ The Court’s reliance on *Lewis* in the June Opinion should not be interpreted as supporting Appellant’s claim that § 5-514’s demand of a hearing for dismissals for cause extends to a non-dismissal situation such as a demotion.

In *Delliponti v. DeAngelis*, the Supreme Court held that the qualifier “terminations for economic reasons,” does not elicit § 5-514’s due process protections.³⁰ The Court interprets *Delliponti* as standing for the proposition that qualifies not enumerated in § 5-514, such as a demotion, are beyond the purview of § 5-514’s hearing requirement.³¹ The Court’s position is bolstered by the reality that even with a professional employee’s

²⁶ *DeLuca v. Hazleton Police Dep’t*, 144 A.3d 266, 276-77 (Pa. Commw. Ct. 2016).

²⁷ *Viviano v. Hazleton Area Sch. Dist.*, 2016 WL 4417191, at *7 (M.D. Pa. Aug. 19, 2016) (“Thus, in order to prevail on a ‘due process claim for deprivation of a liberty interest in reputation, a plaintiff must show a stigma to his reputation plus deprivation of some additional right or interest.’”) (quoting *Hill v. Borough of Kutztown*, 455 F.3d 225, 236 (3d Cir. 2006)).

²⁸ June Opinion at 5 (quoting *Lewis v. Sch. Dist. of Philadelphia*, 690 A.2d 814, 817 (Pa. Commw. Ct. 1997)).

²⁹ *Lewis v. Sch. Dist. of Philadelphia*, 690 A.2d 814, 815, 817 (Pa. Commw. Ct. 1997).

³⁰ See *Delliponti*, 681 A.2d at 1264; accord *Pefferman v. Sch. Dist. of Pittsburgh*, 387 A.2d 157, 158 (Pa. Commw. Ct. 1978); *Sergi v. Sch. Dist. of City of Pittsburgh*, 368 A.2d 1359, 1361 (Pa. Commw. Ct. 1977).

³¹ See 1 Pa.C.S.A. § 1921 (“When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”), § 1922 (“In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among

statutory right to a hearing in cases of demotion, the law does not prevent a school district from assigning a professional employee to “particular classes, or to particular schools or positions.”³² The Court believes permitting a nonprofessional employee due process rights that are superior to a professional employee is an affront to the legislature’s intent. Appellant has not provided a case, and the Court has not found a case, that demands a different result.³³

At argument, Appellant relied on the persuasive authority of *Miller v. Quakertown Community School District*.³⁴ However, the Bucks County Court of Common Pleas in *Miller* did not elaborate on its conclusion that demotion of a nonprofessional employee also demands due process protections. It appears that the Bucks County Court of Common Pleas based its decision on two facts: (1) the school board’s concession that a hearing was necessary and (2) the severity of the demotion, which involved a sixty (60) percent reduction in the appellant’s salary.³⁵ Neither fact is present here. By Appellant’s own framing of the factual posture, his demotion concerned alterations to his job title and job duties as well as a biweekly salary decrease of approximately one hundred and fifty (150) dollars.³⁶ Under these circumstances, the Court agrees with the learned opinion of the Honorable Lawrence F. Stengel on the United States District

others, may be used: [. . .] That the General Assembly intends the entire statute to be effective and certain.”).

³² *Board of Sch. Directors of Abington Sch. Dist. v. Pittenger*, 305 A.2d 382, 385 (Pa. Commw. Ct. 1973) (“There is no doubt that the Legislature intended the administrators of school districts to have the power to assign its professional employees to particular classes, or to particular schools or positions in accordance with its judgment and discretion reasonably exercised.”).

³³ As Appellant relied on his *Brief in Opposition to Motions to Dismiss* under docket number 18-0197 in his current brief, the Court also relied on this brief as well. Appellant’s Brief at 30.

³⁴ See generally *Miller v. Quakertown Cmty. Sch. Dist.*, 18 Pa. D. & C. 3d 416 (Bucks Com. Pl. 1981).

³⁵ *Id.* at 420.

³⁶ Appellant’s Brief 5-9.

Court for the Eastern District of Pennsylvania that only dismissal of a nonprofessional employee will trigger due process protections under § 5-514.³⁷

Based on the reasoning articulated above, Appellant's appeal is **DISMISSED**.³⁸

IT IS SO ORDERED this 29th day of August 2019.

BY THE COURT:

Eric R. Linhardt, Judge

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³⁷ See *Organtini v. Methacton Sch. Dist.*, 2008 WL 324022, at *5 (E.D. Pa. Feb. 6, 2008).

³⁸ This Court's ruling does not affect its June Opinion as that opinion's holding regards Appellant's due process rights when a dismissal for cause is at issue.