

Commonwealth Of Kentucky

Court Of Appeals

NO. 2003-CA-000568-MR

T. L. IRWIN

APPELLANT

v. APPEAL FROM BRECKINRIDGE CIRCUIT COURT
HONORABLE SAM H. MONARCH, JUDGE
ACTION NO. 00-CI-00069

CITY OF HARDINSBURG,
RON MCKINNEY, AND DONALD YOUNG

APPELLEES

OPINION
AFFIRMING

** ** * * * ** **

BEFORE: EMBERTON, CHIEF JUDGE; BUCKINGHAM AND KNOPF, JUDGES.

KNOPF, JUDGE: T. L. Irwin appeals from an order of the Breckinridge Circuit Court, entered February 21, 2003, dismissing his complaint against the City of Hardinsburg, its mayor, and its chief of police. Irwin claims that the mayor wrongfully discharged him from employment as a part-time Hardinsburg police officer. We agree with the trial court that the discharge, without cause and without a hearing, was within the mayor's authority.

Irwin served the city of Hardinsburg for several years. He was initially employed full-time, but after October 1994 he worked only one or two days per week. In August 1999, "due to the financial constraints" of the police department's budget, the mayor, on behalf of the city, laid Irwin off. For the purposes of this action, the city concedes that the lay-off was in effect a discharge.

Irwin contends that he could only be discharged for cause, which has not been shown, and that cause must be established at a hearing, which the city did not provide. The trial court ruled that in fifth-class cities, such as Hardinsburg, that have not adopted a civil service commission and have not accepted police-department funding from the state, police officers serve at the pleasure of the executive and may be discharged at any time and for any reason not violative of an overriding public policy. We agree.

The source of this authority is KRS 83A.080(2), which provides that

[a]ll nonelected city officers shall be appointed by the executive authority of the city and, except in cities of the first class, all these appointments shall be with approval of the city legislative body if separate from the executive authority. The officers may be removed by the executive authority at will unless otherwise provided by statute or ordinance.

Absent a statute providing otherwise, therefore, Irwin's discharge at the mayor's¹ discretion was lawful.

Irwin contends that KRS 95.765 is a statute providing otherwise. It is true, as Irwin notes, that KRS 95.765 provides in part that

no member of the police or fire departments shall be removed from the department or reduced in grade upon any reason except inefficiency, misconduct, insubordination or violation of law, or violation of rules adopted for the departments.

This statute, however, is part of the civil service commission provisions--KRS 95.761--95.784--that do not come into effect until by ordinance a fourth or fifth-class city adopts them.² Hardinsburg has not adopted a civil service plan.

Irwin, however, contends that, unlike the other provisions of KRS 95.761--95.784, KRS 95.765 need not be adopted to be effective. He argues that prior to 1980 KRS 95.700 protected police officers from dismissal without cause, and thus the repeal in 1980 of that statute should be deemed the General Assembly's way of making KRS 95.765 mandatory in its stead. We find this argument unpersuasive.

¹ Because Irwin has not contested the point, we assume that the mayor exercises Hardinsburg's executive authority.

² KRS 95.761; Wilson v. Jeffersontown, Ky., 511 S.W.2d 115 (1974); City of Pikeville v. May, Ky., 374 S.W.2d 843 (1964). See also City of Munfordville v. Sheldon, Ky., 977 S.W.2d 497 (1998) (confirming this interpretation of the statutes in dicta).

The repeal of KRS 95.700 coincided with the adoption of KRS 83A.080. As this court noted soon after those changes, "in enacting KRS chapter 83A in 1980 the Legislature intended to place a far greater degree of authority in mayors of fifth-class cities with respect to the appointment and removal of nonelective city officers than had previously been the case."³

We believe this assessment of the legislative intent comports with the language of the statutes. Although previously KRS 95.700 required a showing of cause, the repeal of that statute and the enactment of KRS 83A.080 seems plainly to have been intended to give mayors of fifth-class cities the authority to dismiss police officers and other nonelective officers at will. Those statutory changes did not, as Irwin contends, imply any modification of the settled interpretation that KRS 95.765 is not effective unless adopted as part of a civil service plan.

The cases upon which Irwin relies are not to the contrary. In City of Madisonville v. Sisk⁴ and Jones v. Hillview Civil Service Commission,⁵ this Court held that KRS 95.765 applied to the dismissal of a police officer. In both cases, however, the cities, unlike Hardinsburg, had apparently adopted

³ McCloud v. Whitt, Ky. App., 639 S.W.2d 375, 376 (1982).

⁴ Ky. App., 783 S.W.2d 885 (1990).

⁵ Ky. App., 760 S.W.2d 91 (1988).

civil-service plans. In neither case, moreover, does the court address the issues presently before us.

In sum, because Hardinsburg has not adopted a civil-service plan, the trial court correctly ruled that KRS 95.765 did not qualify the mayor's authority under KRS 83A.080 to discharge Irwin at will and without a hearing. Accordingly, we affirm the February 23, 2003, order of the Breckinridge Circuit Court.

ALL CONCUR.

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