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APRIL 16, 2008
(FILE NO. 2007-SC-0502-D)**

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000424-MR

COMMONWEALTH OF KENTUCKY
JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF CORRECTIONS;
STEPHEN B. PENCE

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 05-CI-01119

JOANN SEARCY

APPELLEE

OPINION REVERSING

** ** *

BEFORE: ABRAMSON AND STUMBO, JUDGES; KNOPF,¹ SENIOR JUDGE.

STUMBO, JUDGE: This appeal is taken from an Order reversing a decision of the

Kentucky Personnel Board. Upon a careful review of the record and the law, this Court

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

finds that the decision of the Personnel Board was correct and therefore reverses the order of the Franklin Circuit Court.

Joann Searcy (hereinafter Appellee) had been an employee of the Kentucky Department of Corrections since 1995. In September 2004, Appellee was promoted to Offender Records Specialist at the Luther Lockett Correctional Complex. On December 1, 2004, she was promoted to the position of Offender Information Supervisor. Appellee had to undergo a six-month probationary period before this promotion could become permanent.

Circumstances in this new position were not ideal for Appellee and on December 28, 2004, she tendered her resignation to Warden Ralph Dailey. The dispute in this case revolves around this resignation. Appellee's resignation stated, in full: "Effective February 1, 2005, I will be resigning from my position with the Department of Corrections as Offender Information Supervisor. I have enjoyed my time with the Department of Corrections, but am looking forward to new avenues for my career and profession." Appellee contends that the resignation was from this new position of Offender Information Supervisor only while the Kentucky Department of Corrections (hereinafter Appellant) contends it was a resignation from state employment entirely.

On January 11, 2005, Appellee came to the office of Warden Dailey and asked if she could rescind her resignation. The Warden considered her verbal request overnight, then informed her that he would not allow the rescission. Upon receiving this verbal response, Appellee again approached the Warden on January 13, 2005, and

informed him that she was concerned that her resignation letter had been misinterpreted to mean a full resignation as opposed to a resignation from the position of Offender Information Supervisor. Appellee then made a written request of the Warden that her resignation be reconsidered.

In response to her written request, Warden Dailey wrote a memorandum setting forth his position that her letter “could only be defined as a resignation from the Department of Corrections. You cannot resign from a position.” He then declined to reconsider her resignation.

Appellee filed a grievance with the Kentucky Personnel Board. On May 25, 2005, an evidentiary hearing was held in front of a Hearing Officer. On June 14, 2005, the Hearing Officer made findings of fact and conclusions of law, recommending to the Personnel Board that the appeal be dismissed. The full Personnel Board considered the exceptions filed by Appellee and upheld the Hearing Officer’s findings and conclusions and dismissed the appeal.

Appellee then appealed to the Franklin Circuit Court. That court reversed the order of the Personnel Board and held:

1. KRS 18A.095 permits a Classified employee the right to rescind a resignation up to the time his or her employment terminates.
2. Even if KRS 18A.095 did not control, a Classified employee has the right to rescind a resignation prior to acceptance. There is no showing from the record that Ms. Searcy’s resignation was accepted prior to her attempted rescission.

3. KRS 18A.111 requires the Reversion of a Classified employee at any time during the term of a probationary period.
4. Ms. Searcy requested a reversion during her probationary period.
5. The Department of Corrections failed to honor Ms. Searcy's request to revert to a Grade 10.

This appeal followed.

Appellant argues that the lower court erred by finding KRS 18A.095 allows an employee to rescind a resignation up to the time his or her employment terminates, that there was no evidence to show acceptance of the resignation, and that Appellee was entitled to a reversion to her previous status.

The lower court found that KRS 18A.095 allowed Appellee to rescind her resignation prior to the effective date. The effective date of Appellee's resignation was February 1, 2005, and Appellee first tried to rescind her resignation January 11, 2005. If the lower court were correct, then Appellee should have been allowed to rescind her resignation. Unfortunately, this Court finds the lower court was incorrect. KRS 18A.095 deals with the dismissal, suspension, and penalization of classified employees. A classified employee, which Appellee was, is "an employee appointed to a position in the classified service whose appointment and continued employment are subject to the classified service provisions of this chapter." KRS 18A.005. KRS 18A.095 does not deal with the resignation of a classified employee. Nowhere within the statute is the word resignation even mentioned. A court has the ability to interpret statutes, but must

do so in a particular method. This method is clearly stated in *Gateway Const. Co. v. Wallbaum*, 356 S.W.2d 247 (Ky. 1962):

Statutory law has been held to be an expression of the intention of the Legislature. To interpret a statute, the common rule is to ascertain and determine the legislative intent . . . The best way in most cases to ascertain such intent or to determine the meaning of a statute is to look to the language used, but no intention must be read into the statute not justified by the language. The primary rule is to ascertain the intention from the words employed in enacting the statute and not to guess what the Legislature may have intended but did not express. Resort must be had first to the words, which are decisive if they are clear. The words of the statute are to be given their usual, ordinary, and everyday meaning.

Id. at 249. This statute is very clear. It does not mention resignation in any way and cannot be read to imply anything about it. It only deals with an employee's rights upon being dismissed, demoted, suspended, or otherwise penalized. Appellee was not dismissed or penalized in any way; she resigned. Therefore, KRS 18A.095 does not apply in this case.

The lower court found that there was no evidence to show that Appellee's resignation had been accepted by the appointing authority, thereby allowing her to rescind it. Appellant argues that the resignation had been accepted and, therefore Appellee was not able to rescind it. In *Board of Education of Wolfe County v. Rose*, 147 S.W.2d 83 (Ky. 1940), it was held that a "resignation may not be withdrawn after its acceptance." This rule is stated clearly throughout Kentucky law. *See Hogg v. Miller*, 182 S.W.2d 242 (Ky. 1944); *Saunders v. O'Bannon*, 87 S.W. 1105 (Ky. 1905). This rule applies to resignations which take place immediately and those that are prospective.

Saunders, supra; 82 A.L.R.2d 750 §2a. Once a resignation has been accepted, it can only be withdrawn “with the consent of the authority accepting, where no rights have intervened.” *Saunders*, at 1106.

In this case, there is ample evidence to show that the Appellee’s resignation had been accepted prior to her attempted rescission. Acceptance of a resignation is more than just physically taking a letter, there must also be some affirmative act showing acceptance. Acceptance may be “evidenced by a formal declaration, and it may be by parol, or it may be shown by performance of an official act which could not legally be performed unless the resignation was accepted.” 67 C.J.S. Officers §136; *see also Redmon v. McDaniel*, 540 S.W.2d 870 (Ky. 1976) (where there was acceptance once a resignation was given to a chief of county police, processed, and in front of a Merit Board); *Saunders, supra* (where acceptance by a board of trustees was shown by adopting a statement to that effect); *Gearhart v. Kentucky State Bd. of Edu.*, 355 S.W.2d 667 (Ky. 1962) (where members of a county board resigned and other people were appointed to their positions).

Here, evidence from the evidentiary hearing on May 25, 2005, reveals that Appellee’s resignation had been accepted prior to her January 11 attempt to rescind. On December 30, 2004, Warden Dailey sent a letter to John D. Rees, Commissioner of the Department of Corrections, informing him “[e]ffective February 1, 2005, the supervisor, Jo Ann Searcy, is resigning her position.” In this same letter Warden Dailey asks for permission to post and fill the newly vacant position. Then, on January 5, 2005, the

position was posted on the Commonwealth of Kentucky job board. It was again posted January 10. All three of these acts are official in nature, show that Appellee's resignation was accepted, and all took place before her initial attempt to rescind on January 11. Since the resignation had been accepted by informing the Commissioner and advertising the job, it became Warden Dailey's decision, as the appointing authority, whether or not to rescind Appellee's resignation upon her request. He refused this request, which was within his power.

Finally, Appellant argues that the court erred in finding Appellee had requested a reversion to her previous position. KRS 18A.111(5) states that "[a]n employee with status may request that he be reverted to a position in his former class at any time during the promotional probationary period." Appellee's promotional probationary period began December 1, 2004, and was to last for six months. While it is true at any time during those six months she could have asked for a reversion and been returned to her previous job, she did not do so. She asked to resign instead of revert. The Personnel Board, along with Warden Daily, thought that her letter of resignation was a resignation from state employment, not a reversion. "In cases where an administrative agency acts in its capacity as a trier of the facts, we have held that the findings of the agency are conclusive if supported by substantial evidence." *Kentucky State Racing Commission v. Fuller*, 481 S.W.2d 298, 307 (Ky. 1972). "If there is any substantial evidence to support the action of the administrative agency, it cannot be found to be arbitrary and will be sustained." *Taylor v. Coblin*, 461 S.W.2d 78, 80 (Ky. 1970).

Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; it is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.” *Kentucky State Racing Commission, supra*, citing *Chesapeake and Ohio Railway Company v. United States*, 298 F.Supp. 734 (D.C.1968). There is enough evidence in this case to be deemed substantial. During the May 25 evidentiary hearing, Warden Dailey, Theresa Bickers (Personnel Administrator for the Regional Personnel Office of the Department of Corrections), Deputy Warden Steven Adwell, and Lee Sheeting (Personnel Director for the Department of Corrections) all interpreted the letter of resignation to be a resignation from state employment. The Personnel Board found this evidence convincing and concluded Appellee had resigned from state employment. This is substantial enough evidence to sustain its finding.

Since there was a finding that Appellee had resigned from state government and not just the Supervisor position, it would not matter whether or not she actually requested a reversion after the acceptance of her resignation. Once her resignation had been accepted, she lost the right to revert.

For the reasons set forth herein, the judgment of the Franklin Circuit Court is hereby reversed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Michael D. Triplett
Justice and Public Safety Cabinet
Office of Legal Services
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Robert V. Bullock
Frankfort, Kentucky