

COMMONWEALTH COURT OF PENNSYLVANIA

Jerry Notarianni and Kim Yencho v. Patrick O'Malley, et al.

Notarianni · No. No. 733 C.D. 2016 · Decided April 12, 2017

SUMMARY

The Pennsylvania Commonwealth Court affirmed the denial of preliminary mandatory injunctive relief sought by Jerry Notarianni and Kim Yencho. The appellants challenged county appointments as allegedly violating the Sunshine Act, the Lackawanna County Home Rule Charter, and limits on lame-duck governmental action, and sought designation of Notarianni as the Minority Commissioner. The court concluded that the appellants had not shown a clear right to relief or satisfied the requirements for a preliminary mandatory injunction.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Robert Simpson; Michael H. Wojcik; James Gardner Colins, Senior Judge
JURISDICTION	Pennsylvania
DECIDED	April 12, 2017
DOCKET	No. 733 C.D. 2016
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appellants appealed the Lackawanna County Court of Common Pleas' denial of preliminary mandatory injunctive and declaratory relief concerning county appointments, alleged Sunshine Act violations, alleged lame-duck appointments, and Notarianni's claim to Minority Commissioner status.
STANDARD OF REVIEW	Review of an order granting or denying a preliminary injunction is limited to examining the record for apparently reasonable grounds supporting the trial court's decision and for abuse of discretion; the appellate court does not inquire into the merits. A mandatory injunction receives heightened scrutiny and requires a very strong showing.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Jerry Notarianni, Kim Yencho v. Patrick O'Malley, Laureen Cummings, John Brazil, John Cerra, Andy Wallace, Don Frederickson,

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether appellants established the prerequisites for a preliminary mandatory injunction requiring removal of county officials allegedly appointed outside a public meeting in violation of the Sunshine Act and Home Rule Charter.
2. Whether written assent on hiring forms constituted a vote or other official action requiring the appointments to be made at a public meeting under the Sunshine Act.
3. Whether the lame-duck board's appointment of the county solicitor unlawfully bound the successor board under the rule against lame-duck commitments.
4. Whether Notarianni established a clear right to be designated Minority Commissioner based on an alleged voting alliance between the other two commissioners and thereby appoint a minority solicitor.
5. Whether the appeal should be dismissed in part because the trial court dismissed the removal claims, including whether the open-government issues were capable of repetition yet evading review.

HOLDINGS

1. A party seeking preliminary mandatory injunctive relief must establish all six prerequisites, including a clear right to relief or, in the injunction context, a substantial legal question, irreparable harm, restoration of the status quo, lack of an adequate remedy at law, greater injury from denial than issuance, and consistency with the public interest. Failure to establish any one prerequisite warrants denial.
2. Appellants did not establish a clear right or sufficient likelihood of success on their claim that the appointments of at-will county officials were invalid because they were effected outside a public meeting. The Sunshine Act does not expressly classify hiring or appointment of these county employees as official action requiring a public meeting, and the written assents were not shown to be votes on a motion, proposal, resolution, rule, regulation, ordinance, report, or order.
3. The lame-duck board's appointment of the county solicitor was not shown to be invalid as an attempt to bind the successor board because the position was at-will and subject to removal by the appointing authority; unlike a binding contract, the appointment did not impose a long-term obligation on the successor board.
4. Notarianni did not establish a clear legal right to be designated Minority Commissioner or to appoint a separate minority solicitor based on two challenged appointment decisions allegedly reflecting a voting bloc.

5. The court declined to dismiss the appeal in part because the open-government issues were important to the public, capable of repetition, and yet evading review.

KEY QUOTATIONS

“Our “review is limited to determining whether the record demonstrates any apparently reasonable grounds to support the trial court’s decision.”” (7)

“Because mandatory injunctions are issued more sparingly than prohibitory injunctions, Mazzi v. Commonwealth, 432 A.2d 985 (Pa. 1981), courts apply greater scrutiny.” (7)

“The case for a mandatory injunction must be made by a very strong showing, one stronger than required for a restraining-type injunction.” (12)

“The essence of official action is its connection to agency business.” (14)

“Appointments to public positions ... where no vacancies existed are invalid, regardless of the past practices of the local municipality because an incumbent governing body lacks the power to appoint to positions where vacancies will not occur until after [its] term in office expires.” (16)

“Because Appellants did not establish all six prerequisites to injunctive relief as to either their improper appointment or Minority Commissioner claims, and there are reasonable grounds to support the trial court’s denial of the preliminary injunctive relief sought, we affirm the trial court’s order.” (23)

FACTUAL BACKGROUND

Lackawanna County uses a three-commissioner form of government under its Home Rule Charter. Before the newly elected commissioners took office on January 4, 2016, the lame-duck board appointed John Brazil as county solicitor, and Brazil named Don Frederickson assistant solicitor; after taking office, two commissioners approved Andy Wallace as chief clerk, while Republican Commissioner Laureen Cummings appointed John Cerra as minority solicitor. The appointments were made through written assent on hiring forms rather than votes at public meetings, consistent with the county's longstanding practice. Commissioner Jerry Notarianni and taxpayer Kim Yencho challenged the appointments and sought to have Notarianni designated Minority Commissioner based on an alleged voting bloc between the other two commissioners.

PROCEDURAL HISTORY

Appellants filed a two-count complaint and a petition for injunctive relief, mandatory injunction, and declaratory judgment in the Lackawanna County Court of Common Pleas. The trial court denied preliminary relief after a hearing, finding no irreparable harm and determining that removal of the county officials would cause greater harm than retaining them. The trial court later dismissed the removal claims on preliminary objections as subject to quo warranto, while the Minority Commissioner claims survived. The Commonwealth Court affirmed the denial of preliminary injunctive relief.

DISPOSITION

affirmed

CASES CITED

- Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc., 828 A.2d 995 (Pa. 2003)
- Lee Publ'ns, Inc. v. Dickinson Sch. of Law, 848 A.2d 178 (Pa. Cmwlth.) (en banc), appeal denied, 857 A.2d 675 (Pa. 2004)
- Reed v. Harrisburg City Council, 927 A.2d 698 (Pa. Cmwlth. 2007)
- Giant Eagle Mkts. Co. v. United Food & Commercial Workers Union, 652 A.2d 1286 (Pa. 1995)
- Watts v. Manheim Twp. Sch. Dist., 84 A.3d 378, 391 (Pa. Cmwlth. 2014), aff'd, 121 A.3d 964 (Pa. 2015)
- Wyland v. W. Shore Sch. Dist., 52 A.3d 572, 582-83 (Pa. Cmwlth. 2012)
- Mazzi v. Commonwealth, 432 A.2d 985 (Pa. 1981)
- Purcell v. Milton Hershey Sch. Alumni Ass'n, 884 A.2d 372 (Pa. Cmwlth. 2005)
- SEIU Healthcare Pa. v. Commonwealth, 104 A.3d 495, 505, 508 (Pa. 2014)
- Fischer v. Dep't of Pub. Welfare, 439 A.2d 1172 (Pa. 1982)
- Maloney v. Lackawanna County Commissioners (C.P. Lackawanna, No. 2004 Civil 339, filed February 18, 2004), 2004 WL 5175141
- Maloney v. Lackawanna Cnty. Comm'rs (Pa. Cmwlth., No. 633 C.D. 2004, filed October 6, 2004) (unreported)
- Dusman v. Bd. of Dirs. of Chambersburg Area Sch. Dist., 123 A.3d 354 (Pa. Cmwlth. 2015)
- Smith v. Twp. of Richmond, 82 A.3d 407 (Pa. 2013)
- Public Opinion v. Chambersburg Area School District, 654 A.2d 284, 289 (Pa. Cmwlth. 1995)
- Preston v. Saucon Valley Sch. Dist., 666 A.2d 1120 (Pa. Cmwlth. 1995)
- Morning Call v. Bd. of Sch. Dirs., 642 A.2d 619 (Pa. Cmwlth. 1994)
- Taylor v. Borough Council Emmaus Borough, 721 A.2d 388 (Pa. Cmwlth. 1998)
- Lobolito, Inc. v. North Pocono School District, 755 A.2d 1287, 1289 (Pa. 2000)
- Borough of Pitcairn v. Westwood, 848 A.2d 158 (Pa. Cmwlth. 2004)
- Ross Township v. Menhorn, 588 A.2d 1347 (Pa. Cmwlth. 1991)
- Commonwealth ex rel. Teller v. Jennings, 186 A.2d 916, 918 (Pa. 1963)
- Grine v. Cnty. of Centre, 138 A.3d 88, 101 (Pa. Cmwlth. 2016) (en banc)
- Patriot-News Co. v. Empowerment Team of Harrisburg Sch. Dist. Members, 763 A.2d 539 (Pa. Cmwlth. 2000)
- Reed v. Harrisburg City Council, 927 A.2d 698 (Pa. Cmwlth. 2007)
- Public Defender's Office of Venango Cnty. v. Venango Cnty. Ct. of Common Pleas, 893 A.2d 1275 (Pa. 2006)

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