

SUPREME COURT OF OHIO

State ex rel. Ragozine v. Shaker

96 Ohio St. 3d 201 (Ohio 2002) · Decided August 21, 2002

SUMMARY

The Ohio Supreme Court affirmed dismissal of a prohibition action brought by members of a school board who sought to prevent a visiting judge from proceeding with a statutory removal case. The court held that the statutory 30-day hearing requirement was not jurisdictional, that the board members had waived any service objection by voluntarily appearing, and that they had an adequate remedy by appeal.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Moyer, C.J.; Douglas, J.; Resnick, J.; F.E. Sweeney, J.; Pfeifer, J.; Cook, J.; Lundberg Stratton, J.
JURISDICTION	Ohio
DECIDED	August 21, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	The board members appealed as of right from the Trumbull County Court of Appeals' dismissal under Civ.R. 12(B)(6) of their complaint seeking a writ of prohibition against the visiting judge presiding over a statutory removal proceeding.
STANDARD OF REVIEW	On review of a Civ.R. 12(B)(6) dismissal, the court presumes all factual allegations in the complaint to be true and makes all reasonable inferences in the claimant's favor; dismissal is proper when it appears beyond doubt that the claimant can prove no set of facts warranting relief. A writ of prohibition requires a patent and unambiguous lack of jurisdiction, and is unavailable when the respondent court has general subject-matter jurisdiction and an adequate remedy by appeal exists.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio; precedential.
PARTIES	Members of the Girard City School District Board of Education v. Mitchell F. Shaker, Judge

TOPICS

civil procedure

subject matter jurisdiction

statutory interpretation

municipal law

remedies

PRACTICE AREAS

civil procedure

extraordinary writs

public officer removal

municipal law

QUESTIONS PRESENTED

1. Whether the failure to conduct the statutory removal proceeding hearing within thirty days after filing the complaint under R.C. 3.08 deprived the common pleas court of subject-matter jurisdiction.
2. Whether the board members were entitled to a writ of prohibition because they were not served with the removal complaint at least ten days before the hearing.
3. Whether the board members had stated a viable claim for a writ of prohibition when the alleged jurisdictional defects could be addressed by appeal.

HOLDINGS

1. The thirty-day requirement in R.C. 3.08 is directory rather than jurisdictional; failure to conduct the removal hearing within thirty days did not create a patent and unambiguous lack of subject-matter jurisdiction.
2. The alleged failure to serve the board members with the complaint at least ten days before the hearing did not entitle them to a writ of prohibition because they voluntarily submitted to the court's jurisdiction and the court later ordered service more than ten days before the scheduled hearing.
3. The board members were not entitled to a writ of prohibition because Judge Shaker did not patently and unambiguously lack jurisdiction and the board members had an adequate remedy by appeal.

KEY QUOTATIONS

“The court’s dismissal of the prohibition complaint for failure to state a claim upon which relief could be granted was appropriate if, after all factual allegations of the complaint were presumed true and all reasonable inferences were made in the board members’ favor, it appeared beyond doubt that the board members could prove no set of facts warranting the requested extraordinary relief in prohibition.” (96 Ohio St. 3d at 202)

“As a general rule, a statute providing a time for the performance of an official duty will be construed as directory so far as time for performance is concerned, especially where the statute fixes the time simply for convenience or orderly procedure.” (96 Ohio St. 3d at 203)

“Based on the foregoing, Judge Shaker did not patently and unambiguously lack jurisdiction over the removal case, and the board members have an adequate remedy by appeal from any adverse judgment in that case.” (96 Ohio St. 3d at 204)

FACTUAL BACKGROUND

The Girard City School District constructed a new intermediate school, but students later experienced physical ailments and environmental testing revealed ventilation problems. The school was closed on May 1, 2001. On

September 19, 2001, 1,612 petitioners filed a complaint under R.C. 3.07 et seq. seeking removal and forfeiture of office of the school board members. The visiting judge scheduled a November 5 hearing after denying the board members' jurisdictional objections based on the statutory thirty-day hearing period and ten-day service requirement.

PROCEDURAL HISTORY

Petitioners filed a statutory removal complaint in the Trumbull County Court of Common Pleas against members of the Girard City School District Board of Education. After the visiting judge denied the board members' motions to dismiss and to contest admission of petitioners' counsel, the board members sought a writ of prohibition in the court of appeals. The court of appeals dismissed the prohibition action for failure to state a claim, and the Supreme Court of Ohio affirmed.

DISPOSITION

affirmed

CASES CITED

- State ex rel. Suburban Constr. Co. v. Skok, 85 Ohio St. 3d 645, 710 N.E.2d 710 (1999)
- State ex rel. Key v. Spicer, 91 Ohio St. 3d 469, 746 N.E.2d 1119 (2001)
- State ex rel. Jones v. Farrar, 146 Ohio St. 467, 66 N.E.2d 531 (1946)
- State v. Bellman, 86 Ohio St. 3d 208, 714 N.E.2d 381 (1999)
- In re Davis, 84 Ohio St. 3d 520, 705 N.E.2d 1219 (1999)
- Nibert v. Ohio Dept. of Rehab. & Corr., 84 Ohio St. 3d 100, 702 N.E.2d 70 (1998)
- In re Removal of Osuna, 116 Ohio App. 3d 339, 688 N.E.2d 42 (1996)
- State ex rel. Stokes v. Cuyahoga Cty. Probate Court, 22 Ohio St. 2d 120, 258 N.E.2d 594 (1970)
- Pengov v. White, 146 Ohio App. 3d 402, 766 N.E.2d 228 (2001)
- Planck v. Auglaize Soil & Water Conservation Dist., 1999 WL 693159 (Ohio App. Sept. 2, 1999)
- Ramsey v. A.I.U. Ins. Co., 1985 WL 10329 (Ohio App. June 18, 1985)
- Parente v. Day, 16 Ohio App. 2d 35, 241 N.E.2d 280 (1968)
- In re Removal of Tunstall, 28 Ohio Law Abs. 635 (C.P. 1939)
- Maryhew v. Yova, 11 Ohio St. 3d 154, 464 N.E.2d 538 (1984)
- Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision, 87 Ohio St. 3d 363, 721 N.E.2d 40 (2000)