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Roetzel attorney scores win for probate court judge

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A recent Ohio Supreme Court ruling gives state probate courts broad jurisdiction to investigate allegations of wrongdoing by park districts and take corrective actions to ensure that these districts are operating in accordance with the law, said Stephen Funk, a partner at Roetzel & Andress.

In its 7-0 decision on April 14, the Ohio Supreme Court denied a writ of prohibition sought by Chester Township and its trustees (Michael J. Petruziello, Bud Kinney and Ken Radtke Jr.) to prohibit Geauga County Probate/Juvenile Court Judge Timothy J. Grendell from issuing or enforcing rulings against them in the case that created the Chester Township Park District.

The township trustees argued that Judge Grendell imposed duties, obligations and fees on them without the jurisdiction to do so.

Funk served as lead counsel to Judge Grendell in a dispute that arose from a March 2014 anonymous report known as the "Chester Township Park District 2013 Review."

According to the Ohio Supreme Court opinion, the report questioned whether the park district was being run in accordance with the law. It also asked if park district funds had been mismanaged.

In response, Judge Grendell appointed attorney Mary Jane Trapp as a master commissioner under R.C. 2101.06 to investigate the issues raised in the report and make recommendations.

The Ohio Supreme Court opinion said Trapp came up with a number of findings including that "the township leadership and some citizen activists have a very incomplete understanding of the independent nature of the park district and what laws are and are not applicable." She concluded that "the park district was created as a separate political body, with independent authority to levy taxes and control the park lands."

On Nov. 26, 2014, Judge Grendell entered a ruling based on Trapp's report. He addressed several concerns laid out by Trapp, including the 2002 decision by township trustees to terminate the dedicated inside millage funding for the park district.

Back when the Chester Township Park District was created in 1984 under R.C. Chapter 1545, it was funded by a portion of local government and library monies, donations and an inside millage of .08 mills. In 1992, the township increased the millage to .1 mill.

The Ohio Supreme Court opinion states that in 2002, the township trustees voted to eliminate the millage, citing sufficient reserves for the park district's 2003 budget and the trustees' plan to shift money to other projects. From that point on, funding for the park district was provided "on a project basis," and the township's road maintenance department was responsible for keeping it clean. However, maintenance services were eliminated in 2013.

The Ohio Supreme Court opinion said Judge Grendell found that the township's elimination of the millage was "contrary to the original judgment entry creating the park district as an independent governmental entity."

Judge Grendell determined that the township's action "directly contravened the fundamental purpose" for creating the park district—to keep it "free from the vicissitudes of Township government and politics."

Judge Grendell also said that park district commissioners and not the township trustees had the authority to levy up to one-half mill for park funding. He ordered the commissioners to take measures to make sure the park district had a dedicated source of independent funding by January 2016. He said that since the trustees wrongfully eliminated the park district's millage funding in 2002, they had a duty to ensure that funds were available to the park district until the commissioners were able to establish an independent funding source. The probate court judge did not order the trustees to pay any specified amount.

The township and the trustees filed an appeal and motion to stay the judgment in the 11th District Court of Appeals. They also filed a motion in the probate court asking for a stay of enforcement pending appeal.

In their motions, they challenged the probate court's subject-matter jurisdiction to grant the relief that the judge prescribed.

The court of appeals temporarily stayed the probate court's order, but on March 31, 2015, it dismissed the township's appeal "for lack of a final, appealable order."

The township and the trustees asked the Ohio Supreme Court to grant a writ of prohibition.

In the opinion denying the writ, the Ohio Supreme Court justices said "Under R.C. 2101.24(C), probate courts have plenary power to 'dispose fully of any matter that is properly before the court,' unless the power is expressly limited or denied by the Revised Code. Without the power to investigate the management of park districts and issue orders compelling compliance with R.C. Chapter 1545, a probate court's power to appoint and remove park-district commissioners would be hollow..."

"In this case, the master commissioner determined that certain activities by the township trustees frustrated the purposes for which the park district was created. The probate court's authority to create park districts and its plenary power 'to dispose fully of any matter' that is properly before it surely includes the ability to issue orders to enforce the entry creating the park district, including orders that impose duties on those interfering with the park district's purposes."

Funk said the ruling is "highly significant because it establishes a new precedent relating to the broad authority of probate court judges over park districts. The ruling applies to all probate judges throughout the state of Ohio."

Attorneys from Mazanec, Raskin & Ryder Co., the firm that represented the township and the trustees as well as the trustees and the fiscal officer, declined to comment on the case.

Now that the prohibition has been denied, Judge Grendell continues to oversee the remaining issues in the case.

According to Judge Grendell the matter concerned three issues: "One was the funding for the park district, which the park district resolved by exercising their statutory right to inside millage," said Judge Grendell.

"The second issue was the status of the agreement between the township trustees and the park district, which was in conflict with state law and Judge Frank Lavrich's original entry creating the park district.

"The master commissioner has conducted meetings with the parties to resolve that issue and has informed the court that they would like until June 15 to see if they can reach a final settlement."

The third issue, Judge Grendell said, entails the responsibility for paying for the master commissioner fees, which are currently \$39,000 and counting.

"The court will enter an order once the agreement issue is resolved, taxing the fees as costs and assessing a portion of those costs to the township and the park district," said Judge Grendell.

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