

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 380 MD 2017

Rachel L. Carr,
Petitioner

v.

State Civil Service Commission,
(Pennsylvania Department of Transportation)
Respondent

BRIEF FOR RESPONDENT STATE CIVIL SERVICE COMMISSION

Petition for Review of the State Civil Service Commission's August 1, 2017 Order
in Appeal No.: 29058

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COUNTERSTATEMENT OF THE QUESTIONS INVOLVED

- I. Whether this Court should Grant the Respondent Commission's (hereinafter, "the Commission") Application for Summary Relief Since the Commission is not the Real Party in Interest with any Legal Obligation to Defend Petitioner's appellate jurisdiction claims?

Suggested Answer: Yes.

- II. Whether this Court should Grant the Respondent Commission's Application for Summary Relief Since the Commission is Neither Alleged by Petitioner to have Violated Petitioner Carr's Right of Free Speech, nor has the Commission violated Petitioner's Right to Due Process of Law by not Adjudicating Her Appeal Less than Ninety (90) Days after the Close of the Record?

Suggested Answer: Yes.

STATEMENT OF THE CASE

A. Statement of Facts

Appellant's appeal hearing commenced and concluded on November 17, 2016. R.R. pp. 33a, 186a–187a. The parties did not file briefs. R.R. pp. 172a-173a. The Commission received a transcript from the Reporting Service on December 2, 2016 and promptly distributed the transcript and exhibits to all three Commissioners for review. The Respondent State Civil Service Commission issued its adjudication on August 1, 2017. Petitioner's Brief, appendix A.

SUMMARY OF THE ARGUMENT

The only claim within the Court's original jurisdiction which is directed at the Commission is an assertion that the Commission deprived the Petitioner of due process of law by allowing more than ninety (90) days to elapse before finally adjudicating her appeal. The Commission filed an Application for Summary Relief on September 29, 2017, in which it asked this Court to dismiss all claims asserted against the Commission within the original jurisdiction portion of Petitioner Carr's Petition for Review. The Commission cited to *Baker v. Department of Public Welfare*, 588 A.2d 1337 (Pa. Commw. 1991) as a precedent opinion by this Court which is dispositive as to Petitioner's claim.

In her brief, Petitioner acknowledges that *Baker, supra.*, by implication, is controlling and contravenes her claim, but argues nonetheless that this Court should reverse its own precedent opinion and consider her claim. The Commission respectfully disagrees. Therefore, the Commission is entitled to summary relief from this Court for the reasons set forth in its Application

ARGUMENT

On August 31, 2017, Petitioner Carr filed a Petition for Review in the Commonwealth Court, which invokes both the appellate and original jurisdiction of this court. Petitioner is seeking an order from the Commonwealth Court reversing an adjudication of her appeal by the Respondent Pennsylvania State Civil Service Commission (hereinafter, “the Commission”). The Commission mailed its adjudication to Petitioner on August 1, 2017. The adjudication dismissed her appeal challenging her removal from probationary Roadway Programs Technician 1 employment with the Pennsylvania Department of Transportation.

Petitioner’s appeal to the Commission is docketed as SCSC Appeal No. 29058 and a copy of the Commission’s adjudication and order is attached to Petitioner’s Brief as Petitioner’s Appendix A. The Petition for Review is divided into three separate and distinct Counts. Count I (paragraphs 1-9) invokes the Court’s appellate jurisdiction only. The Commission does not defend its own adjudications on appeal. The other Respondent to this Petition for Review is the Petitioner’s former employer, *i.e.* the Commonwealth of Pennsylvania Department of Transportation (hereinafter “PennDOT”). Respondent PennDOT is the real party in interest and therefore will defend all of the claims addressed to this Court’s appellate jurisdiction in Count I.

Count II (which incorporates by reference paragraphs 2-5 of Count I and continues with paragraphs 10 through 16) is captioned as “The Department’s Violation of Petitioner’s Constitutional Right to Free Speech.” Count II exclusively is directed at the other Respondent to this Petition for Review, which is PennDOT, and asserts no responsibility or liability for the alleged free speech violation against the Commission. Count III (which also incorporates by reference paragraphs 2-5 of Count I, and then continues with paragraphs 17-23) is captioned as “The Commission’s Violation of Petitioner’s Constitutional Right to Due Process.”

Count III avers a violation of Petitioner’s Right to Due Process due to the Commission’s alleged failure to issue its adjudication dismissing her appeal within the ninety (90) day time period specified in section 952 of the Civil Service Act, 71 P.S. § 741.952(a). Count III further avers that the Commission has failed to conform to the ninety-day time period for each of the last twenty-six (26) appeals for which it has issued an adjudication, which allegedly constitutes “a systemic denial of due process by the Commission.” Count III requests as a remedy that this Court, “reverse the decision of the Commission and reinstate [Petitioner] to her position with the Department of Transportation” or “in addition or in the alternative” asks this Court to “issue declaratory relief in the form of an order indicating that the

Commission has violated the due process rights of the Petitioner and issue an injunction against the Commission that requires them to adhere to the statutorily proscribed ninety (90) day time limit under 71 Pa. C.S. § 741.952(a).”

The Commission filed an Application for Summary Relief on September 29, 2017, in which it asked this Court to dismiss all claims asserted against the Commission within the original jurisdiction portion of Petitioner’s Petition for Review. This Summary Relief Application is equivalent to, and can alternatively be regarded by this Court as, a preliminary objection in the form of a demurrer pursuant to Pa. R.C.P. No. 1028(a)(4). A demurrer is an assertion that the complaint does not set forth a cause of action upon which relief can be granted; it admits, for the sole purpose of testing the sufficiency of the civil complaint, all properly pleaded facts, but not the conclusions of law stated therein. *Balsbaugh v. Rowland*, 447 Pa 423, 290 A.2d 85 (1972); *Christ the King Manor v. Commonwealth, Department of Public Welfare*, 911 A.2d 624 (Pa. Commw. 2006), affirmed 597 Pa. 217, 951 A.2d 255 (2006).

Should this Application for Summary Relief be denied by this Court, the Commission expressly reserved the right to plead over to Petitioner’s complaint as permitted by Pa. R.C.P. No. 1028(d). For purposes of this Application for Summary Relief only, the Commission concedes that there are no material facts in dispute. The Commission’s demurrer should be sustained only if it is clear and free

from doubt that the law will not recognize Petitioner's right to the relief she has requested from the Commission under the facts she alleged in her Petition. *Palmer v. Bartosh*, 959 A.2d 508 (Pa. Commw. 2008); *Warminster Fiberglass Company, Inc. v. Upper Southampton Township*, 939 A.2d 441 (Pa. Commw. 2007).

The Demurrer should be sustained as to Count I of Petitioner's Complaint against the Commission because Count I invokes only this Court's appellate jurisdiction and no answer is required from the Commission in response to the averments in Count I (paragraphs 1-9). The demurrer should be sustained as to Count II of Petitioner Carr's complaint against the Commission because Count II alleges that it was exclusively Respondent PennDOT who allegedly violated Petitioner's Constitutional Right of Free Speech. Therefore, as a matter of law, Count II fails to state a claim against the Commission for which relief can be granted by this Court. The demurrer should be sustained as to Count III of Petitioner's complaint against the Commission because it is settled law in Pennsylvania that the provision in the Civil Service Act requiring the Civil Service Commission to report its findings and conclusions within ninety (90) days after the conclusion of the hearing is directory only and not mandatory. *Baker v. Department of Public Welfare*, 588 A.2d 1337 (Pa. Commw. 1991).

In deciding *Baker*, this Court rejected Baker's request to reverse the Commission's adjudication and rule in his favor because the Commission allegedly did not comply with the ninety (90) day rule, holding that this would amount to a "deemed decision" with complete disregard for the merit concept which forms the cornerstone of Civil Service law. *Baker*, 588 A.2d 1337, 1340 (Pa. Commw. 1991). This Court has also previously consistently held that other statutes which seek to impose time limits on adjudicating tribunals are directory only. *See: West Penn Power Company v. Pennsylvania Public Utility Commission*, 521 A.2d 75 (Pa. Commw. 1987).

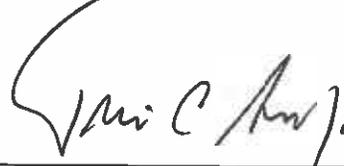
Baker is a precedential opinion by this Court, which is dispositive as to Petitioner's original jurisdiction claim against the Commission as set forth in Count 3. In her brief, Petitioner acknowledges that *Baker*, if not expressly then at least by necessary implication, is both controlling and contravenes her alleged due process claim against the Commission. Nonetheless, she argues that this Court should reverse its own precedent opinion and consider her claim. The Commission respectfully disagrees. The reasoning of *Baker* is sound, has been settled law guiding the Commission for more than twenty-five (25) years, and is consistent with other decisions on the same subject involving other commonwealth tribunals.

Under the facts alleged in Count III, the only Count to which the Commission is legally required to defend, Petitioner is neither entitled as a matter of law to a “deemed decision” in her favor, nor to a declaratory order that her due process rights have been violated, nor an injunction requiring the Commission to adhere to the statutory ninety (90) day time limit to issue its adjudications. *See, Baker, supra.* Therefore, the Commission is entitled to summary relief from this Court for all of the reasons set forth in its Summary Relief Application

CONCLUSION

For the reasons noted above, the State Civil Service Commission properly adjudicated Petitioner's Appeal Request and did not deny Petitioner due process of law. Accordingly, based on the above stated facts and law, this Honorable Court is respectfully requested to grant the State Civil Service Commission's Application for Summary Relief and dismiss all claims asserted against the State Civil Service Commission in Petitioner's Appeal.

Respectfully submitted by:



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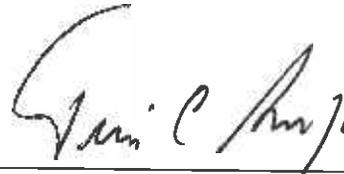
CERTIFICATE OF SERVICE

I hereby certify that I am, this day, serving one (1) true and correct copy of the foregoing document upon the following persons by depositing same in the United States First Class Mail, addressed as follows:

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