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Clerk of Courts
Cuyahoga County, Ohio

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

JOSEPH BUTTS
Plaintiff

Case No: CV-19-917591

Judge: SHANNON M GALLAGHER

CUYAHOGA COUNTY, ET AL
Defendant

JOURNAL ENTRY

98 DISPOSED - FINAL

OPINION AND ORDER REVERSING THE DECISION OF THE CUYAHOGA COUNTY PERSONNEL REVIEW COMMISSION TO TERMINATE THE EMPLOYMENT OF APPELLANT JOSEPH BUTTS. O.S.J. COURT COST ASSESSED TO THE DEFENDANT(S).

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

Judge Signature

Date

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY

JOSEPH BUTTS)	CASE NO. CV-19-917591
)	
Plaintiff,)	JUDGE SHANNON M. GALLAGHER
)	
vs.)	
)	<u>OPINION AND ORDER</u>
CUYAHOGA COUNTY, ET AL.)	
)	
Defendant)	

Shannon M. Gallagher, J.:

Appellant Joseph Butts appeals from the decision of the Personnel Review Commission affirming his termination of employment with his former employer Cuyahoga County. Based upon this Court's review of the entire record, Butts' termination was arbitrary, unreasonable, and unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record pursuant to R.C. 2506.04. As discussed within, Butts' conduct did not rise to the level of a removable infraction. The evidence in the record supports a less extreme disciplinary action, such as demotion. Accordingly, the decision of the Personnel Review Commission is reversed.

I. Standard of Review

This appeal is brought pursuant to R.C. 2506. Per the standard of review found in R.C. 2506.04, the court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. In adhering to R.C. 2506.04, the court has to proceed under the presumption that the decision of the administrative agency is reasonable and valid. *Community Concerned Citizens, Inc. v. Union Twp. Bd. of Zoning Appeals*, 66 Ohio St.3d 452, 456, 613 N.E.2d 580 (1993); *see also Mayfield Hts. v. Snappy Car Rental*, 110 Ohio App.3d 522, 526, 674 N.E.2d 1193 (8th Dist. 1995).

II. Facts and Procedural History

Appellant Joseph Butts (hereinafter "Butts") brings this appeal contesting an order terminating his employment with his former employer, Cuyahoga County (hereinafter "County"). Butts was informed of his termination on July 25, 2018 and timely requested an administrative hearing which was held on November 26, 2018 and February 1, 2019. On April 16, 2019 the Hearing Officer issued a Report and Recommendation to affirm Butts' removal. Butts timely filed an appeal. On June 5, 2019, the parties appeared before the Personnel Review Commission to argue objections to the Report and Recommendation. The Personnel Review Commission ultimately affirmed Butts' removal by a vote of 2 to 1. Butts timely appealed the removal decision to this court on July 1, 2019 pursuant to R.C. 2506.01 *et seq.*

Butts was employed by the County for 23 years. He began his career as a child support payments processor at the Cuyahoga County Job & Family Services' Child Support Enforcement Agency (now known as The Office of Child Support Services (hereinafter "OCSS")) and had been promoted to Principal Support Officer Supervisor prior to his ultimate termination. In his role, Butts' work was sensitive in nature, and involved access to confidential information about his OCSS clients by using the agency's "Client Registry Information System Enhanced" (hereinafter "CRIS-E"). CRIS-E is an automated system used by caseworkers to support state and Federal programs such as Medicaid and Food Assistance. CRIS-E is a hybrid system administered by the State of Ohio and the Cuyahoga County. Its use is governed by both County Rules and Ohio Law and includes sensitive information that must be handled properly.

Butts is divorced and is undisputedly in a functioning and cooperative co-parenting relationship with his former wife, to whom he pays child support for their only child. Butts has his own personal active child support case with OCSS's "Support Enforcement Tracking System" (hereinafter "SETS"). As an OCSS employee, Butts' active support case was quarantined into the Employee/Confidential caseload, through which OCSS employees are denied access to their own personal support cases.

Butts' supervisory role with the county involved coaching his subordinates about county policy and improper handling of sensitive information both in and out of the CRIS-E and SETS systems. Prior to the events leading up to termination, Butts was regarded as a good employee with no disciplinary record and

had received a positive review during the review period before his termination. In addition to his role at the County, Butts maintained secondary employment in his family's tax preparation business, a business that sometimes served County employees as its clients. Butts' secondary employment had properly been disclosed and subsequently approved by the County. The fact that Butts held secondary employment and the nature of that employment was not considered as a reason for Butts' termination and is not considered on this appeal. This fact is, however, relevant to the County's allegations.

Butts' conduct and behavior in the workplace was subject to the County Policy and Procedures Manual. Contained in section 13.08 of this manual is an illustrative, non-exhaustive, and non-conclusive-list of inappropriate conduct and grounds for discipline described as the "Progressive Discipline Program." This lengthy list is too comprehensive to recreate here; the list is segregated into three groups ranging from the mundane to the very serious. The three groups are defined as: minor infractions, major infractions, and removable infractions. Minor infractions include acts such as using county equipment or property for other than its intended purpose and conducting non-work related business while on county time. Major infractions include failure of good behavior, i.e. unauthorized sharing of confidential information about clients and/or employees or any act that would bring discredit to the employer. Removable infractions include the most flagrant conduct. Such infractions include falsification of records, conviction of a felony, soliciting bribes, etc.

The County has alleged misconduct that they believe warrants removal and is unmitigated by Butts' long and undisciplined tenure. The County has justified its removal decision with instances of misconduct pertaining to Butts' supervisory role with the County and Butts' approved secondary employment. The instances of misconduct were discovered after another employee reported that Butts had received a document related to his tax preparation business on a county fax machine in violation of County policy.¹ When the County was notified of the fax, Butts' manager opened an investigation that tracked Butts' computer usage over a fifteen day period.

¹ Butts contends and effectively proves on the record via text messages that the initial fax relating to Butts' tax business was not solicited. The County does not dispute this in their reply brief.

In its notice of termination provided to Butts and pursuant to its investigation, the County grounded its termination in the following general justifications:

- Failure of Good Behavior (any act that would bring discredit to the County)
- Unauthorized Sharing and accessing confidential information about clients and/or its employees
- Performing non-County related business during work hours on County equipment.

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Specifically the County alleged that Butts obtained unauthorized access to his own personal case file in the CRIS-E and SETS systems and also that Butts had transferred a confidential divorce decree to an unauthorized recipient and emailed spreadsheets with sensitive information to his private email (reportedly to work on over the weekend). Lastly, the county uncovered evidence that Butts was conducting business for his secondary employment during work time.² The County argues that these instances of misconduct justify Butts' termination.

The County alleges that the misconduct was in violation of the following sources of law and County policy: Electronic Mail and Communication Policy, JFS Code of Responsibility, Ohio Revised Code 3125.50 (Prohibiting Disclosure of Information), Ohio Administrative Code 5101:12-1-20 (Confidentiality of Information). County Policies and Procedures Manual (and Employee Handbook, Section 7).

Butts has admitted to the substantive conduct uncovered by the County during its investigation including the received fax and subsequent findings. What Butts has argued, and continues to argue on this appeal, is that the conduct has been either mischaracterized by the county, does not constitute removable conduct per County policy, was a one-time mistake, or should be mitigated by 23 years of undisciplined employment. The County has argued that some of the conduct is so severe that even a single occurrence is a removable offense and thus Butts' termination therefore proper. This court disagrees with the County's assertion and reverses the decision of the Personnel Review Commission.

² The County uncovered 19 minutes in two weeks, mostly during Butts' lunch hour and a few minutes during regular work hours.

III. Law an Analysis

Based upon a review of the entire record, the decision of the Personnel Review Commission affirming Butts' termination was arbitrary, unreasonable, and unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record pursuant to R.C. 2506.04.

According to the plain language of the County Policy and Procedures Manual, Butts' conduct does not warrant termination.³ Butts' receipt of an unsolicited fax and his performing limited work from his secondary employment on County time are clearly outlined as "Minor Infractions" and are easily correctible through progressive discipline. The County makes no meaningful argument to assert that this behavior is somehow egregious, not widespread, or otherwise removable on its own. What's more, the County does not clarify that the inclusion of these Minor Infractions somehow tips the scales to justify termination on otherwise neutral grounds. The County's inclusion of these matters distorts the principal issues at hand which are discussed below. A termination based on these offenses is contrary to established County policy.

Somewhat more actionable is Butts' transmission of spreadsheets through unsecured channels. It is undisputed that Butts sent spreadsheets with sensitive data to his personal email to work on over the weekend. The closest "illustration" on the progressive discipline scale would be the "Violation of County Policy and/or Procedures." This hardly rises to the level of intentional, reckless, or egregious conduct represented by identified removable offenses in the county. At best it evidences Butts' dedication to his job. At its worst, it can be considered as a lack of good judgment.

Also more actionable is Butts' unauthorized transmission of the divorce decree. The evidence demonstrates that Butts attempted to help a Spanish speaking client and transmitted the decree to an unauthorized person. "Unauthorized sharing of confidential information about clients and/or employees" is clearly listed in section 13.08 as a "Major Infraction" and not a "Removable Infraction." This represents a

³ It should be noted from the outset that the County's decision to terminate Butts was at least partly based upon the County holding Butts to a higher standard because he was a supervisor. Yet the County does not explain how the disciplinary process changes when one is a supervisor. There are certainly provisions pertaining to supervisors, but it is not clear that a major infraction becomes removable because one is a supervisor. Such a fact might justify demotion, but supervisory status should not change the standard for removal.

misguided effort to help, and is again evidence of a lack of good judgment. However, it does not rise to the level of an offense that would be on par with the egregiousness of those listed within the County's "Removable Offenses."

The most controversial instances of Butts' misconduct is his access to his own personal case file in SETS and access to his ex-wife's income in CRIS-E. Regardless of Butts' intent, logging into his own case file was a clear "Violation of County Policy." This conduct could also constitute "any act that would bring discredit to the employer," as the County argues convincingly that the integrity of the system relies on proper use and handling of the information contained within the system. While this misconduct could rise to the level of a removable infraction, the decision to terminate Butts was ultimately unreasonable given his record of good employment with no disciplinary issues.

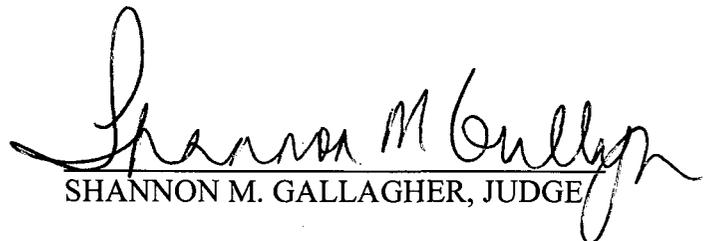
IV. Conclusion.

Butts was a 23 year County employee with no disciplinary history. He earned two promotions during his tenure and a positive review in his last review period. Butts is in a cooperative co-parenting relationship with his ex-wife and is a Veteran of the U.S. Navy. When Butts was confronted with his misconduct, he complied dutifully with the investigation.

The County has indeed identified conduct that warrants a form of discipline. However, the County has established guidelines on what is, and is not, removable conduct. As explained above, most of Butts' conduct falls squarely in what the county considers "minor infractions" and are easily correctable. For Butts' more serious transgressions, the County should have issued a less extreme form of progressive discipline, such as suspension or demotion. Accordingly, the decision of the Personnel Review Commission is reversed and Butts' employment is reinstated, subject to the appropriate progressive discipline.

IT IS SO ORDERED.

Date: June 29, 2020


SHANNON M. GALLAGHER, JUDGE