

IN THE TWELFTH DISTRICT COURT OF APPEALS
BROWN COUNTY, OHIO

State of Ohio ex rel.
Dennis J. Varnau

Case No. CA2009-02-10

FILED
COURT OF APPEALS

Relator/Petitioner

MAY 16 2011

Vs

Dwayne Wenninger

TINA M. MERANDA
BROWN COUNTY CLERK OF COURTS

Respondent Wenninger's Reply to Relator
Varnau's Summary Judgment Argument

Respondent/Defendant

A. Procedural Posture and Statement of Facts

Respondent Wenninger (Wenninger) has set forth the operative facts with citations to the record in the statement of facts in his argument filed in this case on May 11, 2011. Relator Varnau has not refuted the facts established by Wenninger with materials having Civil Rule 56 evidentiary value. Specifically, the affidavits of Wenninger, Lee Spievack and Jamie Callender as well as Wenninger's deposition testimony stand un rebutted and unrefuted.

B. Varnau's Argument

Wenninger's lack of required post-secondary education

Varnau argues that Wenninger did not possess the educational requirements to become Brown County sheriff when he assumed the office in January of 2001. The essence of Varnau's argument is that the diploma that Wenninger received from Technichron Technical Institute (TTI) did not meet the criteria of the then existing version of R.C. 311.01, the sheriff qualification statute. The statutory language to be interpreted reads as follows [R.C. 311.01(B)(9)(b)]:

Has completed satisfactorily at least two years of post-secondary education or the equivalent in semester or quarter hours in a college university authorized to confer degrees by the Ohio board of regents or the comparable agency of another state in which the college or university is located.

Though Varnau has had many months to do so, Wenninger reiterates that the affidavits of Spievack and Callender stand factually un rebutted and unrefuted. Though Varnau attacks

Callender's affidavit as being a product of political witchcraft, in fact, Callender's affidavit accurately states the relationship between the Ohio board of regents and the State Board of School and College Registration. Varnau specifically attacks that portion of Callender's affidavit that indicates that a letter from Shane DeGarmo to then Brown County Prosecutor Grennan is deceptive. In fact, DeGarmo's letter to Grennan was deceptive and is refuted by other of DeGarmo's written words.

On March 19, 2003, DeGarmo sent a memo to a staff member of the Ohio Attorney General.¹

The pertinent portions of that memo state as follows:

I downloaded the rules which the Proprietary Board operates under off of their website and it indicates in Section 3332.05, Part B of the Ohio Revised Code....

The state board shall promptly furnish the Ohio board of regents a copy of all applications for issuance of renewal of program authorization to offer any associate degree program. Prior to the issuance or renewal of such program authorization the state board shall conduct an on-site visit of the school proposing the program. A representative of the board of regents shall participate in the visit. Within twenty-one days of the on-site visit the representative of the board of regents shall provide the state board with written (*sic*) state recommending approval or disapproval of the program.

Very clearly, the Ohio board of regents had the authority to approve or disapprove the programs of TTI.

Wenninger also suggests that the National Association of Trade and Technical Schools is an accrediting agency comparable to the Ohio board of regents.² As such, TTI's accreditation by that body met the requirements of the qualification statute.

Though Varnau argues that the diploma that Wenninger received was deficient in hours under the statute, Varnau has produced no evidence to substantiate the argument. Again, the affidavits of Spievack and Callender stand un rebutted and unrefuted. Varnau desires that Wenninger

¹ This memo is found in the record at the last two pages of the materials appended to Wenninger's argument that was filed May 11, 2011. See also, letter of Sevy, appended to Wenninger's argument filed on May 11, 2011.

² See affidavits of Spievack and Callender.

be punished for getting his hours on a full-time student basis.³ The qualification statute sets forth an 'equivalency standard', it does not require two continuous years of post-secondary academia.

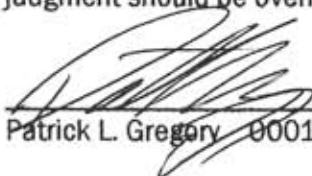
Varnau cites the Court to *State ex rel. Knowlton v. Noble Co. Bd. Of Elections*, 125 Ohio St.3d 82, 2010-Ohio-1115. *Knowlton* is factually distinguished from this case as Wenninger met the post-secondary educational requirements and has not attempted to 'double count' or 'cross count' OPOTA training with post-secondary education.

Break in service

Varnau also argues that since Wenninger was not properly the sheriff when he took office in January of 2001, the service of his term of office constituted a disabling event to OPOTA certification. Factually, Wenninger's OPOTA certification has no expiration date. Factually, Wenninger has continuously held the office of Brown County Sheriff since January of 2001. Factually, Wenninger's deposition testimony establishes that Wenninger became a member of the Ripley Police Department the same day that he resigned from the Brown County Sheriff's office and that there has been no break in service as statutorily defined.⁴ Again, Varnau has offered nothing of Civil Rule 56 evidentiary value to rebut or refute this evidence (or to establish anything to the contrary).

Conclusion

Wenninger's summary judgment evidence stands un rebutted and unrefuted. Wenninger is entitled to judgment and Varnau's complaint should be dismissed (or, his motion for summary judgment should be overruled).


Patrick L. Gregory 0001147


Gary A. Rosenhoffer 0003276

³ Wenninger's counsel both completed a four year law school course of study in less than four years. Each was admitted to the Ohio Bar five days before they graduated from law school. Should counsel's law degrees or licensure be called into question? Should they be punished for getting the required law school hours in a shorter period than an academic calendar might otherwise establish?

⁴ Wenninger depo, p. 13, 42, 47.

CERTIFICATE OF SERVICE

I certify that on May 16, 2011, a copy of this pleading was served by ordinary mail, postage prepaid upon Thomas G. Eagle, 3386 N. State Route 123, Lebanon, Ohio 45036.



Gary A. Rosenhoffer