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NOT FOR OFFICIAL PUBLICATION
See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

SEP - 9 2024

JOHN D. HADDEN
CLERK

Case No. 120,855

OKLAHOMA STATE DEPARTMENT)
 OF HEALTH,)
)
 Petitioner/Appellee,)
)
 vs.)
)
 JOHN FLEMING,)
 Real Party in Interest,)
)
 Appellant,)
)
 and)
)
 CAROL SHELLEY, Executive Director)
 of the Oklahoma Merit Protection)
 Commission,)
)
 Respondent.)

Rec'd (date)	9-9-24
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APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE C. BRENT DISHMAN, TRIAL JUDGE

AFFIRMED

Daniel J. Gamino
DANIEL J. GAMINO &
ASSOCIATES, P.C.
Oklahoma City, Oklahoma

For Appellant
John Fleming, Real
Party in Interest

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For Appellee

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For Respondent.

OPINION BY JAMES R. HUBER, PRESIDING JUDGE:

John Fleming, Real Party in Interest, appeals an Order Granting Petitioner's Appeal of Final Agency Order and Petition for Injunction.

BACKGROUND

On September 7, 2021, Oklahoma State Department of Health (OSDH) recommended John Fleming (Fleming) be discharged from his employment. Fleming was a permanent classified employee of OSDH vested with coverage by the Oklahoma Personnel Act, 74 O.S.2021 §§ 840-1.1 et seq. After conducting a pretermination hearing on September 16, 2021, OSDH issued a Notice of Final Decision reducing the discipline from a discharge to a five-day suspension without pay.

Fleming appealed his five-day suspension to the Oklahoma Merit Protection Commission (MPC) on October 28, 2021, pursuant to 74 O.S.2021 § 840-6.5. The MPC Administrative Law Judge (ALJ) conducted a two-day evidentiary hearing

on March 2 and 3, 2022. The ALJ issued a Final Order, filed on March 17, 2022, finding OSDH did not meet its burden of proof that there was just cause to discipline Fleming. The ALJ sustained Fleming's petition for appeal, rescinded the five-day suspension, and ordered OSDH to pay Fleming his lost back pay and benefits.

On April 26, 2021, Oklahoma Governor Stitt approved House Bill 1146 (H.B. 1146), which amended 74 O.S. § 840-1.7 by adding the italicized language – “There is hereby created the Oklahoma Merit Protection Commission, *to continue until December 31, 2022.*”¹ 74 O.S.2021 § 840-1.7(A). The legislation became effective January 1, 2022.

Fleming's attorney filed an application for attorney fees pursuant to 74 O.S.2021 § 840-6.8 on March 24, 2022, to which OSDH objected.

On March 28, 2022, OSDH filed a Motion to Reconsider the ALJ's decision. Fleming objected to OSDH's reconsideration request. The ALJ set a hearing on the motion for reconsideration for April 21, 2022 but cancelled the hearing and reset the hearing for May 26, 2022.

On May 11, 2022, Governor Stitt signed House Bill 3420 (H.B. 3420). H.B. 3420 contained an emergency clause making the legislation immediately effective

¹ The Legislature previously created the MPC. The prior statutory language of Section 840-1.7(A) provided, in part: “There is hereby created the Oklahoma Merit Protection Commission.” 74 O.S.2021 § 840-1.7(A) (effective until January 1, 2022).

upon his signature. H.B. 3420 amended 74 O.S. § 840-1.7 to transfer all “functions, powers, duties, and obligations” from the MPC to the Oklahoma Office of Management and Enterprise Services (OMES).

Following the effective date of H.B. 3420, the MPC conducted a hearing on OSDH’S Motion to Reconsider on May 26, 2022. The MPC issued its Final Petition Decision denying OSDH’s Motion to Reconsider on that same date.

The ALJ subsequently awarded Fleming attorney’s fees and costs pursuant to 74 O.S.2021 § 840-6.8.

On June 27, 2022, OSDH filed for judicial review in the Oklahoma County District Court pursuant to 75 O.S.2021 § 318. OSDH filed an Amended Appeal of Final Agency Order and Petition for Injunction on July 1, 2022.

The Oklahoma County District Court granted OSDH’s appeal of the ALJ’s Final Order and the petition for injunction, memorializing the decision in its Order Granting Petitioner’s Appeal of Final Agency Order and Petition for Injunction filed on October 19, 2022. The District Court found that 74 O.S. § 840-1.7(D), as amended by H.B. 3420, transferred all “functions, powers, duties, and obligations” from the MPC to OMES, effective May 11, 2022. The District Court vacated all orders, determinations, and decisions in this case made by the MPC after May 11, 2022 and transferred this case to OMES. Also, the court enjoined MPC from making any further orders, determinations, or decisions in Fleming’s case.

Fleming appeals the district court's Order.

STANDARD OF REVIEW

This appeal presents a question of statutory interpretation. “Statutory interpretation presents a question of law which this Court reviews under a *de novo* standard.” *Antini v. Antini*, 2019 OK 20, ¶ 9, 440 P.3d 57, 59. “In conducting *de novo* review, this Court possesses plenary, independent, and non-deferential authority to examine the lower tribunal's legal rulings.” *Id.*

ANALYSIS

The first issue on appeal is whether the MPC had authority to act after May 11, 2022, the effective date of 74 O.S. Supp. 2022 § 840-1.7. Fleming argues the MPC had continuing jurisdiction until December 31, 2022, pursuant to Section 840-1.7(A). OSDH contends Section 840-1.7 unambiguously transferred all powers of the MPC to OMES effective May 11, 2022, and therefore MPC did not have jurisdiction nor the authority to act after May 11, 2022.

Title 74 O.S. Supp. 2022 § 840-1.7 provides:

- A. The Oklahoma Merit Protection Commission shall continue until December 31, 2022. Whenever the terms “Ethics and Merit Commission”, “Special Counsel of the Ethics and Merit Commission”, or the “Oklahoma Merit Protection Commission” appear in the Oklahoma Statutes, they shall mean the Human Capital Management Division of the Office of Management and Enterprise Services.
- B. Any funds appropriated to, in the possession of, or allocated to the Commission shall be deemed to be funds of the Office of Management and Enterprise Services.

- C. Upon request of the Director of the Office of Management and Enterprise Services, the personnel of the Commission shall deliver to the Office of Management and Enterprise Services all books, papers, records, and property of the Commission.
- D. All functions, powers, duties, and obligations previously assigned to the Commission are hereby transferred to the Office of Management and Enterprise Services.
- E. All rules, regulations, acts, orders, determinations, and decisions of the Commission pertaining to the functions and powers herein transferred and assigned to the Office of Management and Enterprise Services in force at the time of such transfer, assignment, assumption, or devolution shall continue in force and effect as rules, regulations, acts, orders, determinations, and decisions of the Commission until duly modified or abrogated by the appropriate body or until otherwise provided by law.

As previously discussed, H.B. 3420, which amended 74 O.S. § 840-1.7, became effective when signed by Governor Stitt on May 11, 2022.² H.B. 3420 amended numerous statutes relating to the Oklahoma Personnel Act, including 74 O.S. § 840-1.7. In the summary of H.B. 3420, the summary stated: “transferring powers, duties, and assets to the Human Capital Management Division of the Office of Management and Enterprise Services.” The summary also stated it was repealing numerous statutes related to the Oklahoma Personnel Act.

² H.B. 3420 contained an emergency clause which stated:

SECTION 28. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

When reviewing the language of a statute, the primary goal “is to ascertain and give effect to legislative intent and purpose as expressed by the statutory language.” *Oklahoma Dep’t of Corrs. v. Byrd*, 2023 OK 97, ¶ 27, 542 P.3d 845, 855 (quoting *Odom v. Penske Truck Leasing Co.*, 2018 OK 23, ¶ 17, 415 P.3d 521, 528). “It is presumed that the Legislature has expressed its intent in a statute’s language and that it intended what it so expressed.” *Id.* “If the language of the statute is plain and unambiguous, the legislative intent is deemed to be expressed by the statutory language.” *CompSource Mut. Ins. Co. v. State ex rel. Oklahoma Tax Comm’n*, 2018 OK 54 n.36, 435 P.3d 90 n.36.

The plain language of 74 O.S. Supp. 2022 § 840-1.7(D) establishes the Legislature’s intent to fully transfer all the functions, powers, duties, and obligations of the MPC to OMES. The Legislature could have used limiting language or any other textual indication that the Legislature intended to restrict the powers transferred from MPC to OMES but elected to use the broad term “all” when transferring the functions, powers, duties, and obligations from MPC to OMES. The Legislature also could have set a later effective date for transferring the functions, powers, duties, and obligations of the MPC to OMES but instead made H.B. 3420 an emergency bill with the legislative action immediately effective. In fact, if the Legislature had intended the MPC to have continuing

jurisdiction, it could have specified this continuing jurisdiction in the language of the statute. *See* 85A O.S.2021 § 400.

The specific language used by the Legislature also reflects the Legislature's intent for the immediate transfer of all powers. Section 840-1.7(D) states that “[a]ll functions, powers, duties, and obligations previously assigned to [MPC] are *hereby* transferred to [OMES].” “Hereby” is defined as “[b]y this document; by these very words” indicating an intent for immediate action. *Hereby*, Black's Law Dictionary (12th ed. 2024).

Relying on 74 O.S. Supp. 2022 § 840-1.7(A) and (E), Fleming argues the MPC had the authority to act until December 31, 2022. However, these subsections do not limit the extensive powers transferred from the MPC to OMES in Section 840-1.7(D) nor does the language conflict with the Legislature's intent to have anything other than an immediate transfer of all functions, powers, duties, and obligations. Fleming contends Section 840-1.7(E) is supportive of his argument that MPC's actions continued past May 11, 2022. However, a careful reading of the plain language of Section 840-1.7(E) shows that all rules, regulations, acts, orders, determinations, and decisions previously taken by the MPC would still be binding and in effect, not that the MPC continued to have the authority to take such actions.

We also note that H.B. 3420 repealed the statutes that gave the MPC its functions, powers, duties, and obligations and its grievance procedures.³ As part of the emergency bill, H.B. 3420, the Legislature made the repeal of these statutes effective May 11, 2022. If we were to adopt Fleming’s interpretation of the statute, MPC would be a shell of an entity with no statutory power to act.

Oklahoma courts have long followed the general rule of statutory construction that a statute will not be construed to reach an absurd result. *McCormack v. Town of Granite*, 1995 OK 105, ¶ 16, 913 P.2d 278, 281. “[S]tatutory construction that would lead to an absurdity must be avoided and a rational construction should be given to a statute if the language fairly permits.” *Ledbetter v. Oklahoma Alcoholic Beverage Laws Enf’t Comm’n*, 1988 OK 117, ¶ 7, 764 P.2d 172, 179. We will not interpret a statute to provide an absurd result. *See Hogg v. Oklahoma Cnty. Juv. Bureau*, 2012 OK 107, ¶ 7, 292 P.3d 29, 33.

Also, indicative of the Legislature’s intent to dissolve the MPC is the context of H.B. 1146 and H.B. 3420. In H.B. 1146, the Legislature added the language providing that the MPC would continue until December 31, 2022. However, the

³ In fact, H.B. 3420 repealed 74 O.S. § 840-6.8 the statute that authorized the MPC to award attorney fees and the authority on which Fleming based his request for attorney fees. Section 840-6.8 was repealed effective May 11, 2022, and the ALJ granted Fleming’s request for attorney fees on August 24, 2022.

Legislature did not change or remove the make-up of the MPC or the MPC's functions and authority to perform its duties.⁴

Giving the language of the statute its ordinary meaning and giving effect to all its parts leads to the interpretation urged by OSHD and held by the district court. Title 74 O.S. Supp. 2022 § 740-1.7, dissolved the MPC and transferred “[a]ll functions, powers, duties, and obligations” from the MPC to OMES, effective May 11, 2022.

We find the district court did not err in finding the MPC did not have jurisdiction to act after May 11, 2022, vacating all orders, determinations, and decisions by MPC in this case after May 11, 2022, and transferring this matter to OMES. We also find the district court did not err in enjoining MPC from “making any further orders, determinations, or decisions” in the present case.

Next, Fleming argues the district court's ruling violated the Oklahoma Constitution, article V, sections 52 and 54. Fleming contends that his rights were vested when this lawsuit was filed and before H.B. 3420 was enacted. According to Fleming, the MPC had jurisdiction to complete the adjudication of his claim.

⁴ Title 74 O.S.2021 § 840-1.7(A) provided that the MPC “shall consist of nine (9) members who shall be appointed for a term of three (3) years” and further provided how the nine commissioners would be appointed and the length of their terms. Section 840-1.7(C) provided for the election of a chairman and other officers of the MPC as needed for the performance of duties. It also provided that the MPC shall hold regular meetings. H.B. 3420 amended Section 840-1.7 by removing the language regarding the appointment of the nine commissioners and authorizing the MPC to act, perform and discharge its duties. H.B. 3420 also removed the language giving authority for the appointment of commissioners.

Okla. Const. art. V, § 52 provides:

Revival of rights or remedies - Taking away cause of action or defense.

The Legislature shall have no power to revive any right or remedy which may have become barred by lapse of time, or by any statute of this State. After suit has been commenced on any cause of action, the Legislature shall have no power to take away such cause of action, or destroy any existing defense to such suit.

Here, Fleming argues that the district court's finding that the MPC no longer had jurisdiction after May 11, 2022, deprived him of a cause of action or destroyed an existing defense to suit in violation of Okla. Const. art. V, § 52. However, Fleming does not identify any cause of action or defense lost. Further, neither our reading of the clear language of the statute nor the district court's decision deprives Fleming of any cause of action or defense, they merely changed the tribunal for disposition of his case. We find no violation of Okla. Const. art. V, § 52.

Fleming also contends the district court's decision violated the Oklahoma Constitution, article V, section 54. Okla. Const. art. V, § 54 provides:

Repeal of statute - Effect.

The repeal of a statute shall not revive a statute previously repealed by such statute, nor shall such repeal affect any accrued right, or penalty incurred, or proceedings begun by virtue of such repealed statute.

Fleming claims his statutorily vested rights were infringed upon but does not specify which rights have been affected and the statutory authority for these rights. He also does not show how any proceedings begun under the prior statute were affected in any substantive way. That is to be expected because the MPC's

“functions, powers, duties, and obligations” were transferred to OMES. Nor does Fleming explain how the difference, if any, of these rights caused him injury or to be wronged. It is the duty of the appellant to present his or her alleged errors and to provide authority in support. “The appealing party must include in the record for appeal all materials necessary for corrective relief” and bears total responsibility for such inclusion. *Ray v. Ray*, 2006 OK 30, ¶ 12, 136 P.3d 634, 637. In addition, the appellant must provide citation to legal authority. “Argument without supporting authority will not be considered.” Okla.Sup.Ct.R. 1.11(k), 12 O.S.2021, ch. 15, app. 1. There is nothing in the record for this Court to discern how the district court erred. Fleming has not met his burden. We find Fleming has failed to show error.

Fleming also contends the district court did not have subject matter jurisdiction. Fleming argues OSDH failed to name Fleming as a necessary party in its Appeal of Final Agency Order and Petition for Injunction, which was fatal to its appeal under the Oklahoma Administrative Procedure Act (OAPA), specifically 75 O.S.2021 § 318.

“This Court has long said that the statutory, procedural requirements of the OAPA are mandatory and must be complied with before the district court can acquire jurisdiction to review a final agency order.” *Leo v. Oklahoma Water Res. Bd.*, 2023 OK 96, ¶ 10, 536 P.3d 939, 945. In *Leo*, the Oklahoma Supreme Court

determined that the “statutory provisions setting out what parties must be named in the petition for review are mandatory, procedural requirements that must be complied with before the district court can acquire jurisdiction to review a final agency order.” *Id.* ¶ 11, 536 P.3d at 945-46. The *Leo* Court first held that the administrative agency issuing the final order being appealed must be named as a respondent in the petition for judicial review. *Id.* ¶ 13, 536 P.3d at 946. OSDH satisfied that requirement by naming the MPC as a party in its Appeal of Final Agency Order and Petition for Injunction.

Here, Fleming contends it was error for OSDH not to name Fleming as an indispensable party in its petition for review. The *Leo* Court addressed this specific issue. The *Leo* Court recognized that, when the Legislature amended 74 O.S. § 318 in 2011, the Legislature intended to make the procedural requirements of Section 318(B) and (C) more lenient by requiring only that the agency be named as a respondent in the petition for judicial review. *Id.* ¶ 20, 536 P.3d at 948. The *Leo* Court held that “[w]hile 75 O.S. § 318(B)(2) does not require that any parties of record to the administrative proceeding other than the agency be named as a respondent in the petition for review, all other parties of record in the administrative proceeding are entitled to notice and the opportunity to be heard, pursuant to 75 O.S. § 318(C).” *Id.* ¶ 25, 536 P.3d at 948. Therefore, we find

OSDH was not required to name Fleming as a respondent in its petition for review and the district court had subject matter jurisdiction over this matter.

As his final proposition of error, Fleming argues OSDH failed to exhaust its administrative remedies because it did not seek a stay of the proceedings from the MPC rather than filing a petition for review before the district court. Based on our holding that the MPC did not have authority to act after the emergency enactment of H.B. 3420 on May 11, 2022, we find this issue is moot.

CONCLUSION

Based on the foregoing, we find the district court did not err in finding the MPC did not have authority to act after May 11, 2022, the emergency enactment of H.B. 3420, vacating all “orders, determinations, and decisions by the Oklahoma Merit Protection Commission [in this matter,] issued after May 11, 2022,” and transferring this case to OMES. The district court’s Order Granting Petitioner’s Appeal of Final Agency Order and Petition for Injunction is affirmed.

AFFIRMED.

HIXON, J., concurs, and BLACKWELL, J., dissents.

BLACKWELL, J., dissenting:

In my view, the majority interprets the relevant statute such that it violates a clear prescription of our state constitution, namely that found in Article V, Section 54. That provision states, in relevant part, that “[t]he repeal of a statute shall not ...

affect any ... proceedings begun by virtue of such repealed statute.”). Because there is another available interpretation—namely that the legislature allowed the Merit Protection Commission to continue to exist to wind down its cases and avoid the chaos unleashed by an immediate transfer of pending cases to an agency with nothing in place to deal with such transfers—I would reject the majority’s constitutionally suspect interpretation. Accordingly, I would reverse the order appealed and remand for additional proceedings. *See Aldridge Hotel Co. v. Mainard*, 1935 OK 376, ¶ 0, 43 P.2d 738 (“In so far as Senate Bill No. 76 ... purports to change the procedure in a proceeding pending at the time of the effective date thereof, it is ineffective, unconstitutional, and void.” (Syllabus of the Court)).

September 9, 2024