

RENDERED: OCTOBER 2, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-001522-MR

BILLY BEAVERS

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT
HONORABLE JEAN CHENAULT LOGUE, JUDGE
ACTION NO. 08-CI-01027

CITY OF BERA, KENTUCKY,
A FOURTH CLASS CITY;
STEVEN CONNELLY,
INDIVIDUALLY AND IN HIS
CAPACITY AS MAYOR OF THE
CITY OF BERA; AND
DWAYNE BRUMLEY,
INDIVIDUALLY AND IN HIS
CAPACITY AS CHIEF OF POLICE
OF THE CITY OF BERA

APPELLEES

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; DIXON AND KRAMER, JUDGES.

KRAMER, JUDGE: Billy Beavers appeals an order of the Madison Circuit Court granting summary judgment against him on claims of wrongful discharge and due process violations following his termination as a police officer. We vacate and remand.

The relevant factual and procedural history of this matter was previously discussed in *Beavers v. City of Berea*, No. 2010–CA–001522–MR, 2012 WL 28690 (Ky. App. January 6, 2012):

Beavers was employed by the City of Berea [FN] as a police officer. On July 4, 2007, he was involved in an automobile pursuit that resulted in his use of force upon the passenger of the automobile involved in the pursuit. Although the passenger did not file any complaint regarding the incident, the Berea Police Department instituted an internal investigation of Beavers' actions. Beavers was suspended with pay pending the outcome of that investigation.

[FN] The City of Berea is a fourth-class city located in Madison County. KRS [Kentucky Revised Statutes] 81.010(4).

On August 1, 2007, the Department found that Beavers' actions violated the Department's regulations. The following day, Beavers was notified that his employment was terminated in a letter signed by the City Mayor, Steven Connelly, and the City's Chief of Police, Dwayne Brumley. In response to his termination, Beavers filed a grievance form, denying that he had violated any regulations and alleging that his termination was excessive. On August 7, Mayor Connelly and Chief Brumley sent a letter which denied the grievance and re-affirmed Beavers' termination. The same letter advised Beavers that he may request a hearing pursuant to the City's Personnel Policies.

Shortly thereafter, Beavers' counsel contacted counsel for the City, arguing that Beavers was entitled to an evidentiary hearing pursuant to KRS 15.520.^[1] In response, the City took the position that KRS 15.520 did not apply and that the City's Personnel Policies provided the only administrative remedy. Beavers declined to participate under such terms, and the hearing was cancelled.

On July 3, 2008, Beavers filed this action against the City, Mayor Connelly individually and in his official capacity, and Chief Brumley, individually and in his official capacity. Beavers alleged wrongful termination in violation of his rights under KRS 15.520, and he sought damages for negligence *per se* for violating the statute, for defamation and for violation of the Kentucky Civil Rights Act. KRS 344.020 *et seq.* In lieu of an answer, the City, Mayor Connelly and Chief Brumley (collectively "the Appellees") filed a motion to dismiss, arguing that the provisions of KRS 15.520 do not apply. The trial court initially denied the motion, finding that issues of fact precluded summary judgment.

On August 10, 2009, Beavers moved for summary judgment, arguing that he was entitled to the hearing provisions set out in KRS 15.520. The Appellees renewed their motion to dismiss, or in the alternative, for summary judgment, arguing that a hearing under KRS 15.520 is only required when the employment action is based on a citizen complaint. Chief Brumley provided an affidavit stating that no citizen complaint was filed in this case and the decision to terminate Beavers was based only on the results [of] an internal investigation.

After considering the motions, the trial court granted the Appellees' motion to dismiss, concluding that KRS 15.520 was not applicable in this case.

Id. at *1-2.

¹ Although not relevant to our analysis, we note this statute was effectively amended on June 24, 2015.

This Court also noted that the appellees had offered three arguments below and on appeal to support the dismissal of Beavers' claims: (1) KRS 15.520, the lynchpin of each claim Beavers had asserted, was irrelevant because Beavers' discipline had resulted from an intra-departmental action and not a citizen's complaint; (2) KRS 15.520 was irrelevant because the City of Berea's municipal form of government had not adopted the civil service provisions of KRS Chapter 95; and (3) even if KRS 15.520 had been relevant to Beavers' disciplinary proceedings, Beavers had rejected the city's offer to challenge his termination before a hearing officer and had consequently failed to exhaust his administrative remedies. *Id.* at *3. Ultimately, this Court affirmed on the basis that "the statutory requisites of KRS 15.520 [were] not relevant to Beavers' termination." *Id.* at *3.

Following a petition for discretionary review filed by Beavers, however, the Kentucky Supreme Court vacated and directed this Court to reconsider our decision in light of *Pearce v. University of Louisville, by and through its Board of Trustees*, 448 S.W.3d 746 (Ky. 2014).

With that said, the Kentucky Supreme Court's decision in *Pearce* effectively refutes the first and second arguments the appellees offered, as described above. *See id.* at 760 ("KRS 15.520 applies to both disciplinary proceedings generated by citizen complaints and those initiated by intra-departmental actions"); *id.* at 755 (noting that the provisions of KRS 15.520 apply "to police officers of local units of government who receive funds pursuant to KRS

15.410 through 15.992” (and the City of Berea undisputedly receives such funds));

see also id. at 759, explaining:

[I]f . . . the legislature intended for the police officer’s bill of rights even in the case of a “citizen’s complaint” to vary depending upon the size of the police officer’s city and its form of municipal government, the legislature could easily have said so by specific language to that effect or by cross-referencing the very KRS Chapters now cited by the dissent [including KRS Chapter 95]. Much to the contrary, the entire tone and tenor of KRS 15.520 suggests uniformity of due process protections to police officers all across the Commonwealth, irrespective of the urban or rural nature of the local community.

However, *Pearce* does not address the appellees’ third argument, *i.e.*, that even if KRS 15.520 did apply (and it does), Beavers’ failure to exhaust his administrative remedies nevertheless deprived the circuit court of jurisdiction to consider the breadth of his claims.

As an aside, an appellate court *may* affirm a lower court’s decision on other grounds as long as the lower court reached the correct result. *See, e.g., McCloud v. Commonwealth*, 286 S.W.3d 780, 786 n. 19 (Ky. 2009). However, we decline to do so because our Supreme Court also refrained from addressing this issue when it vacated and remanded this matter for our reconsideration;² and, upon reconsideration of the limited record before us (and in light of the fact that the circuit court likewise never addressed this issue), we believe the same restraint is warranted at this level. Prudence dictates we allow the circuit court to revisit this issue upon remand to determine whether, and to what extent, the doctrine of

² The appellees also raised this argument before the Kentucky Supreme Court in their response to Beavers’ petition for discretionary review.

exhaustion of administrative remedies precludes Beavers' claims. As *dicta*, we would also direct the circuit court's attention to *Pearce v. Whitenack*, 440 S.W.3d 392 (Ky. App. 2014), which recently summarized the purpose of KRS 15.520; its relationship to the exhaustion of remedies doctrine; and the doctrine's effect upon the viability of certain tort claims implicating compliance or noncompliance with KRS 15.520.

We therefore VACATE the circuit court's judgment dismissing Beavers' claims, and REMAND for further proceedings not inconsistent with this opinion.

ALL CONCUR.

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