

ORIGINAL

IN THE SUPREME COURT OF OHIO
CASE NO.:

16 AP 083

IN RE:

DISQUALIFICATION OF
JUDGE TIMOTHY J. GRENDALL

**AFFIDAVIT OF PREJUDICE IN SUPPORT OF THE DISQUALIFICATION OF
JUDGE TIMOTHY J. GRENDALL**

I, Ken Radtke, Jr., a duly elected member of the Board of Trustees of Chester Township, Ohio, hereby presents for filing the within Affidavit of Prejudice against Judge Timothy J. Grendell of the Probate Division of the Geauga County, Ohio, Court of Common Pleas. Respectfully, I seek the disqualification of Judge Grendell in accordance with Ohio Revised Code Section 2101.39 and 2701.03 based upon Affiant's knowledge, information, and belief that Judge Grendell could be perceived as biased and prejudiced; and because Judge Grendell's impartiality might reasonably be questioned. Therefore, this Court should permanently disqualify Judge Timothy J. Grendell from participating in *In the Matter of: Chester Township Park District*, Geauga County Court of Common Pleas, Probate Division, Case No. 84 PC 000139. Affiant respectfully requests that the Supreme Court of Ohio assign visiting or retired judges from outside Geauga County to preside over this case as it relates to Chester Township.

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The following Affidavit is submitted in support of the Disqualification of Judge Timothy J. Grendell:

AFFIDAVIT

Affiant Ken Radtke, Jr., first being duly sworn according to law, deposes and states to the best of his knowledge, information, and belief that:

1. Affiant Radtke is a duly elected member of the Board of Trustees of Chester Township, Ohio ("Chester BOT"). Chester Township is a political subdivision. The Chester BOT represents the citizens of Chester Township. A political subdivision must act through its employees and elected officials. *Elston v. Howland Local Sch.*, 113 Ohio St. 3d 314, 318, 865 N.E.2d 845, 849-50, 2007-Ohio-2070, ¶19; *Spires v. Lancaster*, 28 Ohio St.3d 76, 502 N.E.2d 615 (1986)("it is undeniable that the State can only act through its employees and officers.").

2. The case at bar, *In the Matter of Chester Township Park District*, Geauga County Court of Common Pleas, Probate Division ("Probate Court"), Case No. 84 PC 000139, originally dates from 1984, when the then-Chester Township Board of Trustees applied to establish a R.C. 1545 park district, the Chester Park District ("CPD").

3. Case No. 84 PC 000139 is currently presided over by Judge Grendell, the sole judge of the Probate Court. The probate judge is the appointing authority of the R.C. 1545 CPD. The probate judge may appoint or remove CPD commissioners at his pleasure. R.C. 1545.05.

4. The within Affidavit is based upon Affiant's own personal knowledge and belief; and is filed in accordance with Ohio Revised Code Sections 2101.39 and 2701.03 because Judge Grendell is biased and prejudiced, and because Judge Grendell's impartiality might reasonably be questioned. The factual allegations, hereinafter set forth, support the allegations of bias, prejudice, and partiality, which warrant Judge Grendell's immediate disqualification.

5. In affidavit-of-disqualification proceedings, “[t]he term ‘bias or prejudice’ ‘implies a hostile feeling or spirit of ill-will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contradistinguished from an open state of mind which will be governed by the law and the facts.’ ” *In re Disqualification of O’Neill*, 100 Ohio St.3d 1232, 2002-Ohio-7479, 798 N.E.2d 17, ¶ 14, quoting *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 469, 132 N.E.2d 191 (1956).

6. This Court has held that “[i]t is of vital importance that the litigant should believe that he will have a fair trial.” *State ex rel. Turner v. Marshall* (1931), 123 Ohio St. 586, 587, 176 N.E. 454. Moreover, this Court has also held that "The law requires not only an impartial judge but also one who appears to the parties and the public to be impartial." *In Re Disqualification of Corrigan*, 110 Ohio St.3d 1217, 2005-Ohio-7153, 850 N.E. 2d 720, ¶11. "Preservation of public confidence and the integrity of the judicial system is vitally important," and "an appearance of bias can be just as damaging to public confidence as actual bias." *In Re Disqualification of Burg*, 2014-Ohio-1458, ¶9, 138 Ohio St.3d 1271, 1273, 7 N.E.3d 1211, 1213.

7. On June 22, 2016, the Probate Court sua sponte "permanently restrained and enjoined" Chester Township from acting in accordance with certain terms of a contractual agreement between the Chester Township Park District and Chester Township that had been in force since 1993. (Judgment Entry of June 22, 2016 at 10, Attached as Ex. "A") **Neither the Chester Park District nor Chester Township asked for this injunction. Neither of these entities sued on the contract in the probate court or any other court.**

8. Judge Grendell ordered his appointed master commissioner to meet with the Park District and the Township to formulate a new contract that would comply with his order. (Judgment Entry of June 22, 2016 at 9; Ex. "A"; see also Interim Judgment Entry of May 4, 2016

at 3; Ex. "B.") On June 22, 2016, the Probate Court issued a final order that *sua sponte* "permanently restrained and enjoined" Chester Township (and the Park District) from acting in accordance with certain terms of a contractual agreement between the Chester Township Park District and Chester Township that had been in force since 1993. (Judgment Entry of June 22, 2016 at 10, Attached as Ex. "A.")

9. At its public meeting where it deliberated the issue as required by Ohio law, Chester Township in a 2-1 vote ultimately did not approve the contract Judge Grendell's master commissioner advocated, which was based on Judge Grendell's June 22, 2016 order.

10. Chester Township timely appealed the June 22, 2016 order to the Eleventh District Court of Appeals. (Notice of Appeal of July 22, 2016.) The Probate Court's unprecedented *sua sponte* June 22, 2016 order (which is on appeal) voids various provisions of a contract between two independent political subdivisions where the terms had been in force for 23 years. Again, neither the Park District nor Chester Township (the parties to the contract) sued on the contract or asked the Probate Court to adjudicate the contract. The primary question of whether the Probate Court exceeded or abused its jurisdiction or authority is at the heart of the appellate case in the Eleventh District.¹

11. On Sept. 1, 2016, the Eleventh District stayed the execution of the Probate Court's permanent injunction from "enforcing or acting on" various provisions of the contract between

¹ In a previous prohibition action, the Supreme Court of Ohio held that Judge Grendell did not "patently and unambiguously" lack subject matter jurisdiction in that case. *State ex rel. Chester Twp. v. Grendell*, 2016-Ohio-1520. Judge Grendell's decision to *sua sponte* void the contract was not at issue at the time and was not part of the prohibition action, which merely found narrowly that the Court was "not convinced that the Probate Court so patently and unambiguously lacked jurisdiction to issue the orders in the underlying case that we are willing to issue a writ and circumvent the appellate process." *Id.* at ¶31. This Court expressly held "we need only decide whether the Probate Court patently and unambiguously lacks jurisdiction over the matter." *Id.*, emphasis added.

the Township and the park district. (Judgment Entry of Sept. 1, 2016; Ex. "C.") In other words, the stay left the contract as it has been for the past 23 years, pending the resolution of the Appeal. The Eleventh District also observed that "the probate court entered a judgment on August 11, 2016, and stated 'execution on the prior orders of [the probate court] as applied to the Chester Township Trustees is stayed pending the outcome of the pending appeal.'" (*Id.* at 1-2, attached as Ex. "C.")

12. Notwithstanding the Eleventh District's stay, Judge Grendell ordered the master commissioner to investigate whether the failure of the majority of the Township Trustees to vote to approve the new contract in accordance with his June 22, 2016 order (the one that is on appeal in the Eleventh District) and the master commissioner's efforts to negotiate a new contract, constituted interference with the park district, fraud on the court, and contempt of court. (Judgment Entry of September 16, 2016; Ex. "D.") Judge Grendell also ordered (among other things) the master commissioner to **investigate felony criminal charges** for "interference" under R.C. 2921.05(A) in retaliation against Judge Grendell and civil claims for a violation of **Judge Grendell's civil rights under Section 1983** against the two Chester Township trustees that voted against the revised contract. (Supplemental Judgment Entry of September 22, 2016; Ex. "E.") Specifically, the Court ordered the master commissioner to investigate and report on whether Trustees Radtke and Petruziello committed a felony by retaliating against Judge Grendell or violated Judge Grendell's constitutional rights under Section 1983:

1. **Whether Chester Township Kenneth Radtke and/or Michael Petruziello, in violation of R.C. 2921.05(A) (a felony of the third degree), retaliated against the Chester Township Park Board members, and/or Judge Tim Grendell in response to the Township Trustees losing their civil mandamus [sic]² action filed with the Ohio Supreme Court because the Park**

² The Probate Court is referring to the prohibition action, *State ex rel. Chester Twp. v. Grendell*, 2016-Ohio-1520, not a mandamus action.

Board members and Judge Grendell successfully discharged their respective duties as public servants with respect to that civil mandamus [sic] action, and, if so, did such retaliation interfere with the purpose of the Chester Park District and Judge Lavrich's order creating the township park district?

2. **Whether Chester Trustees Kenneth Radtke and/or Michael Petruziello, in violation of 42 U.S.C. § 1983 deprived the Chester Township Park Board members, and/or Judge Tim Grendell of their/his constitutionally protected rights in response to the Township Trustees losing their civil mandamus [sic] action filed with the Ohio Supreme Court** because the Park Board members and Judge Grendell successfully discharged their respective duties as public servants with respect to that civil mandamus [sic] action, and, if so, did such deprivation of constitutional and federal statutory rights interfere with the purpose of the Chester Park District and Judge Lavrich's order creating that township park district?

(Supplemental Judgment Entry of September 22, 2016 at paragraphs 1 and 2, emphasis added; Ex. "E.") Judge Grendell has also ordered the master commissioner to investigate whether the Geauga County Prosecutor's Officer and private counsel retained by the Chester Township Trustees perpetrated a fraud on the Court or were complicit with others committing fraud on the court related to the Township's failure to approve a new contract with the Park District. (Judgment Entry of Sept. 16, 2016.)

13. Judge Grendell's order to the master commissioner to investigate whether Judge Grendell personally is being retaliated against and ordering the master commissioner to investigate whether the Chester Trustees are criminally and civilly liable to him, disqualifies him.

14. A reasonable and objective observer would question a judge's impartiality to be able to rule fairly when the judge himself will rule on whether he is being retaliated against. The Supreme Court has held that "[i]t is of vital importance that the litigant should believe that he will have a fair trial." *State ex rel. Turner v. Marshall* (1931), 123 Ohio St. 586, 587, 176 N.E. 454. It is reasonable to call into question the fairness of Judge Grendell, as he has ordered the master commissioner to investigate felony criminal charges against two of the three Chester

Township Trustees because he believes they are retaliating against him for losing a prohibition case against him. (Supplemental Judgment Entry of Sept. 22, 2016.)

15. Judge Grendell ultimately will decide whether to adopt the master commissioner's recommendations.

16. Even assuming that Judge Grendell could be fair in this circumstance where he is claiming he is being retaliated against, the appearance of an impartial judge would be impossible. "The law requires not only an impartial judge but also one who appears to the parties and the public to be impartial." *In Re Disqualification of Corrigan*, 110 Ohio St.3d 1217, 2005-Ohio-7153, 850 N.E. 2d 720, ¶11. "Preservation of public confidence and the integrity of the judicial system is vitally important," and "an appearance of bias can be just as damaging to public confidence as actual bias." *In Re Disqualification of Burg*, 2014-Ohio-1458, ¶9, 138 Ohio St.3d 1271, 1273, 7 N.E.3d 1211, 1213.

17. Further, Judge Grendell has taken the improper role of criminal investigator that also requires him to be disqualified. It is the role of law enforcement, not the judiciary, to conduct criminal investigations. *In Disciplinary Counsel v. Campbell*, 126 Ohio St.3d 150 (2010)(finding judge violated canons of judicial conduct and disciplinary rules). The Court has explained: " 'The responsibility of a judge is to decide matters that have been submitted to the court by the parties. The judge may not, having decided a case, advocate for or, as in this case, materially assist one party at the expense of the other. Such advocacy creates the appearance, and perhaps the reality, of partiality on the part of the judge. This, in turn, erodes public confidence in the fairness of the judiciary and undermines the faith in the judicial process that is a necessary component of republican democracy.' " *Id.* at ¶ 14, quoting *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704, 815 N.E.2d 286. Judge Grendell's order to the master

commissioner to investigate whether the Chester Trustees are criminally liable as a result of alleged retaliation as to the Judge, disqualifies him. Further, neither the Park District nor Chester Township asked for the injunction or filed a complaint in the probate court or any court. The Court sua sponte voided provisions of a contract between two independent political subdivisions that had been in effect for decades, thus "creat[ing] the appearance, and perhaps the reality, of partiality on the part of the judge."

18. Judge Grendell also is improperly mixing administrative and judicial responsibilities that renders him disqualified. On June 22, 2016, the Probate Court sua sponte "permanently restrained and enjoined" the Township from acting in accordance with certain terms of a contract between the Chester Township Park District and Chester Township that had been in force since 1993. (Judgment Entry of June 22, 2016 at 10.) The conflict between the judge's administrative duties as someone who must appoint and remove park district commissioners and his judicial duties – in this case where he has sua sponte injected himself into altering a contract between the Township and the Park District – render him disqualified. See *In re Disqualification of Murphy*, 110 Ohio St.3d 1206, 850 N.E.2d 712, 2005-Ohio-7148 ¶ 7 ("the potential conflict between the judge's administrative duties on the board and his judicial duties on the bench might well cause a reasonable and objective observer to question the judge's partiality.") Again, neither the Park District nor the Township asked for this injunction. Neither of these entities sued on the contract in the Probate Court or any other court. Both the Park District and Chester Township are separate political subdivisions under Ohio law.

19. Judge Grendell's orders also seem to assume that the Township and the Park District entered a new contract that was binding, even before the Township deliberated and voted on the contract in an open meeting. Judge Grendell commanded the master commissioner to investigate

retaliation and fraud on the court because he believed that his master commissioner had reached a binding agreement that the Township ultimately did not approve. The master commissioner was involved in trying to establish a new contract. Judge Grendell initiated an investigation against not only the Trustees but the "Geauga County Prosecutor's Office and/or private counsel retained by Chester Township." (Judgment Entry of Sept. 16, 2016 at paragraph 5.) Judge Grendell's appointed master commissioner and Judge Grendell himself would be central to the resolution of the dispute they are investigating, rendering Judge Grendell disqualified. *Cf. In re Disqualification of Unruh*, 127 Ohio St. 3d 1244, 2010-Ohio-5960, 937 N.E.2d 1030 (2010) (trial judge, who participated in mediation and settlement negotiations for the parties was disqualified because of a significant likelihood that the judge would be called to testify as to her recollection and understanding of terms of the parties' agreement). Further, "The law requires not only an impartial judge but also one who appears to the parties and the public to be impartial." *In re Disqualification of Corrigan*, 110 Ohio St.3d 1217, 2005-Ohio-7153, 850 N.E.2d 720, ¶ 11. Based on Judge Grendell's conduct it is impossible for him to appear to the parties and public as impartial.

20. Furthermore, it is Affiant Radtke's perception and belief that Judge Grendell has ill will or hostile feelings toward him. On November 11, 2015, Judge Grendell approached Trustee Radtke at a Veteran's Day Ceremony in Chester Township and said to Trustee Radtke, "Are you a hypocrite every day, or just on Veteran's Day?" The Judge's gratuitous and inflammatory comments toward Radtke could lead a reasonable and objective observer to believe that the Judge may not be able to sit fairly and impartially on a case involving the Township when Affiant Radtke is one of the trustees, especially when viewed in light of Judge Grendell's recent orders.

21. As set forth above, and in compliance with R.C. 2701.03(A), the within Affidavit of Prejudice in Support of the Disqualification of Judge Timothy J. Grendell seeks to disqualify Judge Grendell on the grounds of bias, prejudice, and partiality.

22. Moreover, as set forth above, and in compliance with R.C. 2701.03(B), the within Affidavit of Prejudice in Support of the Disqualification of Judge Timothy J. Grendell contains specific allegations on which the claims of bias, prejudice, disqualification, and partiality are based; and includes specific facts supporting the bias, prejudice, disqualification, and partiality allegations.

23. Contemporaneous with the filing of this Affidavit, a copy is being served upon Judge Grendell at the Court of Common Pleas, Probate Division, Geauga County and on all other parties or their counsel as indicated on the Certificate of Service attached to this Affidavit.

24. This Affidavit is timely made and brought as soon as practicable after the conduct/actions giving rise to this Affidavit as such conduct/actions have occurred within the last 30 days. There is not a hearing in this matter before Judge Grendell currently scheduled.

25. Accordingly, for the foregoing reasons, this Court should permanently disqualify Judge Timothy J. Grendell from participating in *In the Matter of: Chester Township Park District*, Geauga County Court of Common Pleas, Probate Division, Case No. 84 PC 000139. Affiant respectfully requests that the Supreme Court of Ohio assign visiting or retired judges from outside Geauga County to preside over this case.

FURTHER AFFIANT SAYETH NAUGHT.

ATTESTATION

The above facts are true and correct to the best of my knowledge information and belief.

Ken Radtke, Jr.
Ken Radtke, Jr., Board of Trustees of Chester
Township

STATE OF OHIO)
)
COUNTY OF CUYAHOGA) ss:

Sworn to and subscribed before me this 7th day of October, 2016 by Synthia
Wahlstrom. Witness my hand and official seal.

Synthia Wahlstrom
NOTARY PUBLIC
My Commission Expires: January 16, 2021

SYNTHIA WAHLSTROM
NOTARY PUBLIC • STATE OF OHIO
Recorded in Lake County
My commission expires Jan. 16, 2021

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of October, 2016, a copy of the foregoing Affidavit of Prejudice in Support of the Disqualification of Judge Timothy Grendell has been sent via Certified Mail, postage prepaid to:

Judge Timothy J. Grendell
Geauga County Juvenile Court
231 Main Street, 2nd Floor
Chardon, OH 44024

James M. Gillette, Esq.
Chester Township Park District
Board of Commissioners
117 South Street, Suite 208
Chardon, OH 44024

Counsel for Chester Township Park District
Board of Commissioners



Ken Radtke, Jr., Board of Trustees of Chester
Township

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IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
GEAUGA COUNTY, OHIO

2016 JUN 22 AM 10: 05

PROBATE-JUVENILE
DIVISION
GEAUGA COUNTY, OHIO

IN THE MATTER OF:)
CHESTER TOWNSHIP PARK)
DISTRICT)
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Case No.: 84 PC 000139

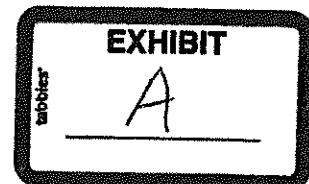
JUDGE TIMOTHY J. GRENDALL
JUDGMENT ENTRY

This matter came on for review on the Court's own motion.

On May 4, 2016, this Court issued an interim judgment entry which provided any party to this case with the opportunity to file a request for a hearing and supporting briefs by May 13, 2016. However, in spite of this opportunity, no party has chosen to submit such a request, so this final order now supersedes the May 4, 2016 Interim Judgment Entry in relevant part. Chester Township Trustees chose to submit a brief, filed on May 18, 2016.

Background

This Court issued a judgment entry on November 26, 2014 setting forth its findings of fact and conclusions of law, based upon the recommendations of the Master Commissioner. The Chester Township Trustees (hereinafter "Trustees") appealed this entry to the Eleventh District Court of Appeals, which, after initially granting a stay, dismissed the appeal, finding that the entry in question was not yet a final appealable order.



The Trustees then filed a petition for a writ of prohibition with the Ohio Supreme Court seeking to prevent this Court from issuing orders governing the conduct of the Trustees, specifically this Court's orders preventing them from (1) interfering with the Judgment Entry of Judge Frank Lavrich and (2) taking action that conflicts with Ohio Revised Code Chapter 1545 as applied to the Chester Township Park District (hereinafter "Park District"). The Trustees argued that this Court did not have legal authority to tax a portion of the Master Commissioner's fees to the Township. Ultimately, the Ohio Supreme Court unanimously denied the Trustees' petition. *State ex rel. Chester Twp. v. Grendell*, 2016-Ohio-1520. The Court found that (1) probate courts do not patently and unambiguously lack jurisdiction to issue orders where township trustees eliminate a source of funds to operate a township park district; (2) probate courts have authority to create park districts and issue orders governing their operation; and (3) probate courts have authority to prevent conduct that frustrates the purposes of a park district, including orders that impose duties on those interfering with the park district's purposes (in this case, the Trustees). *Grendell*, at ¶30-32.

This Court has reviewed the three issues still outstanding: (1) whether the Chester Township Park District has adequate funding for its budget; (2) the total of the Master Commissioner's fees to be taxed as costs; and (3) whether the 1993 Agreement between the Trustees and the Park District conflicts with or violates R.C. Chapter 1545 and Judge Lavrich's 1984 order creating the Chester Township Park District. The Court will address each issue in turn.

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Funding Has Been Resolved and Is Now Moot

Chester Township Park Board Commissioner Joseph H. Weiss informed the Court that the Park District has received adequate funding to operate the township park for 2015 and expects to receive adequate funding for 2016. Mr. Weiss testified that the 2016 Park District budget has been partially funded, and that he expects the Township to fund the remaining \$10,000.00 requested. Mr. Weiss further informed the Court that the Park District has taken the necessary steps to receive its permitted inside tax millage funds in the future under R.C. 1545.20. The Court hereby finds that the budget issue has been resolved and is now moot.

Assessment of Master Commissioner's Fees and Costs

The second issue presented concerns whether the \$37,220.00 in fees and expenses invoiced by attorney Mary Jane Trapp for her services as Master Commissioner are reasonable and appropriate and whether those fees should be taxed as costs. Counsel for the Trustees argues that he cannot accept or reject the fees and costs until the Trustees themselves can view said costs and fees. The Court heard sworn testimony from Mrs. Trapp regarding what activities she conducted as Master Commissioner and how she calculated her fees, which were charged at a substantially discounted hourly rate because of the public nature of the proceedings. The Court also heard sworn testimony from Joe Svete, an attorney with more than 50 years of legal practice in Geauga County. He testified that in his professional opinion, Mrs. Trapp's fees and costs as Master Commissioner were reasonable.

The Court accepts the June 17, 2016 Invoice, which was submitted by Mary Jane Trapp in the amount of \$38,845.00 for her services as Master Commissioner in this

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matter, which includes services provided for the period after the Ohio Supreme Court issued its opinion. The Court hereby taxes said \$38,845.00 in fees and costs as costs in this case under R.C. 2101.06 and 2101.07. Pursuant to ¶13 of this Court's Judgment Entry of 11/26/2014, the Court shall pay \$10,386.26 of those costs, the Chester Township Trustees shall be responsible for and shall pay \$14,229.37, and the Chester Township Park District shall be responsible for and shall pay \$14,229.37 of those costs, as per R.C. 2101.07 and 2101.06.¹ The Court further orders that these funds shall be paid within sixty (60) days of the docketing of this judgment entry.

The trustees contest this Court's authority to tax the master commissioner's fees as costs to the township in their brief. Brief of Chester Township Trustees of 5/18/2016, 3-4. The Trustees' arguments center around an incorrect interpretation of their own role in the proceedings. The trustees believe (incorrectly) that they ceased to be parties to this proceeding once the park district was created. However, the Trustees have always been parties to this matter, as evidenced by, *inter alia*, the fact that they have been served copies of all orders in the case since its initiation and the fact that they have participated at hearings and filed briefs in the past in this case.

Further, the Supreme Court in *Grendell* noted that the plenary power of probate courts to dispose fully of any matter properly before them "surely includes the ability to issue orders to enforce the entry creating the park district, including orders that impose duties on those interfering with the park district's purposes." *Grendell*, at ¶30. Because both the township trustees and the park district commissioners interfered with the park district's purposes, orders imposing duties on both groups of persons are within the

¹ This amounts to a percentage breakdown of 25% to this Court, 37.5% to the Trustees, and 37.5% to the Park District.

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permissible scope of probate court authority. By taking actions affecting the rights and duties of a separate legal and political entity (the Park District), Trustees ensured that they were well within this Court's jurisdiction to correct wrongful conduct, regardless of whether or not they are parties.

Courts have significant discretion as to how the costs of an action shall be assessed. *State ex rel. Fant v. Regional Transit Authority*, 48 Ohio St. 3d 39 (1990); *State ex rel. Estate of Hards v. Klammer*, 2006-Ohio-3670. *Klammer* is particularly relevant, because the Supreme Court in *Klammer* noted the authority of probate courts to tax master commissioner fees as costs in a case. *Klammer*, at ¶15. Additionally, Trustees' status as continuing parties to this matter means that they are liable to pay court costs if those costs are taxed as a part of this Court's judgment. *Strattman v. Studt*, 20 Ohio St. 2d 95, 103 (1969).

The 1993 Agreement Conflicts with Relevant Statutes

Under R.C. 2101.24(C), probate courts have plenary power to dispose fully of any matter that is properly before the court, unless that power is expressly limited or denied by the Revised Code. *Grendell, supra*, at ¶28. This "surely includes the ability to issue orders to enforce the entry creating the park district, including orders that impose duties on those interfering with the park district's purpose." *Grendell, supra*, at ¶30. The Court hereby finds that several sections of the 1993 Agreement (hereinafter "Agreement") between the Trustees and the Park District are in direct conflict with relevant portions of state law. Specifically, ¶1, ¶3, ¶4, ¶8, and ¶12 of the Agreement are in conflict with relevant state statutes, Judge Lavrich's original order forming the Park District, or both. This Agreement gives the Trustees powers over the Park District that are not provided for

by state law. Essentially, R.C. Chapter 1545 would be meaningless if the agreement were permissible.

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The Court hereby finds:

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1. ¶1 of the Agreement conflicts with R.C. Chapter 1545 because it would grant the township trustees unilateral authority to terminate and discontinue the Park District, which, under R.C. 1545.35, can only be accomplished by this Court or by a vote of the residents of Chester Township.
2. ¶3 of the Agreement conflicts with R.C. 1545.14 because it hinders the ability of the Park District and its commissioners to enter into contracts and creates an unlawful veto mechanism for the Trustees to override the decisions of the Park District's commissioners.
3. ¶4 of the Agreement conflicts with R.C. Chapter 1545 because it essentially grants the trustees authority to interfere with the Park District's commissioners and their decisions in matters involving the Park District, despite the Park District's existence as a separate legal entity.
4. ¶8 of the Agreement conflicts with R.C. Chapter 1545 broadly and R.C. 1545.11 specifically because it interferes with the powers of the Park District to take actions as permitted by state law.
5. ¶12 of the Agreement conflicts with R.C. 1545.35 and 1545.36 because it allows the Chester Township Trustees to take control of all Chester Township parks, while statute permits only the Court or the people of Chester Township to dissolve the Park District, which is done without any involvement from the township Trustees.

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BEREA COUNTY, OHIO

Contract terms that clearly conflict with statutory provisions or other public policy established by state law are not enforceable in Ohio courts. *E.g., John Hancock Mutual Life Ins. Co. v. Hicks*, 43 Ohio App. 242, 247 (10th Dist. 1931). *Cf. State Farm Mutual Automobile Ins. Co. v. Grace*, 2009-Ohio-5934, ¶16 (noting that a shift in public policy permits contracts previously impermissible as contrary to public policy). *See generally, Key v. Vattier*, 1823 Ohio LEXIS 27, at 4-5 (contract with attorney found to be against public policy and therefore void); *Lamont Building Co. v. Court*, 147 Ohio St. 183, 185 (1946) (judges must take care not to invalidate contracts unless they are clearly opposed to public policy). Because enforcing the 1993 Agreement would harm the statutorily protected interest of Chester Township residents and the clearly established statutory authority of the Chester Township Park District's commissioners, the Court finds that the 1993 Agreement contains provisions that conflict with or otherwise violate public policy, R.C. Chapter 1545, and Judge Lavrich's original order. Therefore, these provisions are impermissible.

In their brief, the Trustees argue that they are authorized to enter into agreements with other public entities. This is correct. However, the Trustees are incorrect when they interpret this statutory authorization to be the equivalent of a blank check to enter agreements of any sort, regardless of the terms of those agreements. Under Ohio law, neither the Trustees nor the Park District has the legal authority to enter into contracts that are in conflict with either specific statutes or public policy. *Hicks, supra*, at 247. Ohio law places restrictions on the types of agreements park districts may enter into.

Trustees rely on R.C. 1545.14, which simply does not permit what Trustees claim it does. Trustees claim that this section constitutes blanket authorization for park districts

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GEAUGA COUNTY, OHIO

to enter into agreements with other public entities, which would therefore permit the township trustees to terminate or dissolve the park district and to thereby gain ownership of the land owned by the park district. However, R.C. 1545.14 is quite explicit about the types of agreements that are permissible. It permits township park districts enter agreements to “assume control” over already-existing park lands not under the control of the park district. R.C. 1545.14.

To “assume” in this sense of the word means “to begin (a role, duty, etc.) as a job or responsibility; to take or begin to have (power, control, etc.) in a job or situation.” Merriam-Webster Dictionary Online. Black’s Law Dictionary defines it as “to take upon one’s self.” Black’s Law Dictionary Online, 2nd Ed. Thus, R.C. 1545.14 permits township park districts to take power upon themselves over other parklands not already under their control. How Trustees see this provision as permitting the Park District to enter an agreement doing the exact opposite of the statute is hard to fathom.

Administrative or other governing bodies are restricted to the powers that are expressly granted to them. *See Davis v. State ex rel. Kennedy*, 127 Ohio St. 261 (1933); *Penn Central Transportation Co. v. Public Utilities Commission*, 35 Ohio St.2d 97, (1973). As much as Trustees would like for the Park District to have the power to enter into agreements that would serve to benefit the Township should the Park District ever be dissolved, that power is not conferred by statute. R.C. 1545.14 permits township park districts to gain control of additional park lands, not to agree to give a separate legal entity the power to dissolve the Park District and to transfer those parklands to that entity.

In their brief, Trustees make much of a quotation from *Bernardini v. Bd. Of Ed.*, 58 Ohio St. 2d 1, 4 (1979): “[I]t is the duty of [courts] to give effect to the words used in

a statute, not to delete words used or to insert words not used.” Trustees’ Brief, at 3. The irony of this citation is not lost on the Court. To accept Trustees’ argument that the 1993 Agreement is permitted by R.C. 1545.14, this Court would be required to insert the words, “or cede” into the statute, when the plain language of the statute permits park districts only to “assume control” over other park lands. This Court declines the invitation to render the English language meaningless.

As has never been contested by any party to this matter thus far, township districts are certainly permitted to enter into agreements with other public entities. However, the potential agreements are restricted in scope, because they must be otherwise in compliance with state law and not contrary to public policy. There can be no doubt that the 1993 Agreement was not within the permitted scope of agreements, because it did not deal with the park district assuming control over other parklands, but rather ceded control of the Park District to the Chester Township Trustees.

Trustees make much of the obligation of courts to give effect to the intent of parties to contracts. Trustees’ Brief, at 2-3. However, those contracts themselves are only valid if they are not prohibited by other statutory provisions.

Pursuant to ¶7 of this Court’s Judgment Entry of 11/26/2014 and page 3 of this Court’s Interim Judgment Entry of 5/4/2016, the Master Commissioner met with the Chester Township Trustees and the Commissioners of the Chester Township Park Board to attempt to formulate an agreement that consistent with and not in conflict with the authority of the Park District under R.C. Chapter 1545, as well as with the initial Township application and Judge Lavrich’s 1984 order forming the Park District. These negotiations are apparently progressing.

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The Court takes notice that Chester Township is the titleholder of the property operated by the Park Board pursuant to the 1993 Agreement. The Court also takes notice that in the Township Trustees' original application to form the Chester Township Park District, the Trustees included all of the Township territory as property "to be included within the park district."² Judge Frank Lavrich then signed the judgment entry creating the park district with jurisdictional territorial authority over all township parks within Chester Township. Thus, pursuant to the actions taken by the Township Trustees and Judge Lavrich in 1984, all township lands used for township park purposes, regardless of the record ownership, are under the jurisdiction of the Park Board. The agreement between the Trustees and the Park Board simply formalizes this previously-adjudicated fact.

This Court hereby finds that paragraphs 1, 3, 4, 8, and 12 of the 1993 Agreement are contrary to state law and contrary to public policy. Consequently, the Court hereby orders that these paragraphs of the 1993 Agreement shall be **unenforceable and without legal effect**. The Court hereby orders that the Chester Township Trustees and the Commissioners of the Chester Township Park Board, and their agents, employees, attorneys, and all other persons in active concert or participation with them are **permanently restrained and enjoined** from enforcing or acting on the basis of paragraphs 1, 3, 4, 8, and 12 of the 1993 Agreement, and are permanently restrained and enjoined from otherwise violating, directly or indirectly, the provisions of R.C. Chapter 1545 and the order issued by Judge Frank Lavrich creating the Park District with jurisdiction over all of Chester Township. This ruling is entered pursuant to and

² The Township Trustees could have limited the geographic scope of the proposed township park district in their application. They chose not to do so.

consistent with the Ohio Supreme Court's decision in *State ex rel. Chester Twp. v. Grendell*, 2016-Ohio-1520.

The Court hereby taxes the Master Commissioner's fees and expenses as costs in the amount of \$38,845.00 as follows: The Chester Township Trustees shall be responsible for and shall pay \$14,229.37, and the Chester Township Park District shall be responsible for and shall pay \$14,229.37 of those costs, as per R.C. 2101.06 and 2101.07. The Court shall pay all remaining master commissioner fees and expenses. These costs shall be paid within sixty (60) days of the docketing of this order.

You are hereby notified that on this date a Judgment Entry was filed that may be an "appealable" order.

IT IS SO ORDERED.


TIMOTHY J. GRENDALL, Judge

cc: Chester Township Trustees
APA Matheney
Chester Park Commissioners
Atty. Gillette
Mary Jane Trapp, Esq.

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IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
GEAUGA COUNTY, OHIO

2016 MAY -4 AM 8:14

PROBATE-JUVENILE
DIVISION
GEAUGA COUNTY, OHIO

IN THE MATTER OF:

CHESTER TOWNSHIP PARK
DISTRICT

CASE NO.: 84 PC 000139

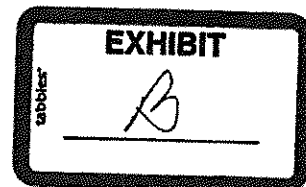
Judge Timothy J. Grendell

INTERIM
JUDGMENT ENTRY

This matter came before the Court on April 26, 2016. Present were: Michael J. Petruziello, Chester Township Trustee; Todd Raskin and Bridey Matheney, Attorneys for Chester Township Trustees ("Trustees"); Joseph H. Weiss, Clay Lawrence, Lance Yandell and Ruth Philbrick, Chester Township Park Board Commissioners ("Park Commissioners"); James Gillette, Attorney for the Chester Township Park Board Commissioners; Mary Jane Trapp, Master Commissioner. Chester Township Trustees Ward Kinney and Brad Radtke were served and given notice of said hearing, but were not present in Court.

The Court issued a November 26, 2014 Judgment Entry setting forth its findings of fact and conclusions of law, based upon the Master Commissioner's recommendations. The Trustees appealed this entry to the Eleventh District Court of Appeals, who, after initially granting a stay, summarily dismissed the appeal, finding said entry not a final appealable order.

The Trustees then filed a petition for a writ of prohibition with the Ohio Supreme Court seeking to prevent this Court from issuing orders preventing the township trustees from (1) interfering with the Judgment Entry of Judge Frank Lavrich, which created the Park District pursuant to Ohio Revised Code Chapter 1545, and (2) taking action that conflicts with Ohio Revised Code Chapter 1545 as applied to the Township Park District. The Trustees also claimed that the



Court did not have legal authority to tax a portion of the Master Commissioners' fees to the Township. Ultimately, the Ohio Supreme Court unanimously denied the Trustee's writ, finding (1) the probate court did not lack jurisdiction to issue the orders where trustees eliminated a source of funds to operate the township park; (2) the probate court had authority to create a park district and to determine matters regarding its operation; and (3) the Court had authority to prevent township trustee interference with the park district's purpose. *State ex rel. Chester Twp. v. Grendell*, 2016-Ohio-1520.

This Court has reviewed the three issues still outstanding: (1) whether the Chester Township Park has adequate funding for its budget; (2) what are the master commissioner's fees to be taxed as costs; and (3) whether the 1993 Agreement between the Trustees and Park Commissioners conflicts with or violates Ohio Revised Code Chapter 1545 and Judge Lavrich's 1984 order creating the Chester Township Park.

I. Funding

Park Board Commissioner Weiss informed the Court that the Township Park District has received adequate funding to operate the township park for 2015 and expects to receive adequate funding for 2016. Mr. Weiss testified the 2016 Chester Township Park budget has been partially funded, and that he expects the Township to fund the remaining \$10,000 requested. Mr. Weiss further informed the Court that the Park District had taken the appropriate action to receive the permitted inside tax millage funds in the future. The Court hereby finds the budget issue moot.

II. Master Commissioner's Fees and Costs

The second issue presented concerns whether the \$37,220 in fees and expenses invoiced by Attorney Mary Jane Trapp for her services as Master Commissioner are reasonable and appropriate and should those fees be taxed as costs. Attorney for the Township Trustees contends he cannot

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accept or reject the fees and costs until the Trustees, themselves, can view said costs and fees. The Court heard sworn testimony from Ms. Trapp regarding what activities she conducted as Master Commissioner and how she calculated her fees, which were charged at a substantial discounted hourly rate because of the public nature of the proceedings. The Court also heard sworn testimony from Joe Svete, an attorney with more than 50 years of legal practice in Geauga County that he believed Ms. Trapp's fees and costs as Master Commissioner were reasonable.

The Court accepts the June 25, 2015 invoice submitted by Mary Jane Trapp in the amount of \$37,220.00 for her services as Master Commissioner in this matter, and taxes said \$37,220 in fees and costs as costs in this case pursuant to R.C. 2101.06 and R.C. 2101.07. Pursuant to paragraph 13 of the Court's November 26, 2014 Judgment Entry, when the Court makes its final ruling, the Court will absorb \$9,305 of those costs, the Township Trustees and Park Commissioners shall each be responsible for and shall pay \$13,957.50 for those costs per R.C. 2101.06 and R.C. 2101.07. (Court – 25%; Trustees – 37.5%; and Park Commissioners – 37.5%).

III. 1993 Agreement

In 2016, the Ohio Supreme Court unanimously ruled that a probate court's authority ^{surety} includes the ability to issue orders to enforce the entry creating the park district, including orders that impose duties on those interfering with the park district's purpose." *State ex rel. Chester Twp. v. Grendell*, 2016-Ohio-1520, at ¶30.

Pursuant to paragraph 7 of this Court's November 26, 2014 Judgment Entry, the Court hereby orders that within fifteen (15) days of the docketing of this entry, the Master Commissioner shall meet with the Township Trustees and Park District Commissioners to formulate an agreement that is consistent with and not in conflict with the authority of the Park District under R.C. Chapter 1545 and the initial Township application and Judge Lavrich's judicial documentation forming the Park

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GEAUGA COUNTY, OHIO

District.

“Under R.C. 2101.24(C), probate courts have plenary power to “dispose fully of any matter that is properly before the court,” unless the power is expressly limited or denied by the Revised Code.” *Grendell*, at ¶28. This “surely includes the ability to issue orders to enforce the entry creating the park district, including orders that impose duties on those interfering with the park districts purposes.” *Id.*, at ¶30. As a preliminary matter and in regards to the 1993 Agreement (“Agreement”) between the Trustees and Park Commissioners, the Court finds that paragraphs 1, 3, 4, 8, and 12 of said Agreement directly conflict with state law, Judge Lavrich’s original order forming the Park District, or both. This Agreement gives the Chester Township Trustees powers that state law does not provide them. Essentially, there would be no need for Ohio Revised Code Chapter 1545, should the Agreement be permissible.

The Court finds, as to the Agreement, that:

1) Paragraph 1 conflicts with Chapter 1545 because it would allow the township trustees authority to terminate the township park district and discontinue the park district’s authority which, under R.C. 1545.35, can only be accomplished by this court or by a vote of the residents of Chester Township;

2) Paragraph 3 conflicts with R.C. 1545.14 because it hinders the township park commissioners’ ability to enter into contract and creates an unlawful veto mechanism for the township trustees to override the park commissioners’ decisions;

3) Paragraph 4 conflicts with Chapter 1545 because it essentially gives the trustees the authority to interfere with the park commissioners and their decisions involving park district matters;

4) Paragraph 8 conflicts with R.C. 1545.11 and Chapter 1545 because it interferes with the

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GEORGIA COUNTY

powers of the park district to take actions as permitted by state law;

5) Paragraph 12 would allow the Chester Township Trustees to take control of all Chester parks, which is in direct conflict with R.C. 1545.35 and R.C. 1545.36, which allow only the court or people to dissolve the park district, not the township trustees.

Contract terms that violate public policy may not be enforced by Ohio courts. *Key v. Vattier* (1823), 1 Ohio 132; *Lamont Bldg. Co. v. Court* (1946), 147 Ohio St. 183, 184-185, 34 O.O. 73, 74, 70 N.E.2d 447, 448; *John Hancock Mut. Life Ins. Co. v. Hicks* (1931), 43 Ohio App. 242, 247, 183 N.E. 93, 95. Second, a contract term that hinders the purpose of a statute is void. In *Grange Mut. Cas. Co. v. Lindsey*, the Supreme Court of Ohio found a contract term void by public policy because it was "in derogation of the public policy and purpose of a statute." Since enforcing the 1993 Agreement would work against the Chester Township residents' statutory protected interest and the Chester Township Park Commissioners' statutory authority, the court finds the 1993 Agreement contains numerous terms that conflict with or violate both public policy and Chapter 1545.

If the parties fail to reach an agreement, this Court will issue a final order which will supersede this interim order and modify it as appropriate.

If any party wants to be heard on the matter, they shall file a request for hearing by May 13, 2016. Each of the parties also shall have fourteen (14) days from the docket date of this entry to submit briefs on the above matters.

IT IS SO ORDERED.


TIMOTHY J. GRENDLELL, JUDGE

cc: Chester Township Trustees
Prosecutor
Chester Park Commissioners
Atty. Raskin
Atty. Gillette
Mary Jane Trapp

STATE OF OHIO
COUNTY OF GEAUGA

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IN COURT OF APPEALS
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IN THE COURT OF APPEALS
ELEVENTH DISTRICT

IN THE MATTER OF THE CREATION OF A
PARK DISTRICT WITHIN CHESTER
TOWNSHIP

DENISE M. KAMINSKI
CLERK OF COURT
GEAUGA COUNTY

JUDGMENT ENTRY

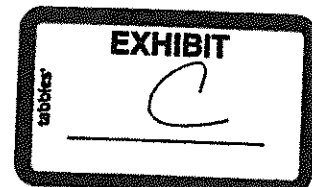
CASE NO. 2016-G-0082

On August 1, 2016, appellant, Chester Township Park District Board of Trustees, filed a motion with this court to stay execution of the portion of the trial court's June 22, 2016 judgment, which issued a permanent injunction from "enforcing or acting on the basis of paragraphs 1, 3, 4, 8 and 12" of a contract between appellant and appellee, the Chester Township Park District Board of Commissioners.

Appellant indicates in its motion that neither party requested injunction or sued on the contract. Appellant requests the stay be effective throughout the pendency of the appeal. Appellant further notes that the trustees and the commissioners have been operating under the agreement since at least 1993, and neither the trustees nor the commissioners requested review of this contract by the court.

Appellant also filed a motion to stay execution of the June 22, 2016 judgment in the Geauga County Court of Common Pleas, Probate Division, as it pertains to payment of certain fees and costs. On August 9, 2016, a hearing was apparently held on the matter. The probate court entered a judgment on August 11, 2016, and stated "[e]xecution on the prior orders of this Court as applied to

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the Chester Township Trustees is stayed pending the outcome of the pending appeal."

It is unclear whether any stay was granted as to the commissioners. However, it appears the intention was to stay application of the entire order as to all affected. This would be the most appropriate course during the pendency of the appeal. Therefore, execution of the probate court's June 22, 2016 judgment as it applies to the Chester Township Park District Board of Trustees and the Chester Township Park District Board of Commissioners is stayed pending further order of this court. It is not stayed as to the probate court's order upon itself to pay fees to the Master Commissioner.


JUDGE TIMOTHY P. CANNON

CYNTHIA WESTCOTT RICE, P.J.,

THOMAS R. WRIGHT, J.,

concur.

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IN THE COURT OF COMMON PLEAS
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GEAUGA COUNTY, OHIO

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DIVISION
GEAUGA COUNTY, OHIO

IN THE MATTER OF:)
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CHESTER TOWNSHIP PARK)
DISTRICT)
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CASE NO.: 84 PC 000139

Judge Timothy J. Grendell

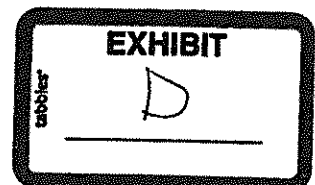
JUDGMENT ENTRY

The Ohio Supreme Court has unanimously ruled that a probate court's authority "surely includes the ability to issue orders to enforce the entry creating the park district, including orders that impose duties on those interfering with the park district's purpose." *State ex rel. Chester Twp. v. Grendell*, 2016-Ohio-1520, at ¶30.

Pursuant to R.C. 2101.06, the Court previously appointed Mary Jane Trapp, an attorney at law (Attorney Registration #: 0005315), as special master commissioner to investigate matters pending before the Court concerning the Chester Township Park District formed by Judge Frank Lavrich through Case No. 84 PC 000139.

In furtherance of her Master Commissioner duties pursuant to R.C. 2101.06, Master Commissioner Trapp is authorized to and shall investigate the following:

1. Did the Chester Township Trustees commit fraud upon the Probate Court in connection with the revised park agreement prepared by the Township Trustees' attorney and submitted to the Chester Township Park Board to sign, and then subsequently voting 2-1 against executing that same revised agreement?



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GEAUGA COUNTY, OHIO

2. Did the Chester Township Trustees interfere with the operation or purpose of the park district by submitting a revised park agreement to the Chester Township Park Board to sign, and subsequently voting 2-1 against executing the same revised park agreement, which was drafted by the Township Trustees' attorney?
3. Did the Chester Township Trustees commit contempt of court by failing to execute the revised park agreement prepared by the Township Trustees' attorney?
4. Did Chester Township Trustee Kenneth Radtke interfere with the operation or purpose of the Chester Township Park Board by inducing and/or intimidating or attempting to induce or intimidate current members of the Chester Township Park Board to resign from their current position as Township Park Board members?
5. Did the Geauga County Prosecutor's Office and/or private counsel retained by the Chester Township Trustees perpetuate fraud on the Court or act in complicity with others to commit fraud on the Court with respect to actions taken and/or misrepresentations made by one or more of those attorneys to the Court in connection with the revised agreement submitted to the Park Board for signature?
6. Did the Chester Township Trustees' actions or inaction with respect to the revised park agreement violate R.C. Ch. 1545?
7. Did the Chester Township Trustees' actions or inaction with respect to the revised park agreement violate Probate Judge Frank Lavrich's original order creating the Chester Park District?

Master Commissioner Trapp has been previously sworn under oath. Bond is not required.

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Master Commissioner Trapp is appointed and fully authorized to investigate these matters in accordance with R.C. 2101.06 and *State ex rel. Chester Twp. v. Grendell*, 2016 Ohio 1520.

Master Commissioner Trapp shall submit a written report to the Court as to the matters stated above by November 15, 2016, stating her findings of fact and conclusions of law with transcripts of any and all witness testimony attached. See R.C. 2101.06.

Master Commissioner fees shall be allowed and taxed as costs pursuant to R.C. 2101.07.

IT IS SO ORDERED.


TIMOTHY J. GRENDALL, JUDGE

- cc: Master Commissioner Trapp
- Chester Township Trustees
- Prosecutor
- Atty. Raskin / Atty. Scialdone
- Chester Park Board
- Atty. Gillette

Trustees losing their civil mandamus action filed with the Ohio Supreme Court because the Park Board members and Judge Grendell successfully discharged their respective duties as public servants with respect to that civil mandamus action, and, if so, did such deprivation of constitutional and federal statutory rights interfere with the purpose of the Chester Park District and Judge Lavrich's order creating that township park district?

These additional matters shall be addressed in the Master Commissioner's report, as previously ordered.

IT IS SO ORDERED.


TIMOTHY J. GRENDOLL, JUDGE

cc: Master Commissioner Trapp
Chester Township Trustees
Prosecutor
Atty. Raskin / Atty. Scialdone
Chester Park Board
Atty. Jim Gillette

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