

IN THE SUPREME COURT OF OHIO

IN THE MATTER OF: )  
CHESTER TOWNSHIP PARK ) Common Pleas Case No. 84 PC 000139  
DISTRICT )  
 ) From the Geauga County  
 ) Court of Common Pleas  
 ) Probate Division  
 )  
 ) **Supreme Court Case No. 16-AP-083**  
 )

**JUDGE TIMOTHY J. GRENDELL’S RESPONSE TO THE AFFIDAVIT OF  
DISQUALIFICATION**

Section 2701.39 of the Ohio Revised Code allows a party to a probate matter to seek the disqualification of the trial judge presiding over the case where the judge is “interested in” the proceeding or “has a bias or prejudice for or against a party to a proceeding.” R.C. 2701.39. Ken Radtke’s affidavit of disqualification should be denied for the following reasons: (1) I bear no ill will, bias, prejudice, or animosity towards Mr. Radtke; and (2) my only interest is to adjudicate all matters involving the Chester Township Park District fairly and impartially, in accordance with the 7-0 ruling of the Ohio Supreme Court in *State ex rel. Chester Twp. v. Grendell*, 2016-Ohio-1530 (Apr. 14, 2016).

**Unlike the Mueller affidavit filed against me in the Russell Township matter (Ohio Supreme Court, Case No. 16-AP-069), Mr. Radtke has not produced any newspaper articles or proof of any public comments attributable to me concerning Mr. Radtke. Mr. Radtke has not and cannot demonstrate any public comments by me that would be in any way disqualifying in this matter. Unlike the Russell Township matter, I did not schedule a hearing or conduct any proceeding, but rather delegated the investigation to former appellate court judge Mary Jane Trapp, as master commissioner as per R.C. 2101.06 and**

***State ex rel. Chester Twp. v. Grendell*, at ¶ 26. Further, unlike the Russell Township matter, I have not issued a subpoena to Mr. Radtke to testify before me and he is not scheduled to testify before me. No proceedings before me are pending or scheduled. Rather, I have followed the master commissioner process outlined under R.C. 2101.06, as approved by the Ohio Supreme Court. *Id.***

Mr. Radtke apparently does not accept the Ohio Supreme Court's 7-0 decision in *State ex rel. Chester Twp. v. Grendell*, in which the Ohio Supreme court specifically and unanimously recognized the Geauga County Probate Court has the authority and jurisdiction to appoint a master commissioner to investigate matters relating to the operation of the park district, and has the jurisdiction "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. *Id.*, at ¶ 26-27, 30. Mr. Radtke now is seeking a de facto writ of prohibition through the filing of his affidavit of disqualification. Even more troubling, Mr. Radtke appears to be using his affidavit of disqualification to argue the merits of his pending appeal with the Eleventh District Court of Appeals. *See, In The Matter of: Chester Township Park District*, Eleventh Appellate District, Case No. 2016-G-0082.

Since the Ohio Supreme Court rendered its 7-0 decision, Mr. Radtke has sought to circumvent or frustrate the Ohio Supreme Court's holding that the Geauga County Probate Court has the authority and jurisdiction to appoint a special master commissioner to investigate matters relating to the operation of the park district, and has the jurisdiction "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. *Id.*, at ¶ 26-27, 30. Mr. Radtke's efforts include: (1) filing an appeal challenging the Probate Court's authority in the Eleventh District Court of Appeals after the

Ohio Supreme Court's April 14, 2016 unanimous decision; (2) two motions for stay (one of which I granted), (3) filing an extraordinary motion to enforce stay in contradiction of binding Ohio Supreme Court authority in *State ex rel. Electronic Classroom of Tomorrow v. Cuyahoga Cty. Court of Common Pleas*, 129 Ohio St.3d 30, 2011-Ohio-626; and (4) now his affidavit of disqualification. All of these filings have the same purpose as the prohibition action denied by the Ohio Supreme Court -- to prevent Judge Timothy Grendell from exercising his Ohio Supreme Court recognized authority 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." *Id.*, at ¶ 30; *See*, Affidavit of Master Commissioner Mary Jane Trapp attached as "Exhibit 1" hereto.

Although Mr. Radtke argues any new investigation conducted by the master commissioner falls outside the scope of the Ohio Supreme Court decision in *State ex rel. Chester Twp. v. Grendell*, the master commissioner's most recent investigation concerns whether Mr. Radtke's alleged conduct rose to a level that interfered and frustrated the purpose of the original probate court order creating the park district. *Id.*, at ¶ 26-27, 30; *see also* Trapp Affidavit, Ex. 1 hereto. The Ohio Supreme Court clearly stated a probate court may issue orders that include 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." *Id.*, at ¶ 30. Therefore, the probate court has jurisdiction over parties that interfere with the park district's purpose. This is the exact issue the master commissioner's investigation seeks to answer. Moreover, the Probate Court has taken no action or judgment against Mr. Radtke, but merely authorized an investigation pursuant to *State ex rel. Chester Twp. v. Grendell*.

I have not initiated any criminal proceedings against Mr. Radtke or anyone else. Rather, pursuant to the Ohio Supreme Court ruling in *State ex rel. Chester Twp. v. Grendell*, I merely authorized Mary Jane Trapp, as master commissioner, to investigate whether Mr. Radtke's alleged conduct rose to a level that interfered and frustrated the purpose of the original probate court order creating the park district. *Id.*, at ¶ 26-27, 30; *see* Affidavit of Chester Park Commissioner Joseph H. Weiss Jr. attached as "Exhibit 2" hereto.

Mr. Radtke's citation to *In Disciplinary Counsel v. Campbell*, 126 Ohio St. 3d 150, 2010-Ohio-3265 (2010) is severely misplaced. In *Campbell*, the Court found the trial judge "crossed the line" when he actively participated in the investigation and collection of evidence against a defendant. *Id.*, at ¶ 13. This case is clearly distinguishable from Mr. Radtke's matter. It is well-settled that a judge should not conduct his or her own independent investigation into a matter. *See*, Model Code of Judicial Conduct R. 2.9(C). In order to comply with this rule, I authorized Mary Jane Trapp, as master commissioner, to investigate whether Mr. Radtke's conduct rose to a level that interfered and frustrated the purpose of the original probate court order creating the park district pursuant to R.C. 2101.06. I will not independently investigate anything in this matter. I am simply exercising my authority and responsibility to follow the Ohio Supreme Court's ruling. The Ohio Supreme Court recognized the probate court may appoint a master commissioner to investigate park related matters analogous to a probate court's authority to investigate guardians. *State ex rel. Chester Twp. v. Grendell*, at ¶ 27. The Court concluded, "The probate court's authority to create park districts and its plenary power 'to dispose fully of any matter' that is properly before it surely includes the ability to issue orders to enforce the entry creating the park district, including orders that impose duties on those [i.e. the Chester Township Trustees] interfering with the park district's purposes." *Id.*, at ¶ 30.

The Ohio Supreme Court decision speaks for itself. I am not conducting an independent investigation, but rather authorizing a master commissioner investigate whether new conduct from Mr. Radtke has or has not interfered with the purpose of the Chester Park District and then Judge Lavrich's order creating the township park district.

Under Mr. Radtke's argument, any court action seeking to prevent interference with park district judgment entries would automatically constitute unethical conduct. This is NOT so. *Id.* Moreover, under Mr. Radtke's argument, a court seeking to prevent contempt would automatically disqualify the judge from proceeding with a show cause hearing and constitute an unethical "criminal" enforcement action by the court. Obviously, this also is not Ohio law. Again, all I have merely done is authorize Mary Jane Trapp, as master commissioner, to investigate is whether Mr. Radtke's and another trustee's conduct rose to a level that interfered and frustrated the purpose of the original probate court order creating the park district. In fact, three of the Chester Township Park Board members want such investigation. (*See* attached news article, dated October 5, 2016) (*See*, "Exhibit 3" hereto.)

The filing of the affidavit by Mr. Radtke is yet another attempt to circumvent the Ohio Supreme Court 7-0 ruling. Mr. Radtke received an unfavorable decision from the Ohio Supreme Court and now believes that as a result I cannot adjudicate matters involving the Chester Township Park District. Granting Mr. Radtke's disqualification effort would be granting Mr. Radtke the relief he was unanimously denied by the Ohio Supreme Court in *State ex rel. Chester Twp. v. Grendell*. In fact, there have been hearings before and after the Ohio Supreme Court's unanimous ruling on April 14, 2016. The Probate Court conducted hearings on April 26, 2016 and August 9, 2016. Interestingly, Mr. Radtke did not seek my disqualification until after he received the unfavorable decision from the Ohio Supreme Court.

Granting his disqualification request also would set a dangerous precedent, encouraging parties who lose prohibition writ actions to use that action as grounds for disqualification.

I have not been retaliatory or prejudicial to Mr. Radtke. In fact, I granted the Township Trustees' Motion to Stay my June 22, 2016 Judgment Entry. The Probate Court has even incurred and paid a portion of the master commissioner's costs initial investigation. Moreover, I ordered **both** the Chester Township Park Board and the Chester Township Trustees to pay **equal** shares of the remaining master commissioner's costs. These are just several examples of my impartiality in handling this matter.

I authorized Mary Jane Trapp to investigate the new allegations of interference with the Park Board instead of holding a direct hearing on this matter or conducting my own independent investigation, unlike the judge in *Campbell*. I have followed the very same master commissioner procedures that the Ohio Supreme Court recognized as proper in its 7-0 decision denying a writ of prohibition.

### ***Conclusion***

The statutory right to seek disqualification is an extraordinary remedy. In re Disqualification of Matia, 135 Ohio St. 3d 1246, 2012-Ohio-6343, ¶ 12. For the multiple reasons stated above, that extraordinary remedy is not warranted here.

I bear no animosity or ill will to Mr. Radtke. I have taken an oath to administer justice and will do so in Case No. 84 PC 000139 In the Matter of: Chester Township Park District, and any other case that comes before me.

This request is totally different from the request filed by Mr. Mueller (16-AP-069) because I did not make any public comments against Mr. Radtke, issue a subpoena, hold a hearing, or conduct any proceeding.

For each and all of the above stated reasons, I respectfully request that the Affidavit of Disqualification filed by Ken Radtke be dismissed or denied.


I am submitting this Response under oath, based on my personal knowledge of the matters stated above herein. Thank you for your attention to this matter.

Respectfully,




Timothy J. Grendell, Judge (0005827)  
Geauga County Probate/Juvenile Court  
231 Main Street Suite 200  
Chardon, Ohio 44024  
Phone: 440-279-1830

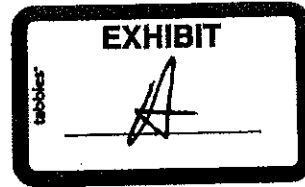
Sworn to and subscribed before me by Judge Timothy J. Grendell on October 20, 2016.



Notary Public



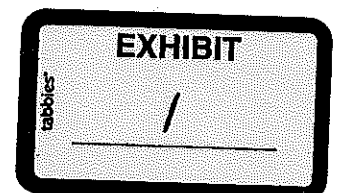
WENDY L. CALL  
Notary Public, State of Ohio  
My Commission Expires 09-30-2017



State of Ohio )  
 ) Affidavit of Mary Jane Trapp  
Cuyahoga County )

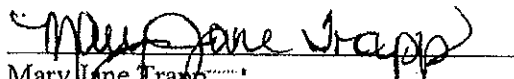
Mary Jane Trapp, being first duly sworn according to law, deposes and states as follows:

1. This Affidavit is based upon my personal knowledge of the matters stated below.
2. I am a licensed, practicing attorney in the state of Ohio and I am in good standing.
3. Pursuant to R.C. 2101.06, I was appointed Master Commissioner *In the Matter of Chester Township Park District*, Geauga County Court of Common Pleas, Probate Division, Case No. 84 PC 000139.
4. Originally, I was authorized to investigate issues raised in an anonymous, twenty-nine page document entitled, "Chester Township Park District 2013 Review."
5. The 2013 Review was presented to the Chester Township Trustees and the Township Fiscal Officer.
6. The 2013 Review raised a number of issues regarding the operation of the park district relating to vendor payments; increased spending; park projects; plans and budget estimates; alleged failures to follow Ohio law; park district-by laws and the Agreement between the park district and Chester Township relating to the operation of a park district and open meetings, among other issues.
7. Pursuant to the Probate Court's order, I investigated the issues raised in the 2013 Review and filed a report of my findings on July 24, 2014.
8. As part of my report, I concluded that the park district's by-laws and a 1993 operating agreement between the Chester Township Trustees and the park district were in need of revision because, among other issues, some provisions of the agreement conflicted with Ohio law.
9. The Probate Court referenced my findings when it issued its June 22, 2016 Judgment Entry invalidating certain provisions of the 1993 Agreement.
10. On September 18 and September 22, 2016, the Geauga County Probate Court issued judgment entries authorizing and directing me to investigate matters unrelated to the issues I raised concerning the 1993 operating agreement. Those matters pertained to allegations of possible new interference with the operation of the park district and its original purpose a separate body.

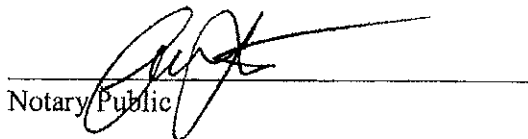


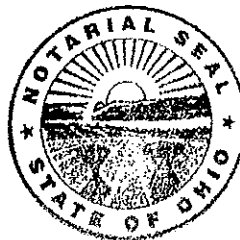
11. I consider the September 18 and September 22, 2016 orders as a mandate authorizing me to investigate new issues that were not a part of my original investigation nor the subject matter of the prior orders of the Probate Court relative to my investigation. I am conducting my current investigation with that consideration in mind.

FURTHER AFFLIANT SAYETH NAUGHT.

  
Mary Jane Trapp

SWORN TO BEFORE ME, a Notary Public, and subscribed in my presence this 13th day of October, 2016.

  
Notary Public



JOHN R.  
LIBER, II  
Attorney At Law  
NOTARY PUBLIC  
STATE OF OHIO  
My Commission  
Has No Exp. Date  
Sec. 147.03 O.R.C.



**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
GEAUGA COUNTY, OHIO**

IN THE MATTER OF:	)	CASE NO. 2016-G-0082
	)	
CHESTER TOWNSHIP PARK DISTRICT	)	On Appeal from Judgment Entry
	)	of the Geauga County Court of
	)	Common Pleas, Probate Division,
	)	Case No. 84PC000139
	)	

**AFFIDAVIT OF JOSEPH H. WEISS, JR.**

STATE OF OHIO            )  
                                  )     SS:  
COUNTY OF GEAUGA    )

I, Joseph H. Weiss, Jr., having been duly sworn, state and depose as follows:

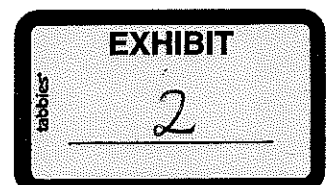
1. I am member of the Chester Township Park District Board of Commissioners and have personal knowledge of the facts stated in this Affidavit.

2. The Chester Township Park District (the "Park District") was created in 1984 by the Geauga County Probate Court in accordance with R.C. Chapter 1545. All of the members of the Board of Commissioners have been lawfully appointed by the Geauga County Probate Court.

3. In March 2014, an anonymous report, entitled "Chester Township Park District 2013 Review" (the "2013 Review"), was submitted to the Chester Township Board of Trustees and then was later provided to the Geauga County Probate Court. The report raised several issues relating to the operations of the Chester Township Park District.

4. Judge Timothy J. Grendell of the Geauga County Probate Court then appointed attorney Mary Jane Trapp as a special master commissioner under R.C. 2101.06 to investigate the issues raised in the 2013 Review.

5. In her report and recommendation, Master Commissioner Mary Jane Trapp raised a number of issues relating to the legality of certain terms in a 1993 written agreement between the Chester Township Board of Trustees and the Chester Township Park District Board of Commissioners relating to the operations of the Park District.




6. Sometime in May 2016, the Chester Township Board of Trustees and the Chester Township Park District Board of Commissioners agreed to meet voluntarily to negotiate the terms of a new operating agreement for the Township Park. A meeting was then held at my office on June 1, 2016, that was attended by Ken Radtke, one of the Chester Township Trustees, and their counsel, Assistant Prosecuting Attorney, Bridey Matheny, and by myself and Jim Gillette, attorney for the Chester Township Park District. Special Master Commissioner Mary Jane Trapp also attended the meeting.

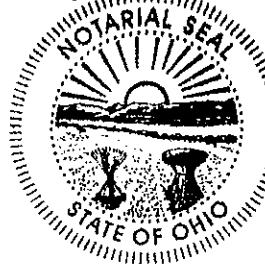
7. After the meeting, there were back-and-forth communications between counsel that ultimately resulted in a final agreement. The final agreement was sent by Ms. Matheny to the Park District's attorney for approval by the Park District Commissioners. The Park District Board then approved and signed the Township's agreement, and sent it back to the Township Trustees for signature. The Township Trustees, however, reneged and refused to sign their own agreement.

8. To my knowledge, the members of the Chester Township Park District's Board of Commissioners has not taken any action that violates the Eleventh District's September 1, 2016 stay order.

  
JOSEPH H. WEISS, Jr.

SWORN TO BEFORE ME, a Notary Public, and subscribed in my presence this 13<sup>th</sup> day of October, 2016.

  
Notary Public



KATHALEEN L. SMITH  
NOTARY PUBLIC  
STATE OF OHIO  
Comm. Expires  
March 15, 2019  
Recorded In  
Lake County

# REQUIREMENTS FOR POLITICAL SIGNS

been advised to remove signs located in the road right-of-way or signs creating safety concerns. Also, permission from the property owner is required prior to posting signage.

Questions? Contact Steve Averill, 440 729-9201, Monday through Friday, from 8 a.m. to 5 p.m.

With the 2016 election upon us, the Chester Township Zoning Office reminds anyone posting political signs that they must not be located in the road right-of-way or impede the view of oncoming traffic. The office has

## SUBMITTED

Trustees appealed Grendell's orders to the 11th District Court of Appeals in Warren. The appellate court ultimately dismissed the appeal, finding it premature because Grendell had not yet approved an ordered payment of the master commissioner's fees and costs.

Rather than waiting, however, trustee filed an action in prohibition with the supreme court.

In a 7-0 decision, issued April 14, the supreme court denied trustee's request. The court held Grendell had the statutory and inherent authority to issue orders related to the probate court's 1984 entry creating the park district. That was the only issue the supreme court said it was deciding.

It did not rule on the content of those orders, however. That would be an issue for the court of appeals, the court said.

## Revised Park Agreement

In a split vote last month, trustees voted not to enter into a revised park agreement with the park board and then voted to terminate an existing 1993 agreement, effective Dec. 31.

Grendell had found in June that five provisions of the 1993 agreement violated public policy and conflicted with the 1984 order creating the park district.

"This has nothing to do with our park board members," Radtke told the Geauga County Maple Leaf last month regarding his Aug. 18 vote. "They have done a great job of our parks and have attracted thousands of people to use them."

Instead, Radtke said he and Petruziello

## Chester

from page 1

Prosecutor's Office or trustees' private counsel perpetuate fraud on the court or act in complicity with other to commit fraud on the court with respect to actions taken or representations made regarding the revised agreement?

5. Did Radtke and Petruziello criminally retaliate against park board members and Grendell, or deprive them of their constitutional rights to discharge their respective duties, because trustees lost their supreme court case?

Gauga County Maple Leaf sent an email to trustees requesting comment on Grendell's latest entries. Radtke said he forwarded the request to outside legal counsel, which has responded.

In response to another email seeking comment, Park Commissioner Joe Weiss said the master commissioner is the means available to find the truth about why Radtke and Petruziello refused to sign the revised agreement.

"The master commissioner served the township well in the past by giving an accurate, unbiased overview of the park board and its need to serve the township as an independent body," Weiss said.

"In the current situation, the majority of the board of trustees side-doored Trustee Bud Kinney by refusing to sign an agreement approved by them which was presented to the park board, which signed it.

"The inactions over the past three years have cost us, the taxpayers, in excess of \$100,000 between the master commissioner

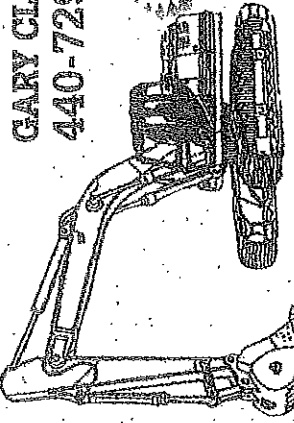
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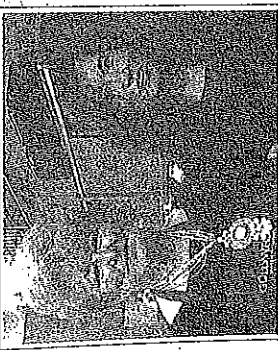
**EXHIBIT**

3

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\$100,000 between the master commissioner fees, the township and park board legal fees, and the legal fees incurred by the court. This must stop," Weiss said.

He added, "The public needs to know the truth once and for all, and those responsible should be held accountable for their actions. The master commissioner needs the latitude given by the court in its orders to do the job and smoke out the truth."

Park Commissioner Ruth Philbrick agreed that Radtke and Petruziello needed to be investigated.

"They wrote a new agreement for the Chester park board and it was signed by all the Chester park board members," she said. "Then the two trustees wouldn't sign their own agreement. Who does that? I have lost my trust in them."

Philbrick added trustees previously said they had no money to put flower baskets along the intersection of U.S. 322 and state Route 306, but can spend thousands on legal fees.

"As a Chester taxpayer, I am appalled at the money they feel free to spend on legal fees," she said. "I don't believe they are responding to what the majority of the taxpayers want."

For Park Commissioner Clay Lawrence, trustees' inaction comes down to two issues.

"One, Radtke is mad because, after all the taxpayer money spent on lawsuits against Judge Grendell's actions, he has been proven wrong by the state supreme court," Lawrence said. "Two, he can only get even by taking back the park operations, thereby relieving Judge Grendell of his appointing authority."

### Supreme Court Decision

In April 2015, trustees asked the Ohio Supreme Court to prohibit Grendell from issuing or enforcing rulings against them in the 1984 probate court case creating the park district.

Months earlier, in November 2014, Grendell had issued orders trustees claimed imposed duties, obligations and fees on them he had no jurisdiction to impose.

instead, Radtke said he and Petruziello based their decisions because of Grendell.

"We need to protect our residents as well as the park district from this judicial over-reach," Radtke said. "He appears to have adversarial relationships with our residents and other public officials."

Radtke asked current park board members to consider resigning and forming a new park committee, "so we can move forward to regain control of the parks, which are owned by our residents."

Trustee Ward "Bud" Kinney, who cast the lone dissenting votes, called his colleagues' actions "unconscionable."

"If they didn't want to sign it, they should have said that after we drafted the document," he told the Maple Leaf last month. "It was embarrassing."

On Sept. 15, Grendell wrote park board members and told them the trustees' Aug. 18 vote did not dissolve the park district or park board.

He also informed them the park district would continue to receive fund annually from the township.

"With that in mind, please be further advised that your resignation from the park district board are unnecessary and would not be accepted under the current circumstances," Grendell wrote.

In August, the Geauga County Budget Commission denied a park district request to collect more than \$60,000 from the township's general fund in 2017, finding the park district did not own any land and trustees terminated the 1993 agreement.

Weiss told commission members that trustees blamed their decision to terminate the agreement on Grendell.

Weiss also argued the park district had the statutory right to request funding from the township, but was told the budget commission is responsible for assigning it.

The budget commission did approve, however, the township's 2017 budget, which included a transfer of \$70,000 to township-owned parks. It did not include any transfers to the park district.